

MOSCOW ARBITRAZH COURT

RULING

Moscow
15 April 2010

Case No. A40-24208/10-63-209

Operative part of the resolution announced on 8 April 2010
Full text of the resolution prepared on 15 April 2010

The Arbitrazh Court, composed of: Judge Ishanova T.N.
the minutes being kept by Judge Ishanova T.N.
having examined at the hearing the application of the Company Ansell S.A.
interested party: OOO MedBusinessService-2000
for the recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009,
being present at the hearing:
for the applicant: Bekeshenko E.A. acting under power of attorney of 8 January 2010, Subbot A.V. acting under power of attorney of 8 January 2010,
for the interested party: Demidov I.A. acting under power of attorney of 10 March 2010, Pavlov N.I. acting under power of attorney of 10 March 2010.

ESTABLISHED:

Ansell S.A. filed an application with the Moscow Arbitrazh Court for the recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009.

At the hearing, the applicant defended the claims and arguments contained in the application.

The interested party objected to the granting of the application for the reasons set out in its answer to the application, indicating that there is no arbitration clause and that the decision of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009 is contrary to the public policy of the Russian Federation.

Having examined the application and having studied the case materials, the court finds that the application should be granted on the following grounds.

The Arbitration Institute of the Stockholm Chamber of Commerce rendered award No. 016/2009 of 11 November 2009 ordering OOO MedBusinessService-2000 to pay to Ansell S.A. USD 342,984.99, plus interest on the amount of USD 274,715.60 at the rate of 0.05 percent per day from 1 February 2009 until the date of payment; SEK 733,500 and EUR 39,240 for the reimbursement of the arbitration expenses; EUR 32,655, of which EUR 26,124 correspond to fees and EUR 6,531 to the VAT; and SEK 39,804 for compensation of expenses, of which SEK 7,961 correspond to the VAT.

According to Article 241(1) of the Arbitrazh Procedure Code of the Russian Federation, decisions of foreign courts, rendered in disputes and other cases arising from the conducting of entrepreneurial or other economic activities (foreign courts), awards of domestic arbitral tribunals and international commercial arbitral tribunals, made in the territory of foreign States in disputes and other cases arising from the conduct of entrepreneurial or other economic activities (foreign arbitral awards), shall be recognized and enforced in the Russian Federation by the arbitrazh courts, if the recognition

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and enforcement of such awards is provided for by an international treaty of the Russian Federation and by a federal law.

Pursuant to Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), recognition and enforcement of an award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

a) The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

c) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Pursuant to paragraph 2 of the same Article of the Convention, recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

a) The subject matter of the dispute is not capable of settlement by arbitration under the law of that country; or

b) The recognition or enforcement of the award would be contrary to the public policy of that country.

The arbitrazh court does not find grounds for refusing to grant recognition and enforcement of the arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009, with regard to the requirements established by the abovementioned Convention and Articles 244(2) and 239(4) of the Arbitrazh Procedure Code of the Russian Federation.

The objections of the interested party to the examination of a dispute, which is not contemplated by or does not fall within the terms of the submission to arbitration, shall be rejected on the following grounds.

According to Article 8.1. of Contract No. AN040409 of 9 April 2004 (in the versions of the complainant and the interested party), all disputes and disagreements that may arise from this contract or in relation to it, shall be resolved, if that is possible, by way of negotiation. If the parties fail to reach an agreement, the dispute must be submitted for examination to Arbitration in Stockholm, Sweden, under the rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

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Pursuant to Article 7 of the Law of the Russian Federation of 7 July 1993 “On International Commercial Arbitration”, the arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another.

As it was established in the hearing, the parties agreed (Article 8.1 of Contract No. AN040409 of 9 April 2004) on the submission of disputes to Arbitration in Stockholm, Sweden.

Furthermore, the interested party did not object to the examination of the case by the arbitral tribunal, filed a statement of defense to the arbitral tribunal, in which it recognized the jurisdiction of the arbitrator for the examination of the case between the parties and filed a counterclaim, within the framework of the arbitral proceedings, in which it requested the examination of its claims regarding offset of damages.

Furthermore, the arbitral award and its enforcement would not produce results contrary to the universally recognized moral and ethical rules or threaten the citizens’ life and health, or the State’s security. Therefore, the challenged award shall not be deemed contrary to the public policy or fundamental principles of Russian law.

On the basis of the above, the application of the Company Ansell S.A. for the recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009 shall be granted.

Guided by Articles 123, 184, 185, 241, 244(2) and 239(4) of the Arbitrazh Procedure Code of the Russian Federation, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), the court

RULED:

The award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009 rendered in the dispute between the Company Ansell S.A. and OOO MedBusinessService-2000 shall be recognized and enforced.

An enforcement writ for the coercive enforcement of the award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009 shall be issued.

OOO MedBusinessService-2000 shall pay to Company Ansell S.A. the registration fees in the amount of 2,000 (two thousand) rubles.

This ruling may be challenged before the Federal Arbitrazh Court for the Moscow District within one month after its rendering.

Judge

T.N. Ishanova