IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA(I) 6

Civil Appeal No 1 of 2022

Between

CKH

… *Appellant*

And

CKG

… *Respondent*

In the matter of Originating Summons No 3 of 2021

Between

CKG

… *Plaintiff*

And

CKH

… *Defendant*

JUDGMENT

[Arbitration — Arbitral tribunal — Jurisdiction]
[Arbitration — Award — Recourse against award — Remission]

Version No 1: 30 Aug 2022 (11:55 hrs)

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CKH
v
CKG

[2022] SGCA(I) 6

Court of Appeal — Civil Appeal No 1 of 2022
Sundaresh Menon CJ, Judith Prakash JCA and Jonathan Hugh Mance IJ
4 May 2022

30 August 2022 Judgment reserved.

Jonathan Hugh Mance IJ (delivering the judgment of the court):

1 This is an appeal under Order 21 rule 20 of the Singapore International Commercial Court Rules 2021 against an order of the International Judge ("the Judge") hearing an application in proceedings in the court below. It has in substance two aspects: first, whether and how far a party may, on a remission under Article 34(4) of the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") scheduled to the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA"), go outside the scope of the order for remission; and, second, whether and how far the Judge was correct in his analysis that the appellant was seeking, but should not be permitted, to do this. Both aspects were clearly, comprehensively and, in this court's view, correctly addressed by the Judge's judgment from which this appeal is brought and to which reference can be made. Essentially the same submissions as were made below have been repeated by the appellant before this court, and have

again been fully answered by the respondent in its submissions. The court does not, in these circumstances, consider it necessary to hear oral arguments on the appeal, or to repeat all that the Judge has said. It proposes to summarise the reasons for dismissing the appeal quite briefly.

2 The case arises from a strongly contested arbitration, leading to a Final Arbitral Award dated 21 August 2020, corrected by two later Memoranda of Corrections dated 2 October and 5 November 2020 ("the Award") made by the arbitral tribunal ("the Tribunal"). In previous proceedings to set aside the Award which reached this court in *CKH v CKG and another matter* [2022] SGCA(I) 4 ("*CKH v CKG*"), this court upheld, with one presently irrelevant variation, the Judge's decision that the Award as corrected failed to take into account the existence and quantum of a debt ("the Principal Debt") and interest owing by the present appellant to the present respondent as at 20 December 2011 in relation to freight and taxes for logs supplied.

3 Under Article 34(4) of the Model Law, the court had in these circumstances the power to suspend proceedings to set aside the Award "to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside". The Judge exercised that power and in the Order of Court giving effect to his judgment ordered that "[t]he Remitted Matters shall be remitted to the Tribunal on the Terms of Reference set out in Annex A". The "Remitted Matters" were debated between the parties and were carefully formulated and defined by the Judge. The recitals in Annex A ("the Recitals") started by identifying the background to remission as follows:

> …
>
> C. The Judgment found that there are grounds for setting aside the Affected Portions of the Final Award insofar as

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> the Tribunal did not take into account any sums owed by [CKH] to [CKG] in respect of taxes and freight charges for logs supplied until December 2011 (the "**Principal Debt**") along with 2% monthly compound interest on said debt (see [67]), which was common ground between the parties (see [59]), when awarding damages to [CKH] (see [55]). This would affect the sums owing between the parties and could affect the incidence of liability for costs of the Arbitration in consequence (see [60]).
>
> D. …
>
> E. The Judgment found that, although [CKH] had disputed the exact quantum of and evidence for the Principal Debt in its Reply to the Defence and Counterclaim (see [44]), it did not dispute the existence of, and its liability for, the Principal Debt in its pleadings (see [44]), and conceded its liability for the Principal Debt and its quantum of IDR 53 billion (as calculated by the experts) in its oral opening and closing statements (see [49]-[50]).
>
> F. The Judgment found that the Tribunal had made findings that (i) the Principal Debt, of the order of IDR 50 billion as of April 2011, was owed by [CKH] to [CKG], as was common ground between the parties (see [53], [55]); (ii) no payments were made at all after November 2011 to repay this debt (see [53]); and (iii) [CKG] had a remedy for such non-payment as [CKH] remained liable for the debt with accruing cumulative interest at a high rate until full payment (see [54]).
>
> …

4 Following these Recitals, Annex A contained the order for remission as follows:

> 1. The Tribunal is to determine what sums are owing by way of the Principal Debt.
>
> 2. The Tribunal is to calculate and fix the interest accrued on the Principal Debt at the contractual rate of 2% monthly compounded from 1 September 2011 to-date.
>
> 3. The Tribunal is to offset the amounts calculated at paragraphs 1 and 2 above against the damages awarded

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> to [CKH] in the Final Award, Section XII, paragraph (a) and the interest on said damages.
>
> 4. The Tribunal is to consider whether or not [CKG] has substantially prevailed in the arbitration and reconsider and, if appropriate, redetermine the costs orders in the Final Award …
>
> …

5 When the matter returned to the Tribunal, CKH claimed to raise a number of points relating to the Principal Debt and interest which CKG contended fell outside the scope of the remission ordered. The Tribunal, after receiving summaries of the parties' respective stances, indicated that it considered it necessary for the parties to revert to the Judge who had ordered remission, for him to resolve that dispute. This he did by the judgment now under appeal. The judgment held that the Tribunal's role was, so far as presently material, strictly limited to the exercise defined by paragraphs 1 to 4 of the order for remission contained in Annex A, and that the further points which CKH claimed to raise were not open to it before the Tribunal on such remission.

6 The power conferred by Article 34(4) of the Model Law to suspend proceedings to set aside the Award "to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside" is on its face a relatively broad power. But the scope of remission is necessarily defined by the terms of the order ordering remission. A carefully defined order, like that in Annex A, specifies precisely what the Tribunal can and should do. Apart from the remission ordered, there is no basis on which a party in CKH's position or the Tribunal itself can seek to re-open or expand the subject matter of the award or arbitration. The Tribunal's original Award renders it *functus officio*, save to the extent that the order for remission gives it revived power. The order for

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remission defines the limits of the exercise which the parties and the Tribunal can undertake when the matter returns before the Tribunal.

7 The principle indicated in the previous paragraph, which is in its essence that the Tribunal's jurisdiction is only revived "to the extent of" the remission ordered, is well-supported in authority: see, *eg*, *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 at [27], *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2014] 1 SLR 1221 at [41]–[42] and *AKN and another v ALC and others and other appeals* [2016] 1 SLR 966 at [47].

8 In the present case, CKH seeks in several respects to challenge the accuracy of, or to qualify, the Recitals in the Order of Court by which the Judge gave effect to his original judgment and which was upheld in substance by this court. CKH submits that it is entitled to raise various issues. It submits, for example, that the Judge "erred in holding that the Tribunal's determination [of the amount of the Principal Debt] had to be subject to [CKH]'s concessions" as to the amount of the Principal Debt outstanding in April 2011 and according to the experts (see Recitals E and F above, and paragraphs 65 to 75 of CKH's written submissions before this court). It submits that the Judge "imposes" an interest rate of 2% monthly, compounded, which "has never been canvassed before the Tribunal" in relation to the Principal Debt, and that his "finding that the 2% Interest Rate is applicable … is not justified" (see paragraphs 77, 78 and 82 of CKH's submissions). Such challenges to the Recitals and order made by the Judge and upheld, so far as material, in this court are not however open to CKH. The Recitals and order are integral aspects of the remission ordered under Article 34(4) of the Model Law, and are *res judicata*. All that is open on the present application before the Judge and now on appeal to this court are issues of interpretation of the meaning and scope of the remission which was ordered.

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9 The court turns to CKH's submissions as to the proper interpretation and application of the order for remission as it was made. First, CKH submits that the order for remission permits it to rely on an award made on or around 11 November 2021 ("the BANI award") in another arbitration before the Indonesian National Board of Arbitration ("the BANI arbitration") which had been commenced on or around 25 January 2021, in favour of a third company (referred to in *CKH v CKG* at [3] and [32] as "the Company"), which CKH submitted can be equated with CKG. The submission is that the BANI award covers the same Principal Debt as that which the court has held should be taken into account in the present arbitration. CKH submits that the BANI award now therefore operates as some form of supervening *res judicata* or issue estoppel to preclude the Principal Debt being pursued or taken into account in the present arbitration, or that the BANI award means that it would be an abuse of process for the Principal Debt to be so pursued or taken into account. CKH by this submission is in effect seeking to revisit an argument which was raised before and was considered by this court in *CKH v CKG* at [32]. There we saw no legal basis or mechanism by which the court could, in the light of the BANI award, refrain from addressing the actual issues before it in the ordinary course, though we thought it most unlikely that the BANI award could lead to double recovery. The same continues to apply now. Further, if there be any question of duplication of issues, the problem does not lie in the present arbitration or Award, but in the failure to demonstrate the duplication in the BANI arbitration. However that may be, the limited remission ordered cannot be misused to bring into the arena before the Tribunal matters falling clearly outside the scope of the limited remission ordered.

10 Second, CKH submits that it is entitled to challenge and require proof of what sums are owing by way of the Principal Debt. That is not as such in

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issue, but the Tribunal must proceed on the basis of what have been described as CKH's concessions (see [8] above). CKH is seeking to expand the issue regarding the quantum of the Principal Debt outstanding from time to time in and after 2011 to embrace a challenge to (i) the existence of a Principal Debt of the order of IDR 50 billion as of April 2011 (see Recital F in Annex A) and (ii) CKH's stated concession of liability for the Principal Debt in the sum of IDR 53 billion as calculated by the parties' experts (see Recital E in Annex A). Those are, however, parameters fixed by the Recitals on the basis of which the remission was ordered, and are not open to being revisited before the Tribunal on the remission.

11 Third, CKH submits that it is entitled to challenge the running of interest at 2% monthly compounded on the Principal Debt until the present date. More specifically, it submits that, although the parties agreed that the outstanding Principal Debt should carry interest at that rate, it should be entitled to argue that it represented an invalid penalty or was unfair and unenforceable and that it should not anyway apply from 20 December 2011 to 3 November 2014, during which period CKG was no longer claiming the Principal Debt, but was claiming (however invalidly, as was in the event held) to withhold logs instead of to recover the Principal Debt. The insuperable obstacle faced by all these suggested arguments is that they fall outside the scope of the limited remission ordered. As to the last, it is also fallacious, since the claim to withhold logs has been held ineffective and the withholding of the logs from 20 December 2011 has entitled CKH to damages. The concomitant is that the Principal Debt, whatever its quantum may be found to have been, remained outstanding from time to time, accruing interest.

12 These observations give only a summary account of the parties' more detailed submissions recited in the Judge's judgment and of the reasoning which

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led him, as it does us, to reject CKH's case regarding the scope of the remission. Reference can, as already stated, be made to the Judge's judgment for more detailed treatment. But we have said sufficient to make clear why this appeal is without merit, and falls to be dismissed with costs. These we would assess and allow at the full amount claimed by CKG, that is $30,000. We also make the usual consequential order for payment out of the security for the costs of the appeal.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Jonathan Hugh Mance
International Judge

Hee Theng Fong, Toh Wei Yi, Poon Pui Yee and Leong Shan Wei Jaclyn (Harry Elias Partnership LLP) for the appellant;
Tan Beng Hwee Paul and Victor Yao Lida (Cavenagh Law LLP) for the respondent.

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