2-2020

Singapore case note: Settlement agreement invoked as shield

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Kluwer Mediation Blog

February 21, 2020

The Singapore Convention on Mediation makes clear that international mediated settlement agreements (iMSAs) may be used as a sword or invoked as a shield in judicial or arbitral proceedings (defence). In the post-Singapore Convention world, lawyers are looking closely at the extent to which courts may recognise settlement agreements, especially mediated settlement agreements, as a shield or a defence to arbitral or litigation proceedings.

In this post, we explore this issue in the recent Singapore Court of Appeal case, *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd [2019] SGCA 33*. Here a (non-mediated) settlement agreement between parties was successfully invoked as a complete defence against arbitral proceedings.

Facts

The factual matrix of the case is complex and the Supreme Court of Singapore has provided summary of it on their web page. For the purposes of this case note, these are the essential details.

Rakna Arakshaka Lanka Ltd ("RALL"), a company linked with the Sri Lankan government and specialising in security and risk management services, fell in dispute with one of its contractors, Avant Garde Maritime Services (Pte) Ltd ("AGMS"), over a private-public sector partnership arrangement related to combating piracy in Sri Lankan waters. AGMS commenced arbitration proceedings against RALL at the Singapore International Arbitration Centre ("SIAC") for breaches of contract, filing a Notice of Arbitration on 8 April 2015. RALL counter-sued AGMS in separate judicial proceedings, sending the latter a letter of demand on 23 August 2015 claiming for compensation as a result of the loss of reputation stemming from the institution of arbitration proceedings. On 20 October 2015, the parties had concluded a signed settlement agreement, encapsulated in a Memorandum of Understanding (MOU). The MOU had made provisions for AGMS to pay sums of money to RALL, in return for the latter to waive a part of one of its claims against RALL. Further, the MOU expressly provided for both parties to withdraw the arbitration and legal proceedings which they had commenced against the other.

On 12 November 2015, RALL's attorney wrote to the SIAC, informing the arbitral tribunal that AGMS had agreed to withdraw the matter. However, on 15 November 2015, AGMS objected and wrote to the tribunal claiming that it was "not in a position to withdraw" the arbitration. AGMS subsequently continued with the arbitration proceedings and successfully obtained an arbitral award in its favour one year later in November 2016. RALL did not substantially participate in the arbitration proceedings. On 27 February 2017, RALL commenced proceedings in the Singapore courts to set aside the arbitral award, on the basis that the arbitral tribunal lacked the requisite jurisdiction to adjudicate the dispute. Whilst the

High Court of Singapore refused to set aside the award, RALL lodged a successful appeal to the Singapore Court of Appeal.

Decision: Establishing the law on the effect of settlement agreements

Giving weight to the MOU, the Court of Appeal ruled definitively that a settlement agreement may be invoked to supersede a cause of action ordinarily available to parties in the event of a breach of a contractual relationship (at para 95). A valid and binding settlement agreement will put an end to judicial and arbitral proceedings in relation to the discrete subject matters which it resolves (that is, which are recorded in the contents of that settlement agreement). As soon as a settlement agreement is concluded and takes a binding effect on the disputing parties, the proceedings will be spent and exhausted. Effectively, the settlement agreement will preclude parties from taking any further steps or making any more submissions on the resolved matter at any determinative forum (i.e., litigation and arbitration), *unless* that agreement provides for parties to apply to court or an arbitral tribunal to revive the settled dispute.

The Court of Appeal also noted that if parties were to breach the settlement agreement, a separate claim against the party in breach would arise. However, the breach will not ordinarily allow parties to revive the settled dispute, *unless* it was specifically provided for in the settlement agreement.

Consequently, the Court of Appeal allowed RALL's appeal. First, it found that the MOU was valid and binding between the parties – it was operative immediately upon its execution, as there was nothing in it expressly or implicitly indicating otherwise. There was an express contractual declaration in the MOU which undoubtedly bound both parties to the agreement which they had entered into by signature. Secondly, the Court of Appeal ruled that the arbitral tribunal did not have jurisdiction to render the award, as the tribunal lacked a mandate owing to the fact that no dispute or cause of action lay before it. The settlement agreement, encapsulated by the MOU, had already documented the resolution of that dispute.

Lessons learned

1. This Court of Appeal decision relates to settlement agreements, however by extension it is also applicable to (international) mediated settlement agreements, referred to as (i)MSAs before Singapore courts.

2. (i)MSAs concluded to resolve discrete issues between disputing parties may be invoked as a complete defence in court or at arbitration. This approach aligns with Article 3(1) and 3(2) of the Singapore Convention on Mediation which provides that an iMSA may be used as a sword or *invoked as a shield* respectively.

3. Parties and their legal advisers may proceed to mediation with the confidence that a carefully drafted and precisely defined (i)MSA will likely be acknowledged by the courts as an enforceable dispute resolution outcome; the (i)MSA may be invoked to prevent litigation or arbitration in relation to the same disputed issues which have been resolved at mediation.