Jurong Engineering Ltd v Black & Veatch Singapore Pte Ltd
[2003] SGHC 292

Case Number : OS 1205/2003

Decision Date : 26 November 2003

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Mohan Pillay, Christopher Chong and Martin Ng (Wong Partnership) for plaintiffs; V K Rajah SC and Vivien Teng (Rajah and Tann) for defendants; Steven Lim from Jones Day, instructing solicitors to Rajah and Tann; Warren Khoo and Ganesh Chandru for SIAC

Parties : Jurong Engineering Ltd — Black & Veatch Singapore Pte Ltd

Arbitration – Agreement – Domestic – Dispute over arbitral regime to be applied – Arbitration commenced under SIAC Domestic Arbitration Rules – Rules not in existence at time of contract – Whether rules applicable – Whether arbitration should have commenced under rules existing at time of contract

Arbitration – Agreement – Domestic – Nature of the arbitration – Whether domestic or international SIAC rules should apply – Whether parties to agreement had specified a particular regime

Introduction

1 In this Originating Summons, the plaintiffs, a company incorporated in Singapore, sought (1) a declaration that on a true construction of clause GC42.2.1 of the General Conditions in contract Structural Steel 61.4001, the reference therein to any arbitration being conducted "*under and in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Centre*" is a reference to the rules of arbitration of the Singapore International Arbitration Centre generally, at the time of the submission of the dispute to arbitration, and not an express reference to the Arbitration Rules of the Singapore International Arbitration Centre (the "SIAC") and (2) an order that the defendants pay the plaintiffs' costs of the application.

2 By a letter dated 23 September to the Registrar of the Supreme Court, the SIAC asked permission of the Court to file a brief, given that the issue raised is of general interest to the SIAC as an "arbitration administering institution". I granted their request.

3 This matter first came up for hearing on 26 September 2003, but was adjourned after I had granted the defendants' application in Summons-in-Chambers Entered no. 6008/2003/B for leave to file and serve the affidavit of Mr David Andrew Lampitt on 17 September 2003. The Originating Summons was heard on 22 October 2003, at the conclusion of which I granted the plaintiff's application and ordered costs to be paid by the defendants to the plaintiffs, to be taxed if not agreed. There is an appeal against my decision. I set out the circumstances and the reasons for my decision.

Background

4 The parties, both of which are locally incorporated companies, entered into a contract known as Structural Steel 61.4001 dated 4 January 2000 (the "**Contract**") under which the plaintiffs agreed to erect steel works for the Tuas II Combined Cycle Power Plant at Tuas South Avenue 9, Singapore. Differences then arose between the parties, as a result of which the plaintiffs issued their Notice of Arbitration on 10 July 2003.

5 The arbitration was commenced under the SIAC Domestic Arbitration Rules (the "**SIAC Domestic Rules**"). However, only the Arbitration Rules of the SIAC (the "**SIAC Rules**") existed at the time the parties made the contract, i.e. on 4 January 2000. The SIAC Domestic Rules only came into existence on 1 May 2001, after the making of the contract but before the submission to arbitration. A further dispute thus arose as to whether the SIAC Domestic Rules or the SIAC Rules were to apply to the present arbitration between the parties.

6 I will add at this juncture that the SIAC Rules were drafted with international arbitrations in mind. However, parties in a domestic arbitration may adopt the SIAC Rules to govern their arbitration, in accordance with the principle of procedural autonomy prescribed by the Model Law.

Construction of the Arbitration Clause

7 The full text of the relevant clause, namely, GC 42.2.1 of the Contract (the "**arbitration clause**") reads:

> "**GC42.2.1 Arbitration**. If no settlement is achieved within sixty days, either party may submit its claim to arbitration before a single arbitrator to be agreed between the parties, or failing agreement within 14 calendar days after either party has given to the other written request to concur in the appointment of an Arbitrator; a person to be appointed on the request of either party by the Chairman or Vice-Chairman for the time being of the Singapore International Arbitration Center. ***Any arbitration will be conducted in English in Singapore under and in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Center***." (my emphasis)

8 The plaintiffs' contention was that the arbitration clause constituted a reference to arbitration under the rules of arbitration promulgated by the SIAC generally, i.e. it did not purport to make any choice or indicate any preference for any particular set of SIAC rules of arbitration. Furthermore, the plaintiffs relied on Rule 1.1(b) of the SIAC Domestic Rules (discussed below) to assert that the SIAC Domestic Rules apply, given that reference was made to the rules of the SIAC generally, and given that the case is a domestic case. On the other hand, the defendants contended that the words in the arbitration clause could only refer to the SIAC Rules since the SIAC Rules were the only rules of the SIAC in existence at the time of the Contract. The defendants therefore asserted that the plaintiffs were in breach in commencing arbitration under the SIAC Domestic Rules.

9 The interpretation of the clause, in a way, involved a two-stage consideration. The first question was whether the words were general or specific. Were there any specific reference to any rules? If not, the second question one had to consider was whether the circumstances were such that the parties were confined to only one set of applicable rules. In this case, the defendants contended that the only set of rules that the parties could possibly have intended were the SIAC Rules since those were the only set of rules which were existent at the time the contract was made.

10 Firstly, it was clear to me that the words of the arbitration clause were very general. If it had been intended that the SIAC Rules were to govern the arbitration, specific reference to the "Arbitration Rules of Singapore International Arbitration Centre" should have been made. This was and has been the full title of the SIAC Rules since they were issued in 1991, when the SIAC was established.

11 In this regard, the SIAC at all material times had clearly recommended that parties use a Model Clause if they wished their arbitration to be governed by the SIAC Rules. The Model Clause was set out on the first page of the SIAC Rules. As is well known, Model Clauses are offered by well

established arbitral institutions, such as the ICC Court of Arbitration and the London Court of International Arbitration ("**LCIA**").

12 The Model Clause, which appeared in both the 1991 and the 1997 edition of the SIAC Rules reads as follows:

> " Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in [Singapore] in accordance with the ***Arbitration Rules of Singapore International Arbitration Centre ("SIAC Rules")*** for the time being in force which rules are deemed to be incorporated by reference to this clause."

13 Parties were free to adopt the Model Clause, but they did not. In any event, the preamble to both the 1991 and the 1997 edition of the SIAC Rules provided:

> "Where any agreement, submission or reference provides for arbitration under the Arbitration Rules of Singapore International Arbitration Centre ("Centre"), the parties thereto shall be taken to have agreed that the arbitration shall be conducted in accordance with the following Rules *……."*

This suggested that the SIAC Rules would only apply if specific reference is made to the SIAC Rules, using the full title.

14 Secondly, I did not think that the natural and ordinary meaning of the phrase "promulgated by the Singapore International Arbitration Center" meant that the parties agreed to adopt only those rules that had already been promulgated by the SIAC at the time of the contract. I did not think the word "promulgated" appearing in the context of the arbitration clause, referred only to those rules and laws that had already been issued by the SIAC at the time of the contract. By reason of the text, viz. "…***Any arbitration will be conducted in English in Singapore under and in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Center***….", I took the view that the parties had agreed to submit to an SIAC arbitration, and generally, to the most appropriate institutional rules existing at the time of the submission, regardless of whether those rules were in existence at the time of the contract.

15 Where the parties agreed to adopt the rules of the SIAC generally, the SIAC Domestic Rules would apply to domestic cases and the SIAC Rules would apply to international cases.

16 The English Court of Appeal in *Perez v John Mercer & Sons* [1922] 10 LLLR 584, which the plaintiffs referred me to, took a similar view. The clause in question, which was similarly general, read: " All disputes to be referred to the Tribunal of Arbitration of the Manchester Chamber of Commerce, to be determined in accordance with the rules of the Tribunal." Were the rules which existed at the time of the contract or those which existed at the time of submission to arbitration to apply? The court construed the clause to read " according to the rules *for the time being* of the Tribunal", as opposed to the rules which already existed at the time of the contract.

17 If more specific words had been used in the arbitration clause, the defendants could possibly have effectively confined themselves to those rules that already existed at the time of the contract. But that was not the case here.

18 The defendants further contended that the structure of certain other clauses of the contract supported their position. They submitted that from the different expressions adopted in these other

clauses, it was clear that the parties wanted to draw a distinction between rules and regulations, which were to be amended from time to time, as opposed to rules that were already promulgated. In particular, the defendants referred to the following clauses of the contract which they contended, referred to rules, regulations and/or laws which were to be promulgated in future, as opposed to those that had already been promulgated at the time of the contract:

> **GC5.2.1**" The Contractor shall comply with the provision of the Factories Act and its Regulations and *any statutory amendment or re-enactment thereof*".
>
> **GC 5.2.2** " It shall be the duty of the Contractor to comply with such requirements of Factories (The Building Operation and Works of Engineering Construction) Regulations, Cap 104, Reg 8 or any other safety regulations *as may be gazetted from time to time*……..."
>
> **GC 9.1.1** "The Contractor shall comply with all statutes, laws, legislation……, *as amended or re-enacted from time to time*,……" [my emphasis]

19 Accordingly, the defendants submitted that the wording of the arbitration clause was intentional, in that the parties had agreed to be confined to the rules which were in existence at the time of the contract.

20 I was not persuaded by this argument because it was quite standard for references to statutory provisions to include the phrase "as amended from time to time". In any event, the relevant portion of the arbitration clause began with the words: *"Any arbitration will be conducted in English in Singapore under and in accordance with**...**"* which, in my view, placed the time context at the start of the arbitration, and not at the time of the contract.

The Law

21 The authorities relied on by the plaintiffs were mainly concerned with different versions of the same set of institutional rules, i.e. whether the pre-amendment rules or the amended rules were to apply. In contrast, the present case concerned deciding between two different and alternative sets of institutional rules, existing at the time of submission to arbitration.

22 The cases I had been referred to mainly dealt with rules that were changed after the contract was made but before the arbitration was commenced, hence leaving the question of which version of the rules was to apply. The English courts appeared to have consistently taken the position that where the arbitration agreement required an arbitration to be held in accordance with the rules of a particular arbitral institution, the applicable rules would be those that were current at the time of submission to arbitration.

23 The defendants emphasised that this case was not concerned with the version of the rules which were applicable. They emphasised their acceptance of the principle that the question of the applicable version of the rules was to be determined at the date of commencement of the arbitration proceedings, and not the version in force at the time of the contract. In this regard, they, too, relied on *Bunge S.A v Kruse* [1979] LR 279, and which the plaintiffs also relied on.

24 However, they contended that this principle did not apply if a wholly different set of rules, viz, the SIAC Domestic Rules, was involved.

25 Be that as it may, I remained of the view that once parties had agreed to adopt the rules of a particular arbitral institution, without specifying the particular set of rules, the applicable rules

would be those that were current at the time of submission to arbitration, regardless of whether we were dealing with a new amended version, or an entirely different set of rules.

26 In this case, the rules, which were current at the time of the reference to arbitration, were the SIAC Rules and the SIAC Domestic Rules. In the absence of any specification, the SIAC Domestic Rules would apply to domestic arbitrations and the SIAC Rules would apply to international arbitrations. This was clearly a domestic arbitration and my reasons for so concluding are set out below. The SIAC Domestic Rules would accordingly apply.

27 Two other related points should be made. Firstly, it must be emphasised that parties to a domestic arbitration are free to adopt the SIAC Rules, provided specific reference to the SIAC Rules is made. The widely accepted principle of party autonomy, as reflected in Article 19 of the UNCITRAL Model Law (the "**Model Law**"), is part of Singapore law (Section 3 of the IAA incorporates the Model Law as part of Singapore law) Article 19 provides, inter alia, that "..*the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings*.."

28 The second point was this: that SIAC have in place two different sets of institutional rules, one tailored for international arbitrations and the other for domestic arbitrations, is mirrored by the Singapore arbitral regime. Singapore has a dual-track arbitral regime, with the Arbitration Act (Cap. 10) (the "**AA**") applying to non-international or what is commonly known as domestic arbitrations, and the International Arbitration Act (Cap. 143A) (the "**IAA**") applying to international arbitrations. The dual-track arbitral regime was already in existence at the time of the contract, and indeed, had existed since 1995, when the IAA was enacted. The domestic Arbitration Act was first enacted in 1953 as the Arbitration Ordinance.

29 The principle of party autonomy is also reflected in the fact that parties are free to choose the arbitral regime to govern their arbitration. More commonly, parties to a domestic arbitration, who, for example, wish their arbitral award to carry a higher degree of finality may agree in writing for the IAA to apply: see Section 5(1) of the IAA. In particular, under the IAA, there is only one recourse against the arbitral award and that is to apply to set it outside under one of the grounds set out in Article 34 of the Model Law and/or the additional grounds set out in Section 24 of the IAA. In contrast, under the AA, the challenging party has two options: either to (i) set the award aside under the grounds set out in Section 48 of the AA (which mirror the Model Law grounds) or (ii) apply to court for leave to appeal on a question of law arising out of the award under Section 49 of the AA.

30 Likewise, parties in an international arbitration, who perhaps favour more judicial intervention, may opt for the AA to govern their arbitration. But the point remains that express words must be used, for the opting in or out of a regime or set of rules, to be effective.

31 For the sake of completeness and in fairness to the learned submissions by counsel for both parties, I shall go on to consider the authorities. *Bunge S.A v Kruse* essentially involved two versions of the Arbitration Rules of the Grain and Feed Trade Association ("GAFTA"), one which existed at the time of the contract and another version which was an amended form that came into application after the contract was made, but before the arbitration was commenced.

32 A contract, which incorporated GAFTA 100, was made on 21 August 1972 for the sale of U.S. Soya bean meal cif Bremen to be shipped in six shipments spanning a period from April to September 1973. The sellers and buyers had agreed to submit any dispute arising out of the contract to arbitration "*in accordance with the Arbitration Rules of The Grain and Feed Trade Association Ltd. No. 125 such Rules forming part of the contract...*". At the date of the contract i.e. 21 August 1972, the GAFTA Arbitration Rules 125 in force were those marked " effective 1st October 1971" (the

"**old rules**"). However, two amendments were subsequently made to the old rules, in October 1972 and in August 1973. Amongst other things, the time limit for the commencement of arbitration was changed. Under the old rules, the notice of intention to proceed to arbitration had to be dispatched and an arbitrator appointed within three calendar months of the expiry of the contract time of shipment. Under the amended rules, the time limit was changed from "three calendar months" to "90 days". 40% of the purchased goods was delivered. However, following the introduction by the United States of an embargo on soya bean meal, the seller claimed they were not liable to deliver the remaining 60%. The buyers, who claimed for non-delivery were two days out of time in commencing arbitration, based on the 90-day time limit under the amended rules. They would not have been out of time based on the three calendar month time limit under the old rules.

33 The question before Mr Justice Brandon (as he then was) was whether the old rules or the amended rules apply. He concluded that the amended rules applied. At page 286 col. 1, the learned judge drew an important distinction:

> "……. between a clause incorporating a code containing mainly substantive provisions i.e. provisions defining or affecting the substantive rights of the parties, on the one hand, and a clause incorporating a code containing mainly procedural provisions, i.e. provisions laying the procedure to be followed in the arbitration of disputes, on the other hand. In the case of the first kind of clause, of which the provision in the present contract incorporating GAFTA form 100 is an example, it is clear that the code incorporated is that contained in form 100 as existing and in force at the date of the contract. In the case of the second kind of clause, of which cl. 30(a) of GAFTA 100 incorporating the arbitration rules of GAFTA 125 is an example, the prima facie inference, I think, is that the code incorporated is that in force when the time for invoking and acting on the procedural provisions concerned arises…."

34 The learned judge explained this distinction on the basis that procedural rules have to be changed from time to time, for the sake of practicality.

35 The learned judge's approach in *Bunge v Kruse* was adopted with approval by Robert Goff J (as he then was) in *Cremer v Granaria* [1981] 2 LR 583, which contained almost identical facts to those in *Bunge v Kruse*. Goff J held that the applicable arbitration rules were those in force at the date when the arbitration was invoked.

36 The plaintiffs also rely on the decision in *China Agribusiness Development Corporation v Balli Trading* [1998] 2 LLR 76. This scenario in this case is quite different from the present matter under consideration, in that, the parties had agreed to adopt a set of arbitral rules, which had already ceased to be effective, even at the time of the contract. A contract for the sale of hot rolled steel coils had been made on 15 June 1994 and the arbitration clause provided for arbitration by the Foreign Trade Arbitration Commission ("FETAC") in China in accordance with the "Provisional Rules of Procedure of the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade" (the "**adopted rules").** When disputes which arose were submitted to arbitration a few months later in October 1994, it transpired that FETAC had changed its name to the China International Economic and Trade Arbitration Commission ("**CIETAC**"). CIETAC did not operate under the adopted rules. On the contrary, CIETAC operated under another set of rules (the "**CIETAC rules**") which came into force on 1 June 1994. One of the differences highlighted in the judgment between the adopted rules and the CIETAC rules was that arbitrator's fees were much higher under the CIETAC rules, viz, the arbitrator's fee was pegged at a maximum of 1% of the amount at stake under the adopted rules, whereas under the CIETAC rules, the arbitrator's fee would have been 2.7% of the amount at stake.

37 Mr Justice Longmore held that the CIETAC rules were to apply. It was pertinent that CIETAC would not have accepted the reference if the parties had asked them to conduct the arbitration under the adopted rules. The court was thus keen to avoid imputing to the parties an intention to do something which could not be done. At page 77 Col 2 he said :

> "As a matter of English law it is clear that if an arbitration agreement requires an arbitration to be held according to the rules of a particular institution that agreement prima facie refers to the rules current at the time when the arbitration is begun (See Offshore International S.A v Banco Central SA [1976] 2 Lloyd's Rep 402, Bunge SA v Kruse [1979] 1 Lloyd's Re; 279 and Mertens & Co P.V.B.A v Veevoeder Import Export Vimex B.V [1979] 2 Lloyd's Report 372.."

Domestic not international

38 As I had decided that the arbitration clause made reference to the rules of the SIAC generally, I then turned to consider the nature of the arbitration, viz, whether it was an international or a domestic case. If it was a domestic case, it fell squarely within the scenario in Rule 1.1(b) of the SIAC Domestic Rules, which was one of three scenarios set out in Rule 1.1 of the SIAC Domestic Rules in which the SIAC Domestic Rules would apply.

39 **Rule 1.1(b)** provided that the SIAC Domestic Rules would apply:

> "where the parties have agreed in writing that their dispute is to be submitted or referred to the SIAC for arbitration under rules of the SIAC generally and where the case is a domestic case;"

Rule 1.2 of the SIAC Domestic Rules then described what was meant by a domestic case:

> " SIAC Domestic Arbitration Rules
>
> A case is a domestic case for the purpose of these rules where all the parties at the conclusion of the arbitration agreement had their *places of business* in Singapore and where a *substantial part of the obligations* of the commercial relationship was to be performed in Singapore; or where the subject matter of the dispute is *most closely connected* with Singapore. " (emphasis added)

40 The SIAC Rules did not define what was meant by an international case. However, Section 5(2) of the IAA stated that an international arbitration is one in which:

> (a) at least one of the parties has its ***place of business*** in any state other than Singapore, at the time the arbitration agreement was concluded; or
>
> (b) the agreed place of arbitration is situated outside the state in which the parties have their place of business; or
>
> (c) any place where a *substantial part of the obligation* of the commercial relationship is to be performed or the place to which the subject matter of the dispute is *most closely connected* is situated outside the state in which the parties have their place of business; or
>
> (d) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

41 The SIAC helpfully pointed out that the similarity between concepts was due to the fact that the SIAC had used the IAA definition of an international arbitration as a reference point when they

drafted the Domestic Rules. At the time the SIAC Domestic Rules were promulgated, i.e. in May 2001, the AA had not yet been enacted. It only came into effect on 1 March 2002. In any event, the AA did not contain any definition of a domestic arbitration.

42 Both the SIAC and the IAA specify that the nature of an arbitration, *viz*, whether it was domestic or international, was largely to be determined by three factors: (1) the parties' place of business (2) where a substantial part of the contractual obligations were to be performed and (3) where the dispute was most closely connected.

43 This was clearly a domestic case. Both parties are locally incorporated companies, with their place of business in Singapore. The contract related to the construction of a power plant in Tuas, Singapore.

44 In any event, I noted that the defendants were not challenging the plaintiffs' contention that this was a domestic case within the meaning of the SIAC Domestic Rules: see paragraph 12 and 13 of fax dated 24 July 2003 from Jones Day to the Registrar of the SIAC. What the defendants stated was that given the international dimension of the contract, the parties intended for the SIAC Rules to apply.

45 In particular, the defendants emphasised that the surrounding circumstances of the contract, which give the contract an international dimension, should be taken into account, namely that the persons with whom the plaintiffs contract were based in Kansas, that the defendants were part of a US-based group and that the project was being undertaken by a main contractor comprising an international consortium involving companies from USA, Japan and Singapore.

Surrounding circumstances

46 The defendants relied on the House of Lords' decision in *Reardon Smith Line Ltd v Hansen-Tangen* [1976] 3 All ER 570 as authority for their proposition that the surrounding circumstances of the contract are to be taken into account. Lord Wilberforce in the Reardon Smith case said at page 574 that:

> "…No contracts are made in a vacuum: there is always a setting which they have to be placed. The nature of what is legitimate to have regard to is usually described as "the surrounding circumstances" but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the *commercial purpose* of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating…" (my emphasis)

And at page 575, Lord Wilberforce continues:

> " … what the court must do must be to place itself in thought in the <u>factual matrix</u> as that in which the parties were…."

47 I agreed with the learned views expressed in the passages cited above, namely, that given the imprecise meaning and potentially broad and uncertain scope of the phrase "surrounding circumstances", the commercial purpose should be considered by the court when it deals with a commercial contract. In this case, the "*commercial purpose*" and "*factual matrix*" were simply this: two locally incorporated companies with their respective places of business in Singapore, entered into a contract for the construction of a power plant in Singapore. Considerations like the fact that the defendants are part of a US-based group or that the main contractor comprises an international

consortium of companies were not relevant to the issue of the "*commercial purpose*" of the contract.

48 One should be aware of the issues that arose in *Reardon Smith* to fully appreciate the context of Lord Wilberforce's words. In *Reardon Smith*, charterers refused to take delivery of a vessel which did not correspond with the vessel's contractual description under the charterparty. However the vessel fully complied with the physical specifications required and was fit for the contemplated service. The House of Lords gave the words of identification of the vessel a liberal construction and held that the charterers were not entitled to refuse delivery, since the commercial purpose of the charterparty was to make available to the charterers a medium sized tanker and this had been fulfilled.

Subjective intention not admissible

49 The defendants contended that their subjective intention was for SIAC Rules to apply given the international dimension of the contract. But it was well established that the subjective intention of a party should not be considered by the court when construing a written document.

50 Paragraph 12-117 of Chitty on Contracts, 28th edition, stated:

> "…Evidence will also not be admitted to show what were the parties' subjective intentions with respect to the words used." The general rule seems to be that all facts are admissible which tend to show the sense which the words bear with reference to the surrounding circumstances of and concerning which the words were used, *but that such facts as only tend to show that the writer intended to use words bearing a particular sense are to be rejected*." (my emphasis)

51 In *Prenn v Simmonds* [1971] 3 All ER 237 at 247, Lord Wilberforce also said:

> "… In my opinion, then, evidence of negotiations, or of the parties' intentions, and a fortiori of [the plaintiff's] intentions, ought not to be received, and evidence should be restricted to evidence of the factual background known to the parties at or before the date of the contract, including evidence of the "genesis" and objectively the "aim" of the transaction."

52 Both the passages from *Prenn v Simmonds* and Chitty on Contracts were cited with approval by LP Thean JA in *MCST Plan No 1933 v Liang Huat Aluminium Ltd* [2001] 3 SLR 253 at 259. This basic principle has also been reiterated by the Court of Appeal in *Pacific Century Regional Development Ltd v Canadian Imperial Investment Ptd Ltd* [2001] 2 SLR 443.

SIAC's submissions

53 Given their experience gained from administering administrations for some 12 years now, I found the views presented by the SIAC very helpful. They stated that they had come across numerous types of arbitration clauses, which could broadly be classified under six main categories as follows:

(a) Clauses which provided for Singapore as the place of arbitration, with or without a reference to applicable arbitral legislation;

(b) Clauses which provided for arbitration before the SIAC;

(c) Clauses which provided for arbitration before the SIAC with only a general reference to the rules of the SIAC;

(d) Clauses with a specific reference to the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules) (note the initial capital letters);

(e) Clauses with a specific reference to the SIAC Domestic Arbitration Rules; and

(f) Defective clauses.

54 The SIAC submitted that the arbitration clause falls squarely within the category (c) and that in previous cases, the parties have had no difficulty accepting the application of the SIAC Rules, where the case is international, and the SIAC Domestic Rules, where it is domestic.

55 I agreed with the SIAC's contention that unlike the category (d) and (e) clauses, where the specific rules are stated, it was more likely than not that the parties were not much concerned as to which rules would be applied in the event of a dispute. Hence, the general words used. Accordingly, it was reasonable that they were taken to have intended to adopt whichever set of rules as would be applicable to their case. To construe the general words used to mean a specific reference to the SIAC Rules would be to strain the words of the arbitration clause.

56 Finally, it was important to note that the SIAC submitted that, in developing the SIAC Domestic Rules, their intention was to capture cases arising under contracts entered into *before* the promulgation of the rules, as well as cases in the future.

Outcome

57 In the circumstances, I declared that on a true construction of the arbitration clause, the reference therein to any arbitration being conducted "*under and in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Centre*" was a reference to the rules of arbitration of the SIAC generally, at the time of the submission to arbitration, and *not* an express reference to the SIAC Rules. I further declared that the SIAC Domestic Rules were to apply in this case, in the light of Rule 1.1 (b) of the SIAC Domestic Rules and the undisputed position that this was a domestic case. I also ordered the defendants to pay costs.

Plaintiffs' application allowed with costs

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