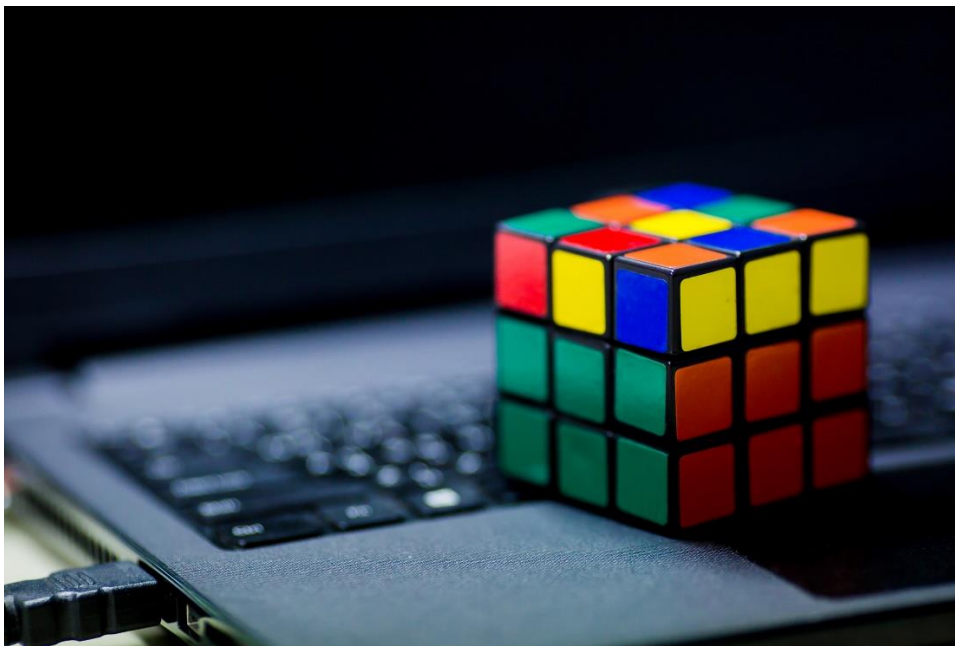


Singapore Court of Appeal Determines: How Final is a "Final Arbitral Award"? Can There be an Implied Reservation of Jurisdiction by an Arbitrator?

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Introduction

When seeking to resolve a dispute, parties generally aim for a full and final resolution to the dispute. In arbitration, this takes the form of a final arbitral award. Once a final award is issued, the arbitrator becomes *functus officio* – he/she no longer has jurisdiction over the dispute and may not issue a further award in relation to the arbitration, save for limited exceptions. This ensures the finality of the arbitration and prevents a party from reopening the dispute.

However, what if an award includes conditions to be met before one party's liability to pay accrues? Can it still be considered a final award, or would the arbitral tribunal retain jurisdiction to issue a further award if the parties are in dispute over whether the conditions are met? Must the tribunal's jurisdiction be expressly reserved, or can jurisdiction be retained by implication?

These questions were answered by the Court of Appeal ("CA") in *Voltas Ltd v York International Pte Ltd* [2024] SGCA 12 ("**Voltas v York**"), where it found that (i) a conditional award may be a final award, and (ii) a tribunal cannot reserve its jurisdiction by implication. The respondent, York International Pte Ltd ("**York**"), was successfully represented by [Ng Kim Beng](#) (Deputy Managing Partner), Benny Santoso (Senior Associate), and Timothy James Chong (Associate) of Rajah & Tann Singapore LLP.

Below, we look into the CA's basis for determining when a conditional award is also a final award, and the rationale behind its finding that an arbitrator may not impliedly reserve his/her jurisdiction after issuing a final award.

Background of Dispute

Dispute and issuance of the Award

York had commenced the arbitration against the appellant ("**Voltas**") for the recovery of unpaid contract sums arising from a contract for the supply and installation of chillers and associated equipment ("**Arbitration**"). Voltas's counterclaimed, including two sums for which it was potentially liable to the owner ("**Claims**"). The owner had claimed these sums as costs incurred due to issues with the performance of the chillers.

The arbitrator ("**Arbitrator**") found, *inter alia*, that York was liable for the Claims. However, Voltas had yet to pay the owner for these costs. To avoid a potential windfall for Voltas, the Arbitrator made his orders conditional upon Voltas first making payment to the owner.

After the Final Award ("**Award**") was issued, Voltas entered into a settlement agreement with the owner, and proceeded to seek payment of the costs of the Claims from York pursuant to the Award. The demands were refused on the basis that the condition for payment had not been met, as Voltas did not provide evidence that it had paid RWS for the Claims.

Second dispute and 2021 Decision

Dissatisfied with York's position, Voltas applied to the Arbitrator for a further award to determine whether the conditions for the Claims had been satisfied. York resisted the application on the basis that the Arbitrator was *functus officio* and thus had no jurisdiction to issue this further award. The Arbitrator issued a preliminary ruling on jurisdiction and decided that he was not *functus* ("**2021 Decision**").

York then applied under section 21(9) of the Arbitration Act 2001 ("**Act**") for the Singapore High Court to decide whether the Arbitrator was *functus officio* after issuing the Award.

High Court Decision and Appeal

The Singapore High Court in *York International Pte Ltd v Voltas Ltd* [2022] SGHC 153 allowed York's application and found that the Award was indeed final. Consequently, the Arbitrator was *functus officio* and did not have jurisdiction to make any further awards in the reference. After reviewing the evidence and submissions made in the Arbitration, the Judge noted that the Arbitrator had rendered a conditional award on quantum, as opposed to adjourning his decision on the same. This indicated that the Arbitrator had intended to fully resolve the parties' dispute over the Claims and had not reserved his jurisdiction to make a future assessment on this issue. Dissatisfied with the High Court's decision, Voltas appealed to the CA.

Court of Appeal Decision

In the appeal, two principal issues arose for the CA's determination, namely:

1. Whether a conditional award may constitute a final award; and
2. Whether an arbitrator can impliedly reserve his jurisdiction to issue a further award.

Whether the 2014 Award constituted a final award

The CA answered this in the affirmative. It confirmed the High Court's finding that "*conditional awards*" are capable of being complete, final and binding under Singapore law, even if "*this might present difficulties for enforcement purposes*". The CA expressly agreed with Justice Cooke's decision in *Konkola Copper Mines v U&M Mining Zambia* [2014] EWHC 2374 (Comm) that an award may be final if the award "*clearly provides for specific relief, including payments of money,*

which only bites at a point in the future" and the tribunal "has made decisions which are final and complete and are not subject to further decisions on its part or of any other person or body unless a specified contingency occurs". In other words, "so long as there is sufficient clarity in both the award and any conditions stipulated therein, a conditional award may be a final award."

The CA further clarified that a conditional award could constitute a final award in the third sense as laid down in *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2015] 4 SLR 364 i.e., "the last award made in an arbitration which disposes of all remaining claims". The key inquiry is whether the conditions in such an award make it necessary for the tribunal to reopen or reconsider the matter. Therefore, a conditional award will constitute a final award if it disposes of all outstanding claims and if an enforcement court will be able to assess whether the conditions in the award have been satisfied.

In the present case, the CA found that the Award was a final award. It disposed of the substantive issues in the dispute, and the Arbitrator did not contemplate that there were any other issues left to be decided thereafter. The CA highlighted three indicia:

1. The substance of the dispute was decided;
2. The Arbitrator had also decided on the costs of the Arbitration, which suggested that he had intended to finally decide on all issues in the dispute between York and Voltas; and
3. In the 2021 Decision, the Arbitrator himself had accepted that he was *functus officio* in respect of the matters decided in the Award. Having elected to issue a conditional award instead of adjourning the matter, he could only have meant to finally dispose of the matter rather than keeping the question of York's liability open.

Whether the Arbitrator had reserved his jurisdiction

In the 2021 Decision, the Arbitrator accepted that he had not expressly reserved his jurisdiction to issue a further award. As such, Voltas sought to argue that there was an implied reservation of jurisdiction by the Arbitrator.

The CA found categorically that it is not possible for a tribunal to impliedly reserve its jurisdiction. The CA accepted the Respondent's submission that an implied reservation is inconsistent with section 43(4) of the Act. A tribunal is not entitled to "re-visit issues canvassed and decided or to re-consider any part of the decisions consciously made", save for the limited exceptions provided in section 43 of the Act. One such exception is set out in section 43(4) of the Act, which allows a tribunal to make an additional award on claims omitted from the award if a party so requests within 30 days of receipt of the award. The CA noted that this time limit was likely intended to preserve the finality and expedition in arbitral proceedings; recognising an implied reservation of jurisdiction would be inconsistent with such underlying rationale. Therefore, under Singapore law, a tribunal must expressly reserve its jurisdiction in order to revisit an otherwise final award.

Concluding Remarks

The CA's decision in *Voltas v York* emphasises the importance of finality of an arbitration. Parties may be assured that where a tribunal issues a final but conditional award, the arbitration may not be reopened by way of an implied reservation of jurisdiction by the tribunal. The decision is also a reminder that a party should take steps to, for instance, seek an additional award or clarification from the arbitrator within the timeline provided for in section 43(4) of the Act, if warranted by the circumstances, and should a dispute on whether the conditions have been met arise, the issue could fall to the enforcement court to determine.

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