BERMUDA

SUPREME COURT

(1) Huawei Tech Investment Co. Ltd. (2) Huawei International PTE Ltd. -v- Sampoerna Strategic Holdings Limited [2014] SC (Bda) 8 Civ (14 February 2014)

THE BERMUDA INTERNATIONAL CONCILIATION AND ARBITRATION ACT, 1993 - FINAL AWARD - ENFORCEMENT - PUBLIC POLICY

Reasons for Decision

By Summons dated 4 October 2013, the Applicants applied for leave pursuant to Section 40(1) of the *Bermuda International Conciliation and Arbitration Act, 1993* (the "Act") to enter judgment in terms of Consolidated Final Award made against the Respondent on 27 June 2013 and the Addendum made to it on 19 August 2013 in the Singapore International Arbitration Centre (the "Award"). As contemplated by the Act, the application was heard on an *ex parte* basis and Hellman J granted leave to enter judgment in terms of the Award, subject to the Respondents' right to apply within 14 days of service of the Order to set aside leave. Under the Award, the Respondent was ordered to pay the first Applicant nearly US$5 million plus costs and the second Applicant approximately US$13.5 million plus costs.

By Summons dated 14 November 2013, the Respondent applied to set aside the grant of leave on the following grounds: (i) the dispute deals with disputes not contemplated by and not falling within the submission to arbitrate; (ii) the Award contains decisions on matters beyond the scope of the submission to arbitrate; (iii) the Respondent was unable to present its case; and (iv) the enforcement of the Award would be contrary to public policy.

At the substantive hearing of the Respondent's Summons, the Chief Justice dismissed the application. The reasons for that decision have been outlined below and provide a useful reiteration of the approach of the Bermuda Court to the enforcement of arbitral awards.

The Bermudian courts have, on many occasions, stressed the strong public policy in favour of enforcing foreign arbitral awards, which is reflected in this legislative scheme. The leading Bermudian authority on enforcement of awards made in Convention countries is of some 25 years' vintage: the Court of Appeal for Bermuda decision in *Soujuznefteexport -v- Joc Oil Ltd* [1989] (Bda) LR 11. That decision outlined that the approach of the Bermuda Court, if there has been a Convention award under the New York Convention, is that there is a presumption that the tribunal acted within its power and that the award is valid and regular. Although this decision pre-dates the enactment of the Act, it was held that the quoted pronouncements on the policy approach to be adopted when dealing with an application for the enforcement of Convention Awards are binding on the Bermuda Court.

The Chief Justice noted that it appears to be settled under Bermuda law that enforcement cannot be refused on the grounds that the award contains matters *"not submitted to arbitration"* when the matters complained of (a) fall within the scope of the arbitration agreement, (b) are adjudicated under the contractually chosen governing law, and also (c) fall within the scope of the specific dispute referred to arbitration in question.

In respect of the public policy complaint, the Chief Justice found that the Respondent had not raised any seriously arguable foundation for declining to enforce the Award on public policy grounds. It was again perhaps unsurprising that the Respondent did not have the temerity to seek to pursue this ground of challenge to the decision of the Singaporean Tribunal before the Singaporean courts.

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