

Singapore Court Issues Landmark Decision on Proper Law for Determining Subject Matter Arbitrability

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Introduction

When a claim is filed in Court in breach of an arbitration agreement, the defendant's key recourse is to seek an anti-suit injunction at the national courts of the seat of the arbitration to restrain the counterparty. Such applications are usually heavily contested as the counterparty would invariably raise various defences as to why the court action should proceed. If the claimant's position is that the dispute is not arbitrable, how should the Court consider such an argument? Should the Court consider the issue of arbitrability under the law governing the *arbitration agreement* or the law of the *seat of arbitration*?

In *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244 ("**Westbridge**"), the Singapore High Court was faced with the exact issue above. The defendant in *Westbridge* commenced action in the Indian courts for a claim of shareholder oppression and company mismanagement. The plaintiff sought an anti-suit injunction in Singapore on the grounds that the dispute ought to be arbitrated. The defendant sought to oppose the injunction on the ground that minority oppression is not arbitrable under the governing law of the arbitration agreement, which he submitted to be the laws of India.

The Singapore High Court held that subject matter arbitrability is determined by the law of the seat of arbitration at the pre-award stage. As the law of the seat in this case was Singapore law, under which the

issue of minority oppression is arbitrable, the Court found that the dispute was arbitrable and thus granted an anti-suit injunction against the court proceedings.

The decision is novel as this is the first time that the Singapore Courts or the Courts of the Commonwealth jurisdictions have decided this issue. In this Update, we highlight the key points of the Court's judgment.

Brief Facts

The plaintiff and the defendant were shareholders in People Interactive, a company registered in Mumbai, India. The parties had entered into a Shareholders' Agreement, which contained an arbitration clause providing that any dispute "*relating to the management of the Company or relating to any of the matters set out in this Agreement... shall be referred to arbitration*". Singapore was specified as the seat of arbitration.

The defendant initiated court proceedings in Mumbai against the plaintiff, alleging, among other claims, minority oppression and mismanagement. The plaintiff then applied to the Singapore Courts seeking, *inter alia*, an anti-suit injunction against the Mumbai proceedings in favour of arbitration, on the ground that the dispute fell within the arbitration clause in the Shareholders' Agreement.

The defendant sought to oppose the injunction, arguing that the law governing the arbitration agreement was Indian law, and that disputes relating to oppression and mismanagement are not arbitrable under Indian law.

The Singapore Court thus had to determine the arbitrability of the dispute. In doing so, it had to consider whether, at this pre-award stage, the applicable law for determining subject matter arbitrability was: (a) the law of the arbitration agreement (which the defendant argued to be Indian law); or (b) the law of the seat of arbitration (which the plaintiff established to be Singapore law).

Holding of the High Court

The Court held in favour of the plaintiff, granting the anti-suit injunction against the Mumbai proceedings.

Arbitrability of dispute

The Court held that it is *the law of the seat* that applies to determine the issue of subject matter arbitrability at the pre-award stage, rather than *the law of the arbitration agreement*.

In coming to its decision, the Court reasoned as follows:

1. **Issue of jurisdiction** – The Court reasoned that subject matter arbitrability, when raised at the pre-award stage before the seat Court, is essentially an issue of whether the arbitral tribunal has jurisdiction to hear the dispute. As it is the law of the seat that limits party autonomy (and thus the tribunal's jurisdiction) by prescribing what type of disputes are arbitrable, it is the law of the seat that should apply to determine subject matter arbitrability at the pre-award stage.
2. **Consistency** – Arbitrability is relevant at both the initial and terminal stages of an arbitration (i.e. the enforcement of the arbitral award). It is uncontroversial that, *at the terminal stage*, the seat Court applies the law of the seat when considering an application to set aside an award on grounds of non-arbitrability of the dispute. Applying the same law to the issue of arbitrability *at the pre-award stage* would thus avoid potential anomalies.

3. **Policy** – Applying the law of the seat at the pre-award stage would be more consistent with the policy to promote international commercial arbitration. Singapore Courts have given broad effect to international arbitration agreements, and giving effect to foreign non-arbitrability rules would potentially undermine Singapore's policy of supporting international commercial arbitration.
4. **Existing authority** – The Court considered the academic authority and existing case law on the issue, and found that it weighed in favour of the law of the seat being applied.

Breach of arbitration agreement

On the facts, the Court found that all the disputes between the parties brought before the Mumbai Court fell within the scope of the arbitration agreement, as they related to the management of People Interactive. Therefore, in commencing the Mumbai proceedings, the defendant had breached the arbitration agreement.

Grant of anti-suit injunction

Applying the relevant legal principles, the Court found that it was appropriate to grant an anti-suit injunction in this case.

The Court rejected the defendant's argument that he was not amenable to the jurisdiction of the Singapore Courts. Having found that the Mumbai proceedings were in breach of the arbitration agreement, the Court also found that there was no strong reason not to grant the anti-suit injunction.

Concluding Words

Anti-suit injunctions are important tools for preventing a disputant from reneging on an agreement to submit a dispute to arbitration. The reasons and guidance provided by the Court in the *Westbridge* decision is therefore a welcome development. The *Westbridge* decision further underscores the Singapore Court's pro-arbitration policy, giving commercial parties great confidence in choosing Singapore as the seat of any arbitration that they may be involved in.

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