Latest developments in the Sanum saga: application to refuse enforcement rejected (Singapore High Court)

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In *Sanum Investments Limited v ST Group Co Ltd [2018] SGHC 141*, the Singapore High Court rejected an application to refuse enforcement of a SIAC arbitral award against the claimant company.

Speedread

In what has been a long-standing dispute comprising several applications before the courts of Singapore and Hong Kong, the Singapore High Court has rejected an application to refuse enforcement of an arbitral award for US$200 million in damages.

The application to refuse enforcement was made pursuant to Article 36(1) of the UNCITRAL Model Law on International Commercial Arbitration (Model Law), which forms part of Singapore's International Arbitration Act.

The applicant argued that:

- The award was made pursuant to an arbitration agreement (or agreements) to which not all the award debtors were a party.
- The award dealt with a dispute not contemplated by or falling within the scope of the submission to arbitration.
- The composition of the tribunal and the seat of the arbitration were not in accordance with the agreement of the parties.

Ultimately, the court found that the applicants had done little to demonstrate the manner in which the alleged procedural irregularities had affected the arbitral procedure that was adopted, and had not produced any evidence of prejudice arising out of any procedural irregularities of the award. Accordingly, the applicants had not discharged their burden of demonstrating the seriousness of the breach.

This is yet another pro-arbitration judgment delivered by the Singapore courts, again demonstrating the high threshold that must be met to refuse enforcement of an arbitral award and one which will hopefully bring the long running Sanum saga to an end. *(Sanum Investments Limited v ST Group Co Ltd [2018] SGHC 141, dated 18 June 2018.)*

Background

The UNCITRAL *Model Law* provides:

> "36. Grounds for refusing recognition or enforcement
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> Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
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> At the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
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> A party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
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> ...
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> The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or
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> ...
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> (iv) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place."

Facts

Sanum Investments Limited (Sanum), a Macanese investor was interested in pursuing business opportunities in Laos in 2007. Sanum formed a joint venture with a Laotian entity for investment in the gaming and hospitality industry in Laos. It entered into a master agreement with ST Group Co, Ltd, Mr Sithat Xaysoulivong, ST Vegas Co, Ltd and ST Vegas Enterprise Ltd (collectively the Lao respondents), which provided for three joint ventures to be created to hold and develop certain properties; two concerned the running of casinos, and the third concerned the operation of slot clubs.

The underlying dispute concerned the turnover of a slot club in Thanaleng (Thanaleng slot club). Central to the determination of the jurisdictional objections was the interpretation and relevance of two dispute resolution clauses found in the master agreement and a second agreement, the participation agreement, between Sanum and ST Vegas Enterprise. The participation agreement provided for any disputes to be resolved by the arbitration rules of the Singapore International Arbitration Centre (SIAC).

The master agreement contained a dispute resolution clause as follows:

"...Parties shall mediate and, if necessary, arbitrate such dispute using an internationally recognized mediation/ arbitration company in Macau, SAR PRC."

While the tribunal used the two agreements to find jurisdiction, the Lao respondents disagreed, contending that those two agreements had nothing to do with the Thanaleng slot club and that disputes concerning the Thanaleng slot club were not covered by an arbitration agreement.

An award was issued by a SIAC tribunal in August 2016 in favour of Sanum. The Lao respondents were required to pay Sanum US$200 million in damages. Sanum applied to the Singapore High Court to enforce the award, and the Lao respondents made an application for the court to refuse enforcement of the award.

According to the Lao respondents, the award was made pursuant to an arbitration agreement to which they all were not a party, and the award dealt with a dispute not contemplated by or falling within the scope of the submission to arbitrate.

Decision

The Singapore High Court rejected the application to refuse enforcement of the award.

The court held that the tribunal had erred in relying on the master agreement together with the participation agreement, and was satisfied that the underlying dispute in fact arose out of the master agreement alone, which contained an agreement to arbitrate.

The court also found that Sanum was only entitled to arbitrate against Mr Sithat, ST Group Ltd and ST Vegas Co Ltd and the award was binding against them alone. ST Vegas Enterprise was not a party to the arbitration agreement and the award did not bind it.

The court also considered the effect of the mediation/ arbitration clause in the master agreement, and whether these words were capable of accommodating the commencement of the arbitration under the auspices of SIAC, adopting the SIAC Rules.

The court found that the choice of selecting the institution should be given to the dissatisfied party and Sanum's choice of SIAC as the arbitration institution was an acceptable one. However, the court also found that while the commencement of the arbitration at the SIAC was proper, the tribunal had been wrong to hold that the seat was Singapore and that the proper seat of arbitration should have been Macau.

The court considered that where the parties have evinced a clear intention to settle any dispute by arbitration, the court should give effect to such intention, even if such aspects of the agreement are ambiguous, inconsistent, incomplete or lacking in certain particulars, so long as the arbitration can be carried out without prejudice to the rights of either party and so long as this does not result in an arbitration that is not within the contemplation of either party.

Ultimately, the court said that whilst the Lao respondents relied on Article 36(1)(a)(iv) of the Model Law to seek a refusal of enforcement of the award, they had done little to demonstrate the manner in which any procedural irregularities had affected the arbitral procedure that was adopted, and had not produced any evidence of prejudice arising out of any such procedural irregularities of the award. Accordingly, the Lao respondents had not discharged their burden of demonstrating the seriousness of the breach.

Comment

In yet another pro-arbitration judgment delivered by the Singapore courts, this case again demonstrates the high threshold that must be met to refuse enforcement of an arbitral award and one which will hopefully bring the long running Sanum saga to an end.

Case

Sanum Investments Limited v ST Group Co Ltd and others [2018] SGHC 141(dated 18 June 2018) (Belinda Ang Saw Ean J)

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