Apparent Authority when Signing Arbitration Agreements

Zafer Oghli
z.oghli@tamimi.com - Sharjah, UAE
Marwa El Mahdy
m.elmahdy@tamimi.com - Sharjah, UAE

June – July 2017

A party seeking to invalidate the arbitration agreement, as a ground for the annulment of an arbitration award, may allege that the signatory to the arbitration agreement was not authorised to agree to bind the company to arbitrate. The most common scenario that leads to such a claim is when the signatory to the arbitration agreement is not the manager of the limited liability company and does not have the necessary authorisation to bind the company to the arbitration clause.

In a recent judgment issued by the Dubai Court of Cassation (the 'CC') dated 24/2/2016, the CC tackled the issue of the authorised signatory in order to ensure the stability of commercial transactions and the principle of good faith when two parties are entering into an agreement, especially where arbitration is an agreed term.

The facts of the case

The Claimant is a leading real estate developer that entered into sale and purchase agreements for four plots of land (the 'SPAs') with the Defendant. The Claimant alleged that the Defendant had breached the SPAs by their failure to pay the full purchase price of the plots. The Claimant issued a claim against the Defendant at the Dubai Court of First Instance ('CFI') claiming an amount of AED 22,753,201.00, together with interest.

The Defendant filed its defence initially as a jurisdictional challenge, which essentially invoked the arbitration clause and requested that the Court dismiss the claim for its lack of jurisdiction. The Claimant, which is a limited liability company, responded claiming that the arbitration clause was invalid because the signatory to the SPAs was not the manager of the Claimant's company and, hence, did not have the capacity to bind the company to an arbitration clause.

On 29/1/2015 the CFI issued its judgment dismissing the Claimant's case due to the parties' agreement to resolve their disputes through arbitration.

On Appeal to the Court of Appeal

The Claimant appealed the CFI's judgment and on 30/6/2015 the Dubai Appeal Court overturned the CFI's judgment and referred the case back for the lower court to re-adjudicate the case. In its decision the Appeal Court found the arbitration clause invalid because it was agreed to by a signatory other than the manager of the Claimant's company.

On Appeal to the Court of Cassation

The Defendant challenged the Appeal Court's decision at the CC on the grounds that the Appeal Court erred in finding the arbitration clause invalid due to the lack of capacity and authority of the Claimant

company's signatory.

The Defendant argued that it is evidenced from the Claimant company's trade licence that the director/manager of the Claimant's company at the time of signing the SPAs was the same person whose name is stated in the SPAs as a representative of the Claimant's company.

In addition, the Defendant further argued that the principles of good faith dictate that authority and capacity to enter into arbitration on behalf of a limited liability company is presumed to be issued by its manager/director or by a representative authorised to represent the company in the agreement.

Judgment of the CC

The CC upheld the Defendant's argument.

The CC stated that it is an established rule that arbitration is the parties' explicit agreement for their disputes to be resolved by one or more arbitrators rather, than the normal route of resorting to the State Courts. It is also well established in the rulings of the CC that an arbitration agreement may only be made by a party having the capacity and competence to dispose of the disputed right. This is because the agreement to arbitrate amounts to a waiver of the right to institute the action before the State Court, which has certain guarantees provided to litigants. Arbitration, as an exceptional mode of dispute resolution, therefore requires a special power of attorney. In this vein, a director of a limited liability company is the only person that has the capacity to bind the company to an arbitration agreement (unless such company's articles of association dictate otherwise).

Furthermore, it is established in precedents of the CC that, if the name of a certain company is stated at the beginning of an agreement and a person signed the agreement on behalf of this company where signatories are set out to sign, this constitutes a legal presumption confirming that the person who signed the agreement was authorised by the company to enter into contractual agreements. In this case, all rights and obligations stemming from this agreement become binding on the company.

To elaborate, the CC made a distinction between two scenarios:

- If the name of the company is stated at the beginning of an agreement, followed by the name and capacity of its representative, and such agreement was signed by a readable name, other than that of the representative stated at the beginning of the agreement, and when such agreement contains an arbitration clause, a party may argue the invalidity of the arbitration agreement due to the lack of capacity of the signatory to bind the company to arbitration.
- If the name of the company is stated at the beginning of the agreement without stating the name and capacity of its representative, and when such agreement is signed with an unreadable signature, it is then a conclusive legal presumption that such signature is attributed to the person who has the legal capacity to bind the company to an arbitration agreement. A party may not then challenge the validity of the arbitration agreement.

The reason for such distinction, as reasoned by the CC, is that the principles of good faith dictate that a party's consent when entering into a contractual obligation must be free of any coercion or misrepresentation. This is in addition to the legal rule that a party may not manufacture evidence for itself against another.

In light of the above, when examining the SPAs where the parties agreed to arbitration, the CC noted that the names of parties were stated without explicitly stating the names of its representatives. The SPAs were further signed by unreadable signatures without stating the names of such signatories. Consequently, the Court found that, in line with the legal principles stated above, the signatures on the SPAs were attributed to the legal representatives of the parties and as such their agreement to arbitrate was valid and the State Courts did not have jurisdiction over the dispute.

Conclusion

Parties entering into any agreement would be advised to ensure that the names and capacities of their signatories are clearly stated both at the ‘parties’ clause as well as the ‘signature’ section of the contract. This is especially the case when there is an agreement to arbitrate.

Moreover, the parties must be mindful of the fact that only the authorised person whose name is stated in the agreement must actually sign the agreement, otherwise they may face challenges to the authority of the signatories and, by extension, the terms of the agreement.