Sobati General Trading LLC v PT Multistrada Arahsarana
[2009] SGHC 245

Case Number : OS No 412/2009

Decision Date : 28 October 2009

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Chou Tzu and Sheila Ng (Rajah & Tann LLP) for the plaintiff; Tan Chuan Thye and Germaine Chia (Wong & Leow LLC) for the defendant

Parties : Sobati General Trading LLC — PT Multistrada Arahsarana

Arbitration

28 October 2009

Tay Yong Kwang J:

Introduction

1 The plaintiff, Sobati General Trading L.L.C. ("SGT"), applied, pursuant to s 24(b) and Article 34 of the First Schedule of the International Arbitration Act (Cap 143A, 2002 Rev Ed)("IAA"), to set aside an arbitral award, dated 11 November 2008 ("the final award") and amended on 9 January 2009 ("the addendum") (henceforth, collectively, the "arbitral award"), made by the single arbitrator tribunal ("the tribunal") in International Chamber of Commerce ("ICC") International Court of Arbitration Case No 15158/JEM ("the arbitration") on the following two grounds:

(a) the arbitral award was made in breach of the rules of natural justice; and

(b) the tribunal exceeded the express mandate given to it by the parties.

Although SGT had initially also contended that the arbitral award was contrary to the public policy of Singapore, its counsel, Ms Chou Tzu, informed me at the outset of the hearing that she was not proceeding on this ground.

2 The central issue before me was whether the tribunal was entitled (as it did) to come to a decision that a distributorship agreement made in March 2003 ("the March 2003 Agreement") between SGT and the defendant, PT Multistrada Arahsarana ("Multistrada"), had terminated on 31 March 2005. The tribunal's decision was based on the express wording of a fax sent by Multistrada to SGT on 29 October 2004 ("the October 2004 Fax"). SGT claimed that because the tribunal was not entitled to find that the March 2003 Agreement had terminated on 31 March 2005, the rules of natural justice were breached and the tribunal exceeded its express mandate given to it by SGT and Multistrada. After hearing the parties, I dismissed SGT's application. I now give the reasons for my decision.

Background facts

The parties

3 SGT, the claimant in the arbitration, is a company incorporated under the laws of the United Arab Emirates. It is in the business of *distributing* automobile tyres. Multistrada, the respondent in the

arbitration, is a company incorporated under the laws of Indonesia. It is a manufacturer of tyres.

The March 2003 Agreement and the arbitration agreement

4 SGT alleged that on or about 7 March 2003, it entered into an exclusive distributorship agreement with Multistrada for the sale and distribution of certain brands of tyres in Iran (*i.e.*, the March 2003 Agreement). The relevant provisions of the March 2003 Agreement, with Article 5.1 as the arbitration clause, read as follows:

Article 1

1.1[Multistrada] hereby appoints [SGT] for sales and distribution of Multistrada Arah Sarana vehicle tires on "Exclusive Distributor" under Corsa, Strada and Duragrip brand in the territories of Iran.

1.2[Multistrada] shall not sell, nor export the goods under Corsa. Strada and Duragrip brand directly or indirectly to any person, firm or corporation within the above territories. Any fax or email inquiry related to the territories received by [Multistrada] will be forwarded to [SGT].

…

Article 4

Both parties agree for the period of 1 (one) year [that Multistrada] and [SGT] [will] manage respectively the supply and importation of products in [the] quantity of;

Minimum 36x40' HC FCL for the 1st year or 9X40" HC FCL per 3 months.

The minimum quantity for the 2nd year if [the March 2003 Agreement] is extended, will be discussed and decided by…both parties.

A performance review will be done every 3 (three) months. In the term that one party is unable to meet one of the requirements, a reminder will be sent to the non-performing party and after the 5th months [*sic*], if there is no indication of an improvement in the performance then this agreement [*i.e.*, the March 2003 Agreement] is deemed null and void.

A 1.5% rebate will be given by [Multistrada] to [SGT] if the importation of [Multistrada's] goods reach the total value of USD1,000,000 based on FOB Jakarta tire only price (without wrapping) within the lifetime of [the March 2003 Agreement].

Article 5

5.1This agreement [i.e., the March 2003 Agreement] shall be interpreted in all respects according to Indonesian Law. All disputes arising out of or in connection with this agreement shall be settled by Arbitration in Accordance with the rules of Conciliation and Arbitration of the International Chamber of Commerce. The Arbitration shall be in the English language in Singapore.

…

This agreement is valid up to 1 (one) year effective from 7 March, 2003 until 7 March 2004 and renewable annually automatically if both [Multistrada] and [SGT] have fulfilled [the] terms and conditions as stated above.

[emphasis added]

SGT's Request and Multistrada's Answer

5 On 6 September 2007, SGT filed a request for arbitration ("Request") with the ICC International Court of Arbitration ("the ICC Court") under the ICC Rules of Arbitration (1 January 1998) ("the ICC Rules") alleging the following:

(a) the March 2003 Agreement was effective on 7 March 2003. Because SGT met the contractual requirement and imported the minimum number of tyres, the March 2003 Agreement was subsequently renewed annually on 7 March 2004, 7 March 2005 and 7 March 2006;

(b) in breach of Article 1.1 and Article 4 paragraph 5 of the March 2003 Agreement (see [4] above), Multistrada unilaterally terminated the March 2003 Agreement on 12 August 2006 by appointing a new sole distributor in Iran in place of SGT;

(c) Multistrada had failed to pay SGT the rebate it was contractually entitled to under the March 2003 Agreement.

SGT claimed damages and specific performance of the March 2003 Agreement.

6 On 15 October 2007, Multistrada filed its answer to SGT's Request ("Answer") denying the existence and validity of the March 2003 Agreement on the grounds that:

(a) the March 2003 Agreement had not been signed by a duly authorised officer of Multistrada;

(b) the March 2003 Agreement was a sham document and void from inception;

(c) the existence of the March 2003 Agreement was inconsistent with all the contemporaneous documentation; and

(d) an oral arrangement between SGT and Multistrada had commenced only from September 2004. Before September 2004 and after 31 July 2005, transactions between SGT and Multistrada had proceeded on a case by case basis.

7 In the alternative, Multistrada claimed, in its Answer, that even if the March 2003 Agreement was valid and binding, it had not been renewed after 7 March 2004. In this regard, Multistrada asserted that:

(a) because SGT did not import the minimum quantity of tyres in the one year period between 7 March 2003 and 7 March 2004 as required by the March 2003 Agreement, SGT was not entitled to a rebate under Article 4 of the March 2003 Agreement (see [4] above);

(b) since 7 March 2004, SGT had only sold tyres to Multistrada on a case by case basis and not pursuant to the March 2003 Agreement; and

(c) SGT had breached the terms of the March 2003 Agreement by importing tyres into Iraq (as opposed to Iraq), thus entitling Multistrada to a counterclaim for damages to be assessed ("the counterclaim").

Appointment of the arbitrator and the issues in the Terms of Reference

8 On 9 November 2007, the ICC Court decided that the arbitration should proceed in accordance with Article 6(2) of the ICC Rules. On 23 November 2007, a single arbitrator (*i.e.*, the tribunal) was appointed pursuant to Article 9(3) of the ICC Rules.

9 Save for Multistrada's counterclaim (see [7(c)] above), which is not relevant for the purpose of these proceedings, the parties' respective positions and the issues arising in the arbitration were agreed and set out in the Terms of Reference ("the Terms of Reference") sometime on or about 25 January 2008. Based on the documents submitted by the parties, paragraph 7 of the Terms of Reference set out the following issues to be decided in the arbitration:

> (a) whether the March 2003 Agreement was valid and binding;
>
> (b) whether the tribunal had jurisdiction to hear SGT's claims; and
>
> (c) if the March 2003 Agreement was valid and binding, whether:
>
> (i) Multistrada had breached its obligations under the March 2003 Agreement;
>
> (ii) the minimum quantities and/or value stated in Article 4 of the March 2003 Agreement were fulfilled or varied by the parties;
>
> (iii) the March 2003 Agreement was renewed after 7 March 2004;
>
> (iv) SGT was entitled to the 1.5% rebate under the terms of the March 2003 Agreement; and
>
> (v) SGT was entitled to damages and/or each of the reliefs sought.

Multistrada's Statement of Defence and Counterclaim

10 In addition to its position as set out in its Answer (see [6] – [7] above), Multistrada averred, *inter alia*, in its Statement of Defence and Counterclaim, filed on 28 February 2008, that:

> 5. Following a conversation between [the] representatives of the respective parties in April/May 2004, it was agreed that the terms of the [March 2003 Agreement] were not to govern the parties' relationship. It was also agreed that [Multistrada] would not pay [SGT] a rebate and that [Multistrada] would supply tyres to [SGT] on a case-by-case basis. All sales since March 2004 by [Multistrada] to [SGT] have been on that basis.
>
> 6. Quite apart from the parties' agreement in April/May 2004, [SGT] had not, during the period March 2003 to March 2004, imported the minimum number of tyres required under the [March 2003 Agreement]. Further, the quantity of tyres imported during that time was less than the minimum required to entitle [SGT] to claim the rebate it now seeks.

SGT's Reply to the Statement of Defence and Defence to the Counterclaims

11 In its Reply to the Statement of Defence and Defence to the Counterclaims filed on 28 March 2008, SGT maintained its position that the March 2003 Agreement was valid and binding, and in support of this position, averred *inter alia*, that:

1. THE AGREEMENT IS VALID AND BINDING TO [SGT] AND [MULTISTRADA]

> [Multistrada] has repetitively argued that the [March 2003 Agreement] is not a valid and binding agreement. It is obvious and apparent that such [an] allegation is false for the reason that [SGT] has continuously purchased [Multistrada's] products until July 2006. Furthermore on 29 October 2004, Mr Hartono Setiobudi [who was a director of Multistrada and who swore affidavits for Multistrada in these proceedings] ha[d] sent a facsimile transmission [*i.e.*, the October 2004 Fax: see [2] above] to confirm the agreement between [SGT] and [Multistrada] in which he stated that "*We shall continue to supply you [tyres] for [the] Iran market in honour [of] the [March 2003 Agreement] signed by Mr. Andhy Setiawan for Multistrada and [SGT]"…*
>
> [emphasis in original]

SGT raised the October 2004 Fax as evidence that the March 2003 Agreement remained in effect *until* 12 August 2006. In other words, SGT raised the October 2004 Fax to show the continued existence and performance of the March 2003 Agreement after 7 March 2004.

12 At this juncture, it would be useful to set out the entire contents of the October 2004 Fax referred to in the preceding paragraph which was addressed to the Managing Director of SGT, Masoud Sobati ("Mr Sobati"). The October 2004 Fax reads as follows:

> Mr Sobati,
>
> Refer to our discussion during your visiting our country we have conclude as follow:
>
> 1. We shall continue to supply you for Iran market in honour the agreement signed by Mr. Andhy Setiawan for Multistrada and [SGT].
>
> 2. This agreement is valid until end of March 2005, and shall not binding both parties after its termination. Renewal of this agreement is subject to negotiation by both parties.
>
> 3. This agreement stipulates that no single tyres should be sold to Iraq, Dubai or any other countries than Iran itself. Failure to meet this requirement shall be considered as breach of agreement, and shall automatically bring this agreement to its termination.
>
> 4. All tyes shall be arranged directly to Iran instead of Dubai.
>
> *This agreement is valid as off today, October 29, 2004*.
>
> [emphasis added]

13 It should be noted that:

(a) the October 2004 Fax was not raised by either party at the pleadings stage;

(b) the October 2004 Fax was not available when the parties decided on the Terms of Reference (see [9] above) for the arbitration; and

(c) in its closing submissions dated 8 August 2008 Multistrada contended that the arrangement between the parties, if any, had ended on 31 March 2005 pursuant to the terms of the October 2004 Fax.

The tribunal's arbitral award

14 SGT and Multistrada also adduced expert opinions on Indonesian law. Dr Hikmanhanto Juwana ("Dr Hikmanhanto") and Dr Otto Hasibuan ("Dr Otto") gave opinions, both dated 30 June 2008, on behalf of SGT and Multistrada respectively. On the first day of the hearing of the arbitration (which was held from 14 July 2008 to 17 July 2008), SGT confirmed that it would not be cross examining Dr Otto. Accordingly, Dr Otto's presence was dispensed with. Dr Hikmanhanto was cross examined on 16 July 2008 on the contents of his expert opinion.

15 The arbitration proceedings concluded on 22 August. On 11 November 2008, the tribunal rendered the final award, dated 11 November 2008, wherein it dismissed SGT's claim and Multistrada's counterclaim. In particular, the tribunal found that:

(a) the March 2003 Agreement was validly made on 7 March 2003 and this finding was fortified by the October 2004 Fax;

(b) although Mr Sobati denied in his evidence that SGT had accepted the term stated in paragraph 2 of the October 2004 Fax (*viz*, that the March 2003 Agreement was valid until 31 March 2005), SGT did not respond further to the October 2004 Fax except to place more orders with Multistrada for tyres. Accordingly, SGT had accepted wholly the terms of the October 2004 Fax and the March 2003 Agreement was extended up to 31 March 2005;

(c) the March 2003 Agreement had already ended when Multistrada appointed a new distributor as its sole distributor of the brands of tyres in Iran on 12 August 2006;

(d) the October 2004 Fax superseded any understanding that the sales made by Multistrada to SGT after 7 March 2004 were each made on a case by case basis. In other words, the affirmation of the March 2003 Agreement in the October 2004 Fax and the fact that it extended the validity of the March 2003 Agreement until 31 March 2005 meant that all sales made by Multistrada to SGT from 7 March 2004 to 31 March 2005 were made pursuant to the March 2003 Agreement;

(e) because the March 2003 Agreement had been extended by the parties to 31 March 2005, it was unnecessary to determine whether the minimum quantity of tyres for the first year (*viz*, 7 March 2003 to 7 March 2004) had in fact been achieved;

(f) because the aggregate purchases made by SGT for the duration of the March 2003 Agreement from 7 March 2003 to 31 March 2005 (i.e., during the lifetime of the March 2003 Agreement) was less than US$1,000,000 in value, no rebate was payable to SGT under Article 4 of the March 2003 Agreement (see [4] above); and

(g) SGT did not breach the March 2003 Agreement by exporting tyres to Iraq as there was no evidence that:

(i) SGT had exported tyres to Iraq or any country outside of Iran at any time from 7 March 2003 to 31 March 2005; and

(ii) any shipment to Iraq or outside of Iran was made during the period without Multistrada's consent or knowledge.

Costs orders were also made against both parties. The net result of these costs orders was that SGT was ordered to pay Multistrada US$108,750. This amount comprised Multistrada's entitlement to the legal costs and expenses of the arbitration, the administrative expenses of the ICC Court and the tribunal's fees and expenses.

16 Following the release of the final award, SGT's lawyers in the arbitration sought by way of two letters dated 25 November 2008 and 1 December 2008 respectively, to apply for a correction and interpretation of the final award pursuant to Article 29 of the ICC Rules. On 9 January 2009, the tribunal rendered the addendum correcting a typographical error and dismissing SGT's said application.

SGT's application to set aside the arbitral award

17 As mentioned above at [1], SGT applied pursuant to s 24(b) and Article 34 of the First Schedule of the IAA to set aside the arbitral award made by the tribunal on the following two grounds:

(a) the arbitral award was made in breach of the rules of natural justice; and

(b) the tribunal exceeded the express mandate given to it by the SGT and Multistrada.

18 The relevant portions of Article 34 of the First Schedule of the IAA, which is the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"), state as follows:

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.

(2) An arbitral award may be set aside by the court …only if:

(a) the party making the application furnishes proof that:

…

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings *or was otherwise unable to present his case*;

or

(iii) *the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration*, *or contains decisions on matters beyond the scope of the submission to arbitration*, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;…

…

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

[emphasis added]

Section 24(b) of the IAA provides that:

Court may set aside award

24. Notwithstanding Article 34 (1) of the Model Law, the High Court may, in addition to the grounds set out in Article 34 (2) of the Model Law, *set aside the award of the arbitral tribunal if* —

…

(b) a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

[emphasis added]

19 To support its position on these two grounds (see [1] and [17] above), SGT relied on the following points to show that it suffered prejudice:

(a) SGT and Multistrada were denied the opportunity to be heard in the proceedings, and in particular on the following:

(i) the question as to whether the March 2003 Agreement had been terminated on 31 March 2005;

(ii) the status of the transactions between the parties from 31 March 2005 to 12 August 2006; and

(iii) the question of when the March 2003 Agreement was terminated.

(b) Because the tribunal failed and/or refused to apply the law governing the March 2003 Agreement, *viz*, Indonesian law (on which expert opinion and submissions had been provided by both parties), the tribunal went outside the scope of its jurisdiction.

(c) In deciding that the March 2003 Agreement had been terminated on 31 March 2005, the tribunal arrived at a conclusion that was "completely unexpected, illogical in the circumstances and/or contrary to available evidence".

(d) The tribunal failed to make a decision or take into consideration the transactions between the parties from 31 March 2005 to 12 August 2006.

20 The above mentioned points revolve essentially around the tribunal's finding that SGT had wholly accepted the terms of the October 2004 Fax and that the October 2004 Fax had extended the March 2003 Agreement to 31 March 2005 (see [15(b)] above), *i.e.*, that the March 2003 Agreement terminated on 31 March 2005. Accordingly, it is clear that the October 2004 Fax must assume central focus in this case.

The Law

21 With regard to the interpretation of s 24(b) of the IAA, the Court of Appeal's decision in *Soh Beng Tee & Co Pte Ltd v Fairmont Development Pte Ltd* [2007] 3 SLR 86 ("*Soh Beng Tee*"), is especially apposite as it sets out the key principles governing the setting aside of an arbitral award on the basis of a breach of the rules of natural justice. Although the setting aside application in *Soh Beng Tee* was made pursuant to s 48(1)(a)(vii) of the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA"), the principles enunciated in *Soh Beng Tee* are equally applicable to the present case since s 48(1)(a)(vii) of the AA is *in pari materia* with s 24(b) of the IAA. In accepting that the right to be heard is a rule of natural justice, the Court of Appeal set out the following principles at [65]:

> *Summary of applicable principles*
>
> 65 The foregoing survey of case law and principles may be further condensed into the following principles:
>
> (a) Parties to arbitration have, in general, a right to be heard effectively on every issue that may be relevant to the resolution of a dispute. The overriding concern…is fairness. *The best rule of thumb to adopt is to treat the parties equally and allow them reasonable opportunities to present their cases as well as to respond. An arbitrator should not base his decision(s) on matters not submitted or argued before him*. In other words, an arbitrator should not make bricks without straw. Arbitrators who exercise unreasonable initiative without the parties' involvement may attract serious and sustainable challenges.
>
> (b) Fairness, however, is a multidimensional concept and it would also be unfair to the successful party if it were deprived of the fruits of its labour as a result of a dissatisfied party raising a multitude of arid technical challenges after an arbitral award has been made. The courts are not a stage where a dissatisfied party can have a second bite of the cherry.
>
> (c) *Indeed, the latter conception of fairness justifies a policy of minimal curial intervention, which has become common as a matter of international practice*. To elaborate, minimal curial intervention is underpinned by two principal considerations. First, there is a need to recognise the autonomy of the arbitral process by encouraging finality, so that its advantage as an efficient alternative dispute resolution process is not undermined. Second, having opted for arbitration, parties must be taken to have acknowledged and accepted the attendant risks of having only a very limited right of recourse to the courts. It would be neither appropriate nor consonant for a dissatisfied party to seek the assistance of the court to intervene on the basis that the court is discharging an appellate function, save in the

very limited circumstances that have been statutorily condoned. *Generally speaking, a court will not intervene merely because it might have resolved the various controversies in play differently*.

(d) The delicate balance between ensuring the integrity of the arbitral process and ensuring that the rules of natural justice are complied with in the arbitral process is preserved by strictly adhering to only the narrow scope and basis for challenging an arbitral award that has been expressly acknowledged under the Act and the IAA. *In so far as the right to be heard is concerned, the failure of an arbitrator to refer every point for decision to the parties for submissions is not invariably a valid ground for challenge. Only in instances such as where the impugned decision reveals a dramatic departure from the submissions, or involves an arbitrator receiving extraneous evidence, or adopts a view wholly at odds with the established evidence adduced by the parties, or arrives at a conclusion unequivocally rejected by the parties as being trivial or irrelevant, might it be appropriate for a court to intervene*. In short, there must be a real basis for alleging that the arbitrator has conducted the arbitral process either irrationally or capriciously. To echo the language employed in *Rotoaira* ([55] *supra*), *the overriding burden on the applicant is to show that a reasonable litigant in his shoes could not have foreseen the possibility of reasoning of the type revealed in the award*. It is only in these very limited circumstances that the arbitrator's decision might be considered unfair.

(e) *It is almost invariably the case that parties propose diametrically opposite solutions to resolve a dispute. They may expect the arbitrator to select one of these alternative positions. The arbitrator, however, is not bound to adopt an either/or approach. He is perfectly entitled to embrace a middle path (even without apprising the parties of his provisional thinking or analysis) so long as it is based on evidence that is before him*. Similarly, an arbitrator is entitled – indeed, it is his obligation – to come to his own conclusions or inferences from the primary facts placed before him. *In this context, he is not expected to inexorably accept the conclusions being urged upon him by the parties. Neither is he expected to consult the parties on his thinking process before finalising his award unless it involves a dramatic departure from what has been presented to him*.

(f) *Each case should be decided within its own factual matrix*. It must always be borne in mind that it is not the function of the court to assiduously comb an arbitral award microscopically in attempting to determine if there was any blame or fault in the arbitral process; rather, *an award should be read generously such that only meaningful breaches of the rules of natural justice that have actually caused prejudice are ultimately remedied*.

[emphasis added]

The decision of the court

Whether the arbitral award was made in breach of the rules of natural justice?

22 The thrust of SGT's case under this head is that it had been denied the opportunity to be heard (see [19(a)] above) on the effect of the terms of the October 2004 Fax which *expressly* provided that the March 2003 Agreement was to terminate on 31 March 2005. In deciding whether the tribunal's decision on this issue breached the rules of natural justice, it must first be asked whether this issue was indeed in play during the course of the arbitration proceedings or whether the tribunal had gone on a frolic of it own and put forth its very own idea unsupported by the evidence placed before it.

Whether SGT was denied the opportunity to be heard

23 SGT claimed it had been denied the opportunity to be heard on:

(a) the question on whether the March 2003 Agreement was terminated on 31 March 2005;

(b) the status of the transactions between the parties from 31 March 2005 to 12 August 2006; and

(c) the question of when the March 2003 Agreement was terminated.

All these issues relate directly to the tribunal's conclusion that the October 2004 Fax terminated the March 2003 Agreement on 31 March 2005. As already mentioned above at [13], while the October 2004 Fax was not raised by either party at the pleadings stage nor available when the parties decided on the Terms of Reference for the arbitration, it was adduced by SGT *itself* on 28 March 2008 in its Reply to the Statement of Defence and Defence to the Counterclaims (see [11] – [12] above), albeit as its evidence that the March 2003 Agreement existed and remained in effect until 12 August 2006. In this regard, SGT had also alleged that the transactions between the parties from 31 March 2005 to 12 August 2006 were pursuant to the March 2003 Agreement.

24 Because Multistrada had no directions to file a response to SGT's Reply to the Statement of Defence and Defence to the Counterclaims, it could only address the effect of the October 2004 Fax when it filed the first witness statement of its director, Mr Hartono Setiobudi's ("Mr Setiobudi"), on 2 June 2008. At [38] of this witness statement, Mr Setiobudi referred to the October 2004 Fax and stated that Multistrada was willing to supply SGT with tyres until the 31 March 2005:

> 38. *I sent a fax on 29 October 2004 to [SGT], in order to set out what we had discussed at the earlier meeting. I suggested that Multistrada would supply tyres to [SGT] "in honour" of the supposed [March 2005 Agreement]*. Although I was willing to acknowledge Mr Sobati's contention that there was a supposed agreement between Multistrada and [SGT], Multistrada was not willing to do business on those terms. *The arrangement proposed in my [October 2004 Fax] was different. I suggested that we would supply [SGT] with tyres again until the end of March 2005* to see whether we could trust [SGT] to distribute solely in Iran. If so, I anticipated negotiating further terms with [SGT] in March 2005.
>
> [emphasis added]

At [41] of his witness statement, Mr Setiobudi also provided evidence to the effect that after 31 March 2005, although the parties did *not* discuss the terms relating to the supply of tyres by Multistrada to SGT, SGT *continued* to make regular orders for tyres:

> 41. At the end of March 2005, [SGT] never discussed the terms on which Multistrada would supply tyres for distribution in Iran. After that, [SGT] continued to make regular orders for tyres. I also note that [SGT] did not ask for payment of a rebate in March 2005 of 2006.

25 The foregoing discussion shows that Multistrada did in fact, at the earliest opportunity, address the effect of the October 2004 Fax. Its position, as evident from the above mentioned passages from Mr Setiobudi's first witness statement, was that it would supply tyres to SGT under the March 2003 Agreement until 31 March 2005 and that thereafter the parties did not negotiate any new

arrangement. Hence, insofar as Multistrada was concerned, the March 2003 Agreement terminated on 31 March 2005. Furthermore, Multistrada's position *vis-à-vis* the status of transactions after 31 March 2005 was that these transactions were on a "regular", case-by-case basis and not pursuant to the March 2003 Agreement. In this respect, I note that SGT had in fact had *ample* opportunities to deal with Multistrada's position (as set out above at [24] – [25]) but it chose *not* to do so. Following the filing of Mr Setiobudi's first witness statement on 2 June 2008 on behalf of Multistrada, SGT filed *four* witness statements on *three* separate occasions, *viz*, that of Mousa Vahedzadeh on 14 June 2008, Maribel Franco Cabrieto on 16 June 2008 and Maribel Franco Cabrieto (again) and Mr Sobati on 9 July 2008. However, in none of these four witness statements did SGT address the terms of the October 2004 Fax or their effect.

26 The question as to the effect of the October 2004 Fax remained a live one even during the hearing from 14 to 17 July 2008 when Mr Setiobudi *expressly* stated that the arrangement between the parties was only valid until March 2005 and that the October 2004 Fax was an acknowledgment of this arrangement. Despite this, SGT chose not to challenge the evidence presented by Multistrada on this. SGT also chose not to challenge the evidence on Indonesian law presented by Multistrada's expert witness, Dr Otto (see [14] above).

27 In its closing submissions dated 8 August 2008, Multistrada submitted that the March 2003 Agreement terminated on 31 March 2005 and that the business relationship between the parties thereafter (*i.e.*, from 31 March 2005 to 12 August 2006) was no longer based on the March 2003 Agreement but "pursued on a month-to-month basis, consistent with Multistrada's dealings with all its other clients". It was only at this juncture that SGT sought to meet and challenge Multistrada's case by way of its Reply to Multistrada's Closing Submissions dated 22 August 2008 wherein SGT argued that that October 2004 Fax did not form an agreement between the parties and that the March 2003 Agreement was renewed after 7 March 2005 and did not terminate until 12 August 2006.

28 Given the foregoing sequence of events, it is clear that Multistrada considered and dealt with the effect of the terms of the October 2004 Fax. While SGT was, since 2 June 2008 (see [25] above), aware of Multistrada's position that the March 2003 Agreement had terminated on 31 March 2005, it chose only to mount a delayed challenge to Multistrada's position more than two months later in its Reply to Multistrada's Closing Submissions. Clearly, SGT failed to fully avail itself of the opportunities it was accorded to rebut Multistrada's position (see also [38] of *Soh Beng Tee*). In these circumstances, I am of the view that SGT cannot now seek to set aside the arbitral award simply because its own conduct in the arbitration has led to a result it was dissatisfied with. Accordingly, SGT's claims that it was denied the opportunity to be heard on the stated issues could not be sustained.

Whether the tribunal exceeded the scope of its jurisdiction

29 SGT's claim that the tribunal exceeded the scope of its jurisdiction because it failed and/or refused to apply the law governing the March 2003 Agreement, *viz*, Indonesian law (on which expert opinion and submissions had been provided by both parties) is also without merit. As stated above at [14], SGT chose not to cross examine Dr Otto on his expert evidence that, under Indonesian law, a person could accept a written offer by conduct and that where an agreement provided that it would terminate on a certain day, that agreement would terminate on that day unless the parties agreed to its extension. In any event, Ms Chou Tzu stated that SGT was not saying that the Indonesian legal position was necessarily different from the position adopted by the tribunal in the arbitral award. Rather SGT's contention was on a more tenuous basis, *viz*, that the Indonesian legal position might be different.

Whether the tribunal arrived at an unexpected, illogical conclusion unsupported by the available evidence

30 SGT's contention that the tribunal arrived as a conclusion that was "completely unexpected, illogical in the circumstances and/or contrary to available evidence" in deciding that the March 2003 Agreement terminated on 31 March 2005 is also difficult to sustain. Even if the issue as to when the March 2003 Agreement was terminated was not truly alive during the arbitration,that would not be sufficient to lead to the conclusion that the [tribunal] had necessarily failed to adhere to the rules of natural justice in denying [the parties] an occasion to present its contentions on the issue because "[i]t is frequently a matter of degree as to how unexpected the impugned decision is, such that it can persuasively be said that the parties were truly deprived of an opportunity to argue it" (see [41] of *Soh Beng Tee*). I am of the view that the tribunal was wholly entitled to come to the conclusion that the March 2003 Agreement terminated on 31 March 2005. The tribunal was not required to put this conclusion before the parties given that this was *not* a dramatic departure from the evidence presented to him, *viz*, the October 2004 Fax, which was in fact placed before the tribunal by SGT itself. The tribunal was entitled to come to this conclusion on the basis of the following:

(a) SGT alleged that Multistrada breached the March 2003 agreement when it appointed a new distributor for its tyres in Iran in August 2006;

(b) Multistrada alleged, in the alternative, that the March 2003 Agreement was not valid and binding;

(c) in order for the tribunal to determine whether Multistrada breached the March 2003 Agreement, the tribunal had to determine:

(i) whether the March 2003 Agreement was valid and binding in the first place;

(ii) if the March 2003 Agreement was valid and binding, whether it was in effect in August 2006;

(d) the evidence before the tribunal included the March 2003 Agreement and the October 2004 Fax;

(e) the October 2004 Fax , which was evidence that SGT itself placed before the tribunal, referred to the March 2003 Agreement and expressly stated a termination date of 31 March 2005; and

(f) during the course of the arbitration proceedings, Multistrada led factual and expert evidence that the parties had wholly accepted the terms of the October 2004 Fax to govern their business relations and that there were no negotiations after 31 March 2005 to renew the agreement or to enter into a new distributorship agreement.

31 In fact, the tribunal adopted a middle path that was consistent with the cases of *both* SGT and Multistrada, *viz*, that:

(a) the March 2003 Agreement was valid and binding (which was Sobati's position); and

(b) the parties had accepted the terms of the October 2004 Fax which terminated the March 2003 Agreement on 31 March 2005 (which was Multistrada's position).

In these circumstances, and given the evidence presented before the tribunal, it is clear that the tribunal was wholly entitled to conclude that the March 2003 Agreement terminated on 31 March 2005 and that, accordingly, the transactions between SGT and Multistrada from 31 March 2005 to 12 August 2006 were not pursuant to the March 2003 Agreement. With SGT's first ground in this application disposed of, I now turn to its second ground.

Whether the tribunal exceeded the express mandate given to it by the parties?

32 SGT's second ground in its application to set aside the arbitral award was (pursuant to Article 34(2)(a)(iii) of the Model Law: see [18] above) on the basis that the tribunal exceeded the express mandate given to it by the parties. The mandate given to the tribunal is contained in Article 5.1 of the March 2003 Agreement. It is sufficiently broad and confers on the tribunal the jurisdiction to determine:

> …[a]ll disputes arising out of or in connection with [the March 2003 Agreement]

33 SGT alleged that the tribunal's finding that the March 2003 Agreement terminated on 31 March 2005 was not within its jurisdiction to make. However, as Multistrada correctly pointed out, this allegation was unfounded because the tribunal's decision had in fact arisen out of the parties' respective cases *vis-à-vis* the March 2003 Agreement, *viz*:

(a) SGT's allegation that the March 2003 Agreement was still in effect in August 2006 and its reliance on the October 2004 Fax as evidence of this; and

(b) Multistrada's alternative allegation that the March 2003 Agreement between the parties ceased to have effect after 31 March 2005.

34 Based on the parties' respective cases as framed in this manner, a pertinent, and indeed determinative, issue that required resolution was clearly whether the March 2003 Agreement was still in effect after 31 March 2005. As mentioned above, no rules of natural justice were breached as it was well within the tribunal's power to come to the conclusion that the March 2003 Agreement terminated by 31 March 2005 by virtue of the October 2004 Fax. In these circumstances, I cannot agree with SGT's contention that the tribunal exceeded the express mandate given to it by the parties.

Conclusion

35 For the above reasons, the application to set aside the arbitral award must fail. Therefore I dismissed SGT's application and ordered that SGT pay Multistrada S$15,000 costs (excluding disbursements).

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