

Ayy v AYZ and another
[2015] SGHCR 22

Case Number : Originating Summons No 695 of 2015 (Summons No 4895 of 2015)
Decision Date : 16 December 2015
Tribunal/Court : High Court
Coram : Colin Seow AR
Counsel Name(s) : Francis Goh and Timothy Chan (Harry Elias Partnership LLP) for the applicant;
Koh Junxiang and Mark Shan (Clasis LLC) for the respondents.
Parties : AYY — AYZ — AZA

Arbitration – International Arbitration Act – Stay of Arbitral Proceedings

16 December 2015

Oral Judgment
delivered on 2
November 2015.

Colin Seow AR:

Introduction

1 Summons No 4895 of 2015 (“the Application”) was an application taken out by AYY in Originating Summons No 695 of 2015 (“the Action”) seeking a stay, under section 10(9)(a) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (“the Act”), of an arbitration involving AYY, AYZ and AZA (“the Arbitration”) pending the disposal of the Action. The Action comprises AYY’s challenge, under section 10(3) of the Act and/or Article 16(3) of the UNCITRAL Model Law on International Commercial Arbitration, against the arbitral tribunal’s affirmative ruling on its jurisdiction over the parties’ substantive dispute in the Arbitration. The Action, which is being resisted by AYZ and AZA, is presently pending before the High Court.

2 The Application was heard on 27 October 2015, where I reserved judgment. On 2 November 2015, I delivered my oral judgment dismissing the Application with costs fixed at \$1,500 (all in) awarded to AYZ and AZA. There has since been no appeal filed against my decision.

3 Given the apparent dearth of published case authorities relating to applications taken out under section 10(9)(a) of the Act, I now issue a note of my oral judgment with a view to sow some jurisprudential seeds in the existing corpus of law which, hopefully, might one day again be of aid when a similar stay application has to be considered in another case.

Note of the oral judgment

4 Section 10(9) of the Act provides as follows:

Appeal on ruling of jurisdiction

10.—(1) This section shall have effect notwithstanding Article 16(3) of the Model Law.

(2) An arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral

proceedings.

(3) If the arbitral tribunal rules —

(a) on a plea as a preliminary question that it has jurisdiction; or

(b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,

any party may, within 30 days after having received notice of that ruling, apply to the High Court to decide the matter.

[...]

(9) Where an application is made pursuant to Article 16(3) of the Model Law or this section —

(a) such application *shall not operate as a stay of the arbitral proceedings or of execution of any award or order made in the arbitral proceedings unless the High Court orders otherwise* [...]

[emphasis added]

5 At the hearing of the Application, there was no case authority cited to me which dealt specifically with the proper test to be applied for stay of arbitrations under section 10(9)(a) of the Act. In fact, the submissions made by the parties in the Application appeared to draw mostly on, *inter alia*, first-principle arguments, what each party considered would be a commonsensical result in the Application, and general propositions relating to the idea of prejudice.

6 In rendering my decision in the Application, I adapted the established principles that apply generally to stay of execution of court judgments pending appeals (see, eg, *HSBC Institutional Trust Services (Singapore) Ltd (trustee of Suntec Real Estate Investment Trust) v Picket & Rail Asia Pacific Pte Ltd* [2010] 4 SLR 326). In particular, I took the view that, *mutatis mutandis*, an appropriate test that could be adopted vis-à-vis an application for stay of arbitration under section 10(9)(a) of the Act was as follows: when a party is exercising his or her right seeking to invoke the court's supervisory powers under, *inter alia*, section 10(3) of the Act over an arbitral tribunal's ruling on jurisdiction, the court ought to see that the party's challenge against the arbitral tribunal's jurisdictional ruling, if successful, would not be incapable of providing a full and consummate redress.

7 In other words, a stay of arbitration will generally be ordered if an applicant is able to demonstrate with reasonable and credible substantiation that a refusal of stay would result in detriment in respect of which the applicant could not later be adequately restituted. In this connection, it should be noted that the court can at the appropriate juncture make an appropriate costs order in relation to the arbitral proceedings in the event that a jurisdictional challenge under section 10(3) of the Act is successful. This power is precisely provided for in section 10(7) of the Act which states:

In making a ruling or decision under this section that the arbitral tribunal has no jurisdiction, the arbitral tribunal, the High Court or the Court of Appeal (as the case may be) may make an award or order of costs of the proceedings, including the arbitral proceedings (as the case may be), against any party.

8 In the present case, I found that there had not been any suggestion made by AYY that AYZ

and AZA would be incapable or unable to satisfy any costs order made pursuant to section 10(7) of the Act if it (*ie*, AYY) were to ultimately succeed in the Action. Neither did AYY satisfy me that the continuance of the Arbitration would result in any other form of detriment or prejudice that could not be adequately compensated by a costs order under section 10(7) of Act, in the event that it succeeded in the Action (for illustration purposes, one example of such other form of detriment or prejudice could conceivably be where a party disputing the arbitral tribunal's affirmative ruling on jurisdiction is compelled to disclose confidential and/or sensitive information (such as trade secrets or price-sensitive information) in order to defend the arbitral proceedings commenced against him or her by an industry competitor).

9 Accordingly, I found that there were no grounds to invoke the court's discretion to stay the Arbitration in the present case.

Conclusion

10 For the reasons stated above, the Application was therefore dismissed with costs fixed at \$1,500 (all in) awarded to AYZ and AZA.

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