

EXHIBIT A

D-24NCC (ARB)-7-2010

27.12.2012

Kerajaan Republik Demokratik Rakyat Laos

5 **Dan**

Hongsa Lignitwe Co Ltd & 1 lagi

David Mathew for pltf

Idza Hajar for def

10 2.50pm.

Enc 1.

15 The main brunt of the challenge of the arbitral award is that the arbitral tribunal has exceeded its jurisdiction. This ground on jurisdictional challenge is captured in s 37 (1) (a) (iv) and (v) of the AA 2005.

I am conscious of the fact that an award of the tribunal is generally final and binding and can only be set aside on the limited grounds provided for in S 37 of the AA for this purpose.

20 I also remind myself that my powers are supervisory and not appellate in nature.

Bearing that in mind I can straightaway dismiss the challenge based on the breach of natural justice and public policy ground.

The tribunal was entitled after hearing the parties to decide on the meaning of 'premium'.

25 But the greater question and indeed a graver one is the question of excess
of jurisdiction.

As stated by the learned authors Redfern & Hunter, the power of the
arbitral tribunal is derived from the arbitration agreement. The tribunal has
so much power to adjudicate on the dispute as the parties have given it
30 under the arbitration agreement.

Here the agreement in question is the PDA and the arbitration clause.

The applicable law to the dispute and the determination of the rights and
liabilities of the parties is N Y Law save for certain exceptions which do not
apply strictly to the dispute.

35 Reading the Award as a whole, the tribunal seems to have lumped together
or co-mingled the claims and disputes under the Mining Contracts with the
claims and disputes under the PDA. The tribunal might have on ground of
efficiency or expediency decided the whole of the dispute under the PDA
as if the rights of the parties under the Mining Agreements have been
40 subsumed into the PDA.

However, when one looks into the relevant clauses in the PDA, it is clearly
stated that the rights of the parties in the Mining Agreements are both
preserved and remained undisturbed.

The Mining Agreement and disputes arising therefrom are governed by
45 Loatian Law.

As such, the dispute arising out of the termination of the Mining
Agreements cannot be lumped and heard together in the arbitration of the
disputes under the PDA which by and large are governed by NY Law.

The P here, GOL, had raised this in their pleadings filed and I am aware of
50 the provision of S 18(3) of the AA.

I am also conscious of the fact that the tribunal may decide the issue of
jurisdiction as a preliminary issue by way of an Interim Award or leave it to
the handing down of the final Award under s 18(7) when it hands down an
award on the merits.

55 Here having read the Award, I find that the tribunal had proceeded to
adjudicate matters under the Mining Agreements and in particular claims of
the recovery of invest costs on Roads and Survey which are clearly matters
to be decided under Loatian Law in the event the Ds here (Claimants there)
are desirous of challenging the validity of the termination of the Mining
60 Agreements. The choice of law clause, in this case, Laotian Law, is a
matter of contract and the Tribunal cannot alter that for the parties
especially the GOL.

The tribunal for deciding the dispute is also different. Though it may be
argues that KLRCA is a member Int Economic Dispute Settlement
65 Organisation, yet parties express consent must be had first as the clause
for arbitration under the Mining Agreements provided for a few options with
respect to the place and the mechanism for arbitration and with that the
rules for it.

Having read the award, I cannot excise the part or portion which is
70 attributable to claims under the Mining Agreements, governed as it is
under Laotian Law, and the part and portion under the PDA, governed as it
is under the NY Law.

As the effective challenge is one of excess of jurisdiction, the whole award
in the circumstance of the case, has to be set aside and I hereby so order.
75 The dispute confining to the PDA is to be re-arbitrated before a new panel
confining itself to just the PDA and not traversing or transgressing into the
Mining Agreements which are governed by Laotian Law.

As for cost I shall now hear the parties.

After hearing parties, Court orders costs of RM50,000.00 in favour of the P
80 from the Ds.

The above represents brief grounds of decision and full grounds shall be
provided upon appeal.

85 Court records its thanks to learned counsel of both parties for their
scholarship and clear submissions on the law.

3.25pm.