

ARBITRAL AWARD BETWEEN GCC PARTIES UPHeld BY ENGLISH COURTS

Terna Bahrain Holding Company Wll v Al Shamsi & Ors [2012] EWHC 3283

Introduction

On 22 November 2012, the English High Court issued its decision in *Terna Bahrain Holding Company Wll v Al Shamsi & Ors* [2012] EWHC 3283, rejecting the applicants' request for an extension of time to challenge an arbitration award, and the challenge to the arbitration award itself.

Facts

In 2007, Terna, a Bahrain company owned by a Cypriot company, and the Bin Kamils, residents of Sharjah, and founders and owners of the Hamriyah Cement Company (constituted under the freezone, Sharjah) entered into a joint venture. In 2009, Terna commenced arbitration against the Bin Kamils as a result of a dispute related to the joint venture. The arbitrator's award was published in April 2012, and awarded Terna AED 84,285,282 (together with interest and costs) in April 2012.

On 29 May 2012, the Bin Kamils filed a claim before the Conciliation and Reconciliation Committee of the First Instance Court in Sharjah, UAE, challenging the validity of the arbitration award. The following day, the English courts gave permission to enforce the arbitration in the same manner as a judgment under section 66, Arbitration Act 1996.

In the present proceedings, the Bin Kamils attempted to challenge the arbitration award for lack of jurisdiction and serious irregularity under sections 67 and 68 Arbitration Act 1996, and sought an extension of time in which to be permitted to do so. The Bin Kamils further sought to set aside an order under section 66 of the Arbitration Act 1996 giving Terna leave to enforce the arbitration award as a judgment.

Terna sought an anti-suit injunction restraining the Bin Kamils from challenging the validity of the Award abroad, and in particular requiring it to discontinue proceedings commenced in Sharjah, UAE, for that purpose.

Judgment

The judge rejected the section 67 extension of time on the grounds that he thought the section 68 challenge would fail, but even if not, then he would have refused as he viewed the delay as a deliberate choice for perceived tactical advantage. The judge further granted the anti-suit injunction requested by Terna, restraining the Bin Kamils from challenging the arbitration award in any court outside England and Wales.

The judge highlighted the factors that would be taken into account when determining whether to grant an extension of time. While typically the most important factors would be the length of the delay; whether the party who permitted the time limit to expire and subsequently delayed was acting reasonably in the circumstances in doing so; and whether the respondent to the application or the arbitrator caused or contributed to the delay, in a situation such as this, where the application for extension of time and the substantive challenge were being considered at the same time, the strength of the challenge application could be determinative to the question of whether the extension will be granted.

Observation

The decision in Terna emphasizes the importance that the court will place on the substantive merits of the challenge in determining whether to grant an extension of time for such a challenge, where these applications are being considered at the same time – the court in Terna suggests that except in particular circumstances, the strength of the merits of the substantive case should be determinative of the application for the extension of time.

Further, applicants should note that the court will take a dim view of an application for an extension of time where it is the court finds that a delay in challenging an arbitration award can be attributed to a tactical advantage.

17th Dec 2012