"Matters" for the Court's Intervention in Arbitration: DMZ v DNA [2025] SGCA 52; [2025] 2 SLR 398

I. Executive Summary

The UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**") reflects consensus on current international arbitration practice, including when a court can intervene in an arbitral case. Article 5 of the Model Law ("Article 5") states that "[i]n matters governed by this Law, no court shall intervene except where so provided in this Law". The Court of Appeal ("CA") held that a two-step inquiry applies for determining whether Article 5 prohibits court intervention in a given case.

(1) First, whether the application for the court's intervention concerns a "matter" governed by the Model Law; and
(2) Second, whether the intended intervention is permitted, either because the legislation does make express provision for such intervention, or, if the "matter" is not governed by the relevant legislation, then because the grant of relief is warranted.

In applying this two-step inquiry, the relevant "matter" must be framed in broad rather than narrow terms. Here, the CA deemed an "appropriate level of abstraction" for framing such "matter" to be one that encompasses challenges against a procedural determination which would affect the progress or conduct of an ongoing arbitration. The court would not countenance intervention in an ongoing arbitration by seeking to second-guess a procedural determination, absent express empowerment to do so under the Model Law or International Arbitration Act 1994 (2020 Rev Ed) ("**IAA**").

The CA also took the opportunity to make some observations on rules 40.1 and 40.2 of the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC**") (6th Ed, 1 August 2016) ("**SIAC Rules**").

II. Material Facts

The respondent entered into five contracts ("**Five Contracts**") for the sale of oil products to the appellant. Each of these provided for arbitration under the SIAC.

A week before the respondent's claim became time barred on 1 July 2024, the respondent filed a Notice of Arbitration ("**NOA**") to seek the repayment of sums that were allegedly due under the Five Contracts. Two days later, the SIAC wrote to the respondent to clarify the precise arbitration clauses that the respondent sought to rely on, to which the respondent duly clarified on 3 July 2024. By this time, the applicable period of limitation applicable to the claims had likely expired.

The Registrar of the SIAC ("**Registrar**") then issued a letter to the parties to confirm the commencement of arbitration (the "**Arbitration**") to be 3 July 2024 (the "**Initial Decision**"), pursuant to rule 3.3 of the SIAC Rules. The Initial Decision was presumably because he considered that the substantive requirements for the NOA were only substantially complied with after the respondent's confirmation on that date.

The appellant then filed its response to the NOA which included an argument that the respondents' claims were time barred. The respondent then wrote to the SIAC to request for an amendment of the Initial Decision – that the date of commencement of the Arbitration should be 24 June 2024 when the NOA was filed.

Following which, the SIAC was satisfied that "the date of commencement of [the Arbitration] shall be amended to 24 June 2024" (the "**Amended Decision**"). The appellant sought an order to set aside the Amended Decision (the "**Main Application**").

The General Division of the High Court of Singapore dismissed the application on the basis that (1) the courts did not have the power to review the Amended Decision, as rule 40.2 of the SIAC Rules stated that the parties waived any right of appeal or review in respect of any decision by the Registrar to any judicial authority, (2) the appellant had curial redress under Article 34(2)(a)(iv) of the Model Law to set aside any eventual award, and (3) the Registrar was plainly entitled to issue the Amended Decision. The appellant appealed to the CA.

III. Issues on Appeal

The main issue on appeal was whether the court was empowered to hear and grant the reliefs sought in the Main Application, including the request to set aside the Amended Decision. This turned on the proper interpretation of Article 5. The CA explained the two-step interpretation of Article 5, which concerned the proper framing of "matter", followed by an analysis of the intended intervention.

A. Article 5 Prohibition of Court Intervention

First, the CA noted that the starting point of interpretation is the text of Article 5, particularly the term "intervene". On a plain reading, the connotation was that in matters governed by the Model Law, the court must not act in any way to "impede or alter the progress and conduct of a pending arbitration", save to the extent that express provision was made in either the Model Law or the implementing legislation (here, the IAA). In short, Article 5 is concerned with "preventing the courts from taking steps to interfere with, or impede the progress of, an arbitration – precisely what the appellant sought to do here".

The next issue was whether the Main Application fell within the scope of "matters" in Article 5.

(i) Two-Step Interpretation of Article 5

The CA explained the two-stage approach to interpreting Article 5:

1. whether the application for the court's intervention concerns a "matter" which is governed by the Model Law; and
2. whether the intended intervention is permitted (either because the legislation does make express provision for such intervention, or, if the "matter" is not governed by the relevant legislation, then because the grant of relief is warranted).

The CA explained that the opening words of Article 5 "[i]n matters governed by this law" meant that Article 5 "does not apply to every instance where court intervention is sought, in a matter

that may in some way be connected to an arbitration governed by the Model Law". This approach was also reflected in ancillary materials surrounding the adoption of the Model Law. The CA stressed that it was always contemplated that there would be certain types of intervention that fell outside the scope of the Model Law, and would thus not be prohibited by Article 5. Finally, this approach was also consistent with prior Singapore judgments.

(ii) Proper framing of "matter"

The CA noted that a critical issue relates to how the relevant "matter" governed by the Model Law is to be framed.

The relevant issue or matter must be framed correctly, and what the correct framing is must depend on its context. In the context of Article 5, the CA could not accept an interpretation that would leave it exposed to abuse if the parties were free to frame the "matter" that their application is concerned with, at whatever level of generality suited their purpose, even if this enabled them to circumvent the prohibition in Article 5.

Thus, the correct interpretation of the word "matters" in Article 5 must begin with an understanding of its underlying purpose. The underlying policy objective of Article 5 was to achieve certainty by having the Model Law set out the circumstances in which court intervention is permissible as completely as it is possible to do. This purpose points to and is wholly consistent with the goal of having the greatest degree of certainty as to when the court may intervene. This, in turn, is to be seen in the light of the well-established understanding that the overall policy of the IAA and the Model Law is to minimise judicial intervention in arbitral proceedings.

The confluence of (a) maximising certainty as to when a court may intervene; and (b) minimising the extent to which a court may intervene, points to the view that the word "matters" in Article 5 should be construed more broadly rather than narrowly because that would:

(a) widen the range of matters that are governed by the Model Law;
(b) limit the opportunities for a court to intervene; and
(c) advance certainty as to when a court may intervene.

Additionally, what is governed by the Model Law extends to both the expressed and implied reach of the legislation.

Prior case law also illustrates the general prohibition in Article 5 against applications that seek to interfere with or impede the progress or conduct of an arbitration, including by challenging procedural determinations of tribunals save where this is expressly provided for in the Model Law or IAA. They also took an approach to construing the coverage of the Model Law in broader rather than in narrower terms, and focused on the procedural nature of the rulings of the tribunals in question that were being challenged in court.

Applying this broad interpretation to Article 5, the appropriate level of abstraction for framing the "matter" in this case should be one that encompasses challenges against a procedural determination which would affect the progress or conduct of an ongoing arbitration. It would

be an exceptional situation where the court would be allowed to intervene in an ongoing arbitration by seeking to second-guess a procedural determination absent express empowerment to do so under the Model Law or IAA.

This is in line with the very nature of arbitration, which is a mode of dispute resolution that is rooted in the agreement of the parties, and which places a high degree of procedural autonomy in the hands of the parties and their chosen arbitrators. The key features of arbitration include:

1. The source of obligation to arbitrate is in the arbitration agreement, and this is generally enforced by an application to stay any proceedings brought in breach of that agreement
2. The parties and the chosen arbitrators are vested with high degrees of autonomy in how they will conduct the proceedings, as long as these do not offend any mandatory provisions of the applicable legislation. Where the parties fail to agree on such matters, they will be bound by the procedural determinations of the arbitrators; and
3. Where the parties have agreed to arbitrate their dispute subject to a set of arbitration rules, those rules shall constitute a part of their arbitration agreement.

Thus, any set of rules, which the parties have agreed will apply to their arbitration, is as much a part of their arbitration agreement, and is as much liable to be upheld and enforced by the court, as the primary agreement to arbitrate. The obligation of the parties is to arbitrate in accordance with their agreed rules; and absent agreement on any given point of procedure, the obligation is to arbitrate in accordance with the procedural determinations of the arbitral tribunal.

(iii) Application to Present Case

In this case, the Registrar made a decision on the commencement date of the Arbitration, as he was empowered to do under the SIAC Rules. The CA held that the fact that the Registrar was not part of the tribunal may be a point going to the ***effect*** of the decision, but not towards the ***procedural*** nature of the decision or with the court's lack of power to intervene at this stage. Where the rules (which the parties have agreed to) provide that certain decisions can be made by a particular decision maker, that is part of the parties' agreement as to how their arbitration it to be conducted and thus a part of the process beyond court's intervention at this stage of the proceedings.

The "matter" here pertains to the ***procedure*** by which arbitration is to be conducted; specifically, whether the Registrar was entitled to reconsider and amend his prior decision on the commencement date of the arbitration. Pursuant to the Model Law, there was no room for court intervention given the lack of express enabling provisions to support the appellant.

While the CA found that this was sufficient to dismiss the appeal, it nonetheless took the opportunity to expound on rule 40.2 of the SIAC Rules.

B. Rule 40.2 Waiver of Right of Appeal

The CA noted that in any event, rule 40.2 of the SIAC Rules posed a bar to the appellant's applications: under such rule, the appellant had agreed to waive any right to bring an appeal

against or to seek a review of any decision of the Registrar before any judicial authority.

Rule 40.2 prescribes only two types of decisions for which court recourse is available:

1. decisions on challenges to an arbitrator (which are under rule 16.1 of the SIAC Rules); and
2. decisions on the jurisdiction of the arbitral tribunal (which are under rule 28.1 of the SIAC Rules).

The Amended Decision did not fall within either of these prescribed exceptions.

The CA also rejected the appellant's argument – that rule 40.2 was an ouster clause that was void because it purported to oust entirely the court's jurisdiction to review decisions made by the Registrar. While rule 40.2 may preclude parties from seeking a direct review of decisions rendered by various organs of the SIAC, it does not preclude parties from arguing that the *tribunal* had wrongly accepted or incorporated such a decision into the final award and thus that the award should be set aside. Thus, rule 40.2 only imposes conditions on the right to judicial recourse, without prohibiting it entirely. The court's jurisdiction has not been ousted by this rule.

C. Appellant's right to seek remedy from the Tribunal

Finally, the CA emphasised that the question of whether it was possible and appropriate to review the Amended Decision was a matter that should have been raised to the tribunal, not the court.

The CA observed that if the decision of the Registrar on the date of commencement of arbitration was binding on both the parties and the tribunal, not only administratively but as a substantive finding of fact that may impact the merits of a time-bar defence, it was then open to the aggrieved party to raise whatever grounds are available to seek recourse against or to resist enforcement of any award that incorporates that part of the Amended Decision, if it is contended that this decision was arrived at following an improper process that was not agreed to by the parties.

Finally, even if recourse against the enforcement of an award incorporating such part of the Amended Decision is not available to the aggrieved party, that is a consequence of party autonomy. It does not mean that the court can intervene.

IV. Conclusion

The CA dismissed the appeal. Further, given the manifest lack of merit in the appeal, the CA also exercised its discretion to award indemnity costs in favour of the respondent.

Written by: Tan Mei Bin, 4th-Year LLB student, Singapore Management University Yong Pung How School of Law.

Reviewed by: Ong Ee Ing, Principal Lecturer, Singapore Management University Yong Pung How School of Law