Going International: The SICC in Frontier Holdings

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The Singapore International Commercial Court ("SICC") in *Frontier Holdings Ltd v. Petroleum Exploration (Pvt) Ltd* overturned a jurisdictional ruling by an International Chamber of Commerce ("ICC") arbitral tribunal, holding that the tribunal did, in fact, have jurisdiction to hear the dispute. The SICC's decision focused on interpreting the arbitration provisions in the Petroleum Concession Agreements ("PCAs") and Joint Operating Agreements ("JOAs"), which had created ambiguity regarding whether disputes between foreign parties, i.e., Foreign Working Interest Owners ("FWIOs"), and Pakistan parties, i.e., Pakistani Working Interest Owners ("PWIOs"), were subject to international arbitration. The arbitral tribunal, by majority, had concluded the PCAs restricted ICC arbitration to disputes between FWIOs *inter se* or between FWIOs and the President of Pakistan, thereby excluding disputes between FWIOs and PWIOs. The SICC rejected this reasoning and concluded that the provisions should be applied with necessary modifications to fit the JOAs' context by conducting an in-depth construction of the dispute resolution provisions of the different agreements involved. The court found that a reasonable interpretation of these provisions indicated an intention to submit FWIO-PWIO disputes to ICC arbitration rather than Pakistani domestic arbitration.

The (Un)Complicated Fact Pattern

The dispute arose from an oil and gas exploration agreement in Pakistan, where Frontier Holdings Limited ("FHL"), a company incorporated in Bermuda, sought to challenge a jurisdictional ruling made by an arbitral tribunal under the auspices of the ICC. FHL's claim was based on JOAs and PCAs signed in 2006 between PEL and the President of Pakistan, which governed oil exploration and production in the Badin South and Badin North Blocks. These agreements contained provisions regarding arbitration and dispute resolution, specifically Article 28, which stipulated that disputes that the International Centre for Settlement of Investment Disputes did not take jurisdiction over were to be

resolved by arbitration under the ICC. Article 28.3 clearly stated that Article 28 was only applicable to a dispute between FWIOs *inter se* or between the FWIOs and the President of Pakistan. The JOAs, which were annexed to the PCAs, further stated under Article 17 that any dispute arising out of the JOAs was to be dealt with *mutatis mutandis* in accordance with Article 28 of the PCAs. Furthermore, Article 29.6 stated that where matters were not specifically dealt with in the PCAs, the matters would be governed by, among other things, the Pakistan Petroleum (Exploration and Production) Rules 2001 ("Rules"). These Rules, as per Rule 74 required that any dispute regarding a petroleum right or anything connected to such right was to be resolved by arbitration in Pakistan under Pakistani law. Article 18.1 and 1 of the PCAs stipulated that in case of a conflict between the JOA and PCA, the JOA would be regarded as modified to conform to the PCA, and in case of inconsistency or difference in such terms, the terms of the PCAs would prevail, respectively. FHL acquired a 50% working interest in the Blocks through a Farm In Agreement ("FIA") and Deed of Assignment. In 2022 and 2023, PEL, as the operator, sought to forfeit FHL's interest due to non-compliance with cash calls. FHL initiated arbitration under ICC rules, but PEL contended that the arbitral tribunal lacked jurisdiction, arguing that the applicable arbitration provisions under the PCAs and JOAs did not cover disputes between FWIOs and PWIOs. The arbitral tribunal, by majority, ruled that it had no jurisdiction. This led to FHL challenging the tribunal's ruling before the SICC.

Judicial Analysis by the SICC

At the outset, there was no dispute between the parties on two aspects: first, that Pakistani law was the proper law of the contract, and second, that the incorporation of Article 28 of the PCAs into the JOAs by Article 17 of the latter agreements demonstrated that each of FHL and PEL consented to resolve disputes arising out of the JOAs by arbitration *per se* to the exclusion of litigation before domestic courts (hence, an agreement to arbitrate *per se* existed). The core issue before the court was whether the tribunal had jurisdiction to hear the dispute between FHL and PHL. To do this, the SICC engaged in the interpretation of Article 28 of the PCAs and Article 17 of the JOAs. The court analysed the textual ambiguities and how the provisions should be construed in light of the overall intent of the agreements.

Pakistan is a partial integration jurisdiction, meaning that the court could go beyond the words of the agreement to construe its meaning only when such

words were ambiguous. In the event of ambiguity, the court could consider the contract's commercial purpose and the factual background against which that contract was made. If the words of the agreement on their plain and ordinary meaning led to inconsistency within the document or absurdity, the plain and ordinary meaning of those words could be reasonably modified to avoid absurdity and inconsistency and reflect the parties' intention.

In understanding the parties' intention, the SICC concluded that upon reading Article 28 of the PCAs as a whole, the intention that disputes involving FWIOs were to be dealt with in a manner other than by Pakistani arbitration (which was specifically stipulated for disputes between PWIOs *inter se* or between PWIOs and the President) even though it did not specifically deal with FWIO-PWIO disputes. Furthermore, because the JOA was annexed to each of the PCAs which were in turn envisaging assignments of interests, there existed an understanding that parties other than the original Pakistani parties could become parties to the JOAs and become subject to the dispute resolution provision in Article 17 of the JOAs. The SICC concluded that FHL became a party to the PCAs and JOAs when it acquired its interest and noted that in the Assignment Agreement between FHL, PEL and the President, there was an ICC arbitration clause. Reading Article 28 of the PCAs and Article 17 of the JOAs with Article 29.6 of the PCAs sand Rule 74 of the Rules, the court concluded that to say that FWIO-PWIO fell under Article 29.6 would render the words "mutatis mutandis" in Article 17 otiose. The court concluded that Article 28.3 of the PCAs applied, moulded by the use of the words "*mutatis mutandis*," by substituting "Pakistan Working Interest Owner" for "THE PRESIDENT" in Article 28.3. This was the approach which commended itself to the England and Wales Court of Appeal ("EWCA") in *Hashwani and others v. OMV Maurice Energy* [2015] EWCA Civ 1171 wherein a similar fact pattern was examined. The SICC further noted that there was a clear intention that disputes involving FWIOs were to be resolved by arbitration outside Pakistan because the expression could not be given effect otherwise. There was no inconsistency with Article 18 and Article 1 and this as per the SICC. Article 29.6 and Rule 75 of the Rules were default provisions and did not alter the meaning of Article 28 of the PCAs and Article 17 of the JOAs.

The contention that FHL was not a party to the original PCAs was irrelevant, and the SICC held that PEL was incorrect in drawing a parallel to the factual matrix in *Hashwani* in this regard. In *Hashwani*, the EWCA had allowed the party which

sought to invoke ICC arbitration even though they were not a party to the original contract. Furthermore, it was a strained construction of Article 17 to say that despite its express incorporation of Article 28, the resolution of the dispute was not governed by Article 28 of the PCAs but by a default provision. Finally, that the FIAs contained an ICC arbitration clause provided support for the contention that the parties' intention at the time FHL entered into the PCAs and became a party to the JOAs was for FWIO-PWIO disputes under the JOAs to be governed by international arbitration. In the circumstances, the SICC held that the majority of the tribunal was incorrect in contending that the tribunal had no jurisdiction to hear or determine the dispute and that FHL was entitled to pursue its claim.

The Ruling's Implications on Commercial Contracts

The court emphasised that reading the arbitration clauses in a restrictive manner, as the tribunal's majority had done, undermined commercial certainty and the purpose of arbitration in cross-border energy contracts. By setting aside the tribunal's ruling, the SICC reinforced the principle that arbitration agreements should be interpreted in a manner that upholds international commercial arbitration, particularly when foreign investors are involved in contracts with state-linked entities. The decision provides clarity on jurisdictional disputes in international contracts, ensuring that parties engaging in cross-border investments can rely on neutral arbitration forums rather than being subjected to domestic dispute resolution mechanisms.

The SICC's ruling in *Frontier Holdings* carries significant implications for commercial contracts, particularly in international energy and infrastructure agreements. It underscores the necessity for clarity in arbitration agreements, emphasising that parties must explicitly define jurisdictional provisions to avoid ambiguity. The ruling highlights the careful use of terms like "*mutatis mutandis*", which, if not properly drafted, can lead to interpretational disputes. This becomes so much more of a zone of ambiguity because of other provisions in the contract which provide for other means of dispute resolution in a different set of circumstances, such as between a combination of specific parties in a multi-party agreement or based on the subject matter of the dispute. India, another partial integration jurisdiction, has faced similar challenges regarding arbitral jurisdiction in cross-border commercial disputes. Several key cases illustrate how Indian courts have approached arbitration agreements in international contracts. For instance, in *Enercon (India) Ltd v. Enercon GmbH* (2014) 5 SCC 1, the

Supreme Court of India ruled that arbitration agreements must be interpreted in a way that ensures disputes are effectively resolved through arbitration. Similarly, in *Cairn India Ltd v. Union of India* (2019 SCC OnLine Del 10792), the Delhi High Court emphasised that arbitration clauses should be construed in favour of international arbitration, especially in contracts involving foreign investment. The implications of the SICC's approach, as seen in *Frontier Holdings*, suggest that partial integration courts could adopt similar reasoning in cases involving foreign and Indian entities in commercial contracts. That said, parties would be in a much better position if they drafted provisions, especially those as pertinent as the dispute resolution terms, in clear terms.

Additionally, the decision reinforces the importance of international arbitration, affirming the preference for neutral forums in resolving cross-border commercial disputes, especially where foreign investors are involved. By setting aside the arbitral tribunal's restrictive interpretation, the judgement further strengthens protections for foreign investments, ensuring that foreign investors are not subjected to domestic arbitration in host states, particularly in cases where state-owned entities are parties to the dispute.