Unofficial translation

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HIGHEST ARBITRAZH COURT
OF THE RUSSIAN FEDERATION

RULING
on the refusal to refer the case to the Presidium of the Highest Arbitrazh Court
of the Russian Federation
No. VAS-4369/11

Moscow 26 May 2011

A panel of Judges of the Highest Arbitrazh Court of the Russian Federation comprised of Presiding Judge: T.N. Neshatayeva, Judges: S.B.Nikiforov and S.V. Sarbash, examined in a court hearing an unnumbered application of the open joint-stock company Production Association Northern Machine-Building Enterprise (58 Arkhangelskoye sh., Severodvinsk, Arkhangelsk Region; mailing address: 40/3 ul. Bolshaya Ordynka, 2rd Floor, Egorov, Puginsky, Afanasyev and Partners Attorneys at Law, c/o Zvetkov V.A.; hereinafter – the Enterprise) of 24 March 2011 for the supervisory review of the ruling of the Arbitrazh Court of the Arkhangelsk Region of 10 December 2010, rendered in Case No. A05-10560/2010, and the resolution of the Federal Arbitrazh Court for the North-Western District of 10 March 2011, rendered in the same case, upon the application of the company Odfjell SE (Conrad Mohrs v. 29, N-5032 Minde Norway (P.O. Box 6101 Postterminalen 5892 Bergen, Norway); mailing address: 1/3A Malaya Konyushennaya Street, Saint Petersburg, 161186, House of Sweden, office of Mannheimer Swartling; hereinafter – the Company) for the recognition and enforcement of an award rendered by the Arbitration Institute of the Stockholm Chamber of Commerce on 30 December 2009 in Case No. V(032/2008) (hereinafter – the SCC Arbitral Award), ordering the Enterprise to pay to the Company USD 43,760,000 in damages resulting from the termination of the following contracts: of 5 November 2004 for the hulls Nos. 98087, 98088, 98089 and 98090; of 5 November 2004 for the hulls Nos. 98091, 98092, 98093 and 98094; of 31 March 2006 for the hulls Nos. 98098, 98099, 98100 and 98101, along with interest on this amount, calculated on the basis of the reference rate of the Swedish Central Bank Riksbank plus 8 percent, starting from the date of the rendering of the SCC Arbitral Award and until the actual payment; EUR 175,750 of arbitration costs, and interest on this amount, calculated on the basis of the reference rate of the Swedish Central Bank Riksbank plus 8 percent, starting from the date of the rendering of the SCC Arbitral Award and until the actual payment; EUR 1,313,888 for compensation of legal and other expenses incurred in the arbitration, and interest on this sum, calculated on the basis of the reference rate of the Swedish Central Bank Riksbank plus 8 percent, starting from the date of the rendering of the SCC Arbitral Award and until the actual payment.

The Court established:

By the ruling of 10 December 2010, the Arbitrazh Court of the Arkhangelsk Region granted the Company's application.

By the resolution of 10 March 2011, the Federal Arbitrazh Court for the North-Western District upheld the ruling of the first instance court.

In its application before the Highest Arbitrazh Court of the Russian Federation for the supervisory review of the judicial acts, the Enterprise requested their cancellation as violating the uniformity in the interpretation and application of the rules of law by the arbitrazh courts, and requested to refer the case for re-examination to the Arbitrazh Court of the Arkhangelsk Region. The Enterprise justified its request on the following grounds: the Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter – the SCC Arbitral Tribunal) went beyond its jurisdiction when considering the damage claim arising out of the second and third contracts; the disputes arising out of each Contract should have been considered in separate proceedings based on the self-standing arbitral clauses; recovery of damages in the absence of breach of contractual obligations and fault of the Enterprise is contrary to the public policy of the Russian Federation.

According to Article 299(4) of the Arbitrazh Procedure Code of the Russian Federation the case can be referred for the supervisory review of the challenged judicial acts subject to existence of the grounds provided for by Article 304(1) of the Arbitrazh Procedure Code of the Russian Federation.

According to Article 304(1) of the Arbitrazh Procedure Code of the Russian Federation, the grounds for the change or cancellation of judicial acts which entered into force in the supervisory proceedings are the following: violation by the challenged judicial act of the uniformity in the interpretation and application of the rules of law by the arbitrazh courts; violation of the rights and legitimate interests of indefinite number of people or other public interests, as well as violation of the rights and interests of man and citizen according to universally recognized principles and rules of international law and international treaties of the Russian Federation.

The Enterprise failed to state such grounds in its application for the supervisory review of the challenged judicial acts.

According to Article V(1)(c) of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), recognition and enforcement of a foreign arbitral 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 the award deals with a difference 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.

The courts established that the Company and the Enterprise entered into three ship-building contracts to design and build twelve chemical tankers on 5 November 2004 (the first two contracts) and on 31 March 2006 (the third contract), according to which the Enterprise undertook to build and transfer to the Company these tankers within the specified periods.

Since the Enterprise delayed the performance of the first contract, following the negotiations in the course of which it became obvious to the Company that the contractor would not be able to build and transfer the tankers, the Company terminated all three Contracts and filed with the SCC Arbitral Tribunal the damages claim.

All three contracts contained an arbitration clause providing for the dispute resolution at the Arbitration Institute of the Stockholm Chamber of Commerce. The SCC Arbitral Tribunal examined the objections of the Enterprise regarding the Tribunal's jurisdiction to hear the dispute and came to the conclusion that it had the competence to consider the claim made by the Company (paragraphs 478-484 of the SCC Arbitral Award).

According to paragraph 2 of Article 2 of the Swedish Arbitration Act (SFS 1999:116), a decision of the arbitrators on their jurisdiction to hear the dispute is not mandatory; an award containing such jurisdictional decision may be challenged under Articles 34 and 36 of the Swedish Arbitration Act.

According to the case materials and challenged judicial acts, the Enterprise failed to provide the courts with the evidence that a decision of the SCC Arbitral Tribunal on its jurisdiction to consider the claims made by the Company was challenged before the State courts of Sweden.

The first instance and cassation courts considered the Enterprise's argument that the SCC Arbitral Award was contrary to the public policy of the Russian Federation and established that all mentioned circumstances are confined to the Enterprise's disagreement with the decision made with respect to the merits of the Company's claims. Equally, the courts established that the SCC Arbitral Tribunal, when making the Award, considered the evidence provided by each party to the dispute to

justify the recovery of the particular sums of damages, which amount was calculated according to the Swedish law applicable to the contracts.

According to the arguments in the Enterprise's application, content of the challenged judicial acts and case materials, the application refers to the factual circumstances of the case, which were examined and given legal assessment in the first instance and cassation court proceedings. The re-examination of these circumstances falls beyond the scope of the supervisory review specified in Articles 292(2), 304 and 305(4) of the Arbitrazh Procedure Code.

In such circumstances, the panel of judges of the Highest Arbitrazh Court of the Russian Federation does not find extraordinary grounds, provided for by Article 304(1) of the Arbitrazh Procedure Code of the Russian Federation, according to which the case can be referred to the Presidium of the Highest Arbitrazh Court of the Russian Federation for the supervisory review of the challenged judicial acts.

By the ruling of the Highest Arbitrazh Court of the Russian Federation No. VAS-4369/11 of 18 April 2011, the enforcement of the ruling of the Arbitrazh Court of the Arkhangelsk Region of 10 December 2010 in this case was suspended.

According to Article 298(5) of the Arbitrazh Procedure Code of the Russian Federation, the suspension of the enforcement of this judicial act shall be cancelled.

In view of the above and based on Articles 299, 301 and 304 of the Arbitrazh Procedure Code of the Russian Federation, the Court:

RESOLVED:

The referral of Case No. A05-10560/2010 of the Arbitrazh Court of the Arkhangelsk Region to the Presidium of the Highest Arbitrazh Court of the Russian Federation for the supervisory review of the ruling of the Arbitrazh Court of the Arkhangelsk Region of 10 December 2010 and the resolution of the Federal Arbitrazh Court for the North-Western District of 10 March 2011 in this case, shall be refused.

The suspension of the enforcement of the ruling of the Arbitrazh Court of the Arkhangelsk Region of 10 December 2010 in Case No. A05-10560/2010 shall be cancelled.

Presiding Judge T.N. Neshatayeva

Judge S.B. Nikiforov

Judge S.V. Sarbash