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BETWEEN SETTLEMENT AND AWARD: JUDICIAL RESTRAINT, CORPORATE AUTHORITY AND FINALITY IN INTERNATIONAL ARBITRATION — A CRITICAL ANALYSIS OF LT V RV

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Introduction

International arbitration has become the most favourable way of resolving complicated disputes with cross-border implications due to its adaptability, objectivity, and enforceability within the international system developed through the United Nations Commission on International Trade Law ["**UNCITRAL**"] Model Law and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ["**New York Convention**"].[1] The concept of 'arbitral award' serves as a cornerstone in the efficiency of this system. Nonetheless, the modern process of arbitration has become more and more hybrid in terms of final results obtained, being both substantial and procedural in nature. Some examples include incidents such as reaching of settlement agreements during arbitration procedures, procedural termination decisions, and awards resulting from consent of parties involved, which undermine the common definition of an 'arbitral award' and may have legal implications different from those generally provided.

The judgment in *LT v RV* represents a case study for understanding the changing dynamics in the domain of international arbitration.[2] In the given case, the issue concerned a situation where there were elements of multiple jurisdictions, insolvency and corporate restructuring, as well as efforts towards settlement while the arbitration was still underway. Thus, the Hong Kong Special Administrative Region ["**SARS**"] High Court was called upon to determine what legal status should be attributed to the settlement agreement entered into during the course of arbitration and the procedural order terminating it before a substantive arbitral award could have been duly issued in respect of the settlement reached. This problem became especially pertinent, taking into

[1] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.
[2] *LT v RV* (2026) HKCFI 1280.

consideration that in the given case, it involved a certain degree of ambiguity with regard to one of the parties' authority and the orders of restructuring in a different court altogether.

From a regime perspective, the ruling becomes important since it delineates the demarcation line between the arbitral body's authority and its jurisdiction by the courts, while further emphasising the rule that post-arbitration proceedings pertain solely to the final arbitral award rather than procedural ones. Additionally, the ruling underscores an increasing trend of the interplay between the law of arbitration and corporate governance within the context of troubled enterprises and their restructuring plans. This can impact the legitimacy of the compromise agreement reached by the corporation through internal approval procedures.

The present article critically examines the judgment in *LT v RV,* situating it within the broader international arbitration regime and assessing its implications for contemporary arbitration practice, particularly in relation to finality of proceedings, authority of corporate actors, and the structured limits of court intervention. [3]

Factual Summary of the Case:

The issue came up when LT, a cryptocurrency trading platform registered in Seychelles, had a disagreement with RV, an individual and the company's major client trading on the platform. In 2022, the cryptocurrency market globally crashed, leading to acute financial distress for LT. The company put a stop to the withdrawal process after it went insolvent. In June 2022, RV sued LT through arbitration at the Hong Kong International Arbitration Centre ["**HKIAC**"] to recover the amount of about USD 249 million because of the breaches by LT of their agreement. In return, LT filed its own arbitration suit against RV with counterclaims for losses worth USD 84 million.

In the same period, LT commenced proceedings for restructuring before the Supreme Court of the Seychelles owing to its financial difficulties. In particular, the company put forward a scheme of arrangement for restructuring purposes and optimising recovery on behalf of the creditors. According to the plan, all claims of LT in the arbitration would be assigned to a separate special purpose vehicle, while recovery entitlements and equity stakes would be allocated to creditors. After obtaining the consent of a majority of creditors, the scheme was accepted by the court in March 2023. As a result of adopting the new scheme, the company made certain amendments to

[3] *ibid.*

its constitutional documents, introducing a new governance system where all decisions related to the settlement of claims were to be approved by creditor-appointed directors.

On 24 August 2023, at the time when the arbitration and restructuring process was still in progress, a settlement agreement was made between LT and RV. This agreement, which was made on behalf of LT by ML, the existing sole director of the firm, envisaged a final and complete settlement on a "drop hands" basis in respect of all matters involved in the arbitration process, with each party waiving its respective claim and being responsible for its own costs. However, disputes later emerged in LT with regard to ML's competence to make such an agreement, considering the changed structure of governance of the firm. ML's actions were taken in haste and before the Seychelles court-ordered restructuring could take place. This was ignored by RV. On 28 August 2023, Procedural Order No. 7 ["**PO7**"] was made by the arbitral tribunal, and the proceedings were terminated without recording any settlement terms and issuing any substantive orders.

Analysis of the Case

The result of an arbitration proceeding, in any case, heavily relies on the wisdom of the tribunal and the expertise of its members. While submissions made by the parties ultimately form part of the award, they have to undergo scrutiny, which ultimately results in a substantive deliberation on the issues. However, it is not impossible that the award may leave important aspects undecided while terminating the proceedings before final determination of such issues, albeit on the request of the parties and leave gaps which may result in the questioning of the award's status.

This situation arose particularly in the instant case, where the final order passed was merely in the nature of a procedural order and not a substantive order, particularly with respect to the validity of the settlement agreement signed by the parties. The applicable law to this arbitration, which is based on model law, treats 'settlement agreement' as an award only if the parties request the agreement to be treated so.[4] However, as noted, the recorded final order PO7 specifically mentioned that:[5]

> *"44. (d) the tribunal does not rule on the merits of any claims or counterclaims presented in the present arbitration as the Parties have agreed that the Arbitration is to be terminated."* [6]

[4] Hong Kong International Arbitration Centre, *HKIAC Administered Arbitration Rules 2018*, art 37.2(a).
[5] *LT v RV* (2026) HKCFI 1280.
[6] *ibid.*

In this case, the order of the tribunal declaring that the proceedings are terminated on account of the settlement agreement would definitely cause some confusion as to whether the settlement agreement is considered equivalent to the award. Furthermore, the issue of determining the validity of the settlement agreement makes one wonder whether the form and content criteria, as mentioned in Article 31 of the model law have any relevance in this situation. [7]

In terms of balancing the interests from an arbitration regime point of view, the decision made by the Hong Kong SARS High Court is appreciable. The decision emphasises the concept of competence that is neither against arbitration nor expansive. This can be explained based on the structure of the Model Law and the current thinking whereby the intervention of courts is allowed only if there is permission in the statute or by the parties.[8] Additionally, the decision supports the prevailing trend whereby procedural preconditions or settlement mechanics cannot be disputed through jurisdictional challenges.

Court's Restraint Towards Classifying Settlement Agreement as an Award for Certain Purposes

In the Model Law system, the difference between "award" and "settlement agreement" is not one of legal formalism but instead constitutes one of the determining factors for whether enforcement and set-aside mechanisms along the lines of those contained in the New York Convention will apply.[9] It is evident from the decision of the Hong Kong court that PO7 was simply an action where the arbitral proceedings were ended by the tribunal together with the imposition of costs, without deciding the merits or recording the settlement as an "award."[10] Therefore, the settlement in PO7 lacks the characteristic "final determination" of an award.

This is an important matter in international commercial arbitration since there are more instances where the dispute has been settled by using multiple means, such as settlement of the dispute during arbitration proceedings, agreement on terms, orders for termination of procedure, or settlement minutes, which are then put before the arbitrator. This case illustrates the importance of being particular in the matter. If the parties want the settlement to enjoy the position of an award, then they have to make sure that the arbitrator has recorded the award in proper form as per the rules.

Protection of Finality Without Expanding Set-Aside Jurisdiction

[7] UNCITRAL Model Law on International Commercial Arbitration 1985, art 31.
[8] UNCITRAL Model Law on International Commercial Arbitration 1985, art 5.
[9] UNCITRAL Model Law on International Commercial Arbitration 1985.
[10] *LT v RV* (n 2).

Another issue is the refusal of the court to permit section 81 from undertaking what the text will not allow.[11] The setting aside of power under the Hong Kong legislation constitutes the only remedy available to challenge an award. The section cannot be employed as a means of enforcing control over every document generated during or around the process of arbitration. In this way, the decision avoids a prevalent trend in arbitration cases where attempts are made to relabel disputes over contracts or settlements as disputes over an award.[12]

It becomes important from an international perspective as well since the New York Convention and UNCITRAL Model Law both constitute award-based systems of arbitration. Although the Model Law was meant to apply to the entire process of arbitration, the system of its enforcement and challenge was created in such a way that the award remained at its heart. This particular position by the courts of Hong Kong can be viewed as one of the examples of the use of textual discipline.

Tribunal Autonomy and Boundary of Judicial Supervision

One of the crucial decisions made during the hearing was related to the proper balance between arbitral independence and judicial control. In this particular case, the arbitral tribunal decided to terminate the procedure since there were no terms for settlement to be recorded, and it refused to consider whether the settlement agreement was valid and whether the individuals had sufficient corporate powers. It serves as an example that arbitral tribunals are not always the proper place for collateral disputes.[13]

It is up to them to resolve the disputes brought before them. If the dispute turns into a matter of corporate power and restructuring approval and the use of an independent settlement instrument, then the boundary between arbitration and regular judicial process becomes more distinct.

Authority of the Signatory: Corporate Governance Now Sits Inside Arbitration Strategy

The most practical question addressed by the decision is that of the 'authority' of the director. It was held in this case that, upon the implementation of the restructuring proposal and the amended articles, there had been changes made in the internal control structure of the company, and that the director executing the settlement was no longer authorised to represent the company. The court rejected apparent authority on the facts, emphasising the difference in this case, a highly

[11] Hong Kong International Arbitration Centre, *HKIAC Administered Arbitration Rules 2018*, s 81.
[12] *C v D* (2021) HKCFI 1474.
[13] *Paul Smith Ltd v H & S International Holding Co. Inc.* (1991) 2 Lloyd's Rep 127.

unusual settlement of a major claim during a court-sanctioned restructuring, and other commercial acts in a company's usual business. [14]

This presents an important arbitration-related problem in our times owing to the increasing prevalence of troubled firms, creditor schemes, and international restructurings in arbitration matters. What this means for any arbitration practitioner is that the issue of authority cannot be treated merely as a correlated matter. In international arbitrations, the power of signature has become one of the factors to be considered in the management of arbitration risks, and in this regard, board approval, creditor approval, amendment of the articles, and restructuring orders could all be relevant.

The judge found that a reasonable person in the same position as the customer (RV) should have taken action to establish whether the creditors knew about the settlement and agreed to it, especially since the terms did not favour them. However, it was unreasonable and irrational for the customer not to inquire about it further, especially since the situation was "extraordinary and exceptional", considering the fact that the signatory to the document appeared to him to be a perjurer and a fraudster.[15]

Public policy is not a Free-Standing Merits Appeal

The case also reflects a larger international warning that public policy must not be used as a 'Free-Standing' merits appeal. The court did not invoke public policy to reassess the merit of the matter, but rather examined whether the settlement was validly executed and if proper authority conducted the matter. This is a much more restricted and justified application of the idea of public policy. At an international level, this issue is significant in light of the abuse of public policy in arbitral proceedings.

The Indian perspective is particularly helpful in this regard. Under Section 34 of the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"], grounds for annulment are quite restricted, and the law now states that public policy considerations should not allow for any merits-based review.[16] In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* the Supreme Court of India has made it clear that after 2015, the concept of public policy is rather restrictive in scope and only deals with

[14] *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd.* (1964) 2 QB 480.
[15] *Hely-Hutchinson v Brayhead Ltd.* (1968) 1 QB 549.
[16] Arbitration and Conciliation Act 1996, s 34.

the fundamentals of the law, moral values, and justice, and illegalities are strictly defined under the law.[17]

Settlement During Arbitration: Why Form Matters?

The judgment's most practical lesson is simple: if that step is skipped, parties may be left with a 'settlement contract,' and not an 'arbitral award.' When parties decide to settle their dispute while arbitration is still ongoing, they have the onus to ensure that it is done correctly. In Hong Kong, this can be achieved according to the ordinance much in the same way as it is achieved by section 30 of the Arbitration Act, where the tribunal can dismiss the case and convert it into an award under agreed terms if the parties so request.[18]

The issue is critical for the global regime, given the nature of award enforcement through the New York Convention. Although the mere settlement agreement may remain enforceable as a contract, it will not become an award by default. The case in question provides a clear message to the parties designing a settlement that if finality, enforceability, and certainty in the form of the New York Convention are sought, the settlement must be transformed into an award by requesting the tribunal.

Conclusion

The case will have far-reaching yet persuasive effects on the Indian arbitration laws from an educational perspective. The Arbitration Act in India is based on the UNCITRAL Model Law, in which Section 5 prohibits judicial interference, Section 16 provides for *kompetenz-kompetenz*, Section 30 deals with settlements in the process of arbitration and award on agreed terms, Section 32 discusses termination, while Section 34 is restricted to arbitral awards only. Insolvency does not destroy the arbitration but may impact its conduct.

What it really implies is three things for the Indian administration. Firstly, a settlement cannot be considered an arbitral award automatically. It is the responsibility of the parties to seek a ruling from the arbitral tribunal to declare a settlement as an 'award'. Secondly, any disputes involving 'authority' within a struggling business entity are far more than mere procedural matters, especially in circumstances like those involved here. Thirdly, it behoves the courts in India to avoid any

[17] *Ssangyong Engineering & Construction Co. Ltd. v NHAI* [2019] SCC OnLine SC 677.
[18] Arbitration and Conciliation Act 1996, s 30.

efforts to make section 34 serve as a means to launch an attack on a settlement that is not an award or to convert a contract dispute into an arbitral award dispute.

The judgment should be seen in India as a pro-finality, pro-textual, and pro-party-autonomy decision that rewards careful drafting and respects the boundary between an unrecorded settlement agreement and an award.