SEGATTO PAOLO ITALO v GEOSOND HOLDING LTD

2015 SCJ 400

SCR No: 109940

THE SUPREME COURT OF MAURITIUS

In the matter of:

Paolo Italo Segatto

Applicant

v.

Geosond Holding Ltd

Respondent

JUDGMENT

This is a second application made pursuant to Rule 15(7) of the Supreme Court (International Arbitration Claims) Rules 2013 (hereinafter referred to as the 2013 Rules) to set aside a provisional order issued on 27 May 2014 and making executory in Mauritius an award of the Arbitral Tribunal of the Swiss Chambers' Arbitration Institution in Arbitration no. 600323-2012 (hereinafter referred to as the Order). The first application has been dealt with in SCR No: 109801.

Central to the present application is a finding of the Sole Arbitrator that the applicant was not bound by the arbitration clause contained in the Share Purchase Agreement which was the subject matter of the arbitration. The Sole Arbitrator so concluded because the applicant was not a party to the Share Purchase Agreement which was between Rostruct (Africa) Limited (Rostruct) and the respondent (Geosond Holding). Accordingly, in the final award, the Arbitrator declared inadmissible the claims of Geosond Holding which were directed against the applicant who was the founder shareholder of Rostruct. Geosond Holding was further ordered by the Arbitrator to pay to the applicant an amount of CHF 107,404.30 as legal costs.

The applicant has moved for security for costs. To the extent that the motion is not in compliance with the procedure set out under Rule 28(2) of the 2013 Rules, we hold that the motion cannot be entertained.

Two grounds are being pressed in support of the application to set aside the Order. They are as follows:

<u>Under Ground 1</u>: The subject matter of the Order is not capable of settlement by arbitration in Mauritius as stipulated under s.39(2)(b)(i) of the International Arbitration Act 2008.

<u>Under Ground 2</u>: The recognition and enforcement of the Award, and the consequent Order, against the Applicant would be contrary to public policy as stipulated under s.39(2)(b)(ii) of the International Arbitration Act 2008.

It must be first observed that the reference to Section 39(2)(b)(i) and (ii) of the International Arbitration Act 2008 is misconceived and inappropriate since the provision only applies to an application for the setting aside of an arbitral award itself made under that Act.

As already stated above, the present case is in fact an application under rule 15(7) of the 2013 Rules for the setting aside of a provisional order making executory in Mauritius a foreign arbitral award. The grounds for refusing the enforcement of a foreign arbitral award - which is the case presently - are set out under Article V(2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The applicant has failed to establish any of the grounds set out under Article V (2). It is the contention of the applicant that the Order should be set aside *quoad* him because he was not a party to the Share Purchase Agreement and also to the resulting award. However as submitted by Counsel for Geosond Holding, this fact is irrelevant to the issue of "*arbitrability"* embodied in Article V(2)(a) of the Convention. Nor has the applicant been able to substantiate and establish that the enforcement of the foreign arbitral award would be contrary to public policy.

As a matter of fact, the Order was as a result of an application for the enforcement of a single arbitral award which also includes payment of costs to the applicant.

For the reasons stated above, the application for setting aside the Order is refused.

A. F. Chui Yew Cheong
Judge

A. A. Caunhye
Judge

D. Chan Kan Cheong
Judge

9 November 2015

Judgment delivered by Hon A. F. Chui Yew Cheong, Judge

For Applicant	**:**	**Mr Attorney R. K. Ramdewar** **Mrs U. B. Boolell, of Counsel**
For Respondent	**:**	**Mr Attorney B. Sewraj** **Mr Y. Fok, of Counsel**