

The Singapore High Court sets aside arbitral award in JVL Agro Industries Ltd v Agritrade International

In *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] SGHC 126, the High Court was faced with an application by the plaintiff, JVL Agro Industries Limited (JVL), to set aside an arbitral award on the basis that there had been a breach of the rules of natural justice in connection with the making of the award (amongst other grounds).

The High Court granted the application on the basis that JVL had been deprived of the opportunity to present its case. The decision is significant because it shows that although the grounds on which a court may set aside an award are few in number and narrow in scope, the courts will not hesitate to act when the circumstances justify doing so. Singapore's reputation as an arbitration friendly jurisdiction does not mean that tribunals have *carte blanche* to base their decisions on matters not submitted or argued before them.

The facts of the case

The underlying dispute between JVL and the defendant, Agritrade International Pte Ltd (Agritrade) arose because JVL agreed to purchase 18,000 tons of palm oil from Agritrade between March and August 2008, via a series of 29 contracts (High Price Contracts). However, the market price of palm oil fell significantly in the second half of 2008, rendering it commercially disadvantageous for JVL to perform the High Price Contracts. The parties therefore entered into a Price-Averaging Arrangement (PAA), the effect of which was to keep the High Price Contracts on foot but to defer delivery under them. At the same time, JVL continued entering into new contracts with Agritrade to buy palm oil at the prevailing market price (Market Price Contracts).

By June 2010, the market price of palm oil had risen significantly and

parties found themselves unable to agree on the additional commercial terms necessary to carry out the price-averaging exercises. By that time, only five Market Price Contracts remained to be discharged (the Outstanding Contracts). It is these five contracts that form the subject-matter of the parties' dispute.

Commencement of arbitration and the parties' pleaded positions

JVL lodged its notice of arbitration at the Singapore International Arbitration Centre (SIAC) in April 2011. JVL's pleaded position was that Agritrade had failed to perform any of the disputed contracts despite promises to do so. Agritrade's primary defence was that the PAA rendered each disputed contract void for uncertainty. Agritrade's alternative plea was that even if the disputed contracts were not void for uncertainty, they had

Key issues

- An arbitral tribunal must afford a party a reasonable opportunity to present its case.
- The award will be liable to be set aside on the ground of breach of natural justice, if a party is deprived of such opportunity.
- Singapore courts will ensure that fundamental rules of natural justice are adhered to, and will not give tribunals *carte blanche* to adopt chains of reasoning that have no nexus with the cases advanced by the parties.

been mutually terminated (the Mutual-Termination Defence). Agritrade abandoned its Mutual-Termination Defence on the first day of the hearing - the net effect of this abandonment meant that Agritrade's sole defence was that the Outstanding Contracts were void for uncertainty.

As noted by the High Court, there were several weaknesses in the case that Agritrade chose to run in the arbitration, chief of which was Agritrade's failure to (even obliquely) address the parol evidence rule. Under the parol evidence rule, unless one of a limited number of exceptions applies, a party to a contract which has been reduced into documentary

form cannot rely on evidence which is extrinsic to the document to vary, contradict, add to or subtract from the contract. The Honourable Justice Coomaraswamy (Coomaraswamy J) highlighted two defences that Agritrade could have availed itself of which would have engaged the rule. First, Agritrade could have characterised the PAA as a condition to which its performance obligation under the disputed contracts was subject (the Conditional-Contract defence). Alternatively, Agritrade could have characterised the PAA as a contract in its own right, running collateral to the disputed contracts and supported by consideration of its own (the "Collateral Contract" defence).

Crucially, neither JVL nor Agritrade even raised the parol evidence rule, even though it was fatal to Agritrade's case.

It ultimately fell to the tribunal to draw the parol evidence rule to the parties' attention on the 3rd day of the evidential phase. Whilst both parties did address the parol evidence rule in the first exchange of written submissions (at the close of the evidential phase), Agritrade elected not to rely on the Collateral Contract defence as an exception to the parol evidence rule, even though it had a clear opportunity to do so. Agritrade similarly chose not to raise the Collateral Contract defence in the two rounds of further written submissions that were exchanged. By the time prior to the issuance of the award, Agritrade had allowed 5 opportunities to advance the Collateral Contract defence to pass it by.

The tribunal rendered its final award in October 2013, dismissing JVL's claim. All three arbitrators agreed that the ultimate issue before them

turned on whether the PAA was a collateral contract. The majority ultimately held that the PAA amounted to a collateral contract, which was in law capable of varying the parties' performance obligation under the disputed contracts notwithstanding the parol evidence rule. The collateral contract point had, therefore, been determinative of Agritrade's liability to JVL for breach of contract.

JVL's application to set aside the award

JVL applied in January 2014 to set aside the tribunal's award. JVL relied on three principal grounds in support of its application, namely: (i) JVL was unable to present its case to the tribunal or there was a breach of the rules of natural justice in connection with the making of the tribunal's award; (ii) the award contained decisions on matters which were beyond the scope of arbitration; and (iii) the tribunal displayed apparent bias towards JVL.

The core of JVL's submission was that the tribunal decided the claim against JVL on a point, ie the collateral contract point, which Agritrade had never advanced. Coomaraswamy J suspended JVL's setting aside application to give the tribunal the opportunity to consider whether it was necessary to receive further evidence/submissions on, *inter alia*, whether the PAA was a collateral contract. The tribunal decided not to receive further evidence and submissions and reaffirmed its original findings in an addendum to the award.

The suspension of JVL's setting aside application expired in November 2014, following which JVL's setting aside

application resumed before the High Court.

The High Court's reasoning

The law makes it clear that a party must have a reasonable opportunity to present its case

While Coomaraswamy J recognised the importance of guarding against unmeritorious attempts by disappointed parties to set aside unimpeachable awards, his Honour was equally quick to note that a party should not be denied a reasonable opportunity to present its responsive case. The Singapore Courts have repeatedly made it clear that there must be "*a sufficient nexus between the chain of reasoning which the tribunal adopts and the case which the parties themselves have chosen to advance*". Put another way, the real question was whether a "*reasonable party to the arbitration could objectively have foreseen the tribunal's chain of reasoning*". At the end of the day, the overriding concern was to ensure that the tribunal had achieved "*substantive fairness*."

JVL was deprived of the opportunity to present its case on the collateral contract issue

The Court found that Agritrade never advanced the collateral contract exception as part of its case, despite having five separate opportunities to do so. On this basis, the court took the view that Agritrade had in fact implicitly rejected the Collateral Contract defence as part of its case. By nevertheless unilaterally finding that the PAA was a collateral contract within the exception to the parol evidence rule, the Tribunal had effectively relieved Agritrade's entire burden to advance and prove a case.

Coomaraswamy J held that the tribunal had exercised "*unreasonable initiative*" and breached natural justice.

The learned Judge went on to find that there was "*little doubt that the collateral contract point was connected to the making of the award*", and that JVL had suffered prejudice when it was not accorded a reasonable opportunity to present evidence and advance submissions on the issue of whether the PAA constituted a collateral contract. JVL also advanced other arguments in support of its case that the award should be set aside (as set out above), although these were ultimately rejected by the Court.

Comment

The court's suggestion that the tribunal may have been influenced to raise the collateral contract exception of its own accord by the fact that "*JVL's pleadings invited the tribunal to embrace a most unattractive case*" is noteworthy. This decision serves as a timely reminder that the desire to avoid seemingly "*unattractive*" outcomes does not give arbitral tribunals *carte blanche* to adopt chains of reasoning that have no nexus with the cases advanced by the parties.

Where parties to an arbitration have not addressed issues that are proverbial elephants in the room, the tribunal can and should direct the parties to address the issues. The power to do so comes from section 12(3) of the International Arbitration Act, which expressly empowers a tribunal to adopt an inquisitorial process. In fact, Coomaraswamy J found that the tribunal had engaged the inquisitorial process by raising the parole evidence rule of its own accord and directing the parties to address the issue. The parole evidence rule (although not the specific exception for collateral contracts) therefore became part of the arbitration. Once the parties have addressed the issues, the tribunal can incorporate the issues in its chain of reasoning.

The decision in no way undermines the pro-arbitration stance that Singapore courts have taken for decades. In fact, the Court's willingness to intervene by ensuring that fundamental rules of natural justice are adhered to serves to validate Singapore as a fair and neutral seat of arbitration. Parties should therefore continue to have confidence in the Singapore courts' ability to exercise supervisory jurisdiction over arbitrations generally.

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