All that Glitters is Not Gold: Singapore High Court Upholds Arbitral Award, Dismissing Allegations of Bias and Prejudgment

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Introduction

The facts of *DDI v DDJ* [2024] SGHC 68 ("***DDI***") are eye-catching, with a mix of drama-worthy elements – jewellery of uncertain origins, celebrities of uncertain bankability, and a billionaire uncle of uncertain existence. Against this sparkling backdrop, *DDI* poses a serious question: Under what circumstances will an arbitrator's conduct in the arbitration be in breach of the rules of natural justice, such that a court may set aside the arbitral award? Does a robust challenge of an expert's views demonstrate that the arbitrator has usurped the expert's role? Does the arbitrator's asking of leading questions prove that they descended into the arena to elicit evidence to validate their views?

The Singapore High Court ("**Court**") answered these questions in the negative, dismissing the applicant's application to set aside the arbitral award. In doing so, the Court considered the high threshold to be met, emphasising that any breach, even if proven, must have caused actual prejudice to the applicant to sustain a setting-aside application.

The respondents were successfully represented by Partner Devathas Satianathan, Senior Associate Walter Yeo, and Associate Sandi Tun of Rajah & Tann Singapore.

Factual Background

Claim

The applicant owned 50% of shares in a company ("**Company DA**") and was its sole director. Company DA purportedly owned and managed a piece of jewellery ("**Jewellery**") which had a Gem set in it. The Gem was laboratory-grown, and the Jewellery was named after and endorsed by a celebrity ("**Celebrity**").

The first respondent was the sole director and shareholder of the second respondent, a company incorporated in Singapore. The second respondent entered into a fractional ownership and transfer agreement ("**2020 FOA**") with the

applicant to purchase a 10% share of the Jewellery. The 2020 FOA had a grading report for the Gem attached to it ("**Report**") and referred to an online article that stated that the Gem was mined in Ruritania. The 2020 FOA was later superseded by two FOAs signed in 2021 ("**2021 FOAs**"), which removed all references to the article and Report, and pursuant to which the second respondent paid approximately $650,000 to the applicant.

Soon after, the applicant and respondents executed a sale and purchase agreement ("**SPA**") and an Option Agreement (collectively "**Agreements**"), under which:

1. The applicant would sell 47% of Company DA's shares to the first respondent.
2. All three FOAs were terminated, and the sum of $650,000 paid by the second respondent was treated as payment on behalf of the first respondent under the SPA.
3. The first respondent was to pay the applicant a balance of approximately $2.339 million ("**Balance**").
4. The applicant had the option to require the first respondent to make payment of the Balance by transferring certain cryptocurrencies ("**Coins**") to the applicant. The storage devices containing the Coins were stored in the applicant's safe deposit box, together with the codes needed to transfer the Coins.
5. Finally, all disputes arising out of the Agreements were to be resolved by arbitration.

One day after the completion of the SPA, the applicant exercised the option, then accessed the safe deposit box and arranged for the Coins to be transferred. The Coins were valued at $2 million, and the applicant commenced arbitration proceedings against the respondents for the remaining $339,000.

Counterclaim

The respondents counterclaimed for the return of the Coins, damages of approximately $650,000, and a declaration that the SPA was void. On their case, they alleged:

1. The applicant had advised that he found a prospective buyer for the Jewellery, who was a friend of the applicant's supposed billionaire uncle. This apparently gave rise to a conflict of interest that required the applicant to divest himself of Company DA's shares.
2. The applicant requested the first respondent to hold Company DA's shares for him temporarily until after the sale went through ("**Plan**").
3. The Coins were provided as security for the Plan, and the Coins were not to be transferred without the first respondent's permission.
4. Relying on the applicant's representation that the Agreements reflected the Plan, and that the Gem was mined and the Jewellery was worth around $13.8m, the first respondent signed both Agreements without reading or reviewing the same.

Setting-aside application

The Arbitrator issued the Final Award, dismissing the claim and allowing the counterclaim. The applicant sought to set aside the Final Award under section 48 of the Arbitration Act 2001 ("**Act**"), arguing that:

- There had been a breach of the rules of natural justice, namely (i) the fair hearing rule, and (ii) the rule against bias, which prevented the applicant from effectively presenting his case; and
- It contained decisions on matters beyond the scope of submission to arbitration.

In his setting-aside application, the applicant relied on unofficial transcripts (it was not clear who prepared these transcripts) and excerpts of the official transcripts provided by the respondents out of goodwill. The Court found this unsatisfactory given that all this arose from the applicant's refusal to pay for the official transcripts. Nonetheless, the Court noted that since the defendants accepted that the unofficial transcripts being relied on broadly reflected the

contents of the official transcripts, it would refer to the unofficial transcripts for the *substance* of what was said during the arbitration (but not as a verbatim record).

Decision of the High Court

Breach of rules of natural justice

An award may be set aside under section 48(1)(*a*)(vii) of the Act for breach of the rules of natural justice only if the breach has caused actual or real prejudice. Quoting *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86, the Court emphasised that:

> "*It is not the function of the court to assiduously comb an arbitral award microscopically in attempting to determine if there was any blame or fault in the arbitral process; rather, an award should be read generously such that only meaningful breaches of the rules of natural justice that have actually caused prejudice are ultimately remedied.*"

Alleged breach of fair hearing rule

The applicant alleged that the Arbitrator failed to apply her mind to the essential issues. Among others, the Arbitrator had allegedly (i) failed to address the evidence on the Plan; (ii) failed to address the necessary elements of fraudulent misrepresentation; and (iii) disregarded relevant evidence annexed to the applicant's closing submissions.

The Court rejected these arguments, finding that:

- *On the Plan*: The Arbitrator was not required to expressly deal with every point or argument that had been canvassed. In any event, there was no causal nexus between the alleged breaches and the Final Award, meaning that the applicant's rights would not have been prejudiced.

- *On the elements of fraudulent misrepresentation:* The applicant's complaint was essentially that there was no express finding as to when the alleged fraudulent misrepresentations had been made. However, such alleged failure at best amounted to an error which was irrelevant to a setting-aside application. Overall, it could not be said that there was a clear and virtually inescapably inference from the Final Award that the Arbitrator failed to apply her mind to the elements of fraudulent misrepresentation.

- *On the annexed evidence:* The Arbitrator had fairly disregarded the annexed evidence (i.e. 51 pages of annexures and 225 pages of the unofficial transcripts) as it was in excess of the 75 page-limit imposed upon closing submissions. It was not necessary for her to give notice to the Applicant that she would be disregarding the pages in excess of the page limits.

Rule against bias

The applicant alleged that the Arbitrator appeared to be biased against him, having predetermined material issues. He complained that the Arbitrator told his expert that comparing mined gemstones with laboratory-grown gemstones was not comparing like with like, and asked the expert whether he was "comparing champagne with coke". Further, he argued, the Arbitrator had descended into the arena to elicit evidence to validate her views by asking leading questions and had imposed her personal views on celebrity status.

The Court disagreed. It noted that the applicant had to establish a reasonable suspicion that the Arbitrator reached a final and conclusive decision before being made aware of the evidence and arguments. An open mind did not mean an empty mind – prejudgment could not be made out solely because tentative views were expressed.

On the evidence, the Arbitrator had not breached the rule against bias. The fact that the Arbitrator disagreed with or was not persuaded by an expert did not mean that she had refused to listen. With regard to celebrity status, the Arbitrator had not rejected the concept that celebrity endorsement could enhance the Jewellery's value as alleged by the applicant – at most, she had disagreed on the celebrity status of the Celebrity.

Ultimately, the question was whether the Arbitrator's conduct was such as to impair her ability to evaluate and weigh the case presented by the parties. The threshold was a high one and had not been crossed.

Matters beyond the scope of submission to arbitration

The applicant also contended that the Arbitrator should not have made findings on certain issues, namely that the Jewellery was not owned by Company DA and that the applicant's billionaire uncle was non-existent.

The Court found that these matters were well within the scope of submission to the Arbitration. For instance, the ownership of the Jewellery had been pleaded in the applicant's statement of claim, and the applicant's witnesses had been cross-examined on their knowledge of Company DA's alleged ownership of the Jewellery. Likewise, the respondents had pleaded in their defence and counterclaim that the applicant had represented that he had a "prominent Ruritanian uncle who was a billionaire".

Concluding Remarks

As seen in *DDI*, in considering setting-aside applications, Singapore courts continue to read awards generously rather than nit-picking for flaws. Gilding such applications with minor breaches of the rules of natural justice will not suffice; the touchstone is proof that actual prejudice had arisen as a result of such breaches.

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