Unofficial translation

HIGHEST ARBITRAZH COURT
OF THE RUSSIAN FEDERATION

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

No. 5243/06

Moscow 19 September 2006

The Presidium of 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: Andreyeva T.K., Vitryansky V.V., Vishnyak N.G., Isaychev V.N., Kozlova A.S., Kozlova O.A., Neshatayeva T.N., Sarbash S.V., Sukhova G.N., Yukhney M.F.;

examined the application of OAO Joy-Lud Distributors International, Inc. for the supervisory review of the ruling of the Moscow Arbitrazh Court of 15 December 2005, rendered in Case No. A40-64205/05-30-394, and the resolution of the Federal Arbitrazh Court for the Moscow District of 21 March 2006, rendered in the same case.

The following representatives were present at the hearing:

for the applicant – OAO Joy-Lud Distributors International, Inc. – Polezhayev A.V., Ryabchenko L.N., Savenkova E.A., Solovyev B.G.;

for OAO Moscow Oil Refinery – Zhukova M.M., Zurabyan A.A., Lanina O.V.

Having heard and discussed the report of Judge Neshatayeva, as well as the explanations of the representatives of the participants in the case, the Presidium has established the following.

The limited liability joint-stock company Joy-Lud Distributors International, Inc. (hereinafter – the Company) and the open joint-stock company Moscow Oil Refinery (currently OAO Moscow Oil Refinery; hereinafter – the Entity) entered into contract No. 011/21-11-01/840 of 19 January 1995 for the sale of diesel fuel and fuel oil, and supplementary agreements thereto.

Pursuant to the provisions of the contract, if the parties fail to reach an agreement on issues in dispute between them, such issues shall be submitted to the Arbitration Court of Stockholm (Sweden) in accordance with the 1976 UNCITRAL Arbitration Rules, to the exclusion of the jurisdiction of general courts. The applicable law is the law of Sweden.

Based on the aforementioned provisions of the contract, the Company filed a request for arbitration against the Entity, claiming compensation for lost profits due to the insufficient supply of diesel fuel, a penalty for the insufficient supply of diesel fuel, lost profits due to the insufficient supply of fuel oil, arbitration costs and legal expenses.

By the award of 14 June 2005, an *ad hoc* tribunal granted the Company's claim in part: the tribunal ordered the Entity to pay to the Company a USD 28,041,975 penalty for the insufficient supply of diesel fuel with incurred interest on that sum at the official Swedish basic interest rate plus 8 percentage points starting from 30 June 2005 until the date of full payment; USD 226,750 for the fees and expenses incurred in the arbitration with incurred interest on this sum at the official Swedish basic interest rate plus 8 percentage points starting from 14 June 2005 until the date of full payment; the claim for damages was denied.

Since the Entity did not voluntarily comply with the arbitral award, the Company filed with the Moscow Arbitrazh Court an application for the recognition and enforcement of the arbitral award.

By the ruling of 15 December 2005, the Moscow Arbitrazh Court refused the application.

By the resolution of 21 March 2006, the Federal Arbitrazh Court for the Moscow District upheld the 15 December 2005 ruling of the first instance court.

Both courts considered that enforcing the international commercial arbitral award of 14 June 2005 would be contrary to the public policy of the Russian Federation.

In the application before the Highest Arbitrazh Court of the Russian Federation concerning the supervisory review of the ruling of the first instance court and the resolution of the court of cassation, the Company requests their cancellation, citing the violation of the uniformity in the interpretation and application of the rules of law by the arbitrazh courts.

In its answer, the Entity requests that the aforementioned judicial acts be upheld as being in accordance with the current legislation.

Having examined the arguments contained in the application, the answer and the pleadings of the representatives of the parties at the hearing, the Presidium considers that the challenged judicial acts shall be cancelled, and the Company's application shall be granted for the following reasons.

By refusing to issue an enforcement writ for the coercive enforcement of the *ad hoc* award of 14 June 2005, the arbitrazh courts concluded that the award was contrary to the public policy of the Russian Federation since the Company did not have a right to compensation for lost profits, the amounts awarded being of punitive character.

However, the arbitrazh courts have not considered the following.

According to the award of 14 June 2005, the tribunal found that the Entity had breached contract No. 011/21-11-01/840 of 19 January 1995; the Company's request for compensation of damages for the insufficient supply of fuel oil and diesel fuel was denied; the Entity was ordered to pay a penalty for the insufficient supply of diesel fuel, which is envisaged in supplementary agreement No. 28 of 11 August 1997 and amounts to 15 percent annually applicable to the total price of the non-delivered goods; the penalty has been charged from 1 November 2003, and the interest on the penalty has been applied since 30 June 2005.

The tribunal imposed the penalty in accordance with Swedish law that was applicable to the contract and supplementary agreement No. 28 of 28 August 1997, the terms of which conform to the usual business practices in the Russian Federation and are envisaged by the legislation of the Russian Federation.

In accordance with Article 330(1) of the Civil Code of the Russian Federation, penalties (fines, interest) are sums determined by a law or a contract that the debtor owes to the creditor if the former fails to perform or inadequately performs its obligations, particularly in cases of delayed performance. When requesting the payment of a penalty, the creditor does not have to provide evidence of loss suffered by him.

In accordance with Article 394(1) of the Civil Code of the Russian Federation, if there is a penalty for non-performance or improper performance of obligations, then the damages not covered by the penalty have to be compensated.

According to Article 1(1) of the Civil Code of the Russian Federation, one of the basic principles of the civil legislation is the principle of the equality of the participants in civil law relationships and the provision of remedies for violation of rights.

Pursuant to the legal position formulated in paragraph 29 of Information Letter of the Presidium of the Highest Arbitrazh Court of the Russian Federation No. 96 of 22 December 2005 “Review of the Case Law of the Arbitrazh Courts on the Recognition and Enforcement of Foreign Court Decisions, Challenge of Arbitral Awards and Granting of Enforcement Writs for the Coercive Enforcement of Arbitral Awards”, public policy is based on the principle of the parties’ equality in the civil law relationships and the proportionality of civil law liability measures to the consequences of a violation with due regard to the fault.

Thus, civil legislation is based on the principle of equality of the rights and obligations of Russian and foreign legal entities and natural persons, and envisages penalties as a measure of liability for the non-performance or improper performance of contractual obligations. Accordingly, penalties form part of the legal system of the Russian Federation and their recovery cannot be contrary to the public policy of the Russian Federation.

The Entity failed to prove, and the case materials do not demonstrate, that the civil liability measure applied by the arbitral tribunal was not proportionate to the consequences of the violation of contract No. 011/21-11-01/840 of 19 January 1995 and supplementary agreements thereto.

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

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

RESOLVED:

The ruling of the Moscow Arbitrazh Court of 15 December 2005, rendered in Case No. A40-64205/05-30-394, and the resolution of the Federal Arbitrazh Court for the Moscow District of 21 March 2006, rendered in the same case, shall be cancelled.

The application of the limited liability joint-stock company Joy-Lud Distributors International, Inc. for the recognition and enforcement of the international commercial *ad hoc* arbitral award of 14 June 2005 shall be granted.

The Moscow Arbitrazh Court shall issue an enforcement writ in Case No. A40-64205/05-03-394 for the recognition and enforcement of the international commercial *ad hoc* arbitral award of 14 June 2005.

Presiding Judge A.A. Ivanov