Black and Veatch Singapore Pte Ltd v Jurong Engineering Ltd
[2004] SGCA 30

Case Number : CA 125/2003

Decision Date : 08 July 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Woo Bih Li J; Yong Pung How CJ

Counsel Name(s) : Steven Chong SC and Vivien Teng (Rajah and Tann) for appellants; Mohan Pillay and Christopher Chong (Wong Partnership) for respondent

Parties : Black and Veatch Singapore Pte Ltd — Jurong Engineering Ltd

Arbitration – Conduct of arbitration – Rules – Clause in contract providing for arbitration to be conducted "in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Centre" – Presumption in favour of procedural rules in force at commencement of arbitration – Whether Arbitration Rules of SIAC or SIAC Domestic Arbitration Rules applicable

8 July 2004

Woo Bih Li J (delivering the judgment of the court):

Background facts

1 On 4 January 2000, the appellants, Black & Veatch Singapore Pte Ltd ("B&V"), and the respondents, Jurong Engineering Ltd ("Jurong"), entered into a contract known as Structural Steel 61.4001 ("the steel contract"). Under the steel contract, Jurong agreed to erect steel works for B&V for the Tuas II Combined Cycle Power Plant Project at Tuas South Avenue 9 ("the construction project").

2 The main contractors for the construction project were an international consortium comprising B&V, Black & Veatch International Co (a related company incorporated in the United States), Mitsubishi Corporation and Mitsubishi Heavy Industries Ltd (both incorporated in Japan). The contract was one of several sub-contracts and supply agreements entered into for the construction project.

3 The General Conditions in the contract included cl GC42.2.1 ("the Clause"). The second sentence of the Clause ("the Second Sentence"), was the subject of the dispute:

> GC42.2.1 Arbitration. If no settlement is achieved within sixty days, either party may submit its claim to arbitration before a single arbitrator to be agreed between the parties, or failing agreement within fourteen calendar days after either party has given to the other written request to concur in the appointment of an Arbitrator, a person to be appointed on the request of either party by the Chairman or Vice-Chairman for the time being of the Singapore International Arbitration Center. *Any arbitration will be conducted in English in Singapore under and in accordance with the rules of arbitration promulgated by the Singapore International Arbitration Center.* [emphasis added]

4 After differences arose between the parties, Jurong commenced arbitration proceedings against B&V by issuing a notice of arbitration on 10 July 2003. The notice was issued under r 7 of the SIAC Domestic Arbitration Rules ("the SIAC Domestic Rules"). The acronym SIAC refers to the Singapore International Arbitration Centre.

5 B&V objected to the application of the SIAC Domestic Rules, and contended that the Arbitration Rules of the SIAC ("the SIAC Rules") should apply to the proceedings. Jurong then took out an originating summons for the court to decide, on a true construction of the Clause, which set of rules should apply. The parties have, pending the resolution of this dispute, proceeded with the arbitration on the basis that the SIAC Domestic Rules should apply.

6 The judge below decided that the SIAC Domestic Rules applied to the arbitration between the parties: see *Jurong Engineering Ltd v Black & Veatch Singapore Pte Ltd* [2004] 1 SLR 333. B&V appealed against this decision and after hearing submissions, we dismissed the appeal with costs. We set out below our reasons.

The SIAC Rules and the SIAC Domestic Rules

7 At the time the steel contract was made on 4 January 2000, the SIAC had only one set of rules: the SIAC Rules. The SIAC Domestic Rules were introduced later on 1 May 2001.

8 It was common ground that if the SIAC Rules applied, then the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA") was also applicable and if the SIAC Domestic Rules applied, then the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA") was also applicable.

9 The differences between the IAA and the AA as set out by B&V can be grouped into two main heads:

(a) Under the IAA, no appeal may be brought in respect of the arbitral award although such an award may be set aside on certain grounds. Under the AA, an appeal may be brought against an arbitral award on questions of law, in addition to an award being set aside on certain grounds.

(b) Court intervention under the IAA is more restricted than under the AA.

Our reasons

10 B&V argued that the judge below was wrong to conclude that the parties could only refer to the SIAC Rules by using the full title thereof.

11 Paragraphs 10 to 13 of the grounds of judgment below ([6] *supra*) state:

> 10 Firstly, it was clear to me that the words of the arbitration clause were very general. If it had been intended that the SIAC Rules were to govern the arbitration, specific reference to the "Arbitration Rules of Singapore International Arbitration Centre" should have been made. This was and has been the full title of the SIAC Rules since they were issued in 1991, when the SIAC was established.
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> 11 In this regard, the SIAC at all material times had clearly recommended that parties use a Model Clause if they wished their arbitration to be governed by the SIAC Rules. The Model Clause was set out on the first page of the SIAC Rules. As is well known, Model Clauses are offered by well-established arbitral institutions, such as the ICC Court of Arbitration and the London Court of International Arbitration ("LCIA").
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> 12 The Model Clause, which appeared in both the 1991 and the 1997 editions of the SIAC Rules, reads as follows:

> Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in [Singapore] in accordance with the *Arbitration Rules of Singapore International Arbitration Centre ("SIAC Rules")* for the time being in force which rules are deemed to be incorporated by reference to this clause.

13 Parties were free to adopt the Model Clause, but they did not. In any event, the preamble to both the 1991 and 1997 edition of the SIAC Rules provided:

> Where any agreement, submission or reference provides for arbitration under the Arbitration Rules of Singapore International Arbitration Centre ("the Centre"), the parties thereto shall be taken to have agreed that the arbitration shall be conducted in accordance with the following Rules …

This suggested that the SIAC Rules would only apply if specific reference is made to the SIAC Rules, using the full title.

12 While we agreed that the SIAC Rules might apply though the full title thereof was not used, the omission to refer to the SIAC Rules by its full title in the face of a proposed model clause was a factor which militated against B&V's contention that the Clause had incorporated the SIAC Rules.

13 B&V also argued that the Second Sentence should be contrasted with the first sentence of the Clause because in the first sentence, where there was no agreement on the appointment of an arbitrator, the arbitrator was to be appointed by the Chairman or Vice-Chairman "for the time being" of the SIAC. Such words did not appear in the Second Sentence. This, together with the use of the word "promulgated" by the SIAC and not the words "to be promulgated" indicated a reference to rules already promulgated at the time when the steel contract was concluded.

14 B&V further argued that as the Second Sentence referred to "the rules of arbitration promulgated by the SIAC and not "any rules", this also suggested the rules already promulgated.

15 We were of the view that the reference to "the rules of arbitration promulgated by the SIAC" instead of "any rules of arbitration to be promulgated by the SIAC" did not advance B&V's case. The latter would make Jurong's contention stronger but the former did not make B&V's contention stronger. Besides, there was a presumption that clauses such as the Second Sentence would refer to such rules as are applicable at the date of commencement of arbitration and not at the date of contract. We will elaborate on that presumption later.

16 As regards the omission of the words "for the time being" from the Second Sentence, which words were present in the first sentence of the Clause, we were of the view that this did not carry much weight. We noted that although the first sentence of the Clause referred to the appointment by the Chairman or Vice-Chairman "for the time being" of the SIAC, another clause, cl 42.2.4, which deals with disputes involving a third party, did not have such words. Clause 42.2.4 states:

> GC42.2.4 Where any dispute or part of a dispute between the Company and the Contractor relating to the Works arises out of or is connected with the same facts as a dispute or part of a dispute between Company and any third party, including the Owner, under any other agreement, the Company and the Contractor will use their best endeavors to ensure that the same arbitrator or arbitrators shall hear the dispute or part of a dispute under this Contract and the dispute or part of a dispute under such other agreement. To this end either party hereto may apply, if necessary unilaterally, to the Chairman or Vice-Chairman of the Singapore International

Arbitration Center for the appointment of such an arbitrator or arbitrators …

Yet it was clear that under cl 42.2.4, the reference to the Chairman or Vice-Chairman was to such an officer for the time being of the SIAC.

17 B&V also argued that it is a principle of interpretation that contract provisions should be interpreted as at the date when the contract is made. This principle was not disputed by Jurong. However, we agreed with Jurong that it did not assist B&V. Even though the Clause was to be interpreted as at the date the steel contract was made, the question still remained whether the Clause referred to rules of the SIAC in force and applicable as at the date of the steel contract or rules of the SIAC in force and applicable as at the date when arbitration commenced.

18 B&V sought to bolster their contention with the argument that in any event, the Clause could not have been intended to apply to the SIAC Domestic Rules because such rules did not even exist at the date the steel contract was entered into. Yet B&V accepted that, if there had been a later and different version of the SIAC Rules, these later rules would apply. In our view, this acknowledgment demonstrated the fallacy in B&V's argument because the later rules would also not have existed as such at the date the steel contract was entered into. Indeed, the later rules could have been a completely different version of the existing ones.

19 We now come to the presumption mentioned above. In *Bunge SA v Kruse* [1979] 1 Lloyd's Rep 279 (affirmed on other grounds in [1980] 2 Lloyd's Rep 142), a question arose as to whether a provision providing for any dispute to be settled by arbitration in accordance with the rules of an association meant that the rules of the association at the date the contract was entered into applied or the rules in force at the date of commencement of arbitration applied. In the view of Brandon J, at 286, there was a *prima facie* inference that where the rules contained mainly procedural provisions, then the rules in force at the time of commencement of arbitration would be the ones that applied to the arbitration. However, if the rules contained mainly substantive provisions, then those in force as at the date the contract was entered into would apply.

20 This decision was followed by Robert Goff J in *Peter Cremer v Granaria BV* [1981] 2 Lloyd's Rep 583 where Goff J said, at 592–593:

> Indeed, if one looks at it as a matter of common-sense, I do not think it can be expected that arbitrators in any particular case should have to look at the date of the contract, ascertain the relevant procedure for arbitrations which were in force as at the date and then, regardless of the fact that new procedures, which may or may not be fundamental, may have been introduced and applicable and keing [*sic*: being] applied at the date when the arbitrators were appointed, go back to and apply the old procedure in force as at the date when the contract was made.

21 B&V sought to avoid the presumption by two main arguments.

22 First, it argued that there were differences between the IAA and AA, which we have mentioned above, and that, for example, the restriction on appeals under the IAA was a substantive provision. In our view, even if that could be said to be a substantive provision, it did not assist B&V. The Clause did not refer directly to primary legislation like the IAA or the AA but to rules promulgated by the SIAC. In other words, the reference to primary legislation was indirect and not direct. There was no suggestion by B&V that the SIAC Rules, which B&V said were to apply, contained mainly substantive provisions.

23 B&V's next main argument was that the SIAC Domestic Rules was not a different version of

the SIAC Rules but a different set of rules altogether. In our view, this was a distinction of form rather than substance. The SIAC Rules could have been amended to include the SIAC Domestic Rules as, say, Part II of the SIAC Rules, rather than as a separate set of rules. Should the position be different because the SIAC Domestic Rules were promulgated separately from, instead of as part of, the SIAC Rules? We did not think so. Consequently, the fact that the SIAC Rules were still in force at the date of commencement of arbitration also did not assist B&V as the question was which of the two sets of rules was applicable.

24 To bolster its contention, B&V referred to a decision by an arbitrator, *In the Matter of an Arbitration between CCC Pte Ltd and RRR Pte Ltd* ARB 074/02 (2003), where the arbitrator said at [10] and [11]:

> 10. There is also a general inference that in the absence of express language, the question of the applicable version of the arbitration rules must be decided at the time the arbitration was commenced, not at the time the arbitration agreement was reached (see *Bunge SA v Kruse* [1979] 1 Lloyd's Rep 279*; Peter Cremer v Granaria BV* [1981] 2 Lloyd's Rep 583; *China Agribusiness Development Corporation v Balli Trading* [1998] 2 Lloyd's Rep 76).
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> 11. The above authorities however do not assist the argument that parties intended a "jump in species" and for a wholly different set of rules which did not exist at that time (as opposed to a different version of the only set of rules existent at that time) to apply.

25 We were of the view that that decision did not assist B&V much because, as Jurong pointed out, the relevant provision in that case specifically referred to the SIAC Rules by its full title. The relevant provision there was that the "Arbitration Rules of the Singapore International Arbitration Centre would apply".

26 In the circumstances, B&V was not able to establish why the presumption should not apply. Accordingly, we dismissed the appeal.