SPC Guiding Case No. 197: Application by Shenzhen Shizheng Gongying Investment Holding Co., Ltd. and Shenzhen Municipal Transport Bureau to Confirm the Validity of an Arbitration Agreement

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 27, 2022.

Keywords

Civil litigation / application to confirm the validity of an arbitration agreement / first hearing / re-arbitration

Holding

Where a party fails to raise an objection to the validity of the arbitration agreement before the first hearing of the arbitral tribunal, it shall be deemed that the party has accepted the arbitral tribunal's jurisdiction over the case. Although the case re-enters the arbitration procedure, it is still an arbitration procedure for the same dispute; where a party raises an objection to the validity of the arbitration agreement before the hearing of the re-arbitration, this does not fall within the circumstance of "raising an objection before the first hearing of the arbitral tribunal" prescribed in paragraph 2 of Article 20 of the Arbitration Law of the People's Republic of China.

Basic Facts

Shenzhen Shizheng Gongying Investment Holding Co., Ltd. (hereinafter "Shizheng Gongying Company") alleged: The dispute between Shizheng Gongying Company and the Shenzhen Municipal Transport Bureau was the subject of a decision by the Shenzhen Court of International Arbitration on February 20, 2020 to re-render the award, and the case had not yet had a new tribunal constituted and was in the stage before the first hearing. The procedures of the two cases were mutually independent, and the time at which the application to confirm the validity of the arbitration agreement was filed should be deemed to be before the first hearing. The first-instance ruling's reliance on Article 13 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Arbitration Law of the People's Republic of China constituted an error in the application of law.

The Shenzhen Municipal Transport Bureau of Guangdong Province argued in defense: The arbitration case in issue was first heard on August 18, 2017. During the hearing, Shizheng Gongying Company confirmed on the spot that it had no objection to the procedure already conducted by the arbitral tribunal, and Shizheng Gongying Company had already accepted the Shenzhen Court of International Arbitration's jurisdiction over the arbitration case in issue. It had no right to recover the rights it had previously waived merely because the case entered the re-arbitration procedure. The first-instance ruling applied the law correctly.

The court ascertained upon trial: The South China International Economic and Trade Arbitration Commission (also known as the Shenzhen Court of International Arbitration, formerly known as the South China Branch of the China International Economic and Trade Arbitration Commission and the Shenzhen Branch of the China International Economic and Trade Arbitration Commission) accepted the arbitration case involved in this case in 2016. On August 18, 2017, the arbitral tribunal held a hearing. Before the arbitration claimant stated and fixed the facts and grounds on which the arbitration claims were based, the arbitral tribunal asked "whether the parties have any objection to the procedure already conducted in this case," and the claimant in this case answered "no objection"; at the end of the hearing, the claimant in this case stated that it had "no

objection" to "the arbitration procedure already conducted up to now." On March 29, 2018, the South China International Economic and Trade Arbitration Commission rendered an award. After the award was rendered, Shizheng Gongying Company applied to the Shenzhen Intermediate People's Court for non-enforcement of the arbitral award. Upon review, the court held that the arbitral tribunal could re-arbitrate the case. Since the arbitral tribunal had already agreed to re-arbitrate within the period designated by the court, the review procedure for non-enforcement of the arbitral award should be terminated. On February 26, 2020, the court ruled to terminate the review procedure of the case.

Judgment

On June 3, 2020, the Shenzhen Intermediate People's Court of Guangdong Province rendered Civil Ruling (2020) Yue 03 Min Te No. 249, dismissing the application of the applicant, Shizheng Gongying Company. Shizheng Gongying Company, dissatisfied, filed an appeal with the Guangdong High People's Court. On September 18, 2020, the Guangdong High People's Court rendered Civil Ruling (2020) Yue Min Zhong No. 2212, dismissing the appeal and affirming the original ruling.

Reasoning

The court in its effective judgment held: Paragraph 2 of Article 20 of the Arbitration Law of the People's Republic of China provides: "If a party has an objection to the validity of the arbitration agreement, it shall raise the objection before the first hearing of the arbitral tribunal." Where a party fails to raise an objection to the validity of the arbitration agreement before the first hearing of the arbitral tribunal, it shall be deemed that the party has accepted the arbitral tribunal's jurisdiction over the case. Although this case entered the re-arbitration procedure, it was still the same dispute. Shizheng Gongying Company did not raise an objection to the validity of the arbitration agreement during the arbitration process and confirmed that it had no objection to the arbitration procedure; its conduct remained effective during the re-arbitration process. Pursuant to Article 13 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Arbitration Law of the People's Republic of China, which provides: "Pursuant to paragraph 2 of Article 20 of the Arbitration Law, where a party fails to raise an objection to the validity of the arbitration agreement before the first hearing of the arbitral tribunal and thereafter applies to the people's court to confirm the arbitration agreement invalid, the people's court shall not accept the application," the first-instance court should not have accepted Shizheng Gongying Company's application to confirm the validity of the arbitration agreement. After accepting the case, the first-instance court dismissed Shizheng Gongying Company's application pursuant to paragraph 1 of Article 8 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Judicial Review of Arbitration, which provides: "Where a people's court finds after filing that the conditions for acceptance are not met, it shall rule to dismiss the application." This was not improper.

Relevant Legal Provisions

Paragraph 2 of Article 20 of the Arbitration Law of the People's Republic of China.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.