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**The Singapore  
International  
Commercial Court  
Throws Out a  
Challenge to a  
US\$146m SIAC  
Award**

*Reliance Infrastructure  
Limited v Shanghai Electric  
Group Co Ltd [2024] SGHC(1)*

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**15 February 2024**

**LEGAL  
UPDATE**

# In this Update

In *Reliance Infrastructure Limited v Shanghai Electric Group Co Ltd* [2024] SGHC(I) 3, the Singapore International Commercial Court threw out a challenge to a US\$146m SIAC award won by Shanghai Electric Group Co Ltd. The challenge was based on allegations that the underlying agreement was forged.

A team led by Cavinder Bull, SC and Director Foo Yuet Min successfully acted for Shanghai Electric Group Co Ltd in this matter.

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## INTRODUCTION

In *Reliance Infrastructure Limited v Shanghai Electric Group Co Ltd* [2024] SGHC(l) 3, the Singapore International Commercial Court (“**SICC**”) threw out a challenge to a US\$146m SIAC award won by Shanghai Electric Group Co Ltd (“**Shanghai Electric**”). The challenge was based on allegations that the underlying agreement, which contained the arbitration agreement, was forged.

A team led by Cavinder Bull, SC and Director Foo Yuet Min successfully acted for Shanghai Electric Group Co Ltd in this matter.

## BACKGROUND

Reliance Infrastructure Limited (“**Reliance Infra**”) and Shanghai Electric were involved in a major construction project for a power plant in India (the “**Project**”). The power plant is currently one of India’s largest electricity generating power plants. On 26 June 2008, Reliance Infra Projects (UK) Limited (“**Reliance UK**”) (a company related to Reliance Infra) entered into a contract for Shanghai Electric to supply equipment and services for the Project (“**Supply Contract**”). On the same day, Reliance Infra issued a guarantee letter to Shanghai Electric (“**Guarantee Letter**”), pursuant to which Reliance Infra guaranteed the performance of Reliance UK’s obligations in the Supply Contract.

Subsequently, Reliance UK failed to make progress payments owed to Shanghai Electric under the Supply Contract. In view of Reliance UK’s breaches, Shanghai Electric sought to enforce Reliance Infra’s guarantor obligations by commencing SIAC arbitration proceedings pursuant to the arbitration agreement in the Guarantee Letter (“**Arbitration**”).

During the Arbitration, Reliance Infra pleaded, among other things, that it had no records of the Guarantee Letter, and that in any case the Guarantee Letter was invalid because the signatory of the Guarantee Letter, Mr Rajesh Agrawal, had no authority to execute the Guarantee Letter on Reliance Infra’s behalf. However, despite arguing at one point that the Guarantee Letter was “a false instrument”, Reliance Infra ultimately chose not to pursue any allegation of forgery. In addition, despite contending that Mr Agrawal lacked authority to execute the Guarantee Letter, Reliance Infra did not argue that Mr Agrawal was not authorised to execute *the arbitration agreement* within the Guarantee Letter.

On 8 December 2022, the tribunal in the Arbitration (“**Tribunal**”) issued a final award which awarded substantial damages to Shanghai Electric of approximately US\$146 million (“**Award**”).

Reliance Infra subsequently applied to the SICC to set aside the Award, arguing that the Tribunal lacked jurisdiction over the dispute as: (a) Mr Agrawal’s signature on the Guarantee Letter was forged; and (b)

alternatively, Mr Agrawal lacked authority to enter into the arbitration agreement in the Guarantee Letter.

In response, Shanghai Electric contended that Reliance Infra had waived its right to object to the Tribunal's jurisdiction on the grounds of forgery and lack of authority to execute the arbitration agreement, as Reliance Infra had failed to raise any jurisdictional objection in the Arbitration even though it had every opportunity to do so. Shanghai Electric also relied on handwriting expert evidence and the surrounding course of conduct between the parties to prove that the Guarantee Letter was genuine, and that Mr Agrawal had at least apparent authority to enter into the arbitration agreement.

## **THE SINGAPORE INTERNATIONAL COMMERICAL COURT'S DECISION**

The SICC dismissed Reliance Infra's application to set aside the Award, and held that Reliance Infra had waived its right to object to the Tribunal's jurisdiction. The SICC also held that in any event, Reliance Infra had failed to show that the Guarantee Letter was forged or that Mr Agrawal lacked authority to enter into the arbitration agreement.

As regards the issue of waiver, the SICC held that Reliance Infra had adequate knowledge of the necessary facts to pursue its forgery allegation before the Tribunal, but chose not to do so. In particular, the oral evidence of Reliance Infra's witness, Mr Neeraj Parakh, revealed that Reliance Infra had made a conscious choice not to pursue its allegation of forgery during the Arbitration because it was confident that its other challenges to the validity of the Guarantee Letter would prevail. The SICC thus found that Reliance Infra had plainly waived its right to pursue its forgery allegation before the SICC.

In a similar vein, the SICC found that Reliance Infra could have raised Mr Agrawal's lack of authority to execute the arbitration agreement during the Arbitration. Reliance Infra's failure to do so constituted a waiver of its right to challenge the Award on that basis.

Despite the finding of waiver, the SICC went on to consider the substance of Reliance Infra's jurisdictional objections. The SICC found that the evidence showed that Mr Agrawal had signed the Guarantee Letter, and that Reliance Infra had held him out as having the requisite authority to make arbitration agreements with Shanghai Electric on Reliance Infra's behalf. Therefore, the SICC concluded that it would have dismissed Reliance Infra's objections even if it did not find a waiver of rights.

## COMMENTARY

### KEYPOINT

*A party's failure to raise jurisdictional objections without any good reason could result in a waiver of that party's right to challenge the arbitral award on those jurisdictional grounds subsequently.*

The SICC's decision serves as a cautionary tale to parties who are tempted to withhold jurisdictional objections in order to pursue a strategic advantage against the other party.

So long as a party in an arbitration believes that it has good basis to object to a tribunal's jurisdiction, it ought to raise such objections expeditiously, regardless of the stage of the arbitral proceedings. A failure to do so could result in a waiver of its right to challenge the tribunal's jurisdiction in subsequent ancillary court proceedings.

In light of the SICC's decision, parties ought to carefully consider their arbitration and litigation strategies, lest their inaction results in a waiver of their rights to raise any jurisdictional objections subsequently. Parties would also be well-advised to err on the side of caution and undertake the necessary investigations and inquiries at an early stage, to determine whether they can and should mount any jurisdictional objections.

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