

Case Comment

**CONDITIONAL AWARDS AND IMPLIED
RESERVATION OF JURISDICTION IN ARBITRATION**

Voltas Ltd v York International Pte Ltd [2024] 1 SLR 559

[2024] SAL Prac 27

When seeking to resolve a dispute, parties generally aim for a final resolution to the dispute. In arbitration, this takes the form of a final arbitral award. Once a final award is issued, the arbitrator becomes *functus officio* – he/she no longer has jurisdiction over the dispute and may not issue a further award in relation to the arbitration, save for limited exceptions. This ensures the finality of the arbitration and prevents a party from re-opening the dispute. However, what if an award includes conditions to be met before one party's liability to pay accrues? Can it still be considered a final award, or would the arbitral tribunal retain jurisdiction to issue a further award if the parties are in dispute over whether the conditions are met? Must the tribunal's jurisdiction be expressly reserved, or can jurisdiction be retained by implication? These questions were answered by the Court of Appeal in *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559, where it found that (a) a conditional award may be a final award; and (b) a tribunal cannot reserve its jurisdiction by implication.

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I. Introduction

1 A general proposition is that once a final award is issued, the arbitrator or tribunal becomes *functus officio* – they no longer have jurisdiction over the dispute and may not issue a further award in relation to the arbitration, save for limited exceptions as provided by the *lex arbitri*. This achieves the finality of the arbitration and prevents a party from re-opening the dispute.

2 Is an award final if it includes conditions to be met before one party’s liability to pay crystallises? Does the arbitral tribunal retain jurisdiction to issue a further award if the parties are in dispute over whether the conditions are met? Must the tribunal’s jurisdiction be expressly reserved, or can jurisdiction be retained by implication?

3 Upholding the Singapore High Court’s decision,¹ these questions were recently answered by the Singapore Court of Appeal (“CA”) in *Voltas Ltd v York International Pte Ltd*² (“*Voltas v York*”), where the CA found that, under Singapore law, (a) a conditional award may constitute a final award; and (b) a tribunal cannot reserve its jurisdiction by implication.

II. Background of dispute

A. The parties

4 Voltas Ltd (“Voltas”) had entered into an agreement (“Purchase Agreement”) with York International Pte Ltd (“York”), under which York would provide Voltas with five water-cooled dual centrifugal chillers (“Chillers”) to supply chilled water to several developments on Sentosa Island.³

5 The Purchase Agreement was made pursuant to Voltas’ contract with Resorts World Sentosa Pte Ltd (“RWS”), to design, construct and maintain a district cooling plant on Sentosa Island

1 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484.

2 [2024] 1 SLR 559.

3 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [5].

(“Main Contract”). The Main Contract was subsequently novated by RWS to DCP (Sentosa) Pte Ltd (“Project Owners”).⁴

6 A dispute arose between Voltas and York when seven of the Chillers’ motors suffered outages during operation. To resolve the dispute, Voltas and York entered into an *ad hoc* arbitration agreement (“Arbitration Agreement”).⁵

B. The 2014 arbitration and 2014 award

7 Sometime in early 2012, York commenced arbitration against Voltas pursuant to the Arbitration Agreement (“Arbitration”). York claimed, among other things, outstanding payments owing under the Purchase Agreement. Voltas counterclaimed \$6.6m arising from York, claiming breaches of the Purchase Agreement for supplying Chillers that Voltas claimed were defective.

8 Among Voltas’ counterclaims were: (a) a claim for \$1,099,162.46 (“Nitrogen Claim”); and (b) a claim for \$33,277.00 (“Removal Claim”).⁶ The Nitrogen Claim and Removal Claim were for costs which the Project Owners were purported to have incurred to fix the defective Chillers, for which Voltas claimed to be liable to the Project Owners.

9 The arbitrator (“Arbitrator”) found in favour of Voltas for the Nitrogen Claim and Removal Claim. At the time of the final award in August 2014 (“2014 Award”), however, no payment had been made by Voltas to the Project Owners for any of these claims. To avoid a potential windfall for Voltas, the Arbitrator thus ordered that York would be liable to pay Voltas, upon Voltas making payment of the Nitrogen Claim and/or Removal Claim to the Project Owners, “up to a maximum of” \$1,099,162.46 and \$33,277.00, respectively.⁷ In other words, York would have to pay Voltas only if and when the latter made payment to the Project Owners for these claims, and only up to the amount actually paid.

4 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [4].

5 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [6]–[7].

6 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [8].

7 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [10]–[12].

10 Sometime after the issuance of the 2014 Award, Voltas entered into a settlement agreement with the Project Owners on the Main Contract claims. Following the settlement, Voltas proceeded to seek payment of the costs of the Nitrogen Claim and Removal Claim from York. York rejected Voltas' demand, on the basis that there was a lack of substantiation demonstrating the amounts actually paid by Voltas to the Project Owners for the Nitrogen Claim and Removal Claim.⁸

C. Further award application and Arbitrator's 2021 decision

11 Dissatisfied with York's position, in August 2020, Voltas applied to the Arbitrator for a further award on the following issues: (a) whether Voltas had paid the Project Owners for the Nitrogen Claim and Removal Claim; (b) if so, what sums Voltas had paid; and (c) what sums were to be paid by York to Voltas. York resisted the application contending that the Arbitrator was *functus officio* in relation to the Arbitration, and did not retain any jurisdiction after issuing the 2014 Award.⁹

12 The Arbitrator invited submissions on the issue of whether the tribunal retained jurisdiction over the issues. In his preliminary ruling on jurisdiction, it was determined that the tribunal was not *functus officio* and retained jurisdiction to render a further award on the issues raised by Voltas ("Jurisdiction Decision").¹⁰ Among the reasons given, the Arbitrator noted that he had not determined the precise quantum due from York to Voltas in relation to the Nitrogen Claim and Removal Claim.

13 Dissatisfied with the Jurisdiction Decision, York commenced HC/OS 952/2021 pursuant to s 21(9) of the Arbitration Act 2001¹¹ ("AA"), for the Singapore High Court to decide whether the Arbitrator was *functus officio* after issuing the 2014 Award.

8 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [14].

9 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [15]–[17].

10 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [18].

11 2020 Rev Ed.

III. Singapore High Court's decision

14 In *York International Pte Ltd v Voltas Ltd*,¹² S Mohan J allowed York's application, finding that the 2014 Award had dealt with all the issues forming the subject of the Arbitration, rendering the Arbitrator *functus officio*.¹³ The learned judge gave five key reasons.

15 First, the Arbitrator had made a conditional award on quantum rather than adjourning his decision on the same. This indicated that he had intended to fully resolve Voltas and York's dispute over the Nitrogen Claim and Removal Claim in the 2014 Award and did not reserve his jurisdiction to make a future assessment.¹⁴

16 Second, the Arbitrator's indication in the Jurisdiction Decision that any reservation of jurisdiction would have been made "in clear and categorical language" displayed his awareness that any such reservation had to be unequivocal. Yet, the Arbitrator did not explain how the 2014 Award contained such a reservation, and there was no language to that effect in the 2014 Award. This showed that the Arbitrator had not intended to reserve his jurisdiction then.¹⁵

17 Third, the 2014 Award had fully resolved all the disputes that formed the subject of the Arbitration. Although the 2014 Award did not fix a specific sum payable by York to Voltas for the Nitrogen Claim and Removal Claim, it set out the method for deriving this sum in the two conditions¹⁶ of the 2014 Award.¹⁷

18 Fourth, the mere possibility of difficulties in enforcement did not mean that the award was not complete, final and binding on the parties, or that the Arbitrator reserved his jurisdiction in the 2014 Award.¹⁸

12 [2024] 4 SLR 484.

13 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484 at [90].

14 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484 at [56] and [58]–[61].

15 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484 at [62]–[64] and [66].

16 See para 8 above.

17 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484 at [72]–[73].

18 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484 at [75]–[76].

19 Finally, the 2014 Award possessed the *indicia* of a final award – being titled “Final Award” and containing a final order on costs which dealt with all the costs of the Arbitration, which was “reasonably common in the last award in an arbitration”.¹⁹

IV. Issues on appeal

20 Voltas appealed against Mohan J’s decision to the CA. In essence, Voltas contended that the 2014 Award was not a final award because it was a conditional award; such an award does not decide all the substantive issues in a dispute.

21 As background, Voltas was granted permission to appeal to the CA on the following issues:²⁰

(a) Whether an arbitrator must reserve his jurisdiction to issue a further award to retain jurisdiction to issue such further award in relation to issues and/or disputes that arise from conditions (i) contained in the original award, or (ii) which have not yet been determined by the arbitrator.

(b) If an arbitrator must reserve his jurisdiction, whether this reservation must be made expressly in the original award or whether it can also be implied.

(c) If the arbitrator’s reservation of jurisdiction can be implied, what factors should a court consider in deciding whether such an implied reservation exists – and should it be implied that an arbitrator reserves jurisdiction to make further determination in relation to issues and/or disputes that arise from conditions (i) contained in the original award, or (ii) which have not yet been determined by the arbitrator?

(d) Whether an arbitrator, who issues an award ordering party B to pay party A money (without specifying the precise sum) conditional upon party A paying that sum to a third party (to satisfy specific claims by that

19 *York International Pte Ltd v Voltas Ltd* [2024] 4 SLR 484 at [78]–[84].

20 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [26].

third party against party A), retains jurisdiction to issue a further award to determine (i) whether party B's obligation to pay party A has accrued, and (ii) the sum payable by party B to party A.

22 The CA identified that two issues arose for its determination: (a) whether the 2014 Award, being a conditional award, constituted a final award ("Issue 1"); and (b) if so, whether the Arbitrator had reserved his jurisdiction to issue a further award ("Issue 2").²¹

V. Court of Appeal's analysis and decision

A. Issue 1: Did the 2014 Award, being a conditional award, constitute a final award?

23 The CA answered the question in the affirmative. The CA rejected Voltas' contention²² that the 2014 Award was not a final award because it was a conditional award, and that it did not decide all the substantive issues in dispute.

24 In doing so, the CA referred to the third definition of a final award in *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation*:²³

53 Third, [a final award] can refer to the last award made in an arbitration which disposes of all remaining claims. This is a 'final' award in the sense used in Art 32(1) of the Model Law.

25 The CA saw no reason to categorically bar a conditional award from constituting a final award in this sense.²⁴ In the CA's view, the key inquiry (into whether a conditional award is a final award) is whether the conditions in such an award make it necessary for the tribunal to re-open the matter. A conditional award can constitute a final award if it disposes of all outstanding

21 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [31]–[33].

22 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [28].

23 [2015] 4 SLR 364.

24 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [42].

claims and if an enforcement court will be able to assess whether the conditions in the award have been satisfied.

26 The CA affirmed that any potential uncertainty as to the appellants' liability does not vitiate the finality of an award. If all that remains is an assessment of the extent to which any liability has accrued, this would fall within the remit of the enforcement court.²⁵

27 Applying the aforesaid principles, the CA found that the 2014 Award was indeed a final award. It disposed of the substantive issues in the dispute between Voltas and York, and the Arbitrator did not contemplate that there were any other issues left to be decided then.²⁶ The CA highlighted the following:²⁷

(a) First, the substance of the dispute was already decided. The only condition left to crystallise York's liability was for Voltas to show it had paid the specified sums claimed under the Nitrogen Claim and Removal Claim to the Project Owners.

(b) Second, the Arbitrator decided on the costs of the Arbitration, finding that Voltas had substantially succeeded and was entitled to 70% of its costs plus 70% reasonable disbursements. This suggested that the Arbitrator intended to finally decide on all the issues of the dispute in the 2014 Award.

(c) Third, in the Jurisdiction Decision, the Arbitrator himself accepted that he was *functus officio* in respect of the matters decided in the 2014 Award. The issuance of the conditional award in the 2014 Award as opposed to adjourning the decision on quantum showed that the Arbitrator did not intend to keep the question of York's liability open but meant to finally dispose of the matter with the 2014 Award.

25 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [44].

26 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [45].

27 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [46]–[48].

B. Issue 2: Did the Arbitrator reserve jurisdiction to issue a further award?

28 In the Jurisdiction Decision, the Arbitrator accepted that he had not *expressly* reserved his jurisdiction to issue a further award. To overcome this admission, Voltas sought to argue that there was an *implied* reservation of jurisdiction by the Arbitrator. The CA found categorically that it is not possible for a tribunal to impliedly reserve its jurisdiction.²⁸

29 The CA noted that a tribunal is *functus officio* once it renders an award – in other words, the tribunal has “completed its mandate by making an award with *res judicata* effect”.²⁹ In the context of a domestic arbitration, the rule on finality of an arbitral award is enshrined in s 44 of the AA:³⁰

Effect of award

44.— ...

(2) Except as provided in section 43, upon an award being made, including an award made in accordance with section 33, the arbitral tribunal must not vary, amend, correct, review, add to or revoke the award.

30 The CA further held that the limited circumstances in ss 43(1) to 43(6) of the AA did not entitle a tribunal to “re-visit issues canvassed and decided or to re-consider any part of the decisions consciously made” when it revisits an earlier-issued award in those situations:³¹

Correction or interpretation of award and additional award

43.—(1) A party may, within 30 days of the receipt of the award, unless another period of time has been agreed upon by the parties —

(a) upon notice to the other parties, request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or other error of similar nature; and

28 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [50].

29 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [51].

30 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [52].

31 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [53]–[55].

(b) upon notice to the other parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award, if the request is also agreed to by the other parties.

(2) If the arbitral tribunal considers the request in subsection (1) to be justified, the tribunal must make the correction or give the interpretation within 30 days of the receipt of the request and the interpretation forms part of the award.

(3) The arbitral tribunal may correct any error of the type mentioned in subsection (1)(a) or give an interpretation as mentioned in subsection (1)(b), on its own initiative, within 30 days of the date of the award.

(4) Unless otherwise agreed by the parties, a party may, within 30 days of receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented during the arbitral proceedings but omitted from the award.

(5) If the arbitral tribunal considers the request in subsection (4) to be justified, the tribunal must make the additional award within 60 days of the receipt of the request.

(6) The arbitral tribunal may, if necessary, extend the period of time within which it is to make a correction, interpretation or an additional award under this section.

31 Thus, a tribunal must reserve its jurisdiction in order to deal with any contingency that may later arise, by taking steps to indicate that the award is not a final award (such as by designating the award as a partial award).³² Failing this, the tribunal's mandate will be terminated absolutely and immediately following the issuance of a final award (aside from the limited circumstances prescribed under s 43 of the AA).³³

32 The CA emphasised that the reservation of jurisdiction must be express. The CA found that the notion of *implying* such a reservation is inconsistent with s 43(4) of the AA, which sets a specific 30-day time limit to seek a further award dealing with any issue possibly omitted by the tribunal. Given its likely underlying rationale to fulfil "the desire for finality and expedition

32 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [56].

33 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [58].

in arbitration proceedings”, the CA reasoned that recognising the possibility of an *implied* reservation of jurisdiction to deal with unresolved issues would circumvent and frustrate s 43(4) of the AA and its rationale.³⁴

VI. Key takeaways

33 *Voltas v York* provides welcome clarity to both the users of arbitration and to arbitrators. It emphasises the finality of an arbitral award, underscoring the limitations to the tribunal’s jurisdiction after issuance of a final award and the need for express language for jurisdiction over any issue to be retained.

34 For users of arbitration, it should be welcomed knowledge to be assured that a concluded arbitration cannot be re-opened by way of an implied reservation of jurisdiction. The CA’s decision also clarifies that a conditional award does not, in and of itself, affect its finality. However, parties must bear in mind that if a dispute on whether the conditions have been met arise, such dispute could well fall within the province of an enforcement court to determine.

34 *Voltas Ltd v York International Pte Ltd* [2024] 1 SLR 559 at [59]–[60].