Catch-all prayer for relief allows arbitral tribunal to award amounts in alternative currency (Swiss Supreme Court)

by Practical Law Arbitration, with Schellenberg Wittmer Ltd

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In Decision 4A_244/2020, the Swiss Supreme Court rejected an application to set aside an ICC award and found that the arbitral tribunal could, based on a catch-all prayer for relief, order the payment of a sum in an alternative currency even if the conversion had not been expressly requested.

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In a French-language decision, the Swiss Supreme Court has rejected an application to set aside an ICC award and confirmed that the arbitral tribunal had not granted the claimant more than it had sought in its prayers for relief when ordering the payment of a sum in US dollars rather than in the currency requested in the prayers for relief, as the claimant had included a catch-all prayer.

The dispute arose out of a contract for the construction of a seaport terminal between contractor (A) and its subcontractor (B).

B initiated arbitration proceedings against A. In its prayers for relief, B requested damages of nearly 8 billion of local currency and USD3,755,269, "alternatively such other sum as the Tribunal deems fit (having regard to the Parties' claims)".

The tribunal found that A owed B USD20,505,649 and USD3,755,269. A applied to the Swiss Supreme Court to set aside the award, pleading a violation of the principle of ne ultra petita (more than what was sought) and of its right to be heard.

First, A argued that the tribunal went beyond the claims submitted to it when it awarded B two amounts expressed in US dollars although B had not requested the conversion of the amount in local currency into US dollars. The court relied on the alternative catch-all prayer to find that the tribunal was indeed empowered to order the payment of a sum in US dollars even if the conversion had not been requested. Regarding A's argument that B's alternative prayer was unclear or granted the arbitral tribunal an impermissibly wide discretion, the court held that A should have raised this objection during the arbitration proceedings; not at the setting aside stage.

Second, A contended that by converting an amount into US dollars of its own motion, without calling on the parties to express their position on the issue, the arbitral tribunal violated A's right to be heard. The court rejected the argument, holding that it was clear from the award that currency conversion had been discussed during the proceedings, and was evidenced in A's post-hearing brief.

While this decision allows the tribunal a broad range where there is a generic catch-all prayer for relief, the outcome might have been different had the applicant raised an objection to that prayer during the arbitration.

Case: Decision 4A_244/2020 (Swiss Supreme Court) (16 December 2020).
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