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Insolvency of One Party to Arbitration and Issues

In a new case, *London Arbitration 10/21 [(2021) 1078 LMLN 4]*, an interesting point was raised whether a Claimant company can proceed against a Respondent company in liquidation in arbitration pursuant to the arbitration clause.

In this case, the Claimant (a supplier) that had supplied bunkers to three of the Respondent's (under liquidation, and liquidator has been appointed pursuant to the Russian law) vessels, and they were not paid. The supplies were expressly provided based on their General Terms and Conditions of Sale (GTCS), and it provided pursuant to *its clause 19 for any disputes to be referred to a sole arbitrator in London in accordance with LMAA Terms*.

The Respondent objected to the Tribunal's jurisdiction on the grounds –

- (1) That the respondent was a Russian company and was in liquidation and as per Russian law of insolvency, only Russian court is suitable jurisdiction; and
- (2) That the respondent was not a party to a contract with the claimant (as they were liquidator and have not signed the arbitration clause with the Claimant).

The Tribunal decided that:

- A contract contained a relevant arbitration clause, and the liquidation of a party could not affect the jurisdiction of a tribunal that has been properly appointed under that clause. In addition, due to the LMAA Term, the English Law was applicable to the issues.
- In addition, the Respondent failed to raise the jurisdiction issue in time and only raised this issue during the Defence Submissions.

FDD Department of ALCO advice to the Andrew Liu's clients is:

- a) The defence of jurisdiction should be raised as soon as possible by any party to arbitration.
- b) The liquidators when they take over the insolvency matter should declare the jurisdiction issues from

the word go.

- c) Insolvency of one of the parties can be troublesome in both litigation/arbitration and FDD department has assisted many of its clients to proceed tactically in such cases.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk

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