Jiangsu Hantong Ship Heavy Industry Co Ltd formerly known as Hantong Ship Machinery Equipment (Tongzhou) Co Ltd and Another v Sevan Pte Ltd
[2009] SGHC 285

Case Number : Suit 961/2008

Decision Date : 22 December 2009

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Philip Tay Twan Lip (Rajah & Tann LLP) for the appellants/plaintiffs; S Mohan and Bernard Yee (Gurbani & Co) for the respondent/defendant

Parties : Jiangsu Hantong Ship Heavy Industry Co Ltd formerly known as Hantong Ship Machinery Equipment (Tongzhou) Co Ltd; China National Aero-Technology Imp & Exp Xiamen Corporation — Sevan Pte Ltd

Arbitration

22 December 2009 Judgment reserved.

Tan Lee Meng J:

1 The appellant, Jiangsu Hantong Ship Heavy Industry Co Ltd ("Hantong"), owns a shipyard in China. The defendant, Sevan Pte Ltd, is a company within a Norwegian offshore maritime group (collectively referred to as "Sevan"). Hantong, which instituted Suit No 961 of 2008 against Sevan Pte Ltd to recover monies owed to it, appealed against the decision of Assistant Registrar Lim Jian Yi ("AR Lim") to stay the proceedings in this suit in favour of arbitration proceedings in London.

Background

2 On 27 May 2006, Hantong and Sevan entered into a contract, under which the former agreed to build a vessel called "Hull 21" for the latter ("the contract"). Under the contract, Sevan was required to make progress payments for the construction of Hull 21 within 5 banking days following its receipt of Hantong's invoices.

3 Hantong, which contended that by 12 December 2008, Sevan owed it USD 2,854,829.50 with respect to progress payments that were due for the construction of Hull 21, instituted legal proceedings in the High Court ("the proceedings") to recover the amount due to it.

4 Sevan responded by applying for the proceedings to be stayed in favour of arbitration proceedings in London in accordance with clause 34 of the contract, which provides as follows:

> Any dispute arising out of or in connection with this Contract, including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Maritime Arbitrators Association (LMAA), which rules are deemed to be incorporated by reference into this Article. The arbitration shall be held in London, England, and the language of the proceedings shall be English.

5 Hantong, which opposed a stay of the proceedings, argued that clause 34 of the contract did not come into the picture as there is no "dispute" between the parties to be referred to arbitration.

6 On 1 April 2009, AR Lim ordered a stay of the proceedings. Hantong appealed against AR Lim's

decision.

The court's decision

7 At the outset, reference may be made to s 6 of the International Arbitration Act (Cap 143A, 2002, Rev Ed) ("IAA"), which provides as follows:

> **Enforcement of international arbitration agreement 6**. — (1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.
>
> (2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings so far as the proceedings relate to the matter, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.

8 As there is no allegation that the arbitration agreement is null and void, inoperative or incapable of being performed, what is in issue is whether or not there is a "dispute" between the parties to warrant a stay of the proceedings.

9 Hantong, which insisted that it has no dispute with Sevan, claimed that Sevan had already admitted liability for the sum claimed by it and that Sevan's counterclaim has no merit.

10 To determine whether there is a dispute for the purpose of an application for a stay of proceedings under the IAA, it is immaterial that the defence or counterclaim of the party seeking a stay appears to be weak. In *Dalian Hualiang Enterprise Group Co Ltd v Louis Dreyfus Asia Pte Ltd* [2005] 4 SLR 646, Woo Bih Li J stressed at [75] that "if the defendant at least makes a positive assertion that he is disputing the claim… then there is a dispute even though it can be easily demonstrated that he is wrong."

11 In *Tjong Very Sumito and Ors v Antig Investments Pte Ltd* [2009] SGCA 41*("Tjong")*, V K Rajah JA, who delivered the judgment of the Court of Appeal, reiterated at [29] that as the whole thrust of the IAA is geared towards minimizing court involvement in matters that the parties had agreed to submit to arbitration, concurrent arbitration and court proceedings are to be avoided unless it is for the purpose of lending curial assistance to the arbitral process. He added at [69] that in line with the prevailing philosophy of judicial non-intervention in arbitration, the court will interpret the word "dispute" broadly and will "readily find that a dispute exists *unless the defendant has unequivocally admitted* that the claim is due and payable". V K Rajah JA referred to *Hayter v Nelson Home Insurance Co* [1990] 2 Lloyd's Rep 265, where Saville J explained as follows:

> Two men have an argument over who won the University Boat Race in a particular year. In ordinary language they have a dispute over whether it was Oxford or Cambridge. The fact that it can be easily and immediately demonstrated beyond any doubt that the one is right and the other is wrong does not and cannot mean that that dispute did not in fact exist. Because one man can be said to be indisputably right and the other indisputably wrong does not, in my view, entail that there was therefore never any dispute between them.

12 Although Lord Saville's illustration was offered before the 1996 English Arbitration Act came into

force, it remains relevant today for an elucidation of what is a dispute for the purpose of staying court proceedings in favour of arbitration.

13 In the present case, Sevan's director, Mr Ragnar Boe, stated in his affidavit as follows at [12]:

> I am advised and verily believe that disputes between the Plaintiffs have arisen in that the Plaintiffs are seeking payment of sums under [the contract] when payment of these sums are being legitimately withheld by the Defendants in accordance with their right of set-off on account of substantial counterclaims that the Defendants have against the Plaintiffs.

14 Broadly speaking, Sevan alleged that Hantong committed a number of breaches, in respect of which it made cross-claims. It contended, among other things, that Hantong is professionally and technically ill-equipped to perform its obligations and commitments under the contract and that Hantong's delayed performance of its obligations gives rise to claims for liquidated damages.

15 Sevan also denied having admitted liability for the amounts stated in Hantong's invoices. Hantong had relied on, among other things, the minutes of a meeting on 2 December 2008 and some correspondence between the parties to show that Sevan never expressly challenged its demand for payment of the invoiced sums. Hantong also pointed out that Sevan had asked for more time to settle the invoiced amounts. However, Sevan submitted that the minutes of the meeting of 2 December 2008 had merely recorded Hantong's view and not any admission of liability on its part. As for the correspondence referred to by Hantong, Sevan pointed out that it had been exchanged in the context of commercial negotiations to resolve the dispute between the parties amicably. Furthermore, Sevan had not had the benefit of legal advice at the material time.

16 It is noteworthy that in *Tjong* (*supra*, [11]), V K Rajah JA stressed at [61] that, generally speaking, the court should not be astute in searching for an admission of a claim, and would ordinarily be inclined to find that a claim is not admitted in all but the clearest of cases. This is not one of the "clearest of cases" where it can be said that the defendant had unequivocally accepted that the amount claimed is owed to the plaintiff.

17 After taking all circumstances into account, I find that there is a dispute between Hantong and Sevan. As such, the dispute between the parties should be resolved through arbitration in accordance with the terms of the contracts. I thus affirm AR Lim's decision and dismiss Hantong's appeal with costs.