

The permissibility of filing a single arbitration case in a multi-contract dispute: a recent judgment of the Dubai Court of Appeal

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Introduction

This article considers, with reference to a recent Dubai court judgment (Dubai Court of Appeal judgment 19 of 2020), the question whether, where two parties who enter into multiple contracts for the same project, each of which contains an identical arbitration agreement providing for arbitration under the rules of the Dubai International Arbitration Centre ('DIAC Rules'), and are in dispute, under the DIAC and/or UAE laws, whether one party may proceed against the other in one set of proceedings or is required to initiate multiple proceedings.

Background of dispute

A subcontractor ('Subcontractor') entered into six contracts (Contracts) with a main contractor ('Main Contractor') to provide certain work for the same project in three different locations. The Contracts included an identical arbitration clause which provided for the submission of disputes arising under the Contracts to arbitration under the DIAC Rules.

The Subcontractor performed the works under the Contracts. However, the Main Contractor failed to pay the Subcontractor all amounts owed to it under the Contracts. Therefore, the Subcontractor commenced one set of arbitral proceeding under the DIAC Rules to claim its outstanding payments under all of the Contracts, following which the arbitration case was registered by DIAC, and an arbitration panel was constituted in accordance with the arbitration agreements to resolve all dispute arising under the Contracts.

The Main Contractor raised a jurisdictional defence, arguing that the arbitral tribunal lacked jurisdiction to review this dispute, as the Subcontractor combined claims arising from all six Contracts into one arbitration case, notwithstanding that each of the Contracts was an independent contract, and had its own arbitration agreement, and consequently the Main Contractor alleged that neither the DIAC Rules, nor UAE laws allow a party to file one arbitration case based on multiple contracts. The Main Contractor referred to, among other articles, article (1) of the DIAC Rules, which defines the arbitration agreement as a single arbitration agreement, and articles (41), and (53) of the UAE Arbitration Law No. 6 of 2018 ('UAE Arbitration Law') which refers to a single arbitration agreement. The Subcontractor rejected the Main Contractor's argument related to the lack of jurisdiction, and insisted that the arbitration panel enjoyed jurisdiction to review this arbitration case.

The arbitral tribunal issued a preliminary award ('Arbitration Award') on jurisdiction, in which it determined that it did not have jurisdiction to review the arbitration case, as the Subcontractor filed one arbitration case based on six Contracts, and instead should have had filed separate arbitration cases for each

Contract, based on its views that neither the DIAC Rules, nor UAE law, permit the commencement of a single arbitration case based on multiple contracts. The arbitral tribunal took the view that the DIAC Rules, and the UAE Arbitration Law define the arbitration agreement as a singular arbitration agreement, and do not permit the commencement of an arbitration case based on multiple arbitration agreements.

The Subcontractor requested Al Tamimi & Company, which had not been involved in the arbitration proceedings, to challenge the Arbitration Award before the competent local court local Court. Consequently, ATCO filed a nullification request number before the Dubai Appeal Court. The nullification request highlighted to the Appeal Court that neither the DIAC Rules, nor the UAE Arbitration Code did not expressly exclude the submission of a single arbitration case based on multiple arbitration agreements in multiple contracts. Furthermore, article (1.2) of the DIAC Rules provides that words used in singular include the plural and vice versa, as the context may require. Therefore, the reference in the Arbitration Award to the arbitration agreement under article (1.1) of the DIAC Rules, which defines the arbitration agreement as a single arbitration agreement, was not accurate, since article (1.2) of the DIAC Rules provides that words used in the singular include the plural and vice versa, as the context may require. Accordingly, and as long as the DIAC Rules did not include any explicit provision which prevented the submission of a single arbitration case based on multiple arbitration agreements that are set out in several contracts, then it should be allowed to do so.

In addition, the arbitration agreements were governed by UAE law. One such law is the UAE Civil Procedural Code, which permits the filing of a single case based on multiple contracts. Furthermore, the UAE Arbitration Law did not include any provision, which proscribed the filing of one arbitration case based on multiple arbitration agreements in multiple contracts.

Dubai Appeal Court judgment

The Appeal Court accepted our nullification request, and our arguments related to the nullification of the Arbitration Award.

The Appeal Court highlighted in its reasoning that the reference to the Arbitral Tribunal to article (1.1) of the DIAC Rules, which defines the arbitration agreement as a singular arbitration agreement, as a ground to justify its finding that the DIAC Rules do not permit the filing of a single arbitration case based on multiple arbitration agreements in multiple contracts, was invalid, as article (1.2) of the DIAC Rules provided that words used in singular include the plural and vice versa, as the context may require.

The Appeal Court further highlighted that since the DIAC Rules are silent on whether the filing of a single arbitration case based on multiple agreements is permitted, the matter was to be determined under the UAE Civil Procedural Code, as both parties had agreed in their arbitration agreements to apply UAE law, article (25/9), which permits the filing of a single case based on multiple contracts.

Accordingly, the Court determined that that the Arbitration Award did not apply the law that both parties agreed to apply, and consequently the Arbitration Award was to be nullified based on article (53/e) of the UAE Arbitration Law, which provides that the arbitration awards shall be nullified if the arbitral award excludes the application of the Parties' choice of law for the dispute. The Main Contractor did not challenge the appeal judgment before the cassation court, and therefore the appeal judgment became final, and binding.

Conclusion

The DIAC Rules are silent on whether it is allowed to file a single arbitration case based on multiple arbitration agreements in multiple contracts. In that case, the question is to be determined under the applicable law of the arbitration agreement. In the present case, UAE law applied. The UAE Civil Procedural Code permits the filing of a case based on multiple agreements (provided the court's fees shall be calculated based on each claim for each contract). It is suggested that if contracting parties, who have agreed to submit their disputes to arbitration under the DIAC Rules, wish to avoid the filing of a single case in a multi-contract dispute, they should expressly provide for this in the respective arbitration agreements.

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