Dispute Resolution Hotline

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SUPREME COURT UPHOLDS ARBITRATION FOR A PATHOLOGICAL ARBITRATION CLAUSE

The Supreme Court:

- reasonably and meaningfully construes a pathological arbitration clause, ensuring that the arbitral process is not derailed;
- acknowledges that the Court cannot question the appointment of a sole arbitrator by the SIAC Chairman and the partial award passed by the sole arbitrator on the issue of jurisdiction in proceedings under Section 11(6) of the Act;
- sends out a strong *pro-arbitration* signal;

INTRODUCTION

The Supreme Court of India (**"Court"**), in the case *of Pricol Limited (**"Pricol"**) v. Johnson Controls Enterprise Ltd. (**"Johnson"**) & Ors.*[1] once again demonstrated its pro-arbitration approach by reasonably and meaningfully construing a pathological arbitration agreement. Further, the Court held that (a) appointment of a sole arbitrator by the Singapore International Arbitration Centre (**"SIAC"**); and (b) a partial award having being passed by the arbitral tribunal on the issue of jurisdiction; cannot be examined in a petition under Section 11(6) of the Arbitration Act.

FACTS

The parties entered into a Joint Venture Agreement on December 26, 2011(**"JVA"**). The JVA contained an arbitration agreement which provided as under.

"*In case of such failure, the dispute shall be referred to sole arbitrator to be mutually agreed upon by the Parties. In case the parties are not able to arrive at such an arbitrator, the arbitrator shall be appointed in accordance with the rules of arbitration of the Singapore Chamber of Commerce."*

The JVA also provided that (a) the arbitration proceedings would be held at Singapore; and (b) it would be governed and construed in accordance with the laws of India.

Disputes arose between the parties and since they were unable to agree on a sole arbitrator, Johnson, construing the said reference to the "*Singapore Chamber of Commerce*" to be SIAC, moved SIAC for the appointment of an arbitrator. SIAC, exercising its powers under Section 8(2)[2] and 8(3)[3] of the Singapore International Arbitration Act (**"IAA"**), appointed one Mr. Steven Lim as a sole arbitrator. In the preliminary meeting, Pricol participated and indicated that it would be challenging the jurisdiction of the sole arbitrator. After exchange of written submissions, a hearing on the question of jurisdiction was held in Singapore. The sole arbitrator passed a partial award holding that the appointment made by the SIAC under the IAA is valid as the parties had expressly agreed that Singapore would be the seat of Arbitration.

The main contentions of Pricol were that the rights of the parties are to be governed by the laws of India; therefore, in the absence of any contrary intention, even the arbitration agreement would be governed by Indian Law. The seat of arbitration continued to be India inasmuch as the parties had only expressed Singapore to be the *venue* for proceedings. Part 1 of the Arbitration & Conciliation Act, 1996 (**"Act"**), would continue to apply and the procedural law governing the conduct of the arbitration would be the law prevailing in India. Even assuming that the seat of arbitration was held to be Singapore, the rights of the parties are to be governed by Indian law. It is only the curial law of Singapore that would apply to regulate the proceedings after the appointment of the Arbitrator and till the passing of the award. Pricol argued that the appointment of the sole arbitrator by SIAC was without jurisdiction and the Court ought to proceed to exercise its powers under the Act.

Johnson contended that the parties had agreed that the seat of arbitration would be Singapore and while substantive law would be Indian law, the appointment of the arbitrator would be in terms of the arbitration agreement. Pleading a reasonable understanding of the arbitration agreement, the Respondents argued that in light of the "*Singapore Chamber of Commerce*" not being an Arbitral Institution, the real intention of the parties was to approach the SIAC for appointment of an Arbitrator in the event of failure of a mutual agreement. Johnson also pointed out Pricol's conduct of dragging its feet as well as the fact that a partial award had already been passed by the arbitrator on the issue of jurisdiction.

JUDGMENT

Giving a reasonable and meaningful construction to a pathological arbitration agreement, the Court held that

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reference to "*Singapore Chamber of Commerce*", which was admittedly not an Arbitration institution having its own rules for appointment of Arbitrators, actually meant SIAC.

Without dealing with Pricol's contentions regarding the issue of the procedural law that would govern the conduct of arbitration, the Court noted that the proceedings before the SIAC were first in time and had resulted in the appointment of a sole arbitrator as well as the partial award on the issue of jurisdiction. The Court acknowledged that the appointment of the sole arbitrator by SIAC and the partial award on the issue of jurisdiction cannot be questioned in proceedings under Section 11(6) of the Act. If that were done, it would amount to the Court sitting in appeal over the decision of SIAC as well as the partial award, which would be wholly inappropriate

ANALYSIS

In the present case, the Court has undertaken a reasonable and meaningful construction of a pathological arbitration agreement. The real intention of parties to arbitrate, notwithstanding the fact that it was under a non-existent institution, has been given due recognition and upheld. In doing so, the Supreme Court effectively ensured that the arbitral process was not derailed and parties would not spend time, effort and money in litigating further on this issue.

The Court has also, rather significantly, acknowledged that any order passed by it would, in effect, amount to it sitting in appeal over the decision of SIAC and/or the partial award passed by the sole arbitrator, which would be inappropriate.

While this approach bodes well for the litigant who wants to arbitrate, it once again reminds us of the care that is imperative whilst drafting an arbitration agreement so that such needless issues are not permitted to fester. An arbitration agreement must be well-drafted and must not permit mischievous interpretation.

– Siddharth Ratho, Sahil Kanuga & Vyapak Desai
You can direct your queries or comments to the authors

[1] Arbitration Case (Civil) No. 30 of 2014;

[2] 8(2) The Chairman of the Singapore International Arbitration Centre shall be taken to have been specified as the authority competent to perform the functions under Article 11(3) and (4) of the Model Law;

[3] 8(3) The Chief Justice may, if he thinks fit, by notification published in the Gazette, appoint any other person to exercise the powers of the Chairman of the Singapore International Arbitration Centre under subsection (2).

September 26, 2024

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September 22, 2024