Tecnicas v PCMC – A Cautionary Tale on Jurisdiction, Contractual Hierarchies and the Perils of "Pick-and-Mix" interpretations of Arbitration Clauses

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In *Tecnicas Renuidas Saudia for Services & Contracting Co. Ltd v Petroleum Chemicals and Mining Company Limited* [2025] EWHC 1785 (Comm) (**Tecnicas** and **PCMC**, respectively), a dispute arose from a subcontract between Tecnicas and PCMC in relation to engineering, procurement and construction work at the Fadhili Gas Plant in Saudi Arabia (the **Subcontract**).

In this case, the English Commercial Court (the **Court**) upheld a challenge under Section 67 of Arbitration Act 1996 (**s.67**) and set aside a partial award (the **Partial Award**) issued by an arbitral tribunal in an institutional arbitration under the auspices of the International Chamber of Commerce (**ICC**). The Court did so on the basis that the Subcontract provided for ad-hoc arbitration in London and, therefore, the ICC had no jurisdiction in respect of the dispute. This is an unusual occurrence, as successful challenges under s.67 are rare. The Court's reasoning is therefore of particular interest. The case also highlights the importance of procedural discipline in arbitration claims before the English courts, as well as the need for clarity and consistency in contractual documentation, especially where multiple documents and hierarchies are involved.

Factual and Procedural Background

In 2015, Saudi Aramco appointed Tecnicas as the head EPC contractor in respect of various packages of work required for the Fadhili Gas Plant. In 2016, Tecnicas subcontracted certain electrochemical elements of the works to PCMC, a Saudi company.

The Subcontract comprised four documents: (i) a purchase order (the **PO**); (ii) the general terms and conditions for construction subcontracts (**GTCCS**); (iii) a deviation list to the GTCCS (the **Deviation List**); and (iv) Technical Requisitions. The PO, executed on 12 Dec., 2016, expressly set out an order of precedence, placing itself above the Deviation List and the GTCCS.

In Clause 11.1 of the PO, the parties agreed that the arbitration proceedings would take place in London, be held in English and be governed by the laws of England and Wales. The Deviation List, however, recorded negotiations between the parties and contained a provision at item 18 that any arbitration would take place under Saudi law, which appeared to have been rejected, followed by one that provided for the applicability of the laws of England and Wales and arbitration "*under ICC Laws*". Adding further complexity, Clause 32 of GTCCS stated that the Subcontract was governed by the laws of Saudi Arabia and disputes would need to be settled by arbitration administered by the ICC.

PCMC commenced arbitration before the ICC. Tecnicas raised issues of jurisdiction, ultimately resulting in bifurcation of the proceedings and a Partial Award from the ICC tribunal on the preliminary issue of its jurisdiction.

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PCMC argued that Paragraph 11.1 of the PO, when read together with Clause 32 of the GTCCS, meant that the arbitration should take place in London under the ICC Rules. PCMC admitted, however, that the contractual provisions were "*a huge bundle of confusion and ambiguity*".

While the ICC tribunal followed a similar line of reasoning when issuing the Partial Award, it adopted something of a "*pick and mix*" approach of all the various arbitration agreements in the Subcontract. It found that Item 18 of the Deviation List recorded a clear and unambiguous confirmation of the parties' agreement to arbitrate under the ICC Rules and that there was nothing in the Subcontract that suggested that the parties intended Clause 11.1 of the PO to establish a standalone arbitration clause overriding all other references to arbitration in the subordinate documents. When read with the GTCCS, this was deemed to provide for arbitration under ICC Rules in London.

The s.67 Challenge and Procedural Issues

A s.67 challenge allows a party to challenge an arbitration award on the basis that the tribunal lacked substantive jurisdiction. A right to make such challenge may be lost if an objection is not made timeously.

A key procedural issue arose due to PCMC's failure to file an Acknowledgment of Service within the required 24-day period after being served with the arbitration claim form by Tecnicas. Despite instructing English solicitors and being repeatedly notified of the consequences of non-compliance, PCMC delayed for nearly two months before filing the necessary documents and subsequently sought relief from sanctions and an extension of time. The Court found the breach to be serious and without good reason, emphasising the importance of expedition in arbitration claims and the need for compliance with procedural rules. Relief from sanctions was refused and all related applications were dismissed. Nevertheless, the Court permitted PCMC to make submissions on a *de bene esse* basis to ensure all arguments were considered.

PCMC sought to derail the claim at a procedural level by arguing that Tecnicas had waived its right to challenge jurisdiction by participating in the ICC arbitration and by not raising the "*ad hoc vs ICC*" point at the earliest opportunity. The Court, applying the principles set out in *Czech Republic v Diag Human SE & Anor* [2024] EWHC 2102 (Comm), held that Tecnicas' jurisdictional objection was, in fact, made within the time allowed by the ICC tribunal and that they had admitted the objection for its determination. This was also not a complaint PCMC had raised at the time with the tribunal itself. PCMC failed on two occasions to oppose Tecnicas's objection as to jurisdiction and even actively participated in the dispute over jurisdiction issue that led to the Partial Award. Tecnicas had also, importantly, expressly reserved its rights, particularly with respect to jurisdiction, when asking for a copy of the Request for Arbitration at the outset of proceedings.

While PCMC also sought to argue the issue was not one of "*substantive jurisdiction*" within the meaning of s.67, the Court further confirmed that the nature of the dispute—whether the parties had agreed to ad hoc or institutional arbitration—was a matter of substantive jurisdiction, not a mere procedural irregularity. There was no requirement for Tecnicas to demonstrate prejudice; the question was whether the tribunal had jurisdiction under the parties' agreement. Institutional versus ad-hoc arbitration was a meaningful and important distinction.

Contractual Hierarchy and the Arbitration Agreement

The Court reviewed the precise wording of the various contractual documents carefully. The PO contained an arbitration clause providing for arbitration in London, in English and governed by

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English law, but made no reference to the ICC or any institutional rules. The Deviation List, which memorialised negotiations, included a reference to "*arbitration under ICC Laws*", but was not itself contractually binding in respect of the PO, and, in any event, was subordinate in the contractual hierarchy. This was particularly so in that the Deviation List had been signed on 13 Dec. 2016—the day before the PO—and was agreed to only amend the GTCCS, not the PO itself. The PO expressly took precedence over the GTCCS.

The Court accordingly found that the parties had agreed only to ad-hoc arbitration in London under English law, as set out in the express terms of the signed PO. The GTCCS and Deviation List could not override or supplement the clear terms of that PO and the "*pick and mix*" approach advanced by PCMC and accepted by the ICC tribunal—seeking to combine elements from different documents—was rejected.

Conclusion

This judgment supplies a series of reminders—some procedural, some substantive—for counsel and contract drafters alike.

1. **Procedural Discipline Matters** – Arbitration claims are meant to be fast-track litigation. Missing an Acknowledgement of Service deadline by months without compelling justification is fatal. Litigation efficiency and enforcing the rules will likely outweigh any sympathy for dilatory defendants.
2. **Maintain Timeliness Objections** – If a party believes an opponent's jurisdictional objection is out of time, it must raise that point before the tribunal at the first opportunity. Silence amounts to waiver.
3. **Hierarchy Clauses Work** – Where documentation expressly lists a hierarchy, the courts will enforce it literally. Lower-ranking provisions that contradict higher-ranking ones are overridden, even if embedded in lengthy general conditions.
4. **Avoid Contradictory Arbitration Language** – Projects with multiple layers of contractual documentation often accumulate clashing clauses. The Deviation List illustrates how easy it is to create ambiguity that spawns satellite litigation, delay and expense. Taking time at the final stages of contractual negotiations to ensure the position is clear could pay dividends in the long run.
5. **Ad-Hoc vs. Institutional Choices are Material** – The Court's extended discussion of this point shows that selecting an arbitral institution is **not** a minor procedural tweak, but a wholesale shift in the parties' legal rights:

- **Appeals and Supervision** – The right to appeal on a question of law under Section 69 of the Arbitration Act 1996 typically survives in ad-hoc London arbitration but is excluded in ICC cases. When choosing ICC arbitration, the parties agree to a detailed set of rules to govern the arbitration, thereby removing a degree of party autonomy in deciding the architecture of the arbitration.
- **Appointment Mechanism and Costs** – ICC Court involvement, fixed fee scales and award scrutiny differ radically from the party-autonomy model of ad-hoc arbitration. There are very significant costs incurred (and from the outset) in an institutional arbitration under ICC Rules in contrast to an ad hoc arbitration where parties can choose their arbitrators (with modest initial appointment fees).
- **Seat and Governing Law** – Institution clauses often travel with assumptions about seat and curial law, which cannot simply be excised without incoherence.

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Ultimately, this judgment underlines the necessity of drafting cohesive dispute resolution clauses (and to consider them strictly within a contractual hierarchy) at the time of agreeing any overarching contractual document. Where parties do stumble into conflicting provisions, English courts will apply orthodox contractual principles with little patience for "*pick-and-mix*" provisions. The safer course is to ensure that the contract says exactly—and only—what the parties intend.

This point is particularly important for practitioners working on complex, multi-layered construction projects. We often see agreements that are comprised of multiple general terms and conditions, purchase orders and other documents. It is not uncommon for there to be inconsistencies between such documents, and lack of clarity on such fundamental points as jurisdiction and applicable law. Wherever it is not possible to ensure consistency across all parts of the contract, a clear order of precedence and an express statement of what provision is agreed to apply will assist.

With respect to the important distinction between various international arbitration regimes, we have recently produced a helpful International Arbitration Rules Comparison. This comparison clearly sets out the key distinctions between the various International Arbitration Rules, and such differences should be firmly kept in mind when considering which rules to include in any dispute resolution clause.

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