Singapore Court of Appeal: when are company disputes arbitrable?

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The Singapore Court of Appeal has held in a recent decision that claims of "oppression" and "unfair prejudice" brought by minority shareholders under section 216 of the Singapore Companies Act[1] are arbitrable, even though some of the reliefs that may be granted for such claims (such as a winding-up order against the company) are unavailable in arbitration.[2]

In doing so, the Court of Appeal reversed an earlier decision[3] in which the Singapore High Court had held that section 216 claims were not arbitrable.

The Court of Appeal found that the potential inadequacy of remedies was not a reason for precluding the arbitration of the parties' substantive dispute, and that this could be addressed by applications to the court for appropriate relief after the outcome of the arbitration. The Court of Appeal also confirmed that the applicable standard of review in applications for a stay of court proceedings in favour of arbitration is the prima facie standard, rather than the full merits standard generally applied in England.

Background

Silica Investors Limited was a minority shareholder in Auzminerals Resource Group Limited. In 2013, Silica commenced a minority oppression claim in the Singapore courts under section 216 of the Companies Act against the majority shareholders in Auzminerals, Tomolugen Holdings Limited and Lionsgate Holdings Pte Ltd, and others.

Silica's claim involved a classic allegation of oppression, namely that Auzminerals had substantially diluted Silica's shareholding by issuing additional shares in breach of provisions in Auzminerals's memorandum and articles of association. Silica also claimed that its rights to take part in the management of Auzminerals had been undermined by the majority shareholders' actions.

Silica had initially acquired its shares in Auzminerals under a share sale and purchase agreement (SPA) between itself and Lionsgate, which provided for Singapore-seated SIAC arbitration for all disputes arising out of or in connection with the SPA. In reliance on the arbitration agreement in the SPA, Lionsgate made an application to the High Court seeking a stay of Silica's proceedings in favour of arbitration pursuant to section 6(1) of Singapore's International Arbitration Act (the IAA), which enables a court to stay proceedings if it is satisfied that there is no sufficient reason why the matter should not be arbitrated.

High Court dismisses the stay application

The Singapore High Court originally dismissed the stay application on the grounds that:

- The dispute was non-arbitrable, since the nature of the oppressive or unfairly prejudicial conduct complained of was inextricably linked to the relief that might be awarded and the remedial powers available to a court under section 216 could not be exercised by an arbitral tribunal and
- Several aspects of Silica's dispute with Lionsgate were outside the scope of the arbitration agreement, and the multiple other defendants were not parties to the arbitration agreement at all. The procedural complexity that would be created by staying some disputes against one party in favour of arbitration, while allowing others to proceed in court, weighed against granting a stay under section 6 of the IAA.

Court of Appeal allows appeal

However, the Singapore Court of Appeal has now allowed an appeal by Lionsgate and other defendants.

As a preliminary matter, the Court of Appeal found that, where a valid arbitration agreement exists, which is not null and void, inoperative, or incapable of being performed, and where the parties' dispute falls within the scope of that arbitration agreement, there is a general presumption that the dispute is arbitrable. In deciding whether such an arbitration agreement exists, the appropriate standard of review is the prima facie standard, rather than the balance of probabilities standard or the full merits standard.

The Court of Appeal relied on the plain words of section 11(1) of the IAA, Chief Justice Menon stating that "[i]n our judgment, the effect of s. 11 of the IAA is that there will ordinarily be a presumption of arbitrability so long as a dispute falls within the scope of an arbitration clause." Only when it can be shown that Parliament intended to preclude a particular type of dispute from being arbitrated, or where the arbitration of such disputes would be contrary to public policy considerations would this presumption be rebutted.

On the question of remedial inadequacy, the Court of Appeal held that "[t]he fact that the relief sought might be beyond the power of the tribunal to grant does not in and of itself make the subject matter of the dispute non-arbitrable". Therefore, jurisdictional limitations on an arbitrator's power to grant certain types of relief are a separate issue from whether the subject matter of the dispute in question is arbitrable, and are not determinative of the question of arbitrability.

As to the second reason for the High Court's initial decision, i.e., unwarranted procedural complexity, the Court of Appeal acknowledged that striking a balance between, on the one hand, upholding the parties' agreement to resolve disputes by arbitration and, on the other, recognising that arbitral tribunals' powers were subject to jurisdictional limits could cause procedural complexity. Notwithstanding these potential difficulties, the Court of Appeal found that procedural complexity or inconvenience was not the threshold that would justify refusing a stay of court proceedings on the basis that the subject matter of the dispute was non-arbitrable. The question therefore became essentially one of appropriate case management, rather than arbitrability. Specifically, the questions for the Court of Appeal were whether all the claims made by Silica against Lionsgate should be stayed in favour of arbitration, and what should be done with Silica's claims against Tomolugen and the other defendants during the pendency of the arbitration.

In addressing these matters, the Court of Appeal found that Silica's allegations regarding its exclusion from the management of Auzminerals fell squarely within the scope of the arbitration agreement in the SPA. These should therefore be dealt with in arbitration. However, Silica's allegations regarding the improper issuance of shares by Auzminerals were not within the scope of the arbitration agreement. Those allegations concerned the conduct of Auzminerals, which was not a party to the SPA and its arbitration agreement, and therefore those claims would have to be resolved in court rather than in arbitration. The Court of Appeal went on to adopt a pragmatic case management approach as to how the overlapping claims should be dealt with in this particular case.

Conclusion

This judgment is another example of the Singapore courts' emphatically pro-arbitration jurisprudence and their determination to ensure that parties honour their commitments to arbitrate disputes to the fullest extent possible. It has been welcomed as such and further confirms Singapore as a modern and sophisticated seat for international arbitration.

That being said, as the Court of Appeal acknowledged on several occasions in its judgment, the ruling may also render the resolution of intra-company disputes under the Companies Act more procedurally complex. Although these difficulties cannot render such disputes non-arbitrable, the outcome does underscore the need for the deft application of case management powers by courts and tribunals alike when faced with intra-company disputes that have a mix of arbitrable and non-arbitrable elements.

1 (Cap 50, 2006)

2 *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2015] SGCA 57

3 *Silica Investors Ltd v Tomolugen Holdings Ltd and others* [2014] 3 SLR 815

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