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Conditional Arbitral Awards – Are They Final?

It is not uncommon for arbitrators to issue awards with conditional reliefs or orders to be fulfilled by the winning party. However, can an arbitrator subsequently revisit the case to ascertain whether these conditions have been fulfilled? Does a conditional award carry the status of a final award?

In the recent case of ***Voltas Ltd v York International Pte Ltd*** [2024] SGCA 12, the Singapore Court of Appeal (“**SGCA**”) held that an arbitral award is considered final if it disposes of all substantive issues in dispute, even if the award contains conditional orders. Absent an express reservation to revisit an award, an arbitrator is *functus officio* after the final award is issued. The appropriate forum to determine whether the conditional orders in the final award were satisfied would be the enforcement court.

The SGCA’s decision is significant because it provides clarity on the circumstances in which an arbitral tribunal may revisit an award. It also upholds arbitration’s promise of finality, reflecting the shared understanding between parties in arbitration that an award would put a definitive end to the parties’ dispute.

Background Facts

In an arbitral award issued in August 2014 (“**2014 Award**”), York International Pte Ltd (“**York**”) was found liable to Voltas Limited (“**Voltas**”) for \$1,132,439.46 (“**Award Sum**”). The 2014 Award contains a condition - Voltas must demonstrate it had paid the Award Sum to a third party, which would have caused Voltas to suffer a loss of \$1,132,439.46, before York’s liability would arise.

Disputes arose when York refused to pay Voltas the Award Sum, claiming Voltas has not paid the Award Sum to the third party. Voltas

sought a further award from the arbitrator. In August 2021, the arbitrator issued a further ruling holding, among others, that he could determine whether the condition in the 2014 Award had been satisfied (“**2021 Ruling**”).

York applied to the Singapore High Court (“**SGHC**”) seeking, among others, an order that the arbitrator lacked jurisdiction to issue the 2021 Ruling. Voltas argued that the arbitrator had impliedly reserved his jurisdiction to revisit the 2014 Award. At the heart of the dispute lies two issues:¹

- a. Whether the 2014 Award, which was regarded as a conditional award, constitutes a final award.
- b. Whether an arbitral tribunal can reserve jurisdiction to revisit an award by implication. The arbitrator admitted he did not expressly reserve his jurisdiction to revisit the 2014 Award.

The SGHC allowed York’s application and found the arbitrator to be *functus officio* after the 2014 Award was issued. Dissatisfied with the SGHC’s decision, Voltas filed an appeal before the SGCA.

The SGCA’s Decision

The SGCA upheld the SGHC’s decision and ruled that a conditional award (i.e., the 2014 Award) constitutes a final award. Absent any express reservation, it cannot be implied that the arbitrator has jurisdiction to issue further rulings or awards after delivering what appears to be a final award. Difficulties in enforcement would not render an arbitral award incomplete, final, and binding.² The thrust of Sundaresh Menon CJ’s judgment can be summarised as follows:

- a. The 2014 Award was a final award because it had disposed of all substantive issues in dispute. The “*key inquiry*”³ is whether the condition in the 2014 Award rendered it necessary for the tribunal to reopen or reconsider the matter. The arbitrator did not contemplate whether there were other issues left to be determined following the 2014 Award. As the arbitrator chose not to adjourn the matter until Voltas had paid the Award Sum to the third party, this meant the arbitrator did not intend to keep the question of York’s liability open. It is dependent on Voltas to show, at the appropriate time, that the requisite condition had been fulfilled.⁴
- b. An arbitral tribunal cannot reserve jurisdiction to revisit any parts of the award by implication. There must be an express reservation. The notion of reserving jurisdiction by implication, as argued by Voltas, is inconsistent with Section 43(3) of Singapore’s Arbitration Act 2001 (“**SG AA**”), which prescribes limited circumstances for

¹ SGCA’s Grounds of Judgment in *Voltas Ltd v York International Pte Ltd* [2024] SGCA 12, paragraphs 31 to 33.

² *Ibid*, paragraph 24.

³ *Ibid*, paragraph 42.

⁴ *Ibid*, paragraphs 45 to 48.

parties to seek a further award within a 30-day timeframe on issues that may have been omitted by a tribunal.⁵

- c. The question of whether the conditions in the 2014 Award have been met can be answered by the enforcement court.⁶ The difficulties, if any, for Voltas to show it had paid the Award Sum to a third party, is a matter which evidence can be led before the enforcement court. An arbitrator's jurisdiction cannot be resuscitated after the final award is delivered.⁷

Key Takeaways

Conditional awards can be final, conclusive, and binding, provided there is sufficient clarity that the substantive issues have been resolved. The SGCA's decision is welcomed as it upholds the finality in arbitral awards, a concept widely regarded as a primary benefit of arbitration.

Whilst this case was decided under the SG AA, the principles enunciated by the SGCA will likely be equally applicable or relevant to jurisdictions that adopt the Model Law,⁸ such as Malaysia. Specifically, there are generally very limited situations where a party may revisit a published final award, namely: (i) to correct arithmetical mistakes or typographical errors; (ii) to clarify a specific point or portion of the award; or (iii) to make an additional award dealing with claims that were presented but omitted from the actual award.⁹

Below, we outline the practical implications of the SGCA's decision for arbitrators and parties to an arbitration:

(a) Arbitrators

- i. In circumstances where it may be necessary to revisit any issues canvassed and decided, it would be prudent to indicate that the award is not a final award, such as by designating the award as a partial award. Such steps would avoid a situation where an arbitral tribunal is rendered *functus officio*.
- ii. An arbitrator should expressly reserve his or her jurisdiction in clear and unambiguous terms if there is a need to reconsider any issues after the issuance of the award. It is undesirable for disputes to arise over the interpretation of certain orders contained in an award.

⁵ Ibid, paragraphs 51 to 60.

⁶ Ibid, paragraph 63.

⁷ Ibid, paragraph 64.

⁸ The [UNCITRAL Model Law](#) on International Commercial Arbitration (1985), with amendments as adopted in 2006, is designed to assist States in reforming and modernising their laws on arbitral procedure. As of June 2024, there are approximately 128 jurisdictions which adopt the Model Law.

⁹ See Article 33 of the Model Law.

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(b) Parties

- i. It is important to promptly review an arbitration award and consider the need to seek clarification or a further award from the arbitrator within the permitted statutory timeline, failing which an arbitral tribunal's mandate would be terminated following the issuance of the final award. In both the SG AA and Malaysia's Arbitration Act 2005, the relevant statutory timeline for parties to request the arbitral tribunal to make an additional award is 30 days from the date of receipt of the award.¹⁰
- ii. The enforceability of an award would not be affected by its conditional nature, provided that the conditions are explicit, and all substantive issues have been disposed of by the tribunal.

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).

¹⁰ See section 35(4) of the Arbitration Act 2005 in Malaysia; and Section 43 of the Arbitration Act 2021 in Singapore.