Shareholder disputes cannot exclude right to arbitration

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Shareholder agreements involving Indian companies are usually governed by Indian law and often contain arbitration clauses covering disputes. Where foreign shareholders are involved, such clauses frequently designate Singapore or other foreign jurisdictions as the seat.

Kelvin Poon
Partner
Rajah & Tann

A dispute will be resolved through international arbitration at the seat unless it is not capable of resolution by arbitration. Whether a particular dispute is arbitrable is policy-driven and varies from jurisdiction to jurisdiction. Indian law does not allow claims for minority oppression under the Companies Act to be resolved through arbitration. Other jurisdictions, including Singapore, allow such arbitration. It is important to know whether claims for minority oppression can be arbitrated in a foreign seat and how far a foreign court or arbitral tribunal may intervene to enforce arbitration, particularly where the agreement is governed by Indian law.

The Singapore High Court resolved this question in *Westbridge Ventures II Investment Holdings*

agreement with an arbitration clause providing that any dispute relating to the management of the company or to any matter in the agreement was to be referred to arbitration. Singapore was the seat of arbitration.

Disputes arose and despite the arbitration clause the defendant started proceedings in the National Company Law Tribunal (NCLT) claiming oppression and mismanagement. Relying on the arbitration clause, the plaintiff applied to the Singapore court for an injunction restraining the defendant from continuing the NCLT proceedings. The defendant then applied to the Bombay High Court for a declaration that the NCLT was the only competent forum to hear the disputes and for a permanent injunction restraining the plaintiff from continuing the Singapore proceedings.

Avinash Pradhan
Partner
Rajah & Tann

In the Singapore High Court, the plaintiff argued that the arbitration clause applied to the dispute and that the defendant had misrepresented the disputes as oppression and mismanagement to circumvent the arbitration clause. The disputes were arbitrable and arbitrability was governed by the law of the seat. The defendant submitted that Indian law governed the arbitration clause, being the law governing the shareholders' agreement.

Since the NCLT proceedings related to oppression and mismanagement, the parties could not have intended the disputes to fall within the arbitration agreement as the clause would be ineffective and declared void under Indian law. An injunction would cause grave injustice because any award rendered in Singapore would be unenforceable in India.

The court accepted the plaintiff's submissions. On arbitrability, the court held, on the following grounds, that the law of the seat determines subject matter arbitrability at the pre-award stage.

a. Pre-award, arbitrability is an issue of the tribunal's jurisdiction. Since it is the law of the seat that limits party autonomy, and the tribunal's jurisdiction, by prescribing what disputes are arbitrable, the law of the seat determines subject matter arbitrability.

b. After an award, the seat court applies the law of the seat when hearing an application to set aside the award on the grounds of non-arbitrability. It is consistent to apply the same law to arbitrability at the pre-award stage.

c. Applying the law of the seat is consistent with Singapore's policy of promoting international commercial arbitration. Singapore courts have given broad effect to international arbitration agreements. Giving effect to foreign rules on subject matter arbitrability undermines this policy.

d. Academic authority and existing case law favours the law of the seat.

Accordingly, the court applied Singapore law as the law of the seat, found that the dispute was arbitrable and granted the injunction.

This decision reinforces the pro-arbitration stance of Singapore courts and instills greater confidence that arbitration agreements in shareholder agreements will be upheld. It highlights the fact that the law in India, which does not regard claims of oppression and mismanagement as arbitrable, may not be the same in non-Indian seats.

Kelvin Poon and Avinash Pradhan are partners at Rajah & Tann

RAJAH&TANN ASIA LAWYERS WHO KNOW ASIA

Rajah & Tann

9 Straits View #06-07, Marina One West Tower,

Singapore 018937

Contact details:

Tel: +65 6535 3600

Email:

kelvin.poon@rajahtann.com

avinash.pradhan@rajahtann.com

www.rajahtannasia.com