Legal Updates on Arbitration Proceedings: Breach of Contract

August 3, 2017

When entering into a contract that contains a provision that requires arbitration for the resolution of disputes, the involved parties have, in fact, chosen to utilize an alternative dispute resolution to resolve conflicts instead of courtroom litigation. However, courts are supportive of arbitration as a means for resolving disputes and try, wherever possible, to uphold arbitration agreements.

In a case1 recently reported in the *New York Law Journal,* Biosar America LLC, a subsidiary of AKTOR S.A., was engaged by Aurora Distributed Solar LLC to build a large solar power project. This large solar power project was to be designed and built under a 2016 engineering procurement and construction agreement (EPC Agreement) which contained a mandatory arbitration clause.

AKTOR guaranteed Biosar’s obligations under the EPC Agreement. Biosar allegedly defaulted on the EPC Agreement. Biosar initiated arbitration against Aurora alleging contract breach pursuant to the EPC Agreement. Aurora’s counter- demand for arbitration alleged Biosar’s breach of contract. Aurora also sued AKTOR in state court to enforce the guaranty. AKTOR federally moved to stay the state court action pending arbitration.

The court granted AKTOR's stay motion. AKTOR showed that common issues, that will be finally determined by arbitration, exist and that the arbitrator will make fact findings as to Biosar's putative breach of the EPC Agreement that are also necessary to resolve Aurora's claims under the guaranty. The issue of Biosar's liability for breaching the EPC Agreement is also capable of being finally determined in the arbitration proceedings, which will not cause Aurora undue hardship.

For more information, please contact Anthony Bracco, David Beckman, Margaret Kolb, Dennis Neier, or Raymond Dragon of Anchin's Litigation, Forensic and Valuation Services Group at 212.840.3456.

1Aurora Distributed Solar LLC v AKTOR S.A., 17-CV-2009 (June 8)