

Singapore High Court Determines: How Final is a "Final Arbitral Award"?

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Introduction

The finality of an arbitral award is a crucial issue. After all, no party desires to incur further legal costs and expend more time on an outcome that may be re-litigated or otherwise disturbed.

Accordingly, when an arbitrator issues an arbitral award with conditional reliefs, but bearing the title "Final Award", are the parties entitled to rely on it as being final? Has the arbitrator been rendered *functus officio* (that is, no longer in possession of further authority after completing his/her intended function), or may the arbitrator render a further award?

In *York International Pte Ltd v Voltas Ltd* [2022] SGHC 153 ("**York**"), the plaintiff applied under section 21(9) of the Arbitration Act 2001 ("**Act**") for the Court's decision that the Arbitrator ("**Arbitrator**") was *functus officio* after issuing an arbitral award that included certain conditional reliefs. Finding in favour of the plaintiff, the Singapore High Court found that the arbitral award was indeed final and the Arbitrator was *functus officio*. In coming to its decision, the Court considered the following issues:

1. Whether the plaintiff's application fell within section 21(9) of the Act or was otherwise barred;
2. If the plaintiff's application was not to be barred, whether the Arbitrator no longer had jurisdiction after the issuance of the award; and
3. Whether the defendant's argument that it would have no other recourse to resolve the outstanding issues had any bearing on the Court's decision regarding the arbitrator's jurisdiction to issue a further award.

The plaintiff was successfully represented by Rajah & Tann Singapore's [Ng Kim Beng](#) (Deputy Managing Partner; Partner, International Arbitration) and Benny Santoso (Senior Associate, International Arbitration).

Background Facts

Entering of contracts

In 2008, the defendant was engaged to design, construct, and maintain a district cooling plant ("**DCP**") on Sentosa Island under a contract ("**Main Contract**"). To construct the DCP, the defendant entered into a Purchase Agreement with the plaintiff to purchase five water-cooled dual centrifugal chillers ("**Chillers**"). The plaintiff supplied the Chillers, but seven of the Chillers' motors failed during operation around two years later, giving rise to a dispute between the defendant and plaintiff.

The other party to the Main Contract ("**DCP Sentosa**") also sought damages from the defendant for losses and expenses arising from the failure of the Chillers (collectively "**Claims**") totalling approximately S\$1.34 million ("**Claims Amount**").

Arbitration and issuance of 2014 Award

The plaintiff and defendant agreed to resolve their dispute through *ad hoc* arbitration. The plaintiff claimed for outstanding payments for the Chillers, while the defendant counterclaimed for the damages sought by DCP Sentosa.

In 2012, the arbitration proceedings commenced in Singapore ("**Arbitration**"). The Arbitrator subsequently issued an award titled "*Final Award*" in 2014 ("**2014 Award**"), in which he allowed the plaintiff's claim for outstanding payments. Key to the issue in the case of *York*, he also found that the plaintiff was liable to the defendant for the Claims but noted that the defendant had not yet paid DCP Sentosa for the Claims. There was therefore a risk of the defendant enjoying a windfall if it ultimately did not have to pay DCP Sentosa. Accordingly, the Arbitrator decided to make the relevant part of his orders for relief conditional upon the defendant making payment to DCP Sentosa. In effect, the relief was that the plaintiff was liable to reimburse the defendant for the quantum paid to DCP Sentosa (subject to a maximum cap) after such payment had been made to DCP Sentosa.

Subsequently, the defendant settled with DCP Sentosa, including on the Claims. The defendant then sought payment of the Claims Amount from the plaintiff. The plaintiff refused to make payment, on the basis that the defendant had not provided satisfactory evidence of payment of the Claims Amount to DCP Sentosa.

Arbitrator's 2021 Decision on jurisdiction

In August 2020, the defendant applied to the Arbitrator for a further award to determine the sums to be paid by the plaintiff in relation to the Claims Amount. The plaintiff raised a preliminary objection on a point of jurisdiction, contending that the Arbitrator was *functus officio* and did not retain any jurisdiction after the 2014 Award was issued.

After considering both parties' submissions, the Arbitrator issued his decision ("**2021 Decision**"). The 2021 Decision declared that the Arbitrator retained jurisdiction to issue a further award in respect of the dispute.

Disagreeing with the 2021 Decision, the plaintiff filed an application before the Singapore High Court under section 21(9) of the Act. Among the reliefs sought was an order that the Arbitrator did not have jurisdiction to make any further award in respect of the Arbitration.

High Court Decision

Did the application fall within section 21(9)?

Section 21(9) of the Act states as follows:

"(9) If the arbitral tribunal rules –

(a) on a plea as a preliminary question [emphasis added] that it has jurisdiction ...

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

The defendant contended that the phrase "*preliminary question*" in section 21(9) of the Act refers to a jurisdictional ruling made at the early stages of the arbitral proceedings. As the 2021 Decision was not made at the early stages of the Arbitration, it was argued that the plaintiff should be barred from making the application.

However, the Court disagreed, finding that the phrase in section 21(9) of the Act refers to an *interim decision* on the arbitrator's jurisdiction, which is a decision separate from one dealing with the merits of the parties' claims. The judgement noted as follows:

1. Based on the plain wording of section 21(9) of the Act, it was not apparent that a jurisdictional challenge had to be raised at the early or initial stages of the arbitral proceedings.
2. Any ambiguity of the phrase "*preliminary question*" was to be determined in the context of the other provisions of the Act. The overarching principle behind section 21 of the Act was that a tribunal may decide on a jurisdictional challenge at any stage of proceedings. Together with other indicators throughout section 21, it followed that "*preliminary question*" could not refer only to a ruling made at the initial stages of proceedings.
3. This was also supported by the drafting history of subsections 21(8) and 21(9) of the Act, which made clear that the phrase was used by the drafters to refer to "*an interim decision or ruling that deals solely with the tribunal's jurisdiction, in contradistinction to an award that deals with both the tribunal's jurisdiction and the merits of the parties' claims.*"

The Court additionally noted that even if the defendant's interpretation was correct, it was prepared to find that the 2021 Decision was a ruling made at the initial stages of a new phase of the Arbitration and was therefore still subject to challenge under section 21(9) of the Act.

Did the Arbitrator have jurisdiction to make a further award?

The Court found that the 2014 Award had dealt with all the issues that had formed the subject of the Arbitration, such that the Arbitrator was *functus officio*. The judgement noted as follows:

1. After expressly recognising the risk of a windfall to the defendant, the Arbitrator did in fact consider the two options available to him to mitigate such a risk. The English High Court case of *Biffa Waste Services Ltd and another v Maschinenfabrik Ernst Hese GMBH and another* [2008] EWHC 2210 (TCC) (which was cited in the Arbitration) recommended that he could either (a) adjourn the decision on quantum to a later date; or (b) make a conditional award. The Court found that the Arbitrator chose the latter for both Claims, indicating that he had not chosen to reserve jurisdiction to determine the quantum at a later date. Further, the Court accepted the plaintiff's general proposition that a conditional award can be "final", citing the English decision of *Konkola Copper Mines plc v U&M Mining Zambia Ltd* [2014] EWHC 2374 (Comm) for an illustration of how a conditional award could be dispositive of all of the issues in an arbitration.
2. It was also significant to the Court that the Arbitrator did not expressly reserve any jurisdiction in the 2014 Award in relation to the Claims. Given that the Arbitrator had himself noted in his 2021 Decision that he would have made such a reservation in "*clear and categorical language*", the Court concluded that the Arbitrator had indeed intended for the 2014 Award to be final.
3. The Court also found that the 2014 Award had fully resolved all the disputes that formed the subject of the Arbitration. Although it did not contain a specific sum to be paid by the plaintiff, the Court observed that it set out the method by which the sum was to be determined. Therefore, the 2014 Award had fully determined the extent of the plaintiff's liability and clearly provided for specific relief, such that it was "*complete and final on its own terms*".

Did the defendant have other recourse in respect of the Claims?

The defendant argued that if the Arbitrator did not have jurisdiction to issue a further award, it could be left without recourse in respect of the Claims Amount.

The Court noted that this argument could not itself be a basis for finding that the Arbitrator retained jurisdiction to issue a further award. Rather, the primary question was whether the Arbitrator had reserved jurisdiction to do so, which was to be determined by the 2014 Award. Moreover, the Court agreed with the plaintiff's submission that any lack of recourse was due in part to the defendant's own doing. For instance, the defendant had not sought to enforce the 2014 Award despite the lapse of nearly eight years.

Concluding Remarks

York makes it clear that the phrase "*preliminary question*" in section 21(9) of the Act is to be interpreted broadly, rather than being restricted to jurisdictional challenges raised at an early or initial stage of the arbitral proceedings. Advisedly, an arbitrator should reserve his/her jurisdiction in express terms, although the judgment does not hold that there is a legal requirement to do so.

The judgment also accepted that "conditional awards" are capable of being complete, final and binding, even if "*difficulties for enforcement purposes*" are present. Finally, *York* is a reminder that a party should take steps to, for instance, seek an additional award / clarification from the arbitrator within the timeline provided for in section 43(4) of the Act, if warranted by the circumstances.

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