Dubai Cassation Court clarifies challenging interim and precautionary arbitration orders

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In a recent judgment, the Dubai Cassation Court clarified the procedure for challenging arbitration-related interim and precautionary orders issued by the competent court or the arbitral tribunal (or arbitrator).

Case

The contract between the plaintiff and the defendant is governed by an arbitration clause. The plaintiff is the beneficiary of a bank guarantee provided by the defendant.

The plaintiff submitted a petition to the President of the Dubai Appeals Court requesting a precautionary order to seize a bank guarantee, pursuant to the provisions of the Federal Arbitration Law.

The defendant challenged the precautionary order before the Dubai Primary Court. The Dubai Primary Court accepted the challenge and nullified the precautionary order.

The plaintiff did not appeal the Dubai Primary Court judgment, instead, the plaintiff reverted to the President of the Appeals Court and requested the reinstatement of the precautionary order to seize the bank guarantee. The President of the Appeals Court accepted the request and reinstated the precautionary order.

The defendant challenged the precautionary order before the Appeals Court.

The defendant argued that the Federal Arbitration Law did not describe the procedures to which a precautionary order may be challenged, and hence, a party wishing to challenge a precautionary order issued in relation to arbitration proceeding should do so pursuant to Article 114 of the Executive Regulations to the Civil Procedures Law.

The defendant also argued that the plaintiff failed to comply with the requirements under Article 114(2) of the Executive Regulations to the Civil Procedures Law which states that:

“The attachor shall, within no later than (8) eight days from the date of issue of the attachment decision, file a claim of right before the competent court, in the cases where the attachment is ordered by the judge of summary proceedings. Otherwise, the attachment shall be considered as if not made.”

The Appeals Court rejected the challenge on the basis that the defendant had not complied with the required procedures in the first instance when the defendant had initiated its original suit before the Dubai Primary Court requesting nullification of the precautionary order.

The defendant continued to appeal the judgment before the Dubai Cassation Court.

Legislative basis of the Court

The Dubai Cassation Court established its reasoning on Article 21(1) of the Federal Arbitration Law which states that unless otherwise agreed by the parties, the arbitral tribunal may, upon request of a party, or on its own initiative, order either one to take interim or precautionary measures as it may deem necessary and as required by the nature of the dispute, including taking necessary measures to preserve the goods that constitute a part of the subject-matter of the dispute, such

as the order to deposit with third parties or to sell perishable goods, and preserving assets and property of which a subsequent award may be enforced, and taking action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself.

The Court also referenced Article 21(4) which permits a party in whose interest an interim order is granted and upon a written authorization from the arbitral tribunal, to request the competent court to grant an order for the enforcement of the order issued by the tribunal or any part of it, within fifteen days after having received the request.

The Court further relied on Article 18(2) and 18(4) of the Federal Arbitration Law in respect of the powers of the President of the competent court (i.e., the Appeals Court), to order, upon request of a party or upon request of the arbitral tribunal, interim or precautionary measures, as he may deem necessary, for the current or future arbitration proceedings, whether before or in the course of the arbitration proceedings, and the effects of such an order shall not terminate, wholly or partially, except by decision of the President of the competent court.

The reasoning of the Court

The Dubai Cassation Court clarified that the legislator regulated interim and precautionary measures that may be taken either before the commencement of the arbitration procedures or during the course of those procedures, in a particular way different than the Civil Procedures Law in terms of the authority to issue the order, procedures and rules, and with respect to appealing or challenging such orders.

The Court continued to confirm that an interim or precautionary measure related to arbitration proceedings governed by the Federal Arbitration Law may not be canceled

except by a decision issued by the authority that made the order, whether it is the arbitral tribunal or the President of the Appeals Court, as regulated by the Federal Arbitration Law.

The Dubai Cassation Court established that it is not permissible to argue that the legislation is devoid of regulating challenges against arbitration interim or precautionary orders, which necessitates the application of the provisions of the Civil Procedures Law to challenge the seizure order, as it is clear from the Federal Arbitration Law that it has regulated grievance procedures against such orders vis-à-vis the authority that issues the interim or precautionary order.

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