

**MACSTEEL INTERNATIONAL FAR EAST LIMITED v DESBRO
INTERNATIONAL LIMITED**

2012 SCJ 26

Record No. 105057

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Macsteel International Far East Limited

Applicant

v

Desbro International Limited

Respondent

JUDGMENT

This is an application under section 4 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 for the recognition and enforcement of a foreign arbitral award delivered by the ICC International Court of Arbitration on 16 December 2010 after the applicant had on 24 January 2007 requested for arbitration in a dispute which had arisen between itself and the respondent.

At the hearing of this application, learned counsel for the respondent has taken a three-pronged preliminary objection to the effect that -

- (a) “the provisions of the International Arbitration Act and the consequential amendments made by that Act to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act do not apply to the arbitral award”;
- (b) “the ‘Court’ as constituted under section 42 of the International Arbitration Act has no jurisdiction to entertain the present application which does not concern any matter arising out of an arbitration which was or is subject to that Act”;

- (c) “the arbitration referred to in the present application was initiated before the commencement of the International Arbitration Act.”

It is appropriate that we state that the law governing the recognition and enforcement of foreign arbitral awards is to be found both in our Code de Procédure Civile, Deuxième Partie, Livre Troisième entitled “*De l’Arbitrage*” and more especially articles 1028 et seq. which deal with “*Des sentences arbitrales prononcées à l’étranger*” and in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 (“the Act”) which came into force on 15 March 2004. Both enactments vest jurisdiction to hear an application for the recognition and enforcement of a foreign arbitral award in the Supreme Court. Thus article 1028-2 provides as follows –

1028-2. *Une sentence arbitrale prononcée à l’étranger ne peut être rendue exécutoire à l’île Maurice que par une décision de la Cour Suprême.*

As for the Act, the Supreme Court derives its jurisdiction from the combined effect of sections 2 and 4 of the Act which initially provided as follows -

2. Interpretation

- (1) *In this Act -*

... ..

“Court” means the Supreme Court.

4. Jurisdiction

- (1) *The Court shall have jurisdiction to entertain any application made under any provision of the Convention.*

(2) *For the purposes of an application under subsection (1), the expression “the competent authority”, wherever it occurs in the Convention, shall be construed as referring to the Court unless the context otherwise requires.*

That definition of “Court” in section 2 of the Act was amended by the International Arbitration Act 2008 on its coming into operation on 01 January 2009 so as to read -

“Court” means the Supreme Court constituted as specified in section 42 of the International Arbitration Act 2008

Section 42 of the International Arbitration Act 2008 in fact provides that the Supreme Court “*shall be constituted by a panel of 3 Judges*”.

The result of that amendment was that an application for the recognition and enforcement of a foreign arbitral award, which was previously heard by the Supreme Court constituted by one Judge or more as may be designated by the Chief Justice depending probably on the complexity of the application and the magnitude of the interests at stake, would as from 01 January 2009 be heard by the Supreme Court constituted by a panel of 3 Judges.

The present application was made on 21 February 2011 and heard by us on 03 November 2011, that is, after the amendment brought to section 2 of the Act. In the circumstances, we take the view that this Court is properly constituted to entertain the present application. True it is that the arbitration was initiated following a request made on 24 January 2007, that is, before the Act was amended on 01 January 2009. But this is a totally irrelevant consideration. What is important is the date of the hearing of the application which, it must be stressed, is one under the Act and not under the International Arbitration Act 2008. The latter enactment provides in its section 3 that its provisions apply only to arbitrations initiated after its commencement. But that provision has no bearing on the Act, the reference in its section 2 to section 42 of the International Arbitration Act 2008 being merely a drafting device.

At any rate, as indicated by learned counsel for the applicant, it is a settled principle that, in the absence of any provision to the contrary, any new law as to procedure has immediate effect and applies to all cases pending before the court irrespective of the date of lodging. We may usefully refer to the following notes from **Encyclopédie Dalloz, Répertoire de Procédure Civile et Commerciale, Tome 2**, under the heading “**Lois et Décrets**” -

33. *La loi nouvelle qui modifie les règles relatives à la procédure de l'instance s'applique aux actes qui doivent être faits à partir du moment où elle est obligatoire.*
34. *La citation en justice, valablement faite suivant les formes et dans les délais prévus par la loi ancienne continue à produire les effets prévus par cette loi.*
36. *Les actes de procédure isolés sont régis par la loi sous l'empire de laquelle ils sont faits. Lorsqu'il s'agit d'une série d'actes formant une même procédure, suivant l'opinion qui prévaut en doctrine et en jurisprudence, tout ce qui tient à la forme, à l'instruction ou à la*

procédure est réglé par la loi nouvelle, du jour où elle devient exécutoire qu'il s'agisse d'instances non encore engagées ou même déjà engagées .

39. *Le jugement est dans sa forme et dans ses effets soumis à la loi en vigueur au jour où il a été rendu. La règle s'applique à l'autorité de la chose jugée et à la force exécutoire de la sentence.*
40. *Toutefois il peut être nécessaire de modifier la formule exécutoire ou de soumettre la décision à exequatur dans ce cas la procédure d'exécution est indépendant du jugement.*

In view of what we have said above, we overrule the preliminary objection. The matter will be mentioned before the Master and Registrar at 09.30 a.m. on Tuesday 31 January 2012 to be fixed to an early date for hearing.

K.P. Matadeen
Senior Puisne Judge

S.G. Domah
Judge

R. Teelock
Judge

19 January 2012

Judgment delivered by Hon. K.P. Matadeen, Senior Puisne Judge

**For Applicant : Mr T. Koenig, S.A.
Mr E. Ribot, S.C.**

**For Respondent : Mr G. Rivalland, S.A.
Mr I. Collendavelloo, S.C.**