SINGAPORE INSTITUTE OF ARBITRATORS

NEWSLETTER

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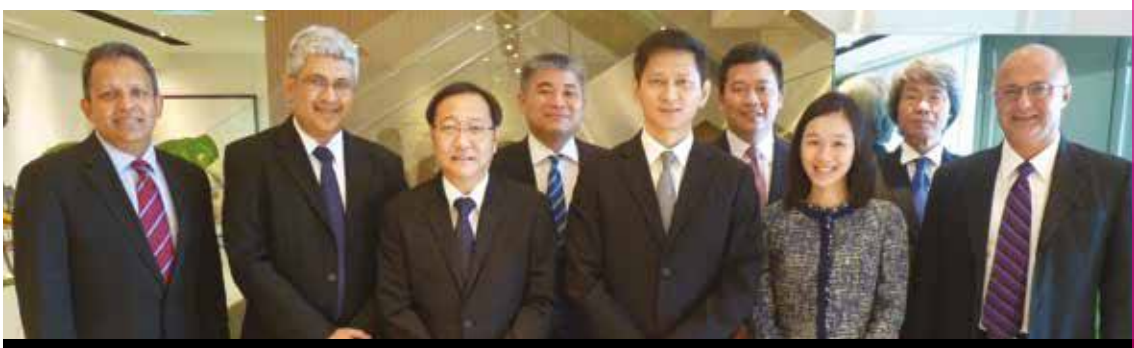
INSIDE THIS ISSUE



Council Members (from L to R): Mohan R, Pillay, Dinesh Dhillon, Chia Ho Choon, Steven Lim, Chan Leng Sun SC, Tay Yu-Jin, Margaret Joan Ling, Yang Yung Chong, Naresh Mahtani, (Not in the picture: Leslie Chew SC and Johnny Tan Cheng Hye BBM)

THE PRESIDENT'S COLUMN

For some months now, SIArb has been working on updating its website, to make it not just more visually pleasing, but also more functional and user-friendly. I thank Ms Margaret Ling for driving this revision with Intellitrain. I believe they have done an outstanding job, as you will see from the website. You can now register for courses and renew your membership online. You will also find current and useful information when you visit our site. Our thanks to Intellitrain as well.

Margaret will be leaving the Council at the end of her one-year term. She has served with distinction as Chair of the Publications Committee. In her short time with us, she has refreshed the look of the Newsletter and now the SIArb website. It is too bad that she does not stay longer to work on the look of the Council members. She has decided to leave Singapore for a while in case we try to make her serve another term. We wish her the best in Pokemon hunting in a different country.

Apart from Margaret, we will be sorry to see Professor Leslie Chew, SC finishing his service with the Council to focus on his other duties. Chief among these is his important appointment as Dean of Singapore's newest law school, the UniSIM's School of Law. Leslie is a pioneer of SIArb. I am glad that he has agreed to continue to support the activities of SIArb.

Vice-President Mr Chia Ho Choon has been working quietly but indispensably in driving miscellaneous key events for SIArb. He finishes his term too and has decided to step aside for another candidate to continue his good work. Like many stalwarts, we can count on Ho Choon to still serve SIArb in other ways.

Mr Naresh Mahtani, our Honorary Secretary, completes his term as well. The present good shape of the Institute is due in large part to his work on improving our processes. Since he is a tireless young man, he has not been given permission to fade into the night.

What is encouraging is that we have more people stepping forward to serve on committees and run for Council election. This ensures that SIArb will continue to flourish with new energy and fresh ideas.

On the subject of energy and ideas, those who were fortunate enough to attend the talk "Arbitration and Mediation - Two Mutually Exclusive Worlds?" on 11 August 2016 by two leading arbitrators and mediators, Mr Lawrence Boo and Mr George Lim, SC learnt just how much more there is to the two subjects that they thought they were already familiar with. Mr Michael Hwang, SC brought a lot to his role as Chair. The considerable insights that Michael, Lawrence and George shared were supplemented by two other very experienced practitioners, Mr Hee Theng Fong and Mr Andreas Respondek.

Continued on page 2

We have our AGM this year on 1 September 2016. I look forward to chatting with many of you there. As our customary pre-AGM talk, we are fortunate to have the Registrar of SIAC, Ms Delphine Ho, speak to our members on the features of the new SIAC Rules 2016 which came into effect on 1 August 2016.

The AGM will be followed by our successful Symposium series. This year, the SIArb Commercial Arbitration Symposium will be held on 21 September 2016. The Symposium will be held as usual at the Old Parliament House. Participants of previous symposiums told us how much they enjoyed the setting. It is an appropriate venue for the kind of stimulating and spontaneous discussions which are the hallmark of this series.

Following these events, we will have our Fellowship Assessment Course in October. The course is demanding but informative. It leads to the coveted qualification for Fellowship in the Institute. I am happy to see the number of candidates increase year on year. This is an indication of the value placed on the content of our courses, the quality of our trainers and the FSIArb accreditation.

After such hard work, let's unwind and catch up at the SIArb Annual Dinner on 27 October 2016. See you soon.

Chan Leng Sun SC
President

CASE LAW DEVELOPMENTS

BY **JOLENE GWEE**
Practice Trainee, ECYT Law LLC

In this issue, we focus on two recent decisions, one by the English High Court and the other by the Singapore High Court.

XSTRATA COAL QUEENSLAND PTY LTD, SUMISHO COAL AUSTRALIA PTY LTD, ITOCHU COAL RESOURCES AUSTRALIA PTY LTD AND ICRA OC PTY LTD V BENXI IRON & STEEL (GROUP) INTERNATIONAL ECONOMIC & TRADING CO LTD **[2016] EWHC 2022**

Introduction

In this case, the English High Court granted an application under Section 79 of the Arbitration Act 1996 to extend the time period within which a party could apply under Article 27 of the London Court of International Arbitration Rules, for the arbitral tribunal to correct its award.

Facts

Contract referred to a different party

The Respondent entered into a contract to purchase quantities of coking coal from the Claimants (the "**Contract**"). A dispute that arose under the contract was referred to arbitration in London, at the end of which the Respondent was to pay around US$28 million to the Claimants (the "**Award**"). Although the Claimants sought to enforce the arbitral award in the People's Republic of China, the Chinese court refused to do so on the basis that the fourth Claimant, ICRA OC Pty Ltd ("**ICRA OC**") was not a party to the Contract, including the agreement to arbitration.

Under the Contract, the seller was described to be the first Claimant, entering as agent for the *Oaky Creek Joint Venturers*", which comprised itself, the second and third Claimants, and an ICRA NCA Pty Ltd ("**ICRA NCA**"). However, the Contract also referred to an "*Oaky Creek Joint Venture*", to which all four Claimants were party (ICRA NCA was not a party).

In making the Award, the tribunal treated ICRA OC, and not ICRA NCA, as:

(a) A party to the Contract, including the agreement to arbitration;
(b) One of the Oaky Creek Joint Venturers;
(c) A party to the claim before the tribunal; and
(d) A beneficiary of the arbitral award.

However, the tribunal did not explain how it dealt with the Contract's reference to ICRA NCA, and not ICRA OC.

Claimants seek to rely on Article 27 of the LCIA Rules

The Claimants, including ICRA OC, sought to rely on the London Court of International Arbitration Rules 1998 ("**LCIA Rules**") to request the arbitral tribunal to:

(a) Make an additional award, under Article 27.3; or
(b) Alternatively, make corrections to the Award, under Article 27.1.

Article 27 of the LCIA Rules provides that any application for a correction of the Award or an additional award has to be made within 30 days of the publication of the Award. However, by the time the Chinese court decided to refuse enforcement of the Award, the said time limit had expired for the Claimants to make any application. The LCIA expressed that "*while sympathetic to the Claimants' position, absent agreement of the parties or an order from a competent court extending time for the application" the arbitral tribunal was "*functus officio", i.e. the arbitral tribunal's authority on the matter had come to an end.

Claimants' application under Section 79 of the Arbitration Act

The Claimants subsequently applied to the English Commercial Court to extend the deadline for its Article 27 application to the arbitral tribunal (the "**Application**"), under Section 79 of the Arbitration Act 1996 (the "**Act**"). Section 79(1) provides that:

> *"[U]nless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings"*

The English Court's decision

The Court analysed Article 27 of the LCIA Rules and Section 57 of the Act and concluded that there were no material differences between the two. On this basis, the Court considered Section 57 more thoroughly.

The Court referred to ***Torch Offshore LLC v Cable Shipping Inc*** **[2004] EWHC 787 (Comm)** in considering the power of the arbitral tribunal under Section 57(3)(a) and (b) of the Act. In *Torch,* it was stated that Section 57(3)(a) "can be used to request further reasons from the arbitrator or reasons where none exist", because:

(a) The policy which underlies the Act is one of enabling the arbitral process to correct itself where possible, without the intervention of the Court; and

(b) If there was unarguably a clear failure to deal with an issue, it could be said that there was no ambiguity in the award, but an award which contains inadequate rationale or incomplete reasons for a decision is likely to be ambiguous or need clarification.

The Court took the view that allowing a tribunal to clarify or remove ambiguity, as permitted under Section 57(3)(a) of the Act, was the same as allowing a tribunal to address "any errors of a similar nature" under Article 27.1 of the LCIA Rules.

The arbitral tribunal had earlier denied a separate request by the Respondent for clarifications of the Award, stating that the grounds for granting corrections under Article 27 are narrow in scope. Notably the Court, in considering the Application, made no definitive comments on the scope of such grounds, but stated that Article 27 allows for clarification of an award through the use of a memorandum which then becomes part of the award.

The Court then, in identifying the Application as a claim that involves an "*omission which may occasionally be made*", stated that if time was indeed extended by the Court, the Claimants would be entitled to request the arbitral tribunal to make corrections to the Award that would clarify a matter that omission had left unclear or ambiguous, and that the arbitral tribunal would control the process and correct the award accordingly.

Clarification is necessary so as not to impede justice and the arbitral process

The Court finally concluded that it would exercise its power under Section 79 of the Act to extend the time limit for application under Article 27.1 of the LCIA Rules. Its reasons were as follows:

(a) The Claimants, Respondent and the Chinese Court had no explanation from the arbitral tribunal of how the tribunal dealt with the issue of ICRA NCA and ICRA OC's identities.
(b) The absence of an explanation meant that the Award was on uncertain terms, and this impeded the arbitral process.
(c) The Claimants had, in the name of justice, the right to have the uncertainty resolved by way of an explanation by the arbitral tribunal.
(d) Enabling the arbitral tribunal to add an explanation, so as to provide clarity or remove ambiguity, was a "*just and reasonable approach*" that would hold parties to their agreement to arbitrate, and which would assist the arbitration process.

The Court found that the Claimants had not unduly delayed in making their Application. The Claimants were reasonable in waiting for the decision of the Chinese court first, before then approaching the arbitral tribunal and the LCIA.

Notably, the Court confirmed that there is value in giving an arbitral tribunal opportunity for correction of its award. The denial of an opportunity for correction may lead to problems in seeking recognition and enforcement of an award in other parts of the world, which would serve no worthwhile end. Moreover, it would be unjust not to allow the tribunal to consider whether uncertainty can be removed.

Comments

This case reflects the English court's emphasis on how the exercise of law and the operation of legal mechanisms should produce sensible and practical outcomes, not only towards matters within the UK but also globally. The pro-arbitration stance of the courts is also highlighted through how the court chose not to overturn the arbitral tribunal's award, but instead invited the tribunal to correct its award. Finally, this case serves as a good reminder as to the importance of clarifying the identities of parties in any legal transaction, lest complications ensue.

JVL AGRO INDUSTRIES LTD V AGRITRADE INTERNATIONAL PTE **LTD [2016] SGHC 126**

Introduction

In this seminal case, the High Court set aside an arbitral award on the ground that the tribunal had breached natural justice, in making an award on the basis of an issue which had not been presented by the parties.

Facts

The parties, JVL and Agritrade, entered into 29 contracts between March and August 2008 for the purchase of palm oil. The parties subsequently entered into a "price-averaging arrangement" (the "**PA Arrangement**"), in light of a significant fall in the market price of palm oil in the second half of 2008, so that JVL could have more time to discharge its contractual obligations to Agritrade and lower the unit price at which it had bought and was to buy palm oil from Agritrade.

Sometime in 2010, as a result of a significant rise in the market price of palm oil, the parties found themselves unable to agree with the application of the PA Arrangement to five remaining contracts (the "**Disputed Contracts**"). Agritrade failed to ship the required amount of palm oil under the Disputed Contracts to JVL, and JVL commenced arbitration proceedings for breach of contract.

Before the arbitral tribunal, Agritrade raised the following defences to JVL's claim:

1. The PA Arrangement rendered each Disputed Contract void for uncertainty, as the key contractual terms of price, quantity, shipment period and discharge port were to be fixed only when the palm oil was actually shipped (the "**Uncertainty Defence**");

2. Alternatively, even if the Disputed Contracts were not void for uncertainty, they had been mutually terminated since the shipment date under each Disputed Contract had already passed without being performed (the "**Prematurity Defence**").

Since Agritrade's defences relied on the PA Arrangement, a "further subsidiary issue" arose: whether the PA Arrangement was within the scope of the parol evidence rule. Under the parol evidence rule, unless one of a limited number of exceptions applies, a party to a contract which has b een reduced into documentary form cannot rely on evidence which is extrinsic to the document to vary, contradict, add to or subtract from the contract.

The tribunal found that the PA Arrangement was not subject to the parol evidence rule, as it was a collateral contract that was capable of varying the parties' obligations under the Disputed Contracts.

It was thus concluded that Agritrade had not breached the Disputed Contracts. Instead, JVL had repudiated the Disputed Contracts by issuing a notice of default and purchasing palm oil off the market before the PA Arrangement was applied (the "**Award**").

JVL applies to the High Court to set aside the Award

JVL then applied before the High Court to set aside the Award (the "**Application**"), under Section 24(b) of the Act (the "**Act**"). Section 24(b) provides that the High Court may set aside the award of an arbitral tribunal if "*a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced*".

The three principal grounds of the Application were:

(a) JVL was unable to present its case to the tribunal or there was a breach of the rules of natural justice in connection with the making of the Award;
(b) The Award concerned decisions on matters which were beyond the scope of arbitration; and
(c) The tribunal displayed apparent bias towards JVL.

At the core of the Application was that the tribunal had decided against JVL on the collateral contract point, which was a point that Agritrade did not present before the tribunal. JVL thus had no opportunity to present its case on the same. As such, the Court decided to suspend the Application to give the tribunal an opportunity to receive any further evidence and submissions on whether the PA Arrangement was a collateral contract. The tribunal concluded that there was no need to receive further evidence and submissions, and reaffirmed their findings.

Upon expiry of the Application's suspension, the hearing on the Application resumed.

The High Court's analysis and reasoning

The High Court decided that the Award should be set aside. Its reasons were as follows:

A. <u>JVL did not have a reasonable opportunity to present its case on an issue</u>

While the Court recognized that caution must be had to unmeritorious attempts by disappointed parties to set aside unimpeachable awards, the Court also highlighted the importance of "*whether there is a sufficient nexus between the chain of reasoning which the tribunal adopts and the case which the parties themselves have chosen to advance*". Accordingly, a particular chain of reasoning can be identified if it:

(a) arises from express pleadings;
(b) is raised by reasonable implication by pleadings;
(c) does not feature in pleadings but is in some other way brought to the other party's actual notice; or
(d) flows reasonably from the arguments actually advanced by either party or is related to those arguments.

An alternative consideration was whether a "*reasonable party to the arbitration could objectively have foreseen the tribunal's chain of reasoning*". The overriding concern was whether the tribunal had achieved "*substantial fairness*". If the tribunal exercised "*unreasonable initiative*" in its chain of reasoning, it was liable to have its award set aside.

The Court found the tribunal's chain of reasoning on the collateral contract exception was one which did not give JVL a reasonable opportunity to present its case on the same, as

(a) Agritrade never advanced the collateral contract exception as part of its case; and
(b) The tribunal also never directed JVL to address the same.

B. <u>The arbitral tribunal did not comply with its duty to confine itself to the issues selected by the parties for determination</u>

Agritrade had forsaken the five opportunities it had to invoke the collateral contract exception and present its submissions. By doing so, the Court found that Agritrade had implicitly rejected the collateral contract exception.

The Court also pointed out that the tribunal did not specifically direct JVL to deal with the collateral contract exception, in that the tribunal had merely mentioned the collateral contract exception in the context of a hypothesis for comment rather than a thesis for proof or disproof.

Since the issue of a collateral contract had not been raised by the parties, as a matter of the arbitration procedure, the tribunal was precluded from adopting the same as part of its chain of reasoning.

Thus it also followed that the tribunal's unilateral decision to find that the PA Arrangement fell within the collateral contract exception was a decision which effectively relieved Agritrade of the burden of invoking an exception to the parol evidence rule, and the burden of producing evidence to establish what was ultimately a dispositive issue.

The Court found that the tribunal had, in making the Award, exercised "*unreasonable initiative*" and breached natural justice.

C. <u>There was a connection between the breach of natural justice and the Award, and JVL was prejudiced</u>

The Court stated that there was "*little doubt that the collateral contract point was connected to the making of the [A]ward*". The tribunal had seemingly not considered whether the evidence before it showed that the PA Arrangement satisfied the criteria to constitute a collateral contract. Since JVL was not given a reasonable opportunity to present evidence and advance submissions on the collateral contract exception, JVL had indeed suffered prejudice.

Following a quick rejection of JVL's other submissions (as mentioned above), the Court concluded that the Award was to be set aside.

Comments

It is well-established that there exists a high threshold in respect of which an arbitral award may be set aside. This case is therefore significant in how it illustrates that the grounds for setting aside, while few and narrow, are nonetheless in the words of the Court, "*fundamental in nature*". The Court was firm in maintaining that, while arbitration has the additional inquisitorial element compared to litigation, arbitration remains adversarial at its core. However strongly or poorly a case may have been formulated, or however an arbitrator may be compelled to reformulate the case, it remains at the parties' discretion as to the issues that are to be determined.

It is not envisaged that this case will undermine arbitral awards made in the future. Instead, this case serves as an excellent reminder as to the fairness of the legal system not just in Singapore, but in the common law world.

BOOK REVIEW

ICC ARBITRATION IN PRACTICE BY HERMAN VERBIST, ERIK SCHÄFER AND CHRISTOPHE IMHOOS [THE HAGUE: KLUWER LAW INTERNATIONAL, 2ND EDITION 2016. 589 PP. +29 APPENDICES. HARDCOVER [EUR 150.00/USD 203.00/GBP 120.00]

BY **DR MICHAEL HWANG S.C.**

This is a book which will arouse both interest and appreciation. Interest, because it is a new book on the latest version of the rules and practices of the world's most popular arbitration institution, and appreciation because the book is clear, concise and precise.

I reviewed the first edition of this book when it appeared in 2004[1*2], and made favourable comments about some of the distinctive features of the book in comparison with other texts on the ICC Rules and ICC Arbitration. The pedigrees of the three authors are well attested to by the distinguished Past President of the ICC International Court of Arbitration, Dr Robert Briner, when he wrote his foreword to the first edition: "*It is fitting that these rules [the 1998 ICC Rules] are presented and commented upon by three lawyers who all formerly held positions as counsel within the Secretariat of the ICC Court and come from countries with traditionally strong links with ICC arbitration. The authors provide a meticulous and easily readable presentation of the ICC Rules of Arbitration, and I am sure that their achievement will help to popularize arbitration in general and that of ICC in particular.*" Likewise, the second edition carries a foreword by the current President of the ICC Court in similar terms. All 3 authors have remained active in ICC Arbitration since their departure from the ICC Secretariat, and have unparalleled direct knowledge of the way in which the ICC operates.

The first point to make is that it is one of the relatively few full expositions of the ICC Rules 2012 and ICC practice in general. Of course, the first port of call for any practitioner on a question concerning ICC practice has to be "*The Secretariat's Guide to ICC Arbitration*" which (being written by the then Secretary-General and his Deputy together with a Senior ICC Counsel) gives invaluable guidance and assistance on how the Secretariat interprets the Rules. This Guide was not available at the time the first edition was available, and one may well ask why practitioners need another commentary on ICC practice in view of the apparently definitive nature of the *Secretariat's Guide*. There are two basic reasons:

(1) This book has features that the *Secretariat's Guide* does not have and contains many valuable additional materials that are not found in the *Guide*. I will elaborate.

  (a) The *Secretariat's Guide* assumes a certain familiarity on the reader's part with international arbitration practice. It is not a textbook with themed chapters, but provides an article-by-article commentary in chronological order. On the other hand, this book is directed at neophytes as well as more experienced practitioners. There are introductory chapters describing the nature of arbitration and different types of arbitration before moving on to an overall analysis of ICC arbitration from beginning to end. While this book also continues an article-by-article commentary, it does so within themed chapters which discuss all Rules under chapter headings, which is a great boon to common lawyers who need to see important topics discussed "in the round", as we are not used to the civil law tradition of textbooks made up of article-by-article commentaries on each provision of a particular code of law or practice, which do not assemble related provisions for easier understanding of the body of law on any particular topic. This book also contains helpful diagrams in the form of flowcharts on selected topics to guide readers through what newcomers (and even experienced practitioners) might find a labyrinth.

  (b) One really valuable feature of the book is a collection of the various notes which have been issued by the Secretariat up to the end of 2015, setting out detailed guidelines on certain aspects of ICC arbitration such as costs, emergency arbitrators, awards and other changes introduced in the 2012 Rules. Finally, there are six appendices setting out in full the reports of the ICC Commission on Arbitration and ADR in recent years which provide in-depth studies on major areas of possible reform in arbitration (whether of external practices of tribunals or internal practices within users' organizations):-

    (1) Effective Management of Arbitration for In-House Counsel;
    (2) Techniques for Controlling Time and Costs in Arbitration;
    (3) Arbitration Involving States and State Entities under the ICC Rules of Arbitration;
    (4) Techniques for Managing Electronic Document Production;
    (5) Issues for Arbitrators to Consider Regarding Experts; and
    (6) Issues for Experts Acting Under the ICC Rules

The thorough analysis of the authors is enhanced by other materials including:-

- A digest of statistics relating to ICC arbitration for the years 2009 to 2013;
- References (in the main text) to selected national arbitration laws and to the UNCITRAL Model Law on International Commercial Arbitration;
- A bibliography, including useful web sites; and
- A separate chapter on ICC's other dispute resolution services, such as mediation, expert proceedings, disputed boards, DOCDEX and the pre-arbitral referee procedure.

An additional plus point is that the book has maintained its highly readable nature by eschewing footnotes (which enhances its readability). Its writing style is based on clear and concise language, which is another boon to readers who may not be native speakers of English.

My conclusion is that this is a highly useful supplement to the *Secretariat's Guide*, and should be recognized as such by the international arbitration community. This book of course realizes the semi-official nature of the *Guide* in explaining ICC procedures, and makes numerous references to this commentary. The purpose of this book is therefore not to repeat what is already in the *Guide*, but to add value by providing additional information and perspectives which are not contained in the *Guide*.

I believe that serious arbitration practitioners will need both books to become fully conversant with ICC arbitration practice.

1 * [2004] Sing. J.L.S pp 300 -312

IN THE HOT SEAT!

SIVAKUMAR MURUGAIYAN

In each issue of our newsletter, we interview an SIArb member to get their views on the alternative dispute resolution scene in Singapore, and to obtain some insight into what makes them tick. In this issue, we interview **SIVAKUMAR MURUGAIYAN**, director at Straits Law Practice LLC.

How would you describe yourself in three words?

Seeker of knowledge.

How did you first get involved in arbitration work?

When I started practice in 1989. I was part of a team of lawyers working on several arbitrations involving a large construction project. As we represented the main contractor, there were several disputes with the employer as well as various sub-contractors.

In the course of your work, do you notice a trend in clients preferring arbitration over litigation as a form of dispute resolution?

Definitely. There is more arbitration work now compared to 20 years ago due to parties incorporating arbitration clauses in agreements specifically providing for arbitration in Singapore.

What is the most memorable arbitration or arbitration-related matter that you were involved in, and why?

It was a construction dispute dealing with piling works between the main contractor and the piling sub-contractor. It was memorable because it was my first as an arbitrator.

What advice do you have for a young fellow practitioner interested in arbitration work?

It is important to join a firm with a strong arbitration practice to learn the ropes and cut your teeth. One also needs patience. It takes time.

What are the challenges you think arbitration practitioners will face in the upcoming years?

Keeping costs under control. One of the factors, apart from confidentiality, in the decision to arbitrate used to be lower costs. Unfortunately, this is no longer true. Escalation in costs will make arbitration less attractive.

With the establishment of the Singapore International Mediation Centre and the introduction of the SIAC-SIMC Arb-Med-Arb Protocol, do you see mediation as now having a bigger role to play in assisting parties to resolve their disputes?

Most definitely. When I was in the Law Society's ADR Committee about 15 or 16 years ago this was already being discussed and mooted.

Who is the person(s) who has had the greatest impact and/or influence on your career?

My late father, G. Murugaiyan, was a lawyer too. The only reason I am in the law is due to his influence.

If you weren't in your current profession, what profession would you be in?

Restaurateur

What's your guilty pleasure?

Depends. Usually fluctuates between durians, good lamb briyani and bak chor mee. Unfortunately, I have to watch my weight.

What is one talent that not many people know you have?

Cooking. I used to cook regularly but hardly do so now.

Fill in the blank: "Arbitration is to dispute resolution as salt is to ___"

The sea.

RECENT EVENTS

Arbitration and Mediation – Two Mutually Exclusive Worlds?

11 August 2016

Speaker: Professor Lawrence Boo, George Lim SC
Chair: Michael Hwang SC

Reported by Yeo Boon Tat, Pinsent Masons MPillay LLP








Chaired by Mr Michael Hwang SC, Professor Lawrence Boo and Mr George Lim SC shared insights and views on whether a synergy exists between arbitration and mediation, or whether the inherent conflicts between the two forms of ADR meant that they continue to be mutually exclusive. Of particular interest during the talk was the question whether a Tribunal could convert itself into a mediator (with the consent of parties) and revert back to its role as arbitrator if mediation proves unsuccessful.

Joining the panel were two guest speakers, Mr Hee Theng Fong and Dr Andreas Respondek, who shared their experience in China and in Germany respectively, on the role of mediation in resolving arbitration/court proceedings in practice.

The evening was highly engaging as the panel shared their personal experience of instances where they were invited by parties, whilst sitting as Tribunal, to convert into a mediator, and the subsequent need to revert back to the role as arbitrator as mediation was unsuccessful. The panel discussed the practical difficulties each of them faced in the process, but acknowledged that much of this could be attributed to a common law upbringing.

The panel recognised that mediation is starting to play an increasingly key role in the resolution of international disputes. Although minefields remained, the panel however advocated that everyone should bravely embrace this nascent development taking root in the ADR world.

ANNOUNCEMENTS

New Members

The Institute extends a warm welcome to the following members and fellows

Associates:

1. Nattanmai Chandrasekaran Muralidharan
2. So Man Kit
3. Nishant Srivastava
4. Zippora Siregar

Members:

1. Yap Hon Yuen
2. Teo Kar Hian
3. Yeo Wee Hian
4. Tan Ay Jy
5. Lee Shi Yan
6. Chua Jian Zhi
7. Joenar Pueblo
8. Toh Poh Lee
9. Chow Kok Onn
10. Tan Khoo Hwa
11. Huang Po Han
12. Leah Christine Jimenez
13. Lim Keng Hwee
14. Els Van Poucke
15. Hewage Ushan Saminda Premaratne
16. Angie Leanne Ang Shi Ru
17. Md Rashed Ali
18. Chung Sheuan Seen
19. Arthur Yap
20. Valerie Ang
21. Madubashini Sri Meththa
22. Bharat Nain
23. Lim Mee Wan

Fellows:

1. David Bateson
2. Tan Boon Kok
3. Mark Andrew Mangan

Panel Arbitrators

The Institute congratulates the following on their admission to the panel of arbitrators

Primary Panel of Arbitrators

1. S. Magintharan

UPCOMING EVENTS

- SIArb Commercial Arbitration Symposium 2016 (21 September 2016)
- The Singapore International Commercial Court A Viable Option for International Dispute Resolution? (12 October 2016)
- Fellowship Assessment Course 2016 (14, 21, 22 October 2016 with an examination on 24 October 2016). Candidates who pass an examination at the end of this Course may apply to be Fellows of the Institute, and subject to meeting membership requirements, may use the abbreviation FSIArb as part of their credentials
- SIArb 35th Annual Dinner (27 October 2016)

Call for Contribution of Articles

The SIArb Newsletter is a publication of the Singapore Institute of Arbitrators aimed to be an educational resource for members and associated organisations and institutions of higher learning. Readers of the newsletter are welcome to submit to the Secretariat at secretariat@siarb.org.sg well-researched manuscripts of merit relating to the subject matter of arbitration and dispute resolution. Submissions should be unpublished works between 1,500 to 2,500 words and are subject to the review of the editorial team.

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