

SIAC 快审程序规则 “遇冷”后的冷思考

SIAC procedure gets
cold shoulder in China



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The First Intermediate People's Court of Shanghai Municipality, on 11 August 2017, refused to recognize and enforce an arbitral award rendered by the Singapore International Arbitration Centre (SIAC) on the grounds that it violated article 5(1)(d) of the New York Convention and, "the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties". This ruling by the Chinese court triggered a hubbub in international arbitration circles for a time.

The applicant in this case was Noble Resources International, and the respondent Shanghai Good Credit International Trade. The arbitral award in question is award No. 005 of 2015, rendered by the SIAC. The core of the case lies in the parties originally having specified in their arbitration agreement that the tribunal was to be composed of three arbitrators, whereas SIAC, pursuant to its rules for an expedited arbitration procedure, had its president designate a sole arbitrator to form the tribunal to hear the case and render the award.

With respect to this, the Shanghai court held that party autonomy is the cornerstone of operation of the arbitration system and the method of constitution of the tribunal is a fundamental procedural rule of arbitration. The phrase "unless the president determines otherwise", in article 5.2(b) of the 2013 version of the SIAC arbitration rules, should not be construed as granting the SIAC president discretion on the method of constitution of the tribunal. On the contrary, in exercising his or her decision authority, he or she should fully respect the parties' agreement on the method of constitution of the tribunal so as to ensure party autonomy. In other words, the arbitration rules formulated by an arbitration institution should not be too loose, and the decision of

上海市第一中级人民法院于2017年8月11日以新加坡国际仲裁中心(SIAC)一起仲裁裁决违反《纽约公约》第五条第一款(丁)项所规定的“仲裁机关之组成或仲裁程序与当事人之协议不符”之情形为由,拒绝予以承认和执行。中国法院的这一裁决,一时间引起国际仲裁界一片哗然。

该案中,申请人为来宝资源国际私人有限公司,被申请人人为上海信泰国际贸易有限公司。涉案仲裁裁决为新加坡国际仲裁中心作出的2015年005号仲裁裁决。该案件的核心,在于当事人原本在仲裁协议中约定仲裁庭由三人组成,而SIAC根据其仲裁快审程序规则,由SIAC主席决定由一人组成了仲裁庭进行审理裁决。

对此,上海一中院认为:当事人意思自治是仲裁制度运作的基石,而仲裁庭的组成方式属于仲裁基本程序规则。SIAC的2013年版《仲裁规则》第5.2条b项所规定的“主席另有决定的除外”不应解释为SIAC主席对仲裁庭的组成方式享有任意决定权。相反,在其行使决定权时应充分尊重当事人关于仲裁庭组成方式的合意,保障当事人的意思自治。换言之,仲裁机构制定的仲裁规则不能太任性,其主席的决定更不应凌驾于当事人之间仲裁协议的明确约定之上。

无独有偶,就同一问题,新加坡最高法院则持截然相反的立场。新加坡最高法院认为:“如果当事人约定适用《仲裁规则》,那么其中的快速程序规则也应一并适用。根据快速程序规则并由独任仲裁员审理案件也是当事人意思自治的体现。除非当事人在仲裁条款中明确约定由三名仲裁员组成仲裁庭同样适用于快速程序规则。”(见W Company v Dutch Company and Dutch Holding Company (2012) 15AA 97)此外,“从商业合理性角度而言,应当将案涉仲裁条款解释为承认SIAC主席有权决定由独任仲裁员审理案件,否则,即便在所述

its chairman should not take precedence over the express provisions of the arbitration agreement between the parties.

Coincidentally, the Supreme Court of Singapore takes an entirely different stance on this issue. A judge of the Singapore court held that the parties chose the arbitration rules to govern the arbitration and they accepted the rules, including the expedited procedure, so the hearing of a case by a sole arbitrator pursuant to the rules of the expedited procedure is also a manifestation of party autonomy. It may be otherwise if the parties had stipulated that there shall be three arbitrators, even if the proceedings were under the expedited procedure (see W Company v Dutch Company and Dutch Holding Company (2012) 15AA 97).

Furthermore, "a commercially sensible approach to interpreting the parties' arbitration agreement would be to recognize that the SIAC president does have the discretion to appoint a sole arbitrator. Otherwise, regardless of the complexity of the dispute or the quantum involved, a sole arbitrator can never be appointed to hear the dispute, notwithstanding the incorporation of the applicable arbitration rules, which provide for the tribunal to be constituted by a sole arbitrator when the expedited procedure is invoked. That would be an odd outcome ..." (See AQZ v ARA (2013) 50HC 49).

In short, the arbitration rules selected by the parties are an entire concept, which includes acquiescence to the authority of the SIAC president to form a tribunal constituted of a sole arbitrator, unless this is expressly obviated in the arbitration agreement. Otherwise the sole arbitrator system under the expedited procedure loses its reason for being.

It should be acknowledged that, with the objective of

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