Singapore Court Awards Costs Against Unsuccessful Set Aside Applicant—*Siddiqsons Tin Plate Ltd v New Metallurgy Hi-Tech* [2024] SGHC 272

5 November 2024

INTRODUCTION

The existence of limited grounds of challenge to an award is a key benefit of arbitration. This gives parties finality in resolution of their disputes and generally enables faster enforcement of awards than court judgments. Nevertheless, some parties persist in alleging "breaches of natural justice" to lodge a *de facto* appeal. However, the courts of common law jurisdictions, including Hong Kong and Singapore, have generally given such appeals by the back door short shrift. Applicants will likely face a costs award following an unsuccessful set aside attempt.[1]

Siddiqsons Tin Plate Ltd v New Mettalurgy Hi-Tech [2024] SGHC 272 concerns another such application to set aside an arbitral award alleging breaches of the rules of natural justice. The applicant argued that its due process rights were infringed on various bases, including that the tribunal's award failed to consider its arguments and that it was denied the right to properly present its case. However, the Singapore High Court found that the application "*did not come close to meeting the high threshold for establishing a breach of natural justice*" and consequently dismissed the application before ordering the applicant to pay costs.

BACKGROUND

Siddiqsons, a Pakistani company, entered into two contracts for the supply of goods and services (the "Contracts") with New Metallurgy, a Chinese company. The Contracts provided for all disputes to be resolved by arbitration if negotiations failed.

In August 2020, New Metallurgy initiated two arbitrations under the rules of the Singapore International Arbitration Centre (one under each of the Contracts, which

[1] See our previous client update here.

were subsequently consolidated). On 6 October 2022, following the resolution of intermediary proceedings, the tribunal rendered an award in favour of New Metallurgy.

Siddiqsons sought to set aside the award, arguing that the award should be set aside because the tribunal: (i) allowed New Metallurgy to make further submissions on points of substantive law without prior leave; (ii) progressed the proceedings by rushing through the finalisation of the Memorandum of Issues ("MOI"); (iii) failed to consider material issues proposed by Siddiqsons; (iv) did not invite Siddiqsons to make submissions on "wilful misconduct"; and (v) "*descended into the arena*" by interrupting the evidentiary hearing.

THE COURT'S JUDGMENT

The Court dismissed all five issues raised by Siddiqsons. In doing so, it highlighted that the "*threshold for finding a breach of natural justice is a high one that will only be exceptionally crossed*." In order for a party to be successful in a set aside application, it would have to demonstrate both a breach of natural justice and that the breach "*at the very least, altered the tribunal's decision in some meaningful way*"—that there was "*actual or real prejudice*."

First, the Court rejected Siddiqsons' complaint that the tribunal allowed New Metallurgy to file a further reply on a preliminary issue (the substantive law of the arbitration) without leave and that it did not direct Siddiqsons to provide a response to the further reply. However, this did not amount to a breach of natural justice because (i) Siddiqsons did not object to the further reply when it was filed and did not request leave to respond to it; (ii) Siddiqsons only objected to the further reply in its set aside application; and (iii) Siddiqsons did not actually indicate what prejudice it had suffered by way of the further reply. While Siddiqsons suggested it could have put forward new arguments, it did not detail them, nor did it request leave to do so at the appropriate time. The Court highlighted that parties intending to make such challenges must do so during the arbitration—not only after receiving an adverse award (therefore hedging its bets).

Second, the Court rejected Siddiqsons' complaint that the tribunal rushed through the finalising of the MOI, thereby denying the parties the opportunity to make thorough document production requests and to properly ventilate their arguments regarding the MOI. Not only did the tribunal give the parties the opportunity to comment on the draft MOI (which Siddiqsons did), Siddiqsons' legal counsel also confirmed after viewing the draft MOI that they had no document production requests. The Court found this complaint "*even more misconceived than the earlier one*."

Third, Siddiqsons complained that it was wrongly prevented by the tribunal from raising relevant issues and claimed that six key issues had been overlooked. For an applicant to demonstrate that an issue had been wrongly excluded, the Court explained that it would need to show it was "*clear and virtually inescapable that the tribunal had failed to consider an issue which was pleaded*."[2] Siddiqsons failed to reach this threshold for several reasons, including that: (a) the Court found that some of the six issues were "*simply a rehash of matters which had been considered and decided by the tribunal*"; (b) Siddiqsons failed to explain to the Court how each of the six issues related to the contractual dispute between the parties; and (c) the Court found that two of the six issues were not even pleaded, and Siddiqsons' counsel admitted the tribunal was correct to have excluded the issues.

Fourth, Siddiqsons argued that the tribunal applied English case law in its award, despite having found that the applicable law to the dispute was that of the United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts. Siddiqsons claimed this represented an "*about-turn*" and a breach of natural justice. While New Metallurgy had referred to the English case law, and the tribunal had invited Siddiqsons to address it, Siddiqsons chose not to do so, a choice which the Court deemed "*was 'at its own* peril.'" In any event, the Court found that it could not see how the tribunal relied on English case law in its reasoning when the tribunal neither expressly affirmed the test nor referred to it in its analysis.

Finally, Siddiqsons alleged that the tribunal interfered in the conduct of cross-examination and the witnesses' answers, and that these represented breaches of natural justice as the tribunal had "*descended into the arena*." The Court disagreed. Having examined the relevant transcript excerpts, the Court found that the alleged interruptions were meant to ensure the questions posed by counsel were concise and specific, and well within the tribunal's general power to control the proceedings. Siddiqsons failed to demonstrate how any of the alleged interruptions were prejudicial to its position, nor had Siddiqsons objected to the interruptions at the time or expressed concern about the effects the interruptions might have.

The Court therefore dismissed the application to set aside the award and awarded costs of SGD 35,000 to New Metallurgy. The Court explained that this amount was apt where Siddiqsons "*abandoned and/or altered several of its complaints in its submissions*," causing much wasted work.

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2 *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488, at [46].

COMMENT

This case is another reminder of the high bar that applications to set aside arbitral awards must meet to set aside arbitral awards in Singapore. As the Court noted, "*the courts take a serious view of such challenges and that is why those which have succeeded are few and far between and limited only to egregious cases*."

The Court also took a strong view on parties hedging their positions during arbitrations, indicating that "*a party will not be allowed to hedge its position by complaining only after receiving an adverse award that its hopes for a fair trial had been prejudiced by the acts of the tribunal*." This continues a trend of indications by the Singapore courts that indicating that parties must give "*fair intimation*" to the tribunal during the arbitration if they consider such a breach of natural justice has occurred.[3]

Finally, this case is also a reminder that unsuccessful applicants for set aside orders are likely to face adverse costs orders by the courts.

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Please do not hesitate to contact us with any questions.

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[3] See our previous client update here.

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