

Drawing the Line: The Finality of the Appointment of Arbitrators by the Local Court in Qatar

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Introduction

The arbitration provisions of the Civil and Commercial Procedures Law (the 'CCPL') allow the parties of an arbitration agreement to seek the assistance of the domestic court for the appointment of arbitrators, where one party or the other fails to nominate an arbitrator. However, recently, the new Arbitration Law, Law No. 2 of 2017 (the 'New Arbitration Law') introduced a similar mechanism, but with a few procedural differences.

In a case brought before the Qatari court, the Appellant in this case, initially the Defendant, argued for the application of the New Arbitration Law as the case was filed after the Law came into force. In addition, the Appellant challenged the jurisdiction of the court on the basis that the International Chamber of Commerce ('ICC') Arbitration Rules were applicable, according to which, the ICC court shall have the jurisdiction to appoint arbitrators if a party fails to nominate an arbitrator. The case went to Cassation, whereby the Court of Cassation issued a judgment setting out two important principles; the first principle concerning the pro-active effect of the New Arbitration Law; and the second principle drawing a clear line concerning the finality of court decisions on the appointment of arbitrators.

Background

Facts

The parties to the case had entered into an agreement which contained an ICC Arbitration clause. The Claimant had brought an action before the Court of First Instance pursuant to the arbitration provisions of the CCPL. The Claimant sought the assistance of the Court of First Instance under Article 195 of the CCPL regarding the appointment of arbitrators, on the basis the Defendant failed to nominate an arbitrator. The Defendant argued that the CCPL was not applicable to the dispute, but rather, the New Arbitration Law should be adopted. Further, it argued that pursuant to the ICC rules, the ICC court should have the jurisdiction to appoint arbitrators and not the domestic courts.

The Court of First Instance ruled in favour of the Claimant and appointed the members of the arbitration tribunal. The Defendant appealed the ruling on the basis that the Court of First Instance neglected the

argument relating to jurisdiction (in that it was the ICC Court's jurisdiction regarding the appointment of arbitrators).

The Court of Appeal decided that the decision of the Court of First Instance was sound pursuant to Article 195 of CCPL. The Appellant challenged the decision before the Court of Cassation, re-iterating its position on the applicability of the New Arbitration Law. The Appellant also argued that even if it is found that the decision to appoint an arbitrator was not subject to appeal under Article 195 of the CCPL, the argument on jurisdiction, which was neglected by the Court of First Instance is open to appeal as a matter of law.

Judgment of the Court of Cassation

The Court of Cassation confirmed that the CCPL was applicable to the dispute however, it overturned the ruling of the Court of Appeal on the basis that the Court of Appeal, by disregarding the jurisdictional argument submitted by the Appellant, had erred on a legal point in its ruling.

The Court of Cassation stated, first and foremost, that the scope of the New Arbitration Law is limited to matters occurring after it had come into force. As the arbitration agreement was concluded before the implementation of the New Arbitration Law, then the CCPL remains the law applicable to the arbitration agreement in question.

However, the Court of Cassation found that the finality of the decision regarding the appointment of arbitrators only extends to that particular part of the judgment. It does not, in any way, affect the parties' right to appeal other elements of the judgment, such as possible neglect by the courts in question to consider legal arguments that were presented in the appeal.

The Court of Cassation determined that the appeal was based on a dispute over the jurisdiction of the Court of First Instance and not solely on a dispute regarding jurisdiction regarding the nomination of the arbitrators. The Court of Appeal had failed to consider the same, rendering the decision of the Court of First Instance open to appeal under the general rules of the CCPL. Consequently, it was found that the Court of Appeal erred on a point of law in deciding that the judgment/nomination was final, leading to its ruling being overturned.

Conclusion

The above-explored judgment is of significant importance as it is one of only a few judgments that have been issued by the Court of Cassation since the introduction of the New Arbitration Law. In this case, the Court of Cassation distinguished between the different elements of the dispute and the grounds for the appeal. This distinction highlighted the limitations on the finality of the court's decision when it comes to the appointment of arbitrators. The Cassation Court's finding separated the case into two elements: the decision of the Court of Appeal as to the appointment of arbitrators and the jurisdiction of the Court of Appeal. It was found that while the Court of Appeal should have the last word when it comes to the appointment of arbitrators, whether or not the court had the jurisdiction to do so in the first place is a matter of law and is hence subject to appeal.

Thus, while a decision of the competent Court of Appeal to appoint an arbitrator cannot be appealed, the decision can be challenged on the basis that the Court of Appeal, in such a case, did not have the jurisdiction to carry out such an appointment.

While the Court of Cassation concluded that the CCPL was applicable to the proceedings at hand, the principles established in the judgment may still be relevant and applicable to cases governed by the New Arbitration Law.

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