IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 58

Originating Summons No 682 of 2021 (Summons No 3925 of 2021)

In the matter of Section 19 of
the International Arbitration
Act (Cap 143A, 2002 Rev Ed)

Shanghai Xinan Screenwall
Building & Decoration Co.,
Ltd.

… *Applicant*

JUDGMENT

[Arbitration — Enforcement of foreign award]
[Arbitration — Agreement — Choice of arbitral institution]

TABLE OF CONTENTS

Re Shanghai Xinan Screenwall Building & Decoration Co, Ltd

[2022] SGHC 58

General Division of the High Court — Originating Summons No 682 of 2021 (Summons No 3925 of 2021)
Philip Jeyaretnam J
2 December 2021, 31 January 2022

18 March 2022 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 When I bump into my childhood friend Ben and call him Bill, I am not inventing an imaginary friend but simply mistaking his name. In the same way, when the name of the arbitral institution in an arbitration agreement does not precisely correspond with that of any existing arbitral institution, it is not that parties have chosen a non-existent institution. Rather, the question is whether they intended the same institution, whether they had in mind different ones or whether it is impossible to tell either way. Only in the latter two cases does the misnomer affect the validity of the arbitration agreement.

Background

2 The applicant, Shanghai Xinan Screenwall Building & Decoration Co., Ltd. ("Xinan") is a company incorporated in the People's Republic of China. By order of court dated 3 August 2021 (the "Order"), Xinan has obtained leave

under s 19 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA") to enforce a foreign arbitral award against Great Wall Technology Aluminium Industry Pte Ltd ("Great Wall"), a company incorporated in Singapore.[1] On 20 August 2021, Great Wall filed an application under s 31 of the IAA to set aside the Order (the "Setting Aside Application").[2]

3 The award dated 27 November 2020 (the "Award") was made in respect of claims brought under two contracts between Xinan and Great Wall (the "Contracts"). The first involved the supply by Xinan to Great Wall of materials for the construction of a facade for a housing project in Singapore, and the second involved the installation of a glass curtain wall mock-up for the same project. By the Award, the tribunal ordered Great Wall to pay to Xinan outstanding sums under the Contracts, as well as interest and costs.[3]

4 The Contracts contained identically worded arbitration clauses, which provided that:[4]

> Any dispute arising from or in relation to the contract shall be settled through negotiation. If negotiation fails, the dispute shall be submitted to China International Arbitration Center for arbitration in accordance with its arbitration rules in force at the time of submission.

5 The Contracts had both Chinese and English versions, with the English versions stipulated to take priority in case of any conflict in interpretation.[5]

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1 Order of Court dated 3 August 2021 (Doc No.: HC/ORC 4372/2021).

2 Summons for Setting Aside Judgment/Order dated 20 August 2021.

3 1st Affidavit of Zhou Jingde dated 16 July 2021 ("Zhou's 1st Affidavit") at pp 14–60.

4 Zhou's 1st Affidavit at pp 87 and 131.

5 Zhou's 1st Affidavit at pp 87 and 132.

6 Great Wall did not participate in the arbitration proceedings.[6]

Preliminary procedural question: late filing of affidavit by Chinese lawyer

7 In the course of the proceedings before me, two procedural issues arose with regard to an affidavit that Great Wall sought leave to file. The affidavit was deposed by one Mr Liu Yang ("Mr Liu") of Fangda Partners, the Chinese law firm engaged by Great Wall. The first issue was whether I should allow the affidavit to be filed. The second issue was whether Great Wall could rely on additional grounds for refusal under s 31(2) of the IAA which were referred to in that affidavit. I elaborate below.

8 In the supporting affidavit for the Setting Aside Application, Great Wall relied only on ss 31(2)(*c*) and 31(2)(*f*) of the IAA.[7]

9 Section 31(2)(*c*) of the IAA concerns lack of notice or opportunity to participate in the proceedings and makes the following a ground to refuse enforcement:

> [where] the party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present the party's case in the arbitration proceedings;

10 Section 31(2)(*f*) of the IAA concerns steps taken at the seat of the Award and makes the following a ground to refuse enforcement:

> [where] the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a

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6 1st Affidavit of Qin Guanglin dated 20 August 2021 ("Qin's 1st Affidavit") at para 11.

7 Qin's 1st Affidavit at para 3.

> competent authority of the country in which, or under the law of which, the award was made.

11 The Award had not been set aside or suspended in China, and Great Wall did not adduce any evidence on Chinese law in support of the Setting Aside Application. However, Great Wall confirmed in connection with its reliance on s 31(2)(*f*) of the IAA that their lawyers in China were "currently working out the necessary papers to effect the application to set aside the Final Award" as of 20 August 2021.[8]

12 Directions were given at a pre-trial conference for Xinan to file its responsive affidavit by 7 October 2021, while Great Wall was to file its reply affidavit by 21 October 2021.

13 Xinan filed its responsive affidavit (exhibited to a solicitor's affidavit) on 6 October 2021.[9] This affidavit principally dealt with what was then the sole ground for setting aside, namely the alleged lack of notice of the arbitral proceedings under s 31(2)(*c*) of the IAA.

14 Great Wall did not file its reply affidavit as directed on 21 October 2021. It obtained an extension until 10 November 2021 at a pre-trial conference held on 28 October 2021. Great Wall's delay also resulted in the vacation of the original date fixed for hearing of its summons. However, it still did not file its reply affidavit by 10 November 2021, and at a pre-trial conference held on 18 November 2021 obtained a further indulgence until 25 November 2021. Great Wall's reply affidavit was then filed on that date. It exhibited a Chinese law

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8 Qin's 1st Affidavit at paras 32–33.

9 3rd Affidavit of Cheryl Lim Phuay Yi (Lin Peiyi) dated 6 October 2021 ("Lim's 3rd Affidavit") at pp 5–154.

opinion from Mr Liu which took the form of a letter of advice to Great Wall (the "Opinion").[10] The Opinion was said to identify two serious jurisdictional and procedural defects under Chinese law in the arbitral proceedings.[11] The first defect arose from the alleged choice of a non-existent arbitral institution, which would render the arbitration agreement invalid under Chinese law. This was said to found a challenge to the Award's enforcement under s 31(2)(*b*) of the IAA. The second defect arose from the reference in the Award to China International Economic and Trade Arbitration Commission's ("CIETAC") domestic provisions even though Great Wall is a Singapore company. This was said to found formed the basis of a challenge under s 31(2)(*e*) of the IAA.

15 This belated introduction of new grounds based on new evidence at the reply stage meant that Xinan would not have the opportunity to respond to them.

16 Moreover, the Opinion did not take the form of a report exhibited to an affidavit sworn to or affirmed by Mr Liu. Xinan pointed out in its written submissions that this did not comply with O 40A r 3(1) of the Rules of Court (2014 Rev Ed) ("the Rules"), which sets out the requirements of expert's evidence.[12] A few days after filing its reply, on the day before the hearing before me, Great Wall sought leave to file an affidavit from Mr Liu, thus seeking to cure the defect that Xinan had pointed out.[13]

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10 2nd Affidavit of Qin Guanglin dated 25 November 2021 ("Qin's 2nd Affidavit") at pp 19–25.

11 Qin's 2nd Affidavit at para 27.

12 Applicant's written submissions dated 29 November 2021 at para 44.

13 Letter to court from Great Wall's solicitors dated 1 December 2021.

17 In its written submissions, Great Wall sought to rely on three grounds for refusal of enforcement: [14]

(a) its original ground that Great Wall was not given proper notice of the appointment of the tribunal or of the arbitration proceedings, or was otherwise unable to present its case, relying on s 31(2)(*c*) of the IAA, because notices were sent to its previous address; and

(b) its new grounds, supported by the affidavit it sought leave to file out of time, that:

(i) The arbitration agreement was not valid under Chinese law, relying on s 31(2)(*b*) of the IAA, because there is no arbitral institution by the name of "China International Arbitration Center".

(ii) The arbitral procedure was not in accordance with Chinese law, relying on s 31(2)(*e*) of the IAA, because Great Wall did not agree to CIETAC, and in any case CIETAC incorrectly applied its domestic arbitration provisions to the matter.

18 The grounds in ss 31(2)(*b*) and 31(2)(*e*) of the IAA read as follows:

> (*b*) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;
>
> …
>
> (*e*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the

[14] Great Wall's written submissions dated 29 November 2021 at para 2.

> parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

19 An ancillary point was raised by Great Wall in respect of s 31(2)(*f*) of the IAA. Great Wall argued that the time limit to file any challenge against the Award in China had not begun to run.[15] This was because the Award not been properly served when it was sent to Great Wall's registered address on 3 December 2020 as Great Wall had changed its registered address a month earlier on 2 November 2020.[16] Great Wall took the position that the Order was the first document to be properly served, because it was served at its new registered address. Strikingly, even at the time of the hearing before me on 31 January 2022, almost six months after the Order was served, Great Wall had not apparently filed any challenge to the Award in China nor sought an extension of time to do so.

20 Xinan objected to leave being granted for the filing of Mr Liu's affidavit. Xinan also argued that the Opinion did not meet the requirements of an expert's report per O 40A r 3(2) of the Rules and expounded upon by the Court of Appeal in *Pacific Recreation Pte Ltd v SY Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*"): at [65]. In particular, Xinan argued that the form and content of the Opinion showed that Mr Liu was not acting as an independent expert for the court but as Great Wall's legal adviser.[17]

21 Great Wall requested I adjourn the hearing so that both parties would have the time to file affidavits by independent Chinese law experts. Xinan did

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15 Great Wall's written submissions dated 29 November 2021 at paras 43 to 49.

16 Great Wall's written submissions dated 29 November 2021 at paras 23 to 25.

17 Applicant's written submissions dated 29 November 2021 at paras 46–52.

not agree, noting that they had filed the application to enforce the Award in July 2021 and that the amounts involved, including interest and costs, were only in the order of about $300,000.

22 I considered that Great Wall had not given adequate reasons for their delay in filing Mr Liu's affidavit. Therefore, I did not grant leave for that affidavit to be filed. It was striking that Great Wall had engaged Chinese lawyers as early as 20 August 2021.[18] Having missed two filing deadlines which resulted in the vacation of the original hearing date, Great Wall only filed the Opinion almost three months' later on 25 November 2021. There was no explanation of when they had first sought the Opinion from Mr Liu. They did not explain whether they were delayed in seeking the Opinion or he was delayed in giving it. I also expressed concern that the way in which the Opinion was expressed suggested Mr Liu had originally been approached to advise Great Wall as its lawyer and not as an independent expert. Consequently, this would diminish the weight to be accorded to the Opinion even if it were admitted.

23 Nonetheless, even though Great Wall had not applied to amend their summons in the Setting Aside Application to add additional grounds for refusal to enforcement namely the grounds set out in ss 31(2)(*b*) and 31(2)(*e*) of the IAA, I indicated that I would hear submissions from both parties based on the evidence properly before me. This included the evidence of Chinese law already exhibited. I therefore allowed them to file two further sets of written submissions dealing with:

(a) the Singapore law approach to arbitration agreements; and

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[18] Qin's 1st Affidavit at para 32.

(b) the evidentiary status of foreign law materials not contained in an expert opinion duly admitted into evidence.

Issues to be determined

24 I will deal with the issues in the following order:

(a) whether Great Wall had proper notice of the arbitration;

(b) whether the Award has become binding;

(c) whether the arbitration agreement is valid under Chinese law; and

(d) whether the arbitral procedure was in accordance with parties' agreement.

Issue 1: Whether Great Wall had proper notice of the arbitration

25 Great Wall contends it never had proper notice of the arbitration, while Xinan contends that in fact there was proper notice.

26 Xinan provided evidence in the form of waybills that there were seven deliveries of documents to Great Wall's office at the address registered with the Accounting and Corporate Regulatory Authority ("ACRA"), starting with the notice of arbitration delivered on 5 June 2020 and ending with the Award delivered on 3 December 2020.[19] Great Wall contended that it had not used this office for business since 15 July 2020 and provided evidence that it had then changed its registered office on 2 November 2020.[20] I note that the first of the

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19 Applicant's written submissions dated 29 November 2021 para 61.

20 Great Wall's written submissions dated 29 November 2021 at para 25(c).

documents was delivered when the address was both Great Wall's place of business and its registered office and that the next five were delivered while it was still Great Wall's registered office.

27 I find that Great Wall did in fact have proper notice of the arbitration as the notice of arbitration was delivered to its registered office at the relevant time. There are three distinct legal bases for this finding.

28 First, Great Wall is a Singapore company, and is thus subject to the provisions of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"). Section 387 of the CA provides:

> A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company.

29 Delivery of a document to a company's registered office is sufficient service of a notice of arbitration, as it is for any other document. This provision of the CA rests on the simple principle that a company must have a registered office and must organise itself to be able to receive documents at that address. It is irrelevant that the company does not do business at those premises or even leaves them vacant. In any case, the notice of arbitration was delivered before 15 July 2020, the date that Great Wall claimed it physically shifted its offices from its registered address to its new address.

30 Secondly, the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") (with the exception of Chapter VIII) has the force of law by virtue of s 3(1) of the IAA. Article 3(1) of the Model Law governs receipt of written communications and provides:

> (1) Unless otherwise agreed by the parties:

> (*a*) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
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> (*b*) the communication is deemed to have been received on the day it is so delivered.

31 All the documents were served in a manner that satisfied Article 3(1) of the Model Law.

32 Thirdly, the address to which the various documents were delivered was the address indicated in the Contracts.[21] Where an address is given in a contract, it is a simple inference that the address has been included to facilitate communication between the parties. Thus, in the absence of any manifestation of a contrary intention, service of a notice of arbitration in respect of that contract at that address will usually amount to proper notice of the arbitration unless prior to the date of service the respondent has notified the claimant of a change of address.

33 Great Wall has contended that reliance on deeming provisions may be displaced by evidence that the intended recipient did not in fact receive the document, citing the Hong Kong decision of *Sun Tian Gang v Hong Kong & China Gas (Jilin) Ltd* [2016] HKCFI 1611. In that case, when the arbitration claimant's solicitors were informed that the respondent no longer worked at the address on which they had served the notice, it was held that they were not

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[21] Zhou's 1st Affidavit at p 81 and p 125.

entitled to proceed with the arbitration relying on service effected in accordance with Article 3(1) of the Model Law as deemed service. While I agree that deemed service may be rebutted by appropriate evidence of non-receipt, that is not the case here. Great Wall is a company and the address where the notice of arbitration was served was both its registered office and its place of business at that time. Great Wall provided no explanation of the system it put in place for the receipt of documents or how that system might have failed in this case. I find on a balance of probabilities that Great Wall's officers saw the notice of arbitration but chose to ignore it.

34 I reject this ground of challenge.

Issue 2: Whether the Award has become binding

35 There was one document that was delivered after the change of Great Wall's registered office, namely, the Award. Accordingly, Xinan cannot rely on s 387 of the CA for the service of the Award.

36 However, Great Wall did not notify Xinan of its change of address. Xinan sent the Award to the address provided by Great Wall in the Contracts to which the Award related. On the second and third bases discussed in the preceding section, there was good service of the Award.

37 More fundamentally, Great Wall is wrong in law to suggest that an arbitration award only becomes binding upon service. Section 19B of the IAA makes clear that an award is binding once made.

38 At the same time, it is true that the time limit for applying to set aside an award runs from the date of receipt of that award, which in this case was 3

December 2020. Thus, accepting that in China the time limit is six months rather than three months as it is in Singapore, Great Wall could have filed an application in China to set aside the Award any time prior to 3 May 2021. As noted at [19] above, Great Wall has made no such application to set aside the Award in China to date, nor sought any extension of time to do so.

39 I reject this ground of challenge.

Issue 3: Whether the arbitration agreement was valid

40 Great Wall contended that under Articles 16 and 18 of the Arbitration Law of the People's Republic of China, parties must select an arbitral institution. Where one is not selected in the original arbitration agreement, there must be a supplementary agreement between parties choosing an arbitral institution. Otherwise, the arbitration agreement is void. If the arbitration agreement is void, then parties would have to seek recourse in a national court that has jurisdiction over the matter.

41 I accept that this is indeed the position under Chinese law. The relevant articles were included as part of Great Wall's bundle of authorities, rather than by way of affidavit.[22] This position under Chinese law is common knowledge in the international arbitration community. It remains the case, however, that because neither party properly adduced expert evidence on Chinese law, the evidence of Chinese law before the court is limited. Consequently, I have assumed that Chinese law is the same as Singapore law where the evidence before the court is insufficient to prove otherwise.

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[22] 2nd Bundle of Authorities of Great Wall Technology Aluminium Industry Pte Ltd dated 16 December 2021 at Tab 2.

42 Great Wall argued that because the arbitration agreements in the Contracts named an arbitral institution that technically did not exist, they were void by virtue of Article 18.[23] Accordingly, Xinan should have commenced proceedings in court instead, either in China or Singapore.

43 However, whether the Contracts did indeed select an arbitral institution, and whether that arbitral institution was CIETAC, is a matter of construction. That question was one that CIETAC had to decide before accepting the case under Article 13 of the China International Economic and Trade Arbitration Commission CIETAC Arbitration Rules (Revised and adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on November 4, 2014. Effective as of January 1, 2015) ("CIETAC Rules").[24] CIETAC accepted the case as recorded in the opening paragraph of the Award.[25]

44 Notwithstanding having been properly served notice of the arbitration, Great Wall made no application to CIETAC or the arbitral tribunal that was appointed to challenge the acceptance of the case or the jurisdiction of the tribunal.

45 Nonetheless, absent waiver or estoppel, a respondent to an arbitration is not precluded by its failure to challenge jurisdiction before the tribunal or at the seat from raising challenges to jurisdiction, including challenges to the validity of an arbitration agreement, at the stage of enforcement. Thus, my task is to

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23 Great Wall's written submissions dated 16 December 2021 at paras 15–22.

24 3rd Affidavit of Zhou Jingde dated 6 October 2021 at p 56.

25 Zhou's 1st Affidavit at p 43.

construe the arbitration agreements in the Contracts to determine whether CIETAC was right to conclude that it was indeed the selected arbitral institution.

46 I have set out the English text of the arbitration agreements at [4] above and noted at [5] that the English text takes priority. The question is then whether "China International Arbitration Center" as stated in the Contracts meant CIETAC in the context of this case.

47 As has been explained by the Court of Appeal in *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936 ("*Insigma*") at [30], an arbitration agreement is to be construed like any other commercial agreement, with a view to giving effect to the intention of the parties as objectively expressed in it. The Court of Appeal also referred to the principle of effective interpretation in the law of arbitration, the aim of which is to facilitate and protect party autonomy by striving to make an arbitration clause effective and workable: *Insigma* at [31]. Similarly, Gary Born, *International Commercial Arbitration* (Kluwer Law International, 2nd Ed, 2014) ("Born") states at pp 775–776:

> If the parties have evinced an intention to resolve their disputes by arbitration, as opposed to by other means, then that intention should be given effect; it constitutes an agreement to arbitrate and defects or uncertainties in the implementation of this agreement should not preclude its enforcement. Consistent with this analysis, courts from virtually all jurisdictions have displayed a pronounced willingness to disregard or minimize imperfections in the parties' arbitration agreement, to imply missing terms and/or to adopt liberal interpretations in order to supply omitted terms or to reconcile apparently inconsistent terms.

48 The starting point is that parties in this case intended to resolve their disputes by arbitration, that this take place in China and that it be administered

by the institution that they called "China International Arbitration Center". It is not that they chose a non-existent institution to administer their arbitration. Rational commercial parties would not deliberately choose a non-existent institution any more than they might invent a fictitious country as the seat. The objective intention of the parties must be that an existing arbitral institution administer the potential arbitration. The question is thus whether the arbitration agreements evince a common intention that CIETAC would be that arbitral institution.

49 Parties did not adopt the official name or designation of CIETAC in the arbitration agreements. However, this does not mean that they did not express the common intention to choose CIETAC as the arbitral institution. Keeping in mind that the primary text is the English text, parties used the first two words in CIETAC's name, namely "China" and "International". They also used another word contained in CIETAC's name, namely "Arbitration". They omitted two other words which are present in CIETAC's name, namely "Economic" and "Trade". Finally, they used the word "Center" instead of "Commission", which is used in CIETAC's name.

50 In the Opinion, Mr Liu helpfully listed five of the major arbitral institutions in China.[26] The first is CIETAC. The others are Shenzhen Court of International Arbitration, Beijing International Arbitration Center, Shanghai International Arbitration Center and China Maritime Arbitration Commission. Thus, three of the others do not even contain the critical national name of "China" and instead adopt the names of cities. I have no hesitation in concluding that none of these three was intended by either party. The fourth does use the

[26] Qin's 1st Affidavit at pp 20–21.

word China but immediately qualifies it with the word "Maritime". Objectively, commercial men would not think of a maritime arbitral institution for resolution of non-maritime disputes such as those which could arise from the Contracts.

51 I conclude that when parties agreed on "China International Arbitration Center", they in fact agreed on CIETAC. Inaccuracy in the name used in the arbitration agreements does not nullify the parties' consent to arbitration or their choice of CIETAC.

52 Courts in other jurisdictions have taken similar approaches to arbitration agreements which name so-called "non-existent" institutions, striving to give effect to parties' choice of arbitration by identifying the intended but misnamed institution. Born at p 780 notes that:

> …Other courts and tribunals have construed references to nonexistent entities generously, finding ways to equate them to institutions which do exist.

53 To be clear, I would not put the point in the way that Born does, as I consider it unlikely that parties (whether subjectively or objectively) intended to choose a non-existent institution. Ordinarily, it is more accurate to say that they chose an arbitral institution to which they gave an imprecise or incorrect name. The real question is whether parties agreed on the subject matter in their contract, by whatever name called.

54 Thus, the reference to "China International Arbitration Center" is properly to be construed as a reference to CIETAC. Accordingly, an arbitral institution was duly selected for the purpose of Articles 16 and 18 of the Arbitration Law of the People's Republic of China. I reject this ground of challenge.

55 For completeness, I consider the second of what Great Wall described as "raw sources" of Chinese law, namely the Civil Ruling of the Zhejiang Higher People's Court (2016) Zhe Min Xia Zhong No. 278 – Appeal Case of Dispute over International Goods Sales Contract between Shennong Resources Limited and Ningbo Cimei International Trade Co., Ltd (the "Shennong decision").[27] The Shennong decision concerned an objection to the court's jurisdiction on the ground that the dispute in that matter was to be referred to arbitration administered by "China International Arbitration Center", which, it was argued, referred to CIETAC. This objection was rejected by the Ningbo Intermediate Court, whose decision was upheld by the Zhejiang Higher People's Court. The court held that the specified arbitral institution was not to be read as referring to CIETAC and thus did not exist. Consequently, the arbitration clause was invalid.

56 It is important to note that this was an interpretation of a different contract between different parties. The Shennong decision does not stand for a rule of Chinese law that any arbitration clause selecting "China International Arbitration Center" is invalid. In truth, it reflects the same principle as that of Singapore law, namely that the exercise is one of contractual interpretation to ascertain whether parties objectively intended to refer to a specific arbitral instruction by the misnomer. As it happens, in that case the Chinese court concluded that it was "impossible to infer a specific arbitration institution".[28] When considering an arbitration clause, the court must consider what parties' intention was, as objectively evinced from the words used in their commercial

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27 Great Wall's written submissions dated 16 December 2021, paras 14, 17 to 22.

28 Great Wall's second bundle of authorities dated 16 December 2021 at p 131 (3/8 of the English translation).

context. I have undertaken that exercise in this case and concluded that the objective intention of the parties to the Contracts was that their disputes should be referred to CIETAC.

57 There is one other point which ultimately I have not relied upon. Great Wall took this objection only at the last minute (on 24 November 2021), even though its representative Mr Qin Guanglin took every other conceivable point in his affidavit dated 20 August 2021 (including alleging that the stamp used on the Contracts was not Great Wall's).[29] It is tempting to draw the inference that Great Wall was not surprised by the reference of the dispute to CIETAC, and therefore CIETAC must have been agreed upon by parties. However, I do not rely on any such inference. Subsequent conduct can be an uncertain guide to contractual intention, as has again been cautioned by the Court of Appeal in *MCH International Pte Ltd and others v YG Group Pte Ltd and others and other appeals* [2019] 2 SLR 837 at [20]–[21].

58 I end this section by noting that once it is accepted that parties chose CIETAC, then CIETAC Rules may be relied on for the purpose of establishing good service. Article 8(3) provides:

> Any arbitration correspondence to a party or its representative(s) shall be deemed to have been properly served on the party if delivered to the addressee or sent to the addressee's place of business, place of registration, domicile, habitual residence or mailing address, or where, after reasonable inquiries by the other party, none of the aforesaid addresses can be found, the arbitration correspondence is sent by the Arbitration Court to the addressee's last known place of business, place of registration, domicile, habitual residence or mailing address by registered or express mail, or by any other means that can provide a record of the attempt at delivery,

[29] Qin's 1st Affidavit at para 38 and Qin's 2nd Affidavit at para 5(c).

> including but not limited to service by public notary, entrustment or retention.

59 This is therefore a further ground that the notice of arbitration and the Award, as well as the other documents, were all validly served on Great Wall.

Issue 4: Whether the arbitral procedure was in accordance with parties' agreement

60 The final ground that Great Wall raised to resist enforcement is that the arbitral tribunal applied the wrong procedure when it said that "the dispute in this case does not involve foreign-related factors" and so referred to Chapter V "Special Provisions on Domestic Arbitration" in the CIETAC Rules.[30]

61 While Great Wall is right that this passing reference to the dispute not involving foreign-related factors was made in error given that it concerned a cross-border transaction with a Singapore company, Great Wall could not identify any impact or consequence that this error had on the conduct of the arbitration, let alone on the making of the Award.

62 I reject this ground as well.

Conclusion

63 Great Wall had proper notice of the arbitration. As I have construed the arbitration agreements, parties intended CIETAC to be the administering institution. The tribunal issued a binding award. Any mistaken reference by it to domestic arbitration provisions had no bearing on the conduct or outcome of

[30] Zhou's 1st Affidavit at p 43.

the arbitration. I dismiss Great Wall's application to set aside the Order. I will hear parties on costs.

Philip Jeyaretnam
Judge of the High Court

Shaun Wong (RHTLaw Asia LLP) for the Applicant;
Lim Bee Li and Wong Zhen Yang (Chevalier Law LLC) for Great Wall Technology Aluminium Industry Pte Ltd.