

SUPREME COURT OF SINGAPORE

13 May 2020

Case summary

Singapore International Commercial Court Originating Summonses No 2 and 3 of 2020

CEB v CEC and another matter [2020] SGHC(I) 11

Background

1 The plaintiff, an Indian company, entered into several contracts with each of the defendants, both UAE companies, for the sale and purchase of various commodities. The plaintiff duly supplied goods to the defendants in respect of some of the contracts as the delivery dates fell due. However, the defendants failed to make full payment for the goods supplied despite several extensions of the payment due dates. Consequently, the plaintiff unilaterally cancelled the remaining contracts between itself and each of the defendants in respect of which delivery had not yet been made.

2 The plaintiff claimed against each of the defendants for, *inter alia*, outstanding payments due and owing as well as damages for consequential loss. In response, the defendants counterclaimed against the plaintiff for breach of contract and sought damages representing the increase in value of the goods due to be delivered under the cancelled contracts. One of the defendants also sought damages for consequential loss.

3 The plaintiff and each of the defendants agreed to resolve their respective disputes by arbitration. The arbitration agreements were similar and provided for the seat of arbitration to be Singapore. The arbitration agreements further stated that the “arbitration shall be conducted in accordance with the Indian Arbitration Act of 1996 ... [and] shall be governed by and construed in accordance with the laws of India”.

4 Both arbitrations were heard together before the same arbitrator. The arbitrator allowed the plaintiff’s claim in respect of the payments due and owing from the defendants. While the arbitrator listed the plaintiff’s claim for consequential loss in the written awards, he made no finding on the issue. The arbitrator further allowed the defendants’ counterclaims, except the claim for consequential loss. Once the sums awarded to the plaintiff and defendants were set off from each other, the amount due to the plaintiff from each of the defendants was reduced, quite significantly in the case of one of the defendants.

5 The plaintiff then brought an application in the Singapore High Court seeking to set aside the awards. The plaintiff argued that the awards were made in breach of natural justice in so far as the arbitrator had failed to consider the issue of the plaintiff’s consequential loss. The plaintiff further submitted that the awards were also in conflict with the public policy of Singapore as the arbitrator’s decision to allow the defendants’ counterclaims was flawed in law and resulted in the defendants obtaining a substantial and unconscionable windfall. The proceedings were subsequently transferred to the Singapore International Commercial Court.

The Court's decision

The structure of the arbitration agreement

6 The Court considered whether the parties had chosen to bifurcate the procedural law and the *lex arbitri*, selecting Indian law and Singapore law respectively, or whether they had selected Singapore law as both the procedural law and *lex arbitri* whilst contractually importing the relevant provisions of Indian procedural law (at [39]–[40]).

7 While the former view was arguable based on the wording of the arbitration agreement, the Court concluded that a decision either way would not affect the outcome of the cases. Neither party had invited the arbitrator to apply a different procedural law, nor did they submit before the Court that there was a fundamental distinction between the two sets of laws such as to require a different decision under one set of procedural laws rather than the other. In any case, it was not disputed that the question of setting aside was a matter to be decided under Singapore law (at [41]–[43]).

Whether the awards should be set aside on the basis of a breach of natural justice

8 Taking the plaintiff's case at its highest, even if the arbitrator had overlooked the issue of consequential loss, the Court decided that it should not exercise its discretion to set aside the awards on the basis of a breach of natural justice.

9 Under s 33(4) of the Indian Arbitration and Conciliation Act, 1996, which echoes Art 33(3) of the UNCITRAL Model Law on International Commercial Arbitration, a party may request, within 30 days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. Although it was open to the plaintiff to invoke this provision, it failed to do so and could not provide a reason for such omission (at [59]–[60]).

10 As observed by the Singapore Court of Appeal in *BLC v BLB*, the failure to request for an additional award is not fatal to a party's case for setting aside, but such failure may be taken into account by the court in deciding whether to exercise its discretion to set aside the award or remit the matter back to the tribunal (at [61]–[62]). In this case, the balance fell heavily on the side of the principle of minimal curial intervention. The plaintiff did not explain why it did not request the arbitrator for an additional award, and its claims for consequential loss formed a mere fraction of its overall claim against each of the defendants. In these circumstances, it would be disproportionate to remit the matter back to the arbitrator or set aside the awards (at [63]–[64]).

Whether the awards should be set aside on the basis of a conflict with the public policy of Singapore

11 The Court further decided that the awards should not be set aside on the basis of a conflict with the public policy of Singapore. The arbitrator had not erred in law in failing to consider the question of anticipatory breach; there was no need to do so given that the arbitrator had found that the contracts were separate contracts. Further, even if the arbitrator had erred in law, a mere error of law or fact is not a valid ground for setting aside an arbitral award (at [71]–[72], [75]).

12 Moreover, the result achieved by the awards did not shock the conscience of the court. The plaintiff had merely made certain commercial decisions that turned out to be disadvantageous, which was part and parcel of normal trading. Although the amount due to the plaintiff from each of the defendants had been reduced, quite significantly in the case of one of the defendants, this did not turn a bad commercial deal into one that shocked the conscience so as to warrant setting aside the award (at **[76]–[77]**).

13 The Originating Summonses were dismissed. The plaintiff was ordered to pay each of the defendant's costs, to be assessed if not agreed (at **[78]**).

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.