

Arbitration Rendered "Impossible" by Sanctions – Singapore Court Affirms Tribunal's Right to Terminate Proceedings

MARCH 2026 | [SINGAPORE](#)



Introduction

While arbitrations are built on the concept of efficiency, obstacles may arise in the course of events that cause delay or halt proceedings entirely. To avoid proceedings being stuck in limbo, the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**") provides that the arbitral tribunal may terminate proceedings where their continuation has become unnecessary or impossible.

DRL v DRK [2026] SGHC 32 involved an arbitration that had been terminated by the arbitral tribunal on the basis that continuing proceedings had become impossible due to various sanctions that had been imposed on the Applicant. The Singapore High Court ("**Court**") dismissed the application to set aside the tribunal's award, upholding the termination of proceedings.

The termination of the arbitration had significant impact on the Applicant as the limitation period that governed its claim against the Respondent expired before the tribunal terminated the arbitration, meaning that the Applicant could not commence a fresh arbitration. Nonetheless, the Court maintained that the sole issue in deciding termination under the relevant provision is the existence of impossibility; there is no room to consider the prejudice to either party or who caused the impossibility.

The Court's decision is particularly relevant in the current global economic context, where the imposition of international sanctions has greatly escalated in recent years.

The Respondent in this matter was successfully represented by [Lee Eng Beng SC](#), [Chew Xiang](#) and Timothy Chong of Rajah & Tann Singapore LLP.

Brief Facts

The Applicant brought a claim against the Respondent before the Singapore International Arbitration Centre ("**SIAC**") in 2020, alleging that the Respondent was indebted to the Applicant under a contract between them ("**Contract**"). The Contract contained an arbitration agreement requiring the parties to resolve all disputes arising under it by arbitration in Singapore under the SIAC Rules.

In 2022, as arbitral proceedings were ongoing, several countries imposed sanctions on the Applicant, essentially freezing the Applicant's assets and imposing prohibitions on dealings and transactions with the Applicant. As a result, the Applicant could not pay deposits to the SIAC, transfer fees to its lawyers, or pay any sums that might be ordered under an award.

The Applicant sought multiple stays of the arbitration to address the sanctions issue. The Tribunal ordered the Applicant to furnish security and state whether it intended to proceed with the arbitration, but the Applicant failed to comply and instead applied for an indefinite stay.

The Tribunal eventually issued an award containing a formal Termination Order ("**Award**"), terminating the arbitration without reaching a decision on the merits, on the basis that the continuation of the proceedings had become impossible within the meaning of Article 32(2)(c) of the Model Law. Notably, the limitation period for the Applicant's claim had expired by then, meaning the Application could no longer commence a fresh arbitration on the same claim.

The Applicant applied to the Court to set aside the Award, advancing three core submissions:

1. It had a fundamental right to a determination on the merits of its claim;
2. The Tribunal had a duty to apply its mind to the essential issues and arguments raised by the parties; and
3. The Applicant had a right to fair and equal treatment.

Holding of the High Court

The Court declined to set aside the Award, upholding the Tribunal's termination of the arbitration.

Right to a hearing on the merits

The Applicant submitted that it had a fundamental right in the arbitration to a determination on the merits of its claim against the Respondent.

The Court clarified that while parties generally have a right to have their dispute determined on the merits, this right is not absolute. Article 32(2)(c) of the Model Law expressly states that a tribunal shall terminate proceedings when continuation has become impossible. A finding of impossibility under Article 32(2)(c) thus obliges a tribunal to terminate the arbitration, meaning that the arbitration would necessarily conclude without a determination on the merits.

The Applicant further submitted that:

1. A claimant has an absolute right to a determination on the merits once the limitation period has expired, thereby precluding it from commencing a fresh arbitration; and
2. A termination order ought not to be made if the impossibility under Article 32(2)(c) has not been caused by either party or has been caused more by the party seeking termination than by the party resisting termination.

The Court rejected these submissions, finding that there is no basis in Article 32(2)(c) for considering or weighing the prejudice to either party, regardless of severity, or for considering who caused the impossibility. Article 32(2)(c) turns solely on an objective finding of fact as to the existence of impossibility.

In any event, the Court highlighted that a claimant has a duty to progress an arbitration to an award on the merits, and to do so expeditiously. Here, the Applicant had sufficient time to devise and implement a mechanism to progress the arbitration despite the sanctions, and to find a third-party funder or an assignee.

Duty to consider essential issues

The Applicant submitted that the Tribunal, in rendering the Award, was obliged to apply its mind to and consider the essential issues and arguments raised by parties.

The Court accepted a tribunal has the duty to consider the essential issues and arguments. However, once impossibility is found and termination ordered, a tribunal cannot continue to consider issues on the merits. Here, the Tribunal had fully discharged its duty to afford natural justice when determining the Respondent's application to terminate proceedings.

Fair and equal treatment

The Applicant submitted that it had a right to fair and equal treatment, and that the Tribunal had failed to consider delay in the arbitration caused by the Respondent and the Tribunal itself.

The Court found that the Applicant's complaints were in substance a disguised appeal against the Tribunal's finding of fact on impossibility. The Applicant failed to establish that the Tribunal acted irrationally or capriciously.

1. Even without the alleged delays, it was highly unlikely that any award would have been issued before the sanctions were imposed.
2. The question of who caused delays was immaterial to the Article 32(2)(c) inquiry, which concerns only whether impossibility exists.

Concluding Words

The Court's decision highlights the importance of ensuring that an arbitration continues to move forward, and that a finding of impossibility would result in the termination of proceedings. This is regardless of who caused the delay, or the prejudice that may result from the termination.

Parties to an arbitration should thus be aware of the hazard posed by obstacles to arbitration, such as sanctions or other financial restrictions, and that they bear the responsibility of navigating such obstacles if they wish for the arbitration to reach a final award.

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