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Contents

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Introduction

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Cases relating to the UNCITRAL Model Law on International Commercial Arbitration (MAL)

Case 1465: MAL 12(2); 13(3); 18; 34
Poland: Court of Appeal Katowice
V ACz 1106/12
A. L. v. (...) Spółka Akcyjna w P.
16 January 2013
Original in Polish

Abstract prepared by Karol Zawiślak, National Correspondent

[**Keywords**: *arbitration agreement; independence of arbitrators; challenge; equal treatment; award-setting aside*]

The District Court in Gliwice dismissed a claim on the grounds that the ineffectiveness of separate provisions of arbitration rules does not necessarily result in the ineffectiveness of the whole arbitration agreement. Moreover the Court stated that while the alleged existence of doubts on the impartiality of some of the arbitrators could play a significant role in the procedure to challenge such arbitrators (Article 1174 § 2 of the Polish Civil Procedure Code that corresponds to Article 12(2) MAL), or in the application to set aside the award (Article 1206 of the Polish Civil Procedure Code that corresponds to Article 34 MAL), it remained irrelevant in the assessment of the validity of the arbitration agreement. The Court also rejected the argument that the arbitration agreement was null and void as a result of the violation of the "principles of community life", since, as it was pointed out, had the claimant acted diligently, it would have seen on the List of Arbitrators provided by the Arbitration Court and in the Register of Entrepreneurs — both available to the public — that some of the arbitrators on the list had business or financial relations with the defendant.

Before the appellate court, the claimant maintained the same arguments insisting on the lack of validity of the arbitration agreement and the unjustified dismissal of its claim by the District Court. The Court of Appeal in Katowice upheld the decision of the District Court reasserting that doubts on the impartiality of some of the arbitrators could result in the ineffectiveness of the arbitration agreement only if the fundamental principle of equal treatment of the parties (Article 1161 § 2, Article 1169 § 3 and Article 1183 of the Polish Civil Procedure Code that correspond to Article 18 MAL) had been violated. Without this caveat, the challenge procedure as set out in the applicable Arbitration Rules and in the Polish Civil Procedure Code would not be necessary, since the arbitration agreement would be deemed invalid each time an arbitrator would be considered lacking impartiality. The Court of Appeal underlined the danger of such reasoning which would give any party the power to influence the validity of the arbitration agreement by solely raising doubts on the impartiality of one (or more) of the arbitrators. The Court of Appeal therefore considered that the procedure of appointment of arbitrators and the legal instruments on the impartiality of the arbitrator as set out in the Arbitration Rules of the Arbitration Court and in the Polish Civil Procedure Code had to be thoroughly examined.

In the case at hand, it was evident that the persons on the list of arbitrators were involved in the business activity of the defendant (as member of the board, member

of the supervisory board and as a proxy). The list also included persons performing functions in the Chamber of Commerce and Industry, of which the defendant was a member. Moreover, a former member of the supervisory board of the defendant acted as a member of the Presidium of the Arbitration Court (the body which assesses the motions on the challenge of arbitrators). However, the Court pointed out that apart from that person, the Presidium consisted of two other persons not connected to the defendant. Consequently, the argument that such situation might result in granting one party "more rights" on the constitution of the arbitral tribunal was considered unreasonable. Additionally, the decisions of the Presidium on the challenge of the arbitrator are not final: a party who is not satisfied has the right to file a motion in accordance with Article 1176 § 6 (corresponding to Article 13(3) MAL). Since the claim was solely based on the lack of impartiality of some of the arbitrators (out of the 31 arbitrators included in the list), no breach of the principle of equal treatment of the parties occurred and the arbitration agreement could not be declared void. In addition, other provisions either in the Polish Civil Procedure Code or in the applicable Arbitration Rules ensured the observance of the principle of equal treatment of the parties. Given that the defendant had no information about the persons on the list of arbitrators, the argument that when concluding the arbitration agreement the defendant deliberately and consciously sought to place the plaintiff in an unfavourable situation must be considered as unreasonable. As a consequence, the Court of Appeal ruled that no violation of the "principles of community life" occurred and dismissed the claim.

Case 1466: MAL 13(3)
Poland: Court of Appeal Poznan
I ACz 1703/12
18 October 2012
Original in Polish
Abstract prepared by Karol Zawiślak, National Correspondent

[**Keywords**: *arbitrators-challenge of; procedure*]

A motion to challenge an arbitrator appointed from the list of the Civil Court of Arbitration (CywilnegoSąduArbitrażowego) was brought before the District Court, which decided to terminate the proceedings. While the challenge procedure was pending, the Civil Court of Arbitration, of which the challenged arbitrator was a member, rendered an award. According to the District Court, in said circumstances, the motion to challenge an arbitrator was irrelevant. The claimant appealed against this decision.

The Court of Appeal upheld the District Court's decision stating that, according to Article 1176 § 6 of the Polish Civil Procedure Code (Kodekspostępowaniacywilnego) that corresponds to Article 13(3) MAL, filing of a motion to challenge an arbitrator had no impact on the proceedings before an arbitral tribunal. Such motion shall not prevent an arbitrator from taking part in works of the arbitral tribunal or exclude his right to do so. Additionally, in case an arbitrator is being challenged, he or she has no obligation to refrain from participating in the case, as prescribed in Article 51 of the Polish Civil Procedure Code. The arbitral tribunal, including the arbitrator who is being challenged, continues the arbitral proceedings and, as in the case at hand, may render an award before the motion to challenge an arbitrator is decided upon.

In the case at hand, the aim of the motion to challenge was to exclude the arbitrator from participating in the preparation of the award. Thus, the District Court reasonably relying on the provision of Article 366 § 2 of the Polish Civil Procedure Code terminated the proceedings.

Case 1467: MAL 8; 11(3); 18
Poland: Court of Appeal Bialystok
I ACz 444/11
Iwona G. v. A. Starosta i Wspólnicy spółka jawna w B.
9 May 2011
Original in Polish

Abstract prepared by Karol Zawiślak, National Correspondent

[**Keywords**: *arbitration agreement; validity; competence; equal treatment*]

A dispute arose between two parties and was brought before the District Court. The defendant invoked the lack of jurisdiction of the Court since the parties were bound by an arbitration agreement (Article 1165 § 1 of the Polish Civil Procedure Code that corresponds to Article 8 MAL). The District Court found that the arbitration agreement was incorporated into a company deed and the question of its validity arose as it was alleged that it was contrary to the principle of equal treatment of the parties pursuant to Article 1161 § 2 of the Polish Civil Procedure Code (corresponding to Article 18 MAL). According to the arbitration agreement, the Arbitral Tribunal had to be constituted by one super-arbitrator to be appointed by arbitrators nominated by every shareholder of the company. The District Court considered that this provision was contrary to the principle of equal treatment of the parties since out of seven arbitrators only one arbitrator was appointed by the claimant whose interests were consequently not equally represented (Article 1169 § 3 of the Polish Civil Procedure Code which is in line with Article 18 MAL). However, the District Court stated that the invalidity of the relevant provision cannot result in the ineffectiveness of the whole agreement. The remaining provisions of the arbitration agreement were declared valid. Consequently, as a result of the ineffectiveness of the provision defining the appointment of the arbitrator, the rules of domestic law on that matter (Article 1171 § 2 of the Polish Civil Procedure Code that corresponds to Article 11(3) MAL) were to be applied.

The claimant appealed and the Court of Appeal in Bialystok upheld the decision of the District Court confirming the invalidity of the procedure of appointment of the super-arbitrator.

Case 1468: MAL 5; 33
Singapore: Court of Appeal [2012]
SGCA 57
LW Infrastructure Pte Ltd v. Lim Chin San Contractors Pte Ltd
16 August 2012
Original in English
Available at: www.singaporelaw.sg/sglaw/

[**Keywords**: *additional award; jurisdiction; procedure*]

This case mainly concerns the application of the rules of natural justice in arbitration proceedings.

The plaintiff and the defendant entered into a contract for a building project. Since the plaintiff (as the defendant sub-contractor) failed to complete its performance by the agreed completion date, the defendant terminated the sub-contract. The resulting dispute (where the defendant was the claimant and the plaintiff the respondent) was referred to a sole arbitrator, which rendered his final award in favour of the plaintiff. Both parties appealed to the High Court, which decided in favour of the defendant and remitted the final award before the arbitrator for reconsideration. The arbitrator rendered a supplementary award in favour of the defendant. Both the final and the supplementary award included provisions of interest on the sum awarded (i.e. post-award interest).

Almost four weeks after the supplementary award, the defendant requested under Article 43(4) of the Arbitration Act, that the arbitrator rendered an additional award, specifically dealing with the pre-award interest. As a matter of fact, the defendant's claim for interest included both pre and post award interest, while the arbitrator had omitted the pre award interest in the supplementary award. Three days later this request, the arbitrator rendered an additional award including a further sum as pre-award interest although the plaintiff had not yet made any submission after the defendant's request to the arbitrator.

Before the High Court, the plaintiff claimed that the additional award should be declared a nullity, as the defendant's claim and the resulting additional award were outside of the scope of S 43(4) of the Arbitration Act, which deals with the correction or interpretation of an award and an additional award. In the alternative, the plaintiff requested that the additional award should be set aside, since it was made without granting the plaintiff the right to be heard, which constitutes a breach of natural justice. The High Court set aside the additional award, but decided against declaring the award a nullity. The case was then brought to the Court of Appeal.

Firstly, the Court noted that the new Arbitration Act was enacted to align domestic arbitration with the rules of international arbitration included in the International Arbitration Act (based on the UNCITRAL MAL) and international practice. As for the Court's power to declare the additional award a nullity, the Court stated that in the light of S 47 of the Arbitration Act (consistent with Article 5 MAL), curial intervention had to be viewed as confined and the Court shall not have jurisdiction to confirm, vary, set aside or remit an award except where so provided in the Arbitration Act. Since the new Arbitration Act does not contain such a provision for the Court to declare the nullity of an award, the Court rejected the plaintiff's claim. In providing its interpretation, the Court stressed the role of the International

Arbitration Act and the UNCITRAL Model Law in providing guidance on the interpretation of the Arbitration Act, in particular in the case of similar provisions. In the case at hand, Article 5 MAL and its commentary were to be considered.

The Court further dealt with the question of whether there was a breach of rules of natural justice in rendering the additional award. The plaintiff alleged that the "notice requirement" is embedded in the Arbitration Act and the MAL, while the defendant relied its argument on the comment on Article 33 MAL in the *Analytical Commentary on Draft Texts of a Model Law on International Commercial Arbitration*, *Report of the Secretary General (A/CN.9/264)*, which reads: "If the arbitral tribunal considers the request, not necessarily the omitted claim, to be justified, it shall make an additional award, irrespective of whether any further hearing or taking of evidence is required for that purpose."

The Court first noted that the defendant had incorrectly relied on the fact that S 43(4) of the Arbitration Act does not expressly provide for the other party a right to be heard. S 43(4) is modelled on Article 33(3) MAL, therefore "the materials that are relevant in the interpretation of Article 33(3) MAL will also assist in the interpretation of S 43(4) of the Act". The Court further emphasized that the "notice requirement" included both in S (43(4) and Article 33 MAL is not simply an extension of the general rule that a party to arbitration proceedings needs to inform the other party when it communicates with the arbitrator, as the defendant alleged. Referring to the *travaux préparatoires* of the Model Law, and to subsequent discussions by UNCITRAL, the Court clarified that the "notice requirement" implied the opportunity for the plaintiff to respond to the defendant's request for an additional award. Such opportunity to respond resulted from the standard of fairness of Article 18 MAL (with which S 22 of the Arbitration Act is consistent) and was highlighted in the sentence "with notice to the other party" contained in both the Model Law and the UNCITRAL Arbitration Rules. Therefore, the approach taken in the *travaux préparatoires* was the opposite of what the defendant contended. The purpose of Article 33(3) MAL is to allow arbitral tribunal to make additional awards both on claims that require additional hearings or evidence and on claims that do not require such additional hearings or evidence, as long as the claim is within the arbitral tribunal's mandate.

In this regard the Court also expressed disagreement with the views of the High Court, which considered that all the submissions and evidence necessary for the additional award must have been placed before the arbitral tribunal during the main arbitral proceedings and nothing further should be required to make the decision. In the Court's opinion, the arbitral tribunal must first decide the jurisdictional question, namely whether a claim presented in the arbitration has in fact been omitted, and in doing so the tribunal must give the other party an opportunity to be heard. The words from the *Analytical Commentary* relied upon by the defendant apply to the substantive question and they mean that once the tribunal decides that a claim has been omitted, it must render an additional award to deal with the unresolved question and it must proceed to do so whether additional evidence is required or not. "Nothing in the *Analytical Commentary* excludes the opportunity for evidence… or hearings to be held".

In light of the above, the Court concluded that there was a breach of rules of natural justice in rendering the additional award, since the plaintiff had been denied the possibility to respond. Further, the Court found that a breach of natural justice had

also occurred in relation to the substantive question, i.e. if the pre-award interest should be awarded and, if so, to what extent. Had the plaintiff been given the opportunity to be heard the arbitrator might have adopted a different approach in the additional award.

For all these reasons the Court affirmed the decision of the High Court and set aside the additional award.

Cases relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards — The "New York" Convention (NYC)

Case 1469: NYC I; IV(2); V(1)(b); V(1)(d); V(1)(e)
People's Republic of China: Hubei Jingmen Intermediate People's Court
[ref.] No. 19 (2013)
Olam International Limited v. Jinshan Jiawei Textiles Enterprises, Ltd.
20 January 2014
Original in Chinese
Available at: www.court.gov.cn

This case concerned an application for the recognition and enforcement of a British arbitral award in China. The claimant (seller) and the respondent (buyer) entered into a cotton sales contract pursuant to which any dispute should be submitted to the International Cotton Association (ICA) in Liverpool, England, for arbitration in accordance with its rules. Subsequently, the buyer refused to perform the contract as agreed and the seller applied for arbitration to the ICA, which decided in favour of the seller. The buyer failed to comply with the arbitral award and the seller applied to the Hubei Jingmen Intermediate People's Court for the recognition of the award.

The Court ascertained that both China and the United Kingdom of Great Britain and Northern Ireland were contracting States of the New York Convention and that, in accordance with Article I NYC, the claimant had the right to apply to a Chinese Court for recognition and enforcement of the award. Since the claimant had filed its application within the time frame provided for in the Civil Procedure Law of the People's Republic of China, the case could be adjudicated by the Jingmen Intermediate People's Court. During the proceedings, the respondent argued that evidence submitted by the claimant was not in compliance with the provisions of Article IV(2) NYC. The Court held, however, that the evidence did comply with both the provisions of the Civil Procedure Law of the People's Republic of China and those of the New York Convention with respect to the translation and certification of the ruling; the Chinese translation was accurate and the claimant had exercised due diligence when engaging the translation service and the services of the notary's office. The error in the notary's certificate would not necessarily result in loss of the certificate's evidentiary value. Unless the respondent provided evidence of error in the notary's certificate, the Court would deem the documents valid evidence.

The respondent further objected to the recognition of the award on four different grounds, all of which were rejected by the Court. First, it argued that the sales contract between the parties only stipulated that disputes should be settled through arbitration in accordance with the rules and articles of association of the ICA, and

did not specify an arbitration institution. Therefore, pursuant to Article V(1)(a) NYC, the ICA did not have jurisdiction over the case. The Court, held that the ICA should be the arbitration institution in accordance with Article 6(2) of the United Kingdom Arbitration Act 1996. Second, the respondent argued that the ICA had failed to give proper notice to the respondent of the arbitration proceedings as required under Article V(1)(b) NYC. The Court ruled that the defence was inadmissible, given the facts of the case and the provisions under Article 76 of the United Kingdom Arbitration Law 1996 and Article 316 of the Articles of Association of the ICA. Third, the respondent argued that the arbitral award fall under Article V(1)(d)NYC regarding the composition of the arbitral authority and arbitral procedure. The Court held that this question required a substantive review of the arbitral award, which was beyond the scope of the Court as reviewing authority. The defence was therefore inadmissible. Fourth, the respondent argued that the arbitral award had not become binding on the parties as per Article V(1)(e) NYC and was hence unenforceable. However, the Court ruled that that claim could not be established given the facts of the case.

For these reasons, the court recognized the validity of the ICA award and ordered the respondent to carry out its payment obligation within thirty days of the Court's decision.

Case 1470: NYC V(1); V(2)
People's Republic of China: Tianjin Higher People's Court
[ref.] No.15 (2012)
China National Chartering Co. v. Guangdong Liwen Paper Manufacturing Ltd.
5 May 2012
Original in Chinese
Available at: www.court.gov.cn

This case concerned a dispute over a maritime security contract. In November 2012, a Hong Kong chartering company (hereinafter "the chartering company") and the plaintiff, entered into a charter contract for the chartering of a vessel for shipping goods from Vietnam to the South of China. The defendant, a Chinese manufacturer (hereinafter "the guarantor") served as the performance guarantor for the chartering company. The guarantor executed a letter of guarantee specifying that Tianjin Maritime Court would have jurisdiction over any dispute that would arise from the non-performance of the charter contract, and that the guarantor would assume all liabilities in case of breach.

When the chartering company failed to pay the chartering fee on the contract due date and requested the contract to be rescinded, the plaintiff submitted the dispute to the London Maritime Arbitrators Association (LMAA) for arbitration against the chartering company pursuant to the contract. The LMAA found that the contractual relationship between the chartering company and the plaintiff to have been validly established and that the chartering company was liable for the subsequent breach of contract. The tribunal awarded monetary damages to the plaintiff, who then applied to the Hong Kong Court for the recognition and enforcement of the arbitral award. Once the recognition was granted, however, the chartering company became insolvent and the plaintiff was unable to obtain the award. The plaintiff thus filed a lawsuit against the defendant in Tianjin Maritime Court, requesting that the

defendant assume joint liability for the breach of the charter contract, and perform its obligations under the terms of the security guarantee contract.

The Tianjin Maritime Court held that: (i) the LMAA arbitral award had been notarized and certified, and hence complied with both the New York Convention and the Decision of the Standing Committee of the National People's Congress on China's Accession to the New York Convention; (ii) the circumstances in which the recognition and enforcement of an arbitral award may be refused, as set forth in Articles V(1) and (2) NYC, were not present; and (iii) the award did not violate the reservations made by China on accession to the Convention. The Court concluded that the award was therefore admissible as evidence in civil proceedings in China. Moreover, because the procedure through which the guarantor and the plaintiff entered into the security contract was defective pursuant to relevant provisions in China Companies Law, the guarantor can assume no more than one half of the chartering company's debt in case of insolvency. Hence, the Tianjin Court held that the defendant was responsible for one half of the chartering company's liability under the LCAA Award and ordered immediate payment. The defendant appealed. The court of second instance held that the lower court was correct in the application of the law and affirmed the decision above and dismissed the case.

Case 1471: NYC IV; V; V(1)(b)
Republic of Korea: Seoul Central District Court 2013
Gahap1407
5 July 2013
Original in Korean
Unpublished

Prepared by Haemin Lee, National Correspondent

The plaintiff is a cable channel broadcasting company based in the United States of America ["the United States"], and the defendant is a Korean company which operates a broadcasting business. The parties signed a licensing contract which guaranteed the defendant with the exclusive right to re-transmit television programs owned by the plaintiff in the Republic of Korea, in return for licensing fees paid by the defendant.

Later on the plaintiff filed a request for arbitration to the Hong Kong International Arbitration Centre seeking payment for unpaid licensing fees from the defendant. The arbitral tribunal issued an award accepting the entirety of the plaintiff's claims.

The plaintiff sought enforcement of the aforementioned award. The Korean court found that the arbitral award fulfilled all of the requirements for enforcement under the New York Convention, since the plaintiff had submitted the copy and translation of the arbitral agreement and arbitral award, which had been duly certified in accordance with Article IV NYC. The court therefore found that compulsory execution was permitted, since there were no grounds for refusal prescribed in Article V NYC.

The defendant argued that the enforcement should be refused based on Article V(1)(b) NYC, because the defendant was unable to appoint its counsel during the arbitral procedure, and the defendant's CEO was unable to attend the hearing at Hong Kong in person. However, the court rejected this argument, stating

that Article V(1)(b) NYC cannot be applied to every situation where a party's right to defence is infringed, but it is limited to cases where the infringement is considerable and thus unacceptable. In this case, the court found that the defendant's circumstances did not constitute such unacceptable infringement of its right to defence.

Cases relating to the UNCITRAL Model Law on International Commercial Arbitration (MAL) and the United Nations Convention on Contracts for the International Sale of Goods (CISG)

Case 1472: MAL 18; 34; CISG 1; 35
Singapore: High Court [2014]
SGHC 220
Triulzi Cesare SRL v. Xinyi Group (Glass) Co. Ltd
30 October 2014
Original in English
Available at: www.singaporelaw.sg/sglaw/

Abstract prepared by Anna Stepanowa

The applicant (i.e., the seller) is a company incorporated in Italy manufacturing and producing horizontal and vertical washing machines for glass sheets. The respondent (i.e., the buyer) is a company incorporated in Hong Kong manufacturing and selling glass products. The parties entered into three contracts providing for the sale and purchase of washing machines.

The buyer cancelled all three contracts as the supplied machines failed to pass the acceptance test. Further, it claimed for reimbursement of the whole purchase price and damages. The seller argued that the supplied machines were operative and that the bad operation of the machines was due to the dirty environment of the buyer's premises. The International Court of Arbitration of the International Chamber of Commerce (the "Tribunal") rendered an award in favour of the buyer and dismissed all the counterclaims made by the seller.

Consequently, the seller requested the High Court of Singapore (the "Court") to set aside the award due to serious breaches by the Tribunal and the violation of obligations under the procedural rules and the Model Law. The seller claimed that the award should be set aside (i) as the Tribunal had not observed the arbitral procedure as agreed by the parties, in particular as regards the expert evidence (Article 34(2)(a)(iv) MAL); (ii) the parties had not been treated equally as prescribed by Article 18 MAL; (iii) the Tribunal had breached the rules of natural justice as prescribed in Article 34(2)(a)(ii) MAL; and (iv) the award was contrary to the public policy of Singapore (Article 34(2)(b)(ii) MAL) as the Tribunal had failed to apply the United Nations Convention on the International Sale of Goods (the "CISG").

First, the Court decided that an agreement to have recourse to expert evidence may be regarded as a procedural agreement that the Court is obliged to follow. Article 34(2)(a)(iv) MAL is of discretionary nature, hence, the Court is not obliged to set aside the award, if one of the grounds under Article 34(2)(a)(iv) MAL applies. When deciding on setting-aside the award, the Court should focus on materiality or seriousness of the procedural breach. The seller referred to the procedural timetable

and the instruction to "file a witness statement" as set out in the procedural timetable. The Court found that the procedural timetable is established by the arbitral tribunal and not by way of an agreement by the parties. Moreover, since the procedural timetable constitutes a procedural order issued by the Tribunal, it cannot be regarded as an agreed procedure for the purposes of application under Article 34(2)(a)(iv) MAL.

Then, the Court decided that Article 18 MAL aims at protecting a party from a possible misconduct by the arbitral tribunal and is not intended to protect a party from its own "failures or strategic choices." In addition, Article 18 does not require that both parties are treated identically, but that similar standards are applied to all parties throughout the arbitral process.

The Court also found that procedural fairness required only that a party should be given "a reasonable opportunity to present its case" and not that the Tribunal needs to ensure that "a party makes the best out of a procedural step to which it is entitled."

The seller claimed that the Tribunal was obliged to apply, as the governing law of the contracts, the CISG that Singapore had signed and ratified, and therefore, that the award was in conflict with the Singapore's public policy as the Tribunal failed to apply the CISG. The Court noted that the Tribunal had decided that the governing law of the contracts was the law of Singapore. Moreover, domestic legislation in the form of the Sale of Goods Act (United Nations Convention) Act (Cap 283A, 2013 Rev Ed) (the "Sale of Goods Act") gives effect to the CISG, thus as the governing law is Singapore law, the Tribunal would be referring to the common law and statutes in force in Singapore, including the Sale of Goods Act. Moreover, the Tribunal applied Article 35 CISG as to the requisite of the burden of proof. In the event that the Tribunal did not consider other relevant articles of the CISG when it ought to, it would have been an error of law, and such error does not engage the public policy ground under Article 34(2)(b)(ii) MAL.

The Court finally addressed the seller's argument that the alleged failure of the Tribunal to apply the CISG violates Singapore's policy of upholding international obligations and should be set aside pursuant to Article 34(2)(b)(ii) MAL. The Court noted that the notion of public policy is to be understood in the narrow sense and that failure to apply the CISG could not be considered offensive or as violating Singapore's "most basic notion of morality and justice". The Court further stressed that Singapore had honoured its obligations as a signatory to the CISG by passing domestic legislation giving legal effect to the Convention.

Arguing that there was no choice of law agreement in any of the contracts signed by the parties, the Court stated that it was clearly within the Tribunals' powers, pursuant to the arbitration agreement which also includes the agreed institutional rules, to determine Singapore law as the governing law of the contract. Since the seller had agreed to the application of the ICC Rules, it had also agreed to have the dispute resolved in accordance with the rule of law determined by the Tribunal even if it disagreed with the Tribunal's choice.

Therefore, the Court found no grounds — among those on which the seller based its claim — for the award to be set aside.