Unofficial translation

Case No. 1522/16182/12

ORDER

IN THE NAME OF UKRAINE

16 August 2012 the Prymorskyi District Court of Odessa Region, consisting of:

Presiding Judge: A. V. Naumenko,

and the Secretary: T. M. Domnikova

Having considered in an open hearing held in the courtroom of Odessa City the application of Rangedale Limited for the recognition and enforcement of the Award of the International Commercial Arbitration Tribunal at the Ukrainian Chamber of Commerce and Industry delivered in relation to the claim of Rangedale Limited against South Airlines Limited Liability Company, the court -

ESTABLISHED:

Rangedale Limited applied to the Prymorskyi District Court of Odessa seeking the recognition and enforcement of the Award of the International Commercial Arbitration Tribunal at the Ukrainian Chamber of Commerce and Industry delivered in relation to the claim of Rangedale Limited against South Airlines, Limited Liability Company. According to the award delivered in case No. AC №397y\2011 on 22 May 2012, the company is bound to return the aircraft by delivering it to the claimant, being the owner, repay EUR 292,024 of debt under the lease agreements, and pay EUR 16,583.46 as indemnification for the arbitration fees.

The representative of Rangedale Limited maintained that the application should be granted. He emphasised that the debtor has been evading voluntary fulfilment of the Arbitral Award. He contended that the arbitral tribunal had considered the case in full compliance with applicable laws of Ukraine, and the award was sent to the debtor, but the latter failed to comply with it.

The representative of South Airlines objected to the application in full. In support of his position, he filed to the court written objections supported by written evidence. He emphasised that the arbitration proceedings in the case were conducted in breach of the requirements of Article 18 of the Law of Ukraine on International Commercial Arbitration, Articles 9 and 15 of the Rules of International Commercial Arbitration Tribunal, and the Rules on the Provision of Postal Services (paragraphs 89 and 106). He contended that no officer of the debtor's legal entity had ever received any notices from the Arbitration Tribunal and, thus, the airline company was not given proper notice of the arbitration proceedings and was deprived of the right to take part in the proceedings and to present evidence in support of its position.

Upon consideration of the application and written evidence presented by the parties, and having heard their explanations, the court concluded that the application could not be granted for the following reasons.

Pursuant to the provisions of Article 389-7 of the Ukrainian Code of Civil Procedure, the matters relating to the issue of a writ of execution for the enforcement of an arbitral award are considered by courts upon application of the person for whose benefit such arbitral award was delivered. The application for the issue of the writ of execution for the enforcement of the arbitral award is to be filed within three years of such arbitral award with the competent court in the country where the arbitration took place. The recognition and enforcement of the international arbitral award, if the arbitration takes place in Ukraine, shall be granted in the manner provided for in Articles 391 to 398 of the Code.

In accordance with Article 390 of the Ukrainian Code of Civil Procedure, decisions of foreign courts shall be recognised and enforced in Ukraine if their recognition and enforcement are provided for in an international treaty approved by the Verkhovna Rada of Ukraine [Ukrainian Parliament] or according to the principle of reciprocity. Where the recognition and enforcement of a foreign judgment are conditional on the principle of reciprocity, it is deemed to exist unless proven otherwise.

Pursuant to Article 394(3) of the Ukrainian Code of Civil Procedure, unless the international treaties approved by the Verkhovna Rada of Ukraine as binding provide the list of the documents to be attached to the application, the following documents are to be attached to the application: 3) the document confirming that the party against whom the foreign judgement was delivered, and who did not take part in the court proceedings, was given proper notice of the time and place of such proceedings.

In accordance with Article 396(2) of the Ukrainian Code of Civil Procedure, should international treaties approved by the Verkhovna Rada of Ukraine as binding not provide for such options, the application may be refused: 2) if the party against whom the foreign judgment was delivered has been deprived of the opportunity to take part in the proceedings due to the fact that it was not given notice of the proceedings.

The contract of 29 November 2007, disputable performance of which became a reason to initiate the proceedings before the Arbitration Tribunal, contains at Article 13 an arbitration agreement within the meaning of Article 7 of the Ukrainian Law on International Commercial Arbitration.

In accordance with Article 5 of the of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (New York, 1958) ratified by Ukraine, recognition and enforcement of the 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 are sought, proof that (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 explanation, or [...]

Reviewing the documents provided on behalf of Rangedale Limited, namely: the Contract No. 0612\08 dated 29 November 2007 with annexes thereto, certificate of the Arbitration Tribunal No. 1402\14-6 dated 19 June 2012 together with copies of four notices sent by regular mail with objections served by South Airlines, Air Company, and certificate 283-284\вх of Ukrposhta, Ukrainian State Enterprise of Postal Communication dated 19 June 2012, the court finds that, for the following reasons, the debtor did not exercise its right to provide its explanations and available objections as it was not given proper notice of the arbitration proceedings.

Based on available case materials, the court finds that the postal notices sent by the Arbitration Tribunal to the address of the defendant's legal entity were filled in violation of the requirements of the Rules on the Provision of Postal Services, because, as regards the two notices delivered by hand, they did not specify the position and the name of the respondent's officer receiving the notices and, as regards the other two other notices, the name of the representative authorised by the respondent to receive them were not mentioned. The signature of 'PERSON_1', who is said to have received the mentioned postal notices on behalf of the air company, is clearly different from the signature of the General Director as 'PERSON_1', appearing on the mentioned contract, schedules and other case materials and, furthermore, it is proven that the said signature was made by a postman. There were four communications sent to the address of a privately owned house, but the Arbitration Tribunal sent no correspondence to the address of South Airlines' actual location set out in the contract, i.e. Civil Airport, Odessa, where the representatives can be found on a regular basis.

The court recognizes to be legitimate the arguments advanced by the representative of South Airlines, Air Company regarding violations due to the fact that the case was considered in the absence of the debtor and in a *de facto* restriction of its access to the Tribunal, i.e. violation of the parties' equality and deprivation of the debtor of the opportunity to present his case.

For the mentioned reasons, the application should be dismissed.

In view of the foregoing and in reliance on Article 396(2) of the Ukrainian Code of Civil Procedure,

ORDERED:

The application of Rangedale Limited for the recognition and enforcement of the Award of the International Commercial Arbitration Tribunal at the Ukrainian Chamber of Commerce and Industry delivered in relation to the claim of Rangedale Limited against South Airlines, Limited Liability Company shall be dismissed.

This Order may be challenged before the Court of Appeal of Odessa Region by filing an appeal via the Prymorskyi District Court of Odessa Region within five days of the date of announcement or, if this Order has been issued without the participation of the appellant, within five days following the date of receipt of this Order.

Judge A. V. Naumenko

16 August 2012