



SINGAPORE COURT CONFIRMS INTERIM AWARD BY A FOREIGN EMERGENCY ARBITRATOR IS ENFORCEABLE IN SINGAPORE

(CVG V CVH [2022] SGHC 249)

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In an important decision, the Singapore court confirmed that an interim award made by an emergency arbitrator in a foreign seated arbitration was, in principle, enforceable in Singapore. The court held that such an interim award could meet the definition of a “foreign award” under the International Arbitration Act (Ch. 143A) (IAA) and therefore could be enforced. However, on this occasion the court refused to enforce the interim award on natural justice grounds after finding that the award debtor had been unable to present its case in the arbitration proceedings.

What are the practical implications of this case?

The court's decision clarifies that an interim award made by an emergency arbitrator in a foreign seated arbitration is in principle enforceable in Singapore. That had been unclear after the Singapore legislators amended the definition of "*arbitral tribunal*" to include "*an emergency arbitrator*" in one part of the IAA, but did not apply the same amendment in Part III, which deals with the enforcement of foreign arbitral awards.

Parties seeking to enforce foreign arbitration awards issued by emergency arbitrators in foreign seated arbitrations now have greater confidence their awards will be enforced in the absence of the usual grounds for refusing enforcement.

The case is also a reminder of the importance of granting each party to arbitration an opportunity to present his or her case, including where (as occurred in this case) one party presents a new allegation in post-hearing written submissions. In such circumstances, the other party must be afforded a sufficient opportunity to respond.

What was the background?

The defendant was the Singapore franchisee of the claimant. The franchise arrangement was the subject of four contracts between the parties, each of which provided for disputes to be determined by arbitration seated in Pennsylvania, USA, administered by the International Centre for Dispute Resolution (ICDR), and governed by Pennsylvania law.

Disputes arose and, in May 2022, the defendant attempted to terminate the contracts on the basis that the claimant had (in the defendant's view) failed to comply with its obligations. In June 2022, the claimant commenced arbitration proceedings and applied to the ICDR to appoint an emergency arbitrator to grant an injunction to enforce certain *post-termination* provisions in the contracts. In so doing, the claimant appeared to accept the contracts had been validly terminated (otherwise it would not have sought to enforce *post-termination* provisions). However, in the claimant's post-hearing submissions, it argued for

the first time that the contracts had not been validly terminated. This was a new argument that had not been made previously.

A few days later, the emergency arbitrator made an interim award granted reliefs which restored the status quo of the parties to the position before the defendant had terminated the contracts. In other words, the interim award was made on the basis that the claimant denied the validity of the defendant's attempts to terminate and did not treat the contracts as terminated. The emergency arbitrator had clearly been influenced by the new allegation made by the claimant in its post-hearing submissions that the contracts had not been validly terminated.

The claimant sought to enforce the emergency arbitrator's interim award in Singapore. At first instance, the enforcement order was granted. However, the defendant sought to set this order aside on grounds which included:

- that an interim award issued by a foreign emergency arbitrator could not be enforced in Singapore; and
- that the emergency arbitrator had breached the rules of natural justice because he had based its award on the claimant's post-hearing submissions, where it argued for the first time that the contracts had not been validly terminated, without giving the defendant an opportunity to respond.

What did the court decide?

The court rejected the defendant's argument that an interim award by a foreign emergency arbitrator is not enforceable in Singapore.

The court was not convinced by the defendant's submission that there was significance in the 2012 decision of the Singapore legislators to amend the definition of "*arbitral tribunal*" to include "*an emergency arbitrator*" in Parts I and I of the IAA, but not to apply the same amendment in Part III, which deals with the enforcement of foreign arbitral awards. The court refused to accept the defendant's argument that, as a result, an interim award by a foreign emergency arbitrator was not a foreign "*arbitral award*" that could be enforced under the IAA.

In the court's view, it was necessary to give a purposive interpretation of the 2012 amendment to the IAA, which involves ascertaining the legislative purpose of the amendment and comparing the possible interpretations of the text against that purpose. In circumstances where the legislators amended the definition of "*arbitral tribunal*" in one part of the IAA to include emergency arbitrators and the definition of "*arbitral award*" to include interim awards, there was obviously an intention to make the IAA applicable to foreign interim awards by emergency arbitrators. The court accordingly confirmed that an interim award by a foreign emergency arbitrator is enforceable in Singapore provided there are no other reasons for enforcement to be refused.

The court went on to say, however, that the interim award should not be enforced because it had been issued in breach of natural justice. The defendant had not been given an opportunity to respond to the claimant's new allegation that the contracts had not been validly terminated. This prejudiced the defendant because, had it had an opportunity to present its argument with respect to the new allegations, it could have said something that reasonably made a difference to the emergency arbitrator's decision.

Case details

- Court: Singapore High Court
- Judge: Chua Lee Ming
- Date of judgment: 07/10/2022

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