

Refusing Enforcement of an Arbitration Award because of Breach of a Procedural Order, a New Ground for Refusing Enforcement of an Arbitration Award? – Singapore Court of Appeal in Wuhu Ruyi Xinbo Investment Partnership v European Topsoho S.à.r.l.¹

Legal Update | 9 July 2025

1. Would the enforcement of an unless order issued for the purposes of enforcing a procedural order be tantamount to fashioning a new ground for refusing the enforcement of a foreign arbitral award in contravention of the New York Convention² (the "Convention")? The Singapore Court of Appeal has ruled no. It also considered whether the court should undertake a proportionality assessment in deciding whether to enforce an unless order.

Facts

2. The parties are the Appellant Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) ("Xinbo") and the Respondent in the appeal European Topsoho S.à.r.l. ("ETS"). Xinbo and ETS were both subsidiaries of a common holding company Shandong Ruyi Technology Group Co Ltd ("Shandong Ruyi").
3. In July 2018, ETS pledged about 40 million shares in a company to Xinbo as security for Shandong Ruyi's debt under a guarantee. Subsequently, ETS also pledged 28 million of those shares as collateral for its own bonds.
4. ETS defaulted on the bonds in October 2021, and so the trustee for the bondholders took possession of the Pledged Shares. ETS then transferred the remaining 12m SMCP shares (the "Remaining Shares") to Xinbo's nominee on 27 October 2021.
5. In what appeared to be an attempt to regularise the transfer of the Remaining Shares, Xinbo commenced an arbitration (the "Arbitration") against its sister company, ETS, in the Beihai Court of International Arbitration (the "BCIA") on 21 March 2022, seeking a declaration that Xinbo was entitled to the Remaining Shares. At that time, all 3 companies (*viz.* Shandong Ruyi, ETS and Xinbo) were apparently under the control of the same individual.
6. The Arbitration before the BCIA was a deviation from the parties' initial agreement in the guarantee to refer disputes to the Jining Arbitration Commission (the "JAC"). When explaining this deviation in the proceedings below, Xinbo advanced two conflicting accounts:
 - a. In its affidavit filed in support of the application to enforce the award, Xinbo stated that the three parties to the Guarantee (*viz.* Xinbo, Shandong Ruyi and ETS) had agreed to change the arbitral institution from JAC to BCIA by a memorandum signed in or around *June 2019*.
 - b. In an affidavit subsequently filed by Xinbo pursuant to the Unless Order (see para 11 below) Xinbo stated that the parties had agreed to change the arbitral institution from JAC to BCIA at an in-person meeting on *9 April 2022*.
7. The Arbitration was conducted at a private hearing on 30 December 2022. During the Arbitration, ETS' counsel at the time had no objection to the evidence submitted by Xinbo, or to the reliefs claimed by Xinbo. Just a few days later, on 10 January 2023, the tribunal issued the award (the "Award") in which the tribunal confirmed that Xinbo had a "priority right of compensation" out of the proceeds of sale of the Remaining Shares. The Arbitration was, in effect, a walkover.
8. After the Award was issued, a bankruptcy order was made against ETS, and, in February 2023, a bankruptcy curator (the "Curator") was appointed to take control of ETS. Since then, the Curator has controlled all of ETS' actions, including the proceedings before the Singapore courts.

¹ [2025] SGCA 32

² Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958) 330 UNTS 38 (entered into force 7 June 1959, accession by Singapore 21 August 1986)

9. On 13 March 2023, Xinbo applied to enforce the Award in Singapore. The application was heard on an *ex parte* basis and permission to enforce the Award was granted.
10. Subsequently, ETS (under the control of the Curator) applied to set aside the *ex parte* order. In essence, ETS's case was that the Arbitration was a sham devised to give Xinbo priority over the Remaining Shares ahead of the other creditors of ETS. In resisting the enforcement of the Award, ETS applied for discovery against Xinbo. Discovery was ordered (the "Production Order").
11. In purported compliance with the Production Order, Xinbo filed 2 lists of documents. ETS contended that the lists were incomplete. ETS applied for an unless order to secure Xinbo's full compliance with the Production Order. The Unless Order was granted. Xinbo was given until 4 March 2024 to provide ETS with the documents it had previously been ordered to produce, failing which both the permission to enforce the Award and the underlying application would be dismissed.
12. On 4 March 2024, Xinbo filed a second supplementary list of documents. ETS argued that Xinbo had still failed to comply with Production Order and applied to enforce the Unless Order. It was allowed. Xinbo appealed against that decision to the General Division of the High Court (the "High Court"). That appeal was dismissed for the reasons set out in *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co, Ltd and another* [2024] SGHC 308.
13. This led to this appeal wherein Xinbo argued *inter alia* that, even if it did breach the Unless Order, the specified consequences should not be strictly enforced. Xinbo contended that where the sanction of an unless order would result in the refusal of the enforcement of a foreign arbitral award, "the proportionality analysis should generally lie in favour of applying other sanctions." Xinbo argued that enforcing the Unless Order strictly would be disproportionate.

Should the Unless Order be enforced?

14. Both the High Court and the Court of Appeal ruled that Xinbo had not complied with the Production and Unless Orders. At the heart of Xinbo's appeal was its contention that the courts must conduct a proportionality analysis when deciding whether to enforce an unless order after it has been breached. Xinbo relied on the decision in *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*") as authority for the proposition that the court should conduct a "proportionality" assessment in enforcing the consequences flowing from a breach of an unless order.
15. Both the High Court and the Court of Appeal rejected this. The Court of Appeal pointed out that when an unless order is first *imposed* against a party, that party would have already been in breach of at least one prior order and the court would have already considered the proportionality of the stated consequence(s) against the condition(s) specified in the unless order³. Although In *Mitora*, there was some language which suggested that the court should "be guided by considerations of proportionality in assessing breaches of 'unless orders'" (at [39]), this broad statement must be understood within its specific context. *Mitora* was ultimately a case about a party who "did substantively comply with all its discovery obligations" (*Mitora* at [21]).
16. The Court of Appeal ruled that following an intentional breach of a valid unless order that stands unchallenged, the court should not revisit the issue of proportionality when deciding to enforce it. The Court of Appeal also clarified that the references to "proportionality" in *Mitora* were not intended as an invitation for courts to undertake a *de novo* assessment of proportionality in deciding whether to enforce the consequences stemming from a breach of an unless order. Instead, *Mitora* simply stands for the uncontroversial position that the court always retains a residual discretion not to enforce an unless order, e.g. where there has been substantial compliance with the unless order such that it would be disproportionate for the unless order to be strictly enforced.
17. The Court of Appeal further clarified that where a party intentionally chooses to *partially* comply with an unless order, it cannot seek refuge in pleas of proportionality to avoid the consequences it has brought upon itself. To permit a second look at proportionality in these circumstances would be to invite parties to engage in tactical gamesmanship through selective non-compliance with unless orders. This would undermine the effectiveness of unless orders and encourage the kind of tactical disobedience that these orders are designed to prevent.
18. Xinbo argued that enforcing the Unless Order would effectively create a new ground for refusing enforcement, contrary to the Convention. Both the High Court and Court of Appeal disagreed. They noted that arbitral awards must be recognized and enforced through domestic courts, which involves

³ Ibid [36]

adhering to local procedures as required by Article III of the Convention⁴. Therefore, courts may enforce unless orders, including dismissing enforcement applications, if procedural rules are not followed, without adding any new grounds under the Convention.

19. Xinbo sought to rely on the English Court of Appeal's decision in *Gater Assets Ltd v Nak Naftogaz Ukrainiy* [2008] Bus LR 388 ("*Gater Assets*"). In that case, Rix LJ suggested in *obiter* (at [81]) that refusing enforcement due to an award creditor's failure to provide security for costs would amount to setting aside an enforcement order "on a ground not expressly within the [the Convention]". However, the Court of Appeal felt that the imposition of security for costs as a procedural hurdle is quite different from the enforcement of an unless order. While security for costs is imposed by the court without reference to the award creditor's conduct, an unless order's consequences flow directly from the award creditor's own choices and actions. Viewed from this perspective, there is nothing unfair or unjust in enforcing an unless order because it is a matter for the party to decide whether it will or will not comply with those rules; if it does not do so, then it must be prepared to face the consequences of its actions. When a party consciously chooses non-compliance despite clear warning of the consequences, those consequences flow not from some novel procedural hurdle to enforcement, but from the party's own deliberate choice to disregard the court's multiple orders⁵.

Conclusion

20. It is now clear that parties cannot assume that just because they have a favourable arbitration award, it is somehow sacrosanct and will be enforced come what may. The recognition and enforcement of the award still depend on compliance on the law and procedures of the enforcement court.

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⁴ "Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon..."

⁵ Ibid [44]