

Post-Refusal to Order Production of Arbitral Tribunal's Deliberations, SICC Dismisses Setting Aside Application

In our 30 June 2023 update titled [Records of Arbitrators' Deliberations to be Produced Only in Very Rarest of Cases, Singapore International Commercial Court Rules](#) on the decision of the Singapore International Commercial Court (**SICC**) in *CZT v CZU* [2023] SGHC(I) 11, we highlighted the SICC's ruling on the confidentiality of records of arbitrators' deliberations and the high threshold to be crossed before a court would order the production of such records, with the SICC emphasising that such production orders should only be made in "*the very rarest of cases*".

In those proceedings, we acted for the defendant and successfully resisted the plaintiff's application for disclosure of the tribunal's deliberations in support of its application to set aside an award against the plaintiff (**Final Award**) issued by a 2-1 majority of the tribunal (**Majority**) in an arbitration commenced by the defendant against the plaintiff.

The SICC has, in *CZT v CZU* [2023] SGHC(I) 22, now dismissed the plaintiff's setting aside application.

Our Partners Koh Swee Yen, SC and Alessa Pang and Associates Claire Lim, Samuel Teo and Shawn Ang acted for the successful defendant in resisting the application to set aside the Final Award.

The plaintiff sought to set aside the Final Award on the basis that there was a reasonable suspicion of bias on the part of the Majority, and further that there was a breach of natural justice that prejudiced its rights and/or meant that the plaintiff was unable to present its case, arguing that:

- (a) the Majority had failed to consider critical arguments made by the plaintiff in the arbitration; and
- (b) the Majority had reached conclusions based on extraneous matters (i.e., facts or matters not argued by the parties and arguments and positions wrongly attributed to the parties).

In support of its setting aside application, the plaintiff relied heavily on the opinion penned by the dissenting member of the tribunal (**Minority**). In the Minority's dissenting opinion, which was sent by the Minority to the parties' lawyers on the same day after the issuance of the Final Award, the Minority accused the Majority, among other things, of having "*engaged in serious procedural misconduct*", attempting "*to conceal the true ratio decidendi from the [p]arties*", and of lack of impartiality (**Dissent**).

After considering the parties' submissions, the SICC roundly rejected the plaintiff's contentions that the Majority had failed to consider critical arguments and based its conclusions on extraneous matters, reaffirming the high bar to be met by any party seeking to challenge an arbitral award on these grounds.

With regard to the plaintiff's submission that there was a reasonable suspicion of bias on the part of the Majority, apart from repeating the arguments that it had made in connection with the other two grounds dismissed by the SICC, the plaintiff also relied on, among other things, the Minority's allegation in the Dissent that he had alerted the Majority to alleged due process violations, and the Majority's subsequent "*substantial[] revis[ion] and amend[ment] [of] the Award*". Additionally, the plaintiff relied on two *ex parte* calls made by one of the members of the Majority to the defendant's solicitors and subsequently the plaintiff's solicitors after the issuance of the Final Award, as well as the tribunal member's email disclosing

that both calls were to explain the unusual delay in the finalisation of the Final Award, and that the Dissent should not be mistaken as forming part of the Final Award.

The SICC found that the allegation by the Minority was “*hardly sufficient basis for a finding of apparent bias*”, as the allegation was without particulars, and merely represented his own subjective view or opinions, and did not justify the court’s intervention.

As for the *ex parte* calls by one of the members of the Majority, the SICC found that they did not give rise to a reasonable suspicion of bias. The SICC considered that the *ex parte* calls and the tribunal member’s email only evidenced his unhappiness with the Minority’s dissemination of the Dissent. Further, the dissemination of the Dissent, the *ex parte* calls and the tribunal member’s email were events that took place *after* the Final Award had been issued, and could not be said to have given rise to a reasonable suspicion of bias.

In this vein, the SICC’s decision clarifies that the allegation of apparent bias on the part of an arbitrator should not be lightly made. Such allegations, if made, must be sufficiently particularised, so that the court is able to determine whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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