Natural Justice in Arbitral Awards

Introduction

The Singapore courts have long established a position of non-interference when it comes to arbitration, leaving appointed tribunals to reach their own binding decisions. However, the courts will intervene in an arbitral award in certain situations, such as where there has been a breach of natural justice. The vast majority of challenges to arbitral awards involve allegations of breach of natural justice, but few are actually successful. *JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] SGHC 126 provides a rare example of a case where an arbitral award was successfully set aside on this ground.

Notably, this landmark case is the first reported decision in which the court has gone on to set aside the award after remitting the matter back to the arbitral tribunal. When the arbitral tribunal’s decision was first challenged, the court remitted the matter to the tribunal to allow them an opportunity to cure the breach of natural justice. However, when the tribunal instead sought to justify its original position without taking any measure to remedy the breach, the court proceeded to set aside the award in the interest of fairness and justice.

Andre Yeap S.C. from Rajah & Tann Singapore LLP was instructed as counsel for the Plaintiff in this successful setting aside application.

Brief Facts

The Plaintiff had entered into a series of contracts with the Defendant in which the Defendant was to supply palm oil. There were two sets of agreements, one at a higher price (the “First Tranche Contracts”) and one at a lower price (the “Second Tranche Contracts”). Both sets were part of a price-averaging arrangement.

When the Defendant failed to make delivery under some of the Second Tranche Contracts, the Plaintiff made a claim for breach of contract. The dispute was referred to arbitration before an Arbitral Tribunal.

The Defendant’s case before the Arbitral Tribunal was largely based on the defence that the disputed Second Tranche Contracts were unenforceable due to uncertainty. However, the Arbitral Tribunal’s award, which was in favour of the Defendant, was instead that the disputed Second Tranche Contracts were subject to the price-averaging arrangement. The majority of the Arbitral Tribunal held that the Defendant could rely on the price-averaging arrangement despite the parol evidence rule, which prevents admission of extrinsic evidence in a written contract that appears to be whole. The price-averaging arrangement was deemed to be a collateral contract, which serves as an exception to the parol evidence rule.

Importantly, the Defendant had not advanced the collateral contract point as part of its case and even in its final written submissions notwithstanding that this was mentioned earlier by the Arbitral Tribunal during the Plaintiff’s oral closing submissions. The Plaintiff thus applied to have the award set aside on the grounds that the Arbitral Tribunal had breached the rules of natural justice by denying the Plaintiff the opportunity to present its case on the collateral contract point.

Remittance to the Arbitral Tribunal

After hearing the parties’ submissions, the High Court found there to be substance in the Plaintiff’s submissions. The Court thus suspended the setting aside proceedings for a period of time to allow the Arbitral Tribunal the opportunity to resume the arbitral proceedings and eliminate the grounds raised by the Plaintiff for the setting aside of the award.
Following the order of the Court, the parties lodged written submissions to the Arbitral Tribunal regarding the breach of natural justice pleaded by the Plaintiff. The Arbitral Tribunal then issued an addendum to its original award. However, the addendum did not remedy any breach of natural justice, but instead sought to justify the original award.

In particular, the Arbitral Tribunal found that the Plaintiff had the opportunity to make submissions on the collateral contract exception as the Arbitral Tribunal had brought the parol evidence rule to the parties' attention during the evidential phase, and had brought the collateral contract exception to the Plaintiff's attention during the oral closing submissions. Further, the Arbitral Tribunal found that there was nothing new or esoteric about its characterisation of the price-averaging arrangement as a collateral contract which required separate or specific pleading.

Setting Aside of the Award

After the expiry of the Court's suspension of proceedings, the setting aside application resumed. The Court considered the Arbitral Tribunal’s addendum and the parties’ further submissions and, in a rare holding, held that there had in fact been a breach of natural justice. The Arbitral Tribunal’s award was accordingly set aside.

The relevant rule of natural in this case is the rule which obliges the Arbitral Tribunal to give each party a fair hearing. A party must thus have a reasonable opportunity to present its case, and to present the evidence and advance the propositions of law necessary to respond to the case made against it.

One way in which a tribunal would breach this rule of natural justice would be by adopting a chain of reasoning in its award which it has not given the complaining party a reasonable opportunity to address. The Court held that, by issuing its decision based on the collateral contract issue, this was precisely what the Arbitral Tribunal had done.

(i) First, the Defendant had never advanced the collateral contract issue. Despite the fact that the parol evidence rule had been brought to the Defendant’s attention during arbitral proceedings, the Defendant did not include the collateral contract exception in its pleadings, nor did the Defendant invoke the exception in its written or oral submissions, despite having numerous opportunities to do so.

(ii) Second, the Arbitral Tribunal never directed the parties to address the collateral contract exception. The lack of clear direction was especially pertinent as the onus of invoking an exception to the parol evidence rule lay on the Defendant, and the Defendant’s case was not only silent on the collateral contract issue, but could be said to have implicitly rejected the point.

The Arbitral Tribunal’s unilateral decision that the price-averaging arrangement was a collateral contract not only relieved the Defendant’s burden of advancing the collateral contract exception, it also discharged the Defendant’s legal and evidential burdens of proof. The award was thus issued in breach of the rules of natural justice.

The breach was clearly connected to the award, and had prejudiced the Plaintiff by denying it the chance to adduce evidence on the price-averaging arrangement and collateral contracts. Therefore, the Court set aside the award of the Arbitral Tribunal.

Concluding Words

The Court highlighted that arbitration, despite being based on the consent of both disputants, is still an adversarial system. Thus, the parties select the issues for the arbitrator to decide, and the arbitrator must confine himself to these issues even if he feels that alternative arguments should have been made. Parties should thus ensure that their pleadings and submissions are comprehensive and cover all essential issues.
The Singapore courts have stated that they will not facilitate attempts by dissatisfied parties to have legitimate arbitral awards set aside. As such, the grounds on which awards may be set aside are few in number and narrow in scope. This decision provides a prime example of when the court will intervene in the arbitral process to remedy an unfairness that has been dealt to a disputant.

The Court also demonstrated the use of its ability to remit the matter to the arbitral tribunal. This is in line with the flexibility of procedure afforded by the arbitral process, as the Court is not restricted to a binary decision in terms of whether to set aside or uphold the arbitral award. In this instance, the Court was also able to revisit the award after the tribunal issued an addendum, and determined that – despite the tribunal’s assessment – there had been a breach of natural justice.

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Our regional presence

Our regional contacts

**RAJAH & TANN | Singapore**

Rajah & Tann Singapore LLP  
9 Battery Road #25-01  
Straits Trading Building  
Singapore 049910  
T +65 6535 3600  F +65 6225 9630  
sg.rajahtannasia.com

R&T Sok & Heng  
Vattanac Capital Office Tower, Level 17, No. 66  
Preah Monivong Boulevard, Sangkat Wat Phnom  
Khan Daun Penh, 12202 Phnom Penh, Cambodia  
T +855 23 963 112 / 113  F +855 963 116  
kh.rajahtannasia.com  
*in association with Rajah & Tann Singapore LLP*

**RAJAH & TANN REPRESENTATIVE OFFICE | China**

Rajah & Tann Singapore LLP  
Shanghai Representative Office  
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road  
Shanghai 200021, People’s Republic of China  
T +86 21 6120 8818  F +86 21 6120 8820  
cn.rajahtannasia.com

**RAJAH & TANN NK LEGAL | Myanmar**

Rajah & Tann NK Legal Myanmar Company Limited  
Myanmar Centre Tower 1, Floor 07, Unit 08,  
192 Kaba Aye Pagoda Road, Bahan Township,  
Yangon, Myanmar  
T +95 9 73040785 / +95 1 657902 / +95 1 657903  
F +95 1 9645537  
mm.rajahtannasia.com
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