Unofficial translation

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HIGHEST ARBITRAZH COURT
OF THE RUSSIAN FEDERATION

RESOLUTION
of the Presidium of the Highest Arbitrazh Court
of the Russian Federation

No. 13211/09

Moscow 9 March 2011

The Presidium the Highest Arbitrazh Court of the Russian Federation, composed of:

Presiding Judge – Chairman of the Highest Arbitrazh Court of the Russian Federation Ivanov A.A.;

Members of the Presidium: Amosov S.M., Andreyeva T.K., Batsiev V.V., Valyavina E.Yu., Vitryansky V.V., Zavyalova T.V., Ivannikova N.P., Kozlova O.A., Makovskaya A.A., Neshatayeva T.N., Pershutov A.G., Sarbash S.V., Yuhney M.F.;

examined the application of the Company Lugana Handelsgesellschaft mbH for the supervisory review of the resolution of the Twentieth Arbitrazh Court of Appeal of 26 July 2010 and the resolution of the Federal Arbitrazh Court for the Central District of 29 September 2010, rendered in Case No. A54-3028/2008 of the Arbitrazh Court of the Ryazan Region.

The following representatives were present at the hearing:

for the Applicant – Company Lugana Handelsgesellschaft mbH – Kuzmin S.Yu.,

for open joint stock company Ryazan Metal Ceramics Instrumentation Plant (respondent) – Gordeyev A.Yu., Davydenko D.L., Kubantsev S.P..

Having heard and considered the report of Judge Neshatayeva T.N., as well as the explanations of the representatives of the participants in this case, the Presidium established the following.

The Highest Arbitrazh Court of the Russian Federation, by Resolution No. 13211/09 of 2 February 2010, ordered the Arbitrazh Court of the Ryazan Region to issue to the Company Lugana Handelsgesellschaft mbH (hereinafter – the Company) an enforcement writ for the coercive enforcement of the following awards rendered by the German Institute of Arbitration (DIS):

the award of 11 August 2005, rendered in Case No. DIS-SV-B-454/04, ordering open joint stock company Ryazan Metal Ceramics Instrumentation Plant (hereinafter – the Plant) to pay to the Company a fine of USD 463,317.63;

the award of 14 October 2005, rendered in Case No. DIS-SV-B-454/04, on general expenses, according to which the Plant shall pay to the Company expenses based on the payment of the arbitration and attorney fees of EUR 81,652.05 made in advance by the Company, along with interest of 5 percentage points above the reference rate, starting from 15 September 2005;

the award of 27 December 2005, rendered in Case No. DIS-SV-B-454/04, on the final settlement of accounts, according to which the Plant shall reimburse to the Company the expenses for the payment of the arbitration and attorney fees of EUR 57,408.71 along with interest of 5 percentage points above the reference rate, starting from 6 December 2005.

On 23 March 2010, the Arbitrazh Court of the Ryazan Region issued enforcement writ No. 002458575 – Series AS, in case No. A54-3028/2008.

The Arbitrazh Court of the Ryazan Region, by a Ruling of 19 April 2010, according to the correction procedure, amended the enforcement writ as follows: on the fifth page, in the schedule regarding the entry into force of the judicial act or its immediate enforcement, the words “shall be immediately enforced” were changed to “2 February 2010”.

Referring to the fact that the content of the enforcement writ does not meet the requirements of Article 320 of the Arbitrazh Procedure Code of the Russian Federation and Article 13 of the Federal Law No. 229-FZ of 2 October 2007 “On Enforcement Proceedings”, the Plant filed an application with the Arbitrazh Court of the Ryazan Region requesting that the enforcement writ be recalled and amended as follows: indicate the dates of the entry into force of the judicial acts (11 August 2005, 14 October 2005 and 27 December 2005); indicate that the time limit for submitting the enforcement writ expired, respectively, on 11 August 2008, 14 October 2008 and 27 December 2008; indicate that the enforcement writ can be submitted for enforcement within three months following the rendering by a court of a ruling on the restoration of an expired time limit according to the procedure provided for by Article 322 of the Arbitrazh Procedure Code of the Russian Federation.

By its Ruling of 4 May 2010, the Arbitrazh Court of the Ryazan Region rejected the Plant’s claims.

The Twentieth Arbitrazh Court of Appeal, by a Resolution of 26 July 2010, overruled the ruling of the first instance Court of 4 May 2010 and the fifth page of the enforcement writ was amended. It was indicated in the schedule regarding the entry into force of the judicial act that “the judicial acts entered into force, respectively, on 11 August 2005, 14 October 2005, and 27 December 2005”; the words “2 February 2010” added by the Ruling of 19 April 2010 were excluded. The following time limits were added in the schedule regarding the submission of the enforcement writ for enforcement: “until 10 August 2008, until 14 October 2008, and until 27 December 2008 respectively”; the words “within three years” were excluded. The rest of the Ruling of the first instance Court of 4 May 2010 was left unchanged and the proceedings related to the appeal regarding the request to amend the enforcement writ, the name of the claimant, its address and the date of the judicial act, were terminated.

By its Resolution of 29 September 2010, the Federal Arbitrazh Court for the Central District upheld the Resolution of the Court of Appeal of 26 July 2010.

In the application before the Highest Arbitrazh Court of the Russian Federation for the supervisory review of the Resolution of the Court of Appeal of 26 July 2010 and the Resolution of the Court of Cassation of 29 September 2010, the Company requests their cancellation, invoking the violation of principles of Russian law and of the uniformity in the interpretation and application of the legal rules by the arbitrazh courts, and requests to uphold the ruling of the first instance Court of 4 May 2010.

In its response to the application, the Plant requests that the challenged judicial acts be upheld as being consistent with the legislation in force.

Having examined the arguments set out in the application, the response and the pleadings of the representatives of the parties at the hearing, the Presidium considers that the application shall be granted on the following grounds.

Under Article 246 of the Arbitrazh Procedure Code of the Russian Federation, the coercive enforcement of a foreign arbitral award shall be conducted on the basis of an enforcement writ issued by an arbitrazh court having rendered a ruling on its recognition and enforcement in accordance with the procedure provided for by the Code and by the federal law on enforcement proceedings, provided that the award is submitted for coercive enforcement within a three years time limit following the day it entered into force.

As it was established by the Courts and confirmed by the case materials, the awards of the German Institute of Arbitration (DIS) of 11 August 2005, 14 October 2005 and 27 December 2005, rendered in Case No. DIS-SV-B-454/04, were submitted for coercive enforcement within the indicated time limit. The enforcement writ for the coercive enforcement of the foreign arbitral awards was issued by the Arbitrazh Court of the Ryazan Region on the basis of Resolution of the Highest Arbitrazh Court of the Russian Federation No. 13211/09 of 2 February 2010.

Foreign arbitral awards shall only be enforced in the territory of the Russian Federation when an arbitrazh court has rendered a decision on their recognition and coercive enforcement according to the national procedural rules (Article III of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and Article 241(1) of the Arbitrazh Procedure Code of the Russian Federation).

A resolution of the Presidium of the Highest Arbitrazh Court of the Russian Federation shall enter into force on the day it is rendered (Article 307(1) of the Arbitrazh Procedure Code of the Russian Federation).

Under Article 321(1)(1) of the Arbitrazh Procedure Code of the Russian Federation, an enforcement writ can be submitted for enforcement within three years following the day the judicial act entered into force.

Accordingly, under Articles 246 and 321(1)(1) of the Arbitrazh Procedure Code of the Russian Federation combined, the recognition and enforcement of a foreign arbitral award in the territory of the Russian Federation shall be done within six years: three years for the voluntary performance or submission to a court for recognition and coercive enforcement, and three years within the framework of the enforcement proceedings upon the submission of the enforcement writ for enforcement.

According to a Resolution of the Inter-District Department for Special Enforcement Proceedings of the Federal Bailiffs Service's Directorate for the Ryazan Region on the initiation of the enforcement proceedings of 13 April 2010, the enforcement writ was submitted for enforcement by the Company on 13 April 2010, before the expiration of the time limit for the submission of the document for enforcement.

Therefore, the Court of Appeal and the first instance Court wrongly concluded that the awards of the German Institute of Arbitration (DIS) of 11 August 2005, 14 October 2005 and 27 December 2005, rendered in Case No. DIS-SV-B-454/04, were enforceable in the territory of the Russian Federation starting from the day they were rendered rather than on the day of their legalization by Russian Courts – on 2 February 2010.

This conclusion led to an incorrect determination by the Courts of the time limit for the submission of the enforcement writ for enforcement – until 11 August 2008, 14 October 2008 and 27 December 2008, respectively. This rendered Resolution of the Highest Arbitrazh Court of the Russian Federation No. 13211/09 of 2 February 2010 and the enforcement writ issued on the basis of that Resolution unenforceable, thus violating the principle of obligatory enforcement of judicial acts.

In view of the above, the challenged judicial acts shall be cancelled in accordance with Article 304(1)(1) of the Arbitrazh Procedure Code of the Russian Federation, as they violate the uniformity in the interpretation and application of the legal rules by the arbitrazh courts.

The interpretation of legal provisions contained in this Resolution of the Highest Arbitrazh Court of the Russian Federation is mandatory and shall be applied by the courts examining analogous cases.

On the basis of Article 303, Article 305(1)(3) and Article 306 of the Arbitrazh Procedure Code of the Russian Federation, the Presidium of the Highest Arbitrazh Court of the Russian Federation

RESOLVED:

The Resolutions of the Twentieth Arbitrazh Court of Appeal of 26 July 2010 and of the Federal Arbitrazh Court for the Central District of 29 September 2010 rendered in Case No. A54-3028/2008 of the Arbitrazh Court of the Ryazan Region shall be cancelled.

The Ruling of the Arbitrazh Court of the Ryazan Region of 4 May 2010 rendered in the same case shall be upheld.

Presiding Judge A.A. Ivanov