

Qatar Court of Appeal
Appeal No. 2186 of 2019
6 July 2020

Qatar Building Company

... Appellant

Redco Cicon

... Respondent

The Respondent had brought Arbitration Case No. AYZ/HTG/23241 in which the ICC International Court of Arbitration issued an award against the Appellant, dated 14.10.19. The Appellant then brought an action against the Respondent, on 17.11.19, to set aside the arbitral award on the ground of an irregularity, under ICC Rules, in the constitution of the arbitral tribunal and the Respondent's non-compliance with pre-arbitration procedures. The Appellant also submitted that the award contravened public policy as it was not issued in the name of the supreme authority of the State, in violation of Article 63 of the Constitution and Article 69 of the Civil Procedure Law. The Appellant further submitted that they were not given an opportunity to present their defense. The Appellant had made a request before the arbitral tribunal to submit a letter from the owners (Appellant) in which they agree to pay the amount of the award, which the Appellant did, but the tribunal ignored the letter, in violation of Articles 31, 33 of the Arbitration Law. The tribunal, moreover, lacked impartiality, in violation of Article 18 of the Arbitration Law. Dr. Adnan Steitieh had dealings with Obrascón Huarte Lain, one of the parties and partners in the JV that had been set up for the project. Dr. Steitieh is a Salam International Investment shareholder and director. Salam International Investment own Salam Technology, a subcontractor for the Doha Metro project with whom a dispute had arisen. Dr. Steitieh failed in his duty to make disclosure because of a conflict of interest.

Turning to the above grounds of appeal, Article 33 of Law No. 2 of 2017 provides:

1. Recourse against an arbitral award may be made only by an application for setting aside in accordance with this Law, before the Competent Court.
2. An action to set aside shall not be admitted unless the party making the application furnishes proof that:
 - a. A party to the Arbitration Agreement was, at the time of its conclusion, incompetent or under some incapacity, under the law governing its capacity; or the said agreement is not valid under the law to which the Parties have subjected it or, failing any indication thereon, under this Law;
 - b. The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case for reasons beyond its control;
 - c. The award contains decisions on matters not falling within the terms of the submission to Arbitration or beyond its scope, provided that, if the decisions on matters submitted to Arbitration can be separated from those not so submitted,

only that part of the award which contains decisions on matters not submitted to Arbitration may be set aside;

- d. The composition of the Arbitral Tribunal, the appointment of the arbitrators, or the arbitral procedure was not in accordance with the agreement of the Parties, unless such agreement was in conflict with a provision of this Law from which the Parties cannot derogate, or, failing such agreement, was not in accordance with this Law.

The law, in seeking to bring certainty and stability to arbitral awards and ensure that challenges to awards do not serve as an appeal in proceedings, specifically enumerates the grounds on which arbitral awards may be set aside. Therefore, challenges to arbitral awards can only be made on those limited grounds and no other. The Appellant's contention of irregularities in the constitution of the tribunal and appointment of the arbitrators under ICC Rules and non-compliance with pre-arbitration procedures is without merit. The Appellant has not explained the reasons for the irregularities and where they lie in the award which makes their contention vague, not to mention that the parties, including the Appellant, had proceeded with their arbitrator appointments without any objections being raised and a presiding arbitrator was then appointed in accordance with Article 13 of the ICC Rules. The contention is ill-founded and is dismissed.

The Appellant's contention that the arbitral award contravenes public policy because it was not issued in the name of HH The Emir of Qatar is without merit. Article 63 of the Constitution provides: "Judicial Authority shall be vested in the courts of law as prescribed in this Constitution; and judgments of the court shall be pronounced in the name of the Emir." Article 14 of Law No. 10 of 2003 on the Judicial Authority provides: "Judgments shall be issued and enforced in the name of the Emir." Article 69 of the Civil Procedure Law provides: "Judgments shall be issued and enforced in the name of HH The Emir of the State of Qatar."

Thus, the law requires that judgments be issued in the name of the supreme authority of the State, namely HH The Emir of the State of Qatar who is the source of all authority, including judicial authority. Issuing judgments in the name of HH The Emir underscores the fact that judgments are enforceable by virtue of the force behind their issuance. The lack of a statement in the preamble to the judgment that the judgment is issued in the name of HH The Emir would not undermine its legality or essence for it is clear that the Constitution and the Judicial Authority Law do not address the particulars that must be included in judgments. The provision that judgments shall be issued and enforced in the name of HH The Emir of Qatar indicates that such issuance is, of itself, presumed by the force of the Constitution per se regardless of whether it is stated in the preamble to the judgment. The inclusion of a statement is a subsequent physical act that bears out but does not perfect the facts presumed, as contemplated by Article 126 of the Civil Procedure Law. The statement's omission does not produce nullity. The contention is accordingly baseless. This is confirmed by the Court of Cassation in Judgment no. 35 of 2003 which we cite in dismissal of such plea.

As regards the exception taken to the arbitral award on the basis that the arbitral tribunal did not give the Appellant an opportunity to present their defense, it is clear, looking at the (contested) award, that the tribunal proposed a procedural timetable

which the parties accepted. The parties, including the Appellant, were then given an opportunity till 30.05.19 to file pleadings, which they did. The Appellant's pleadings are based on the documents submitted by counsel. The contention is ill-founded and not supported by real facts. The arbitral tribunal denied the Appellant's request to submit an additional document, refusing, in the exercise of its statutory discretion, to reopen proceedings. The tribunal gave its reasons, in para 219, where it considered that the payment agreement and the sums paid by Qatar Rail were an advance payment intended, not as a payment on behalf of the Appellant, but to mitigate the damages that result from the breach of contract, and that Qatar Rail was entitled to encash that bond at any time. The challenge is accordingly dismissed.

The Appellant's contention that one of the arbitrators lacked impartiality is in fact an arbitrator challenge governed by the arbitrator challenge procedures of Article 14 of the ICC Rules which requires that the challenge be made by the submission to the Secretariat of a written statement within 30 days from receipt by the party concerned of the notification of the appointment of the arbitrator, for the Court to decide the challenge after the arbitrator concerned has submitted a response. As such, a lack of impartiality is not one of the limited grounds enumerated in law on which an arbitral award may be set aside. Likewise, the Appellant's contention of a violation of the law regulating the legal profession cannot be grounds to set aside, as ICC Rules, the procedural rules of choice, make no such provision.

Based on the foregoing, the appeal is dismissed on its merits.