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Does My Claim Fall Inside Or Outside Of The Contract – An Issue Of Admissibility Or Jurisdiction?

In an arbitration, jurisdictional challenges are commonly raised when a party contends that a particular claim does not fall within the scope of an arbitration agreement. What if, however, the issue turns on whether a claim falls within the scope of a contract? Would the interpretation of a contractual provision be a matter of claim admissibility, or does it go to the jurisdiction of an arbitral tribunal?

In ***CYY v CYZ*** [2023] SGHC 101, the Singapore High Court ("**SGHC**") decided that the question of whether a claim falls within the terms or scope of a contractual clause is a matter of claim admissibility, which does not affect the tribunal's jurisdiction to preside over such claim.

This decision is significant as it clarifies the conceptual differences between jurisdictional issues and issues of admissibility. Accordingly, when lodging preliminary objections in an arbitration (or filing arbitration-related applications in court), it is crucial to properly categorise whether the grounds relate to jurisdiction or admissibility. A tribunal's jurisdictional rulings can usually be challenged in court.[1] In contrast, there is no automatic right to challenge a tribunal's ruling peculiar/specific to the admissibility of a claim.[2]

Brief Facts

In ***CYY v CYZ***, the parties entered into an agreement where CYY chartered a crane barge from CYZ for the purposes of salvage operations in respect of a vessel ("**Contract**"). The parties adopted the

[1] See, for example, **Section 10(3)(a) of the Arbitration Act 1994** in Singapore, and **Section 18(8) of the Arbitration Act 2005** in Malaysia.
[2] Rulings on admissibility can only be challenged if, for example, the tribunal has made them in breach of natural justice, a general ground for challenge not specific to rulings of admissibility, which goes to the way in which the ruling was reached rather than the content of the ruling.

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BIMCO Supplytime 2017,[3] a standard form contract for the hire of offshore vessels. In addition to the standard clauses of the BIMCO Supplytime 2017, the parties included several additional clauses in the Contract. One such additional clause, Clause 39, is of central importance to the dispute:

> *"Clause 39*
>
> *All Consumables, communications and medicine on the Vessel which are used or taken by Charterers shall be charged at Cost + 15%*
>
> *All procurement services by Owner at the request of the Charterers shall be charged at Cost + 15%"*

Throughout the salvage operation, in addition to chartering the crane barge to CYY, CYZ also procured various services, personnel, equipment, and craft at CYY's request ("**Disputed Claims**"). Contemporaneous invoices were issued by CYZ to CYY in respect of the Disputed Claims, where a "*15% markup rate*" was included.

After the salvage operation was completed, CYY refused to pay CYZ for the Disputed Claims. CYZ commenced an arbitration against CYY to claim for the Disputed Claims. In the arbitration, CYY argued that the tribunal had no jurisdiction to determine the Disputed Claims, as Clause 39 was limited solely to the procurement services rendered for the charter of the crane barge, and does not extend to procurement services rendered for the salvage operation in general.

Applying a contextual interpretation, the Tribunal found that Clause 39 encompassed all procurement services rendered by CYZ for the entire salvage operations, and thus concluded it had jurisdiction to determine the Disputed Claims ("**Tribunal's Decision**"). Dissatisfied with the Tribunal's Decision, CYY applied to the SGHC to seek a declaration that the Tribunal has no jurisdiction over the Disputed Claims.

Decision

The SGHC found, among others, the issue on the interpretation of Clause 39 was not a matter of jurisdiction, but was one that concerns the merits of the dispute referred to arbitration. The thrust of Philip Jeyaretnam J's judgment on this issue can be summarised as follows:

a. The interpretation of Clause 39, specifically what was meant to be covered by the phrase "all procurement services", is a matter of claim admissibility. Specifically, CYY's objection was directed at CYZ's claim, rather than the Tribunal's authority in the arbitration agreement.

b. As CYY had accepted there was a binding arbitration agreement, the question of whether the Disputed Claims fell within Clause 39 would therefore be a matter for the Tribunal to determine as part of the dispute referred to arbitration. Importantly, the court

[3] The Baltic and International Maritime Council Supplytime 2017 Contract for the Time Charter for Offshore Support Vessels is a standard form contract used for the hire of offshore support vessels.

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had no power to intervene with the Tribunal's interpretation of Clause 39, even if the Tribunal reaches what the court might consider to be the wrong conclusion.

c. The situation in this case differs from the interpretation of the arbitration agreement contained within a contract, which might go to jurisdiction if the differences between the parties relate to the scope of the arbitration agreement.

As the Tribunal had also ruled on the proper meaning of Clause 39 on the basis that it had jurisdiction over the Disputed Claims, the SGHC proceeded to consider parties' respective position on the interpretation of Clause 39 and agreed with the Tribunal's Decision.

Key Takeaways

Our main takeaways from this decision are as follows:

a. The admissibility of a claim relates to whether it is appropriate for a claim to be brought before an arbitral tribunal, whereas a jurisdictional challenge is usually directed at the authority of an arbitral tribunal to decide the matter;

b. The interpretation of a substantive contractual provision (eg., whether a claim falls within the terms or scope of a contract) would ordinarily concern the admissibility of a claim; conversely, the interpretation of the scope of an arbitration agreement (eg., its existence, scope and/or validity) would usually concern the jurisdiction of an arbitral tribunal; and

c. Where parties to a contract decide to incorporate additional or supplemental provisions into a standard form contract (such as the BIMCO Supplytime 2017 in ***CYY v CYZ***), it is crucial to ensure that the disputes arising from all additional or supplemental provisions fall within the ambit of the arbitration agreement. This may, in hindsight, avoid unnecessary jurisdictional challenges.

This decision is a welcomed addition to the common law jurisprudence on jurisdictional challenges. It is anticipated that this clarification will, in retrospect, sieve out unmeritorious jurisdictional challenges and enable tribunals to determine substantive issues at the appropriate stage of the proceedings.

The full grounds of judgment can be accessed here.

If you have any queries, please contact associate, **Soh Zhen Ning** (szn@lh-ag.com) or his team partner **Crystal Wong Wai Chin** (wwc@lh-ag.com).

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