

Setting Aside an Arbitral Award: Court Considers Curial Jurisdiction and Sovereign Immunity

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Introduction

Where a party disagrees with an arbitral tribunal's finding as to the seat of arbitration, how may it contest the decision? Can it simply file an annulment application before the courts of its perceived seat, instead of the court of the seat as ascertained by the tribunal? Under what circumstances will the Singapore courts grant an anti-suit injunction ("**ASI**") to restrain that party from pursuing such an annulment application in a foreign court? When will a state-linked entity come under the umbrella of sovereign immunity, and does sovereign immunity make a state-linked entity immune to the operation of an ASI?

The Singapore International Commercial Court ("**SICC**"), sitting in a three-judge bench, answered these questions in *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu and another* [2025] SGHC(I) 16. It highlighted the two categories of ASIs – contractual and non-contractual – and set out the relevant requirements for a contractual ASI. The SICC further found that the state-linked entity did not enjoy sovereign immunity either in terms of adjudicative immunity or enforcement immunity.

We look into the key highlights of the decision below.

Background

The second defendant, the Melamchi Water Supply Development Board ("**MB**"), had been formed by the Government of Nepal as the implementing agency for a project to alleviate chronic water shortage ("**Project**"). MB entered into a contract with the claimant, Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy ("**CMC**"), to provide

construction services in respect of the Project ("**Contract**"). The Contract specified that disputes would be resolved by international arbitration administered by the Singapore International Arbitration Centre ("**SIAC**"), with Singapore as the "Place of Arbitration".

Following various contractual disputes, CMC terminated the agreement in November 2018. In December 2022, CMC commenced arbitration with the SIAC. Due to a belief that MB had been dissolved and succeeded by the first defendant, the Department of Water Supply & Sewerage Management, Kathmandu ("**DOW**"), CMC named the respondent as "[DOW] which was formerly known as [MB]".

A three-member tribunal was constituted in May 2023, and the following proceedings took place:

1. **Joint Decision:** The Tribunal issued a Joint Decision allowing DOW's application for early dismissal on the basis that DOW was not a party to the arbitration agreement with CMC. However, the Tribunal found that MB was already a party to the arbitral proceedings.
2. **First Annulment Application:** DOW applied to the High Court Patan in Nepal for the Joint Decision to be set aside.
3. **Originating Application ("OA 18"):** CMC applied to the SICC for an ASI restraining both DOW and MB from pursuing the First Annulment Application.
4. **Seat Decision:** The Tribunal determined that the seat of the arbitration was Singapore.
5. **Second Annulment Application:** MB applied to the High Court Patan to set aside the Seat Decision.

In the present application, CMC applied to the SICC for an interim ASI restraining MB from pursuing the Second Annulment Application pending the final determination of OA 18. It fell to the SICC to determine whether an interim ASI should be granted, which involved considering:

1. the applicable requirements to be met for an ASI to be granted; and
2. whether sovereign immunity applied to MB.

Applicable Requirements

To determine which requirements were applicable, the SICC noted that it was important to distinguish between contractual and non-contractual ASIs. The former is an ASI sought to restrain the defendant from pursuing foreign proceedings in breach of a jurisdiction clause or arbitration agreement. In contrast, the latter is an ASI sought in relation to foreign proceedings that would unduly interfere with the process, jurisdiction or judgments of the forum court, or amount to vexatious or oppressive conduct. The constituent elements for an ASI would vary depending on whether it was contractual or non-contractual. Indeed, the SICC emphasised that an applicant seeking an ASI must be clear on the basis on which the injunction is sought and, correspondingly, what are the requirements to be satisfied for the grant of the ASI.

The present case involved a contractual ASI, as CMC sought to restrain the foreign proceedings on the basis of a breach of the arbitration agreement in the Contract. As such, the SICC laid out the following requirements for the grant of a contractual ASI:

1. the defendant is amenable to the jurisdiction of the court;
2. the foreign proceedings are in breach of an exclusive jurisdiction clause or arbitration agreement between the parties; and
3. there are no strong reasons to decline enforcement of the parties' agreement.

On the facts, these requirements were met.

First, if the word "seat" was not used in the arbitration agreement, a reference by the parties to a chosen "place" or "venue" for arbitration would usually be construed as a choice of seat. The effect of designating Singapore as the "Place

of Arbitration" was therefore an express or implied agreement for Singapore to be the seat of arbitration. Such a choice embodied the parties' submission to the curial jurisdiction of the Singapore courts as the seat court.

Second, the proceedings were clearly in breach of the arbitration agreement. A choice of seat is generally construed as a choice of the *exclusive* jurisdiction in which the parties can challenge a tribunal's decisions. MB therefore had a negative obligation not to challenge the Seat Decision other than before the Singapore courts.

Lastly, there were no strong reasons not to grant the ASI. There was no excessive delay in bringing the injunctive application such that the foreign proceedings had become too far advanced, given that CMC had filed the application a mere nine days after being notified of the Second Annulment Application. Also, the Second Annulment Application was in the early stages, and therefore the grant of the ASI would not be contrary to comity. Conversely, there were strong reasons in favour of the grant of the ASI, given that MB was in breach of an earlier ASI that had been granted on an *ex parte* basis. Notwithstanding the potential futility of an ASI due to MB's non-compliance and CMC's inability to enforce it in Nepal, this was no reason for the SICC to refrain from granting it.

Sovereign Immunity

Although the issue of sovereign immunity was not raised to the Court's attention by CMC, the Court had an obligation under section 3(2) of the State Immunity Act 1979 (2020 Rev Ed) ("**SIA**") to take the point on its own motion and to satisfy itself that MB, as an entity linked to the government of Nepal, was not immune from the jurisdiction of the Singapore courts.

The SICC found that MB was not immune. Under the SIA, there was a distinction between immunity from the court's "adjudicative jurisdiction" ("**adjudicative immunity**") and its "enforcement jurisdiction" ("**enforcement immunity**").

On adjudicative immunity, the SICC referred to section 11(1) of the SIA, which provides that where a State has agreed in writing to submit a dispute to arbitration, the State is not immune as respects proceedings in the Singapore courts which relate to that arbitration. Given that the SICC had found that MB had agreed to submit to the curial jurisdiction of the Singapore courts, the exception to adjudicative immunity under section 11(1) would apply.

On enforcement immunity, the SICC noted that this was a "thornier" issue. Ultimately however, the SICC held that MB was not entitled to sovereign immunity as it was a "separate entity" and not a "department of government" under section 16(1) of the SIA. Thus, section 15(2)(a) of the SIA, which concerned enforcement immunity and prohibited the grant of injunctive relief against a State, did not apply.

Concluding Remarks

The decision emphasises the significance of the parties' choice of seat, and upholds the exclusive jurisdiction of the seat court over an application to set aside an arbitral award. It also clarifies the circumstances under which an ASI may be granted to uphold an arbitration agreement, and is an example of how the Singapore courts will not shy from granting an ASI to give effect to parties' choice of seat. This demonstrates the Singapore courts' strong support for the international arbitration regime.

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