Abu Dhabi Court upholds out-of-scope award and indirect arbitration claims

May 24, 2023

A recent case from the Abu Dhabi Cassation Court serves as an exemplary canvas on which several key arbitration concepts were explored, particularly concerning the validity and enforceability of an arbitration award that delves beyond the scope of its underlying arbitration agreement and the role of indirect claims in arbitration under the UAE Civil Transactions Law.

Case

The case revolved around a dispute arising from a contractual relationship involving the appellant – a contractor – and three respondents. The first respondent, on behalf of the other two, had previously filed a lawsuit against the appellant to enforce its rights per the UAE Civil Transactions Law's Articles 392 and 393. These articles form a cornerstone of the UAE's law regulating civil and commercial matters.

Articles 392 and 393 of the Civil Transactions Law permit a creditor, even if their right is not due for performance, to exercise all the rights of the debtor, unless those rights are intimately linked to the debtor's personality or non-attachable. A creditor is thus deemed to be representing their debtor in exercising these rights, and any benefit derived from such an exercise enters the debtor's assets and becomes a guarantee for all the debtor's debts.

Decision

The case’s focal point centered on the enforceability and validity of the arbitral award rendered in the ensuing arbitration proceedings. The appellant sought to nullify the arbitral award, primarily on the grounds that the arbitral tribunal had decided on matters not encompassed within the arbitration agreement. However, the Abu Dhabi Cassation Court dismissed these arguments, standing by the arbitral tribunal’s decision.

Importantly, the Court upheld the arbitral award’s validity, noting that even if the award delved into issues not covered by the arbitration agreement, it would not be void if the award’s portions subject to arbitration could be separated from those that were not. The court further held that based on Article 393 of the UAE Civil Transactions Law, the first respondent was entitled to indirectly claim the last two respondents’ rights from the appellant, including resorting to arbitration under the construction contract between the appellant and the last two respondents.

Thus, the arbitration award was affirmed, obliging the appellant to pay the first respondent the sum adjudged in the award, considering the first respondent as a representative of the second and third respondents.

Reasoning

The Court’s judgment was rooted in a number of principles. First, it relied on the fundamental notion that an arbitration agreement’s ambit defines the arbitrators’ jurisdiction. However, the Court applied a pragmatic approach in recognizing that an award may still be valid, even if it touches upon matters outside the arbitration agreement, provided those portions can be segregated without impacting the decision’s overall integrity.

The Court’s decision also involved a careful interpretation of Articles 392 and 393 of the UAE Civil Transactions Law. The

Court acknowledged that these provisions enabled a creditor to exercise all the rights of the debtor, even those not due for performance, subject to certain limitations. These provisions thereby authorized the first respondent to act on behalf of the other two respondents in claiming their rights from the appellant.

This interpretation gave rise to an intriguing legal scenario, one where the first respondent was allowed to resort to arbitration based on the construction contract between the appellant and the last two respondents. Consequently, this reasoning empowered the first respondent to indirectly claim the last two respondents' rights from the appellant through arbitration proceedings despite the lack of an arbitration agreement between the appellant and the first respondent.

Significance

The Court's decision in this case sets several significant precedents and offers a profound avenue for future indirect claims, particularly for subcontractors in the construction sector in the UAE, such as in cases where a subcontractor attempts to pursue the employer on behalf of the main contractor via arbitration.

1. **Arbitration Agreement and Scope**: The judgment underscores the arbitration agreement's significance in delineating the arbitrators' jurisdiction. However, it advances a nuanced interpretation, asserting that an arbitration award can still retain its validity even if it ventures beyond the agreement's scope, as long as the portions relating to the arbitration agreement can be segregated from the rest.
2. **Role of Indirect Claims**: Perhaps the most remarkable facet of this judgment is its interpretation and application of the provisions of the UAE Civil Transactions Law concerning indirect claims. By endorsing the first respondent's capacity to act on

behalf of the last two respondents in claiming their rights from the appellant, the Court offers a crucial precedent for the applicability of Articles 392 and 393.

3. **Arbitration and Indirect Claims**: The judgment also establishes an essential principle regarding arbitration's place within the domain of indirect claims. It affirms that a party representing another's rights, under the context of Articles 392 and 393, may resort to arbitration under the original contract between the debtor and the creditor.
4. **Enforceability and Validity of Arbitral Awards**: The ruling further adds to the ongoing dialogue concerning the enforceability and validity of arbitral awards. By upholding the award despite the appellant's objections, the Court reinforces the UAE's pro-arbitration stance and offers reassurance about the robustness and reliability of its arbitration regime.

The decision's legal implications are broad and far-reaching. It augments the body of legal precedents that will undoubtedly influence future disputes involving similar arbitration issues. It offers important guidance on interpreting the UAE Civil Transactions Law towards indirect arbitration claims under Articles 392 and 393 and provides valuable insights into the UAE's arbitration landscape.

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