FEDERAL ARBITRAZH COURT FOR THE NORTH-WESTERN DISTRICT

Yakubovich street, bldg. 4, Saint-Petersburg, 190000
http://fasszo.arbitr.ru

RESOLUTION

11 October 2011

Case No. A21-2498/2011

The Federal Arbitrazh Court for the North-Western District composed of the presiding judge K.Yu. Korobov,

Judges R.V. Kazanceva, N.N. Malysheva

Being present for the limited liability company [OOO] LEKS, L.V., A.P. Kruzhevnikov (Power of Attorney of 12 September 2011),

Having examined on 11 October 2011 on an open hearing the cassation complaint of the Kaliningrad Regional Public Organization of Disabled Persons ASSA against the ruling of the Arbitrazh Court of the Kaliningrad Region of 23 June 2011 in the case No. A21-2498/2011 (judge O.A. Shanko),

established:

The limited liability company LEKS LV, legal address: Talsu road 31, bldg. 7, apt. 57, Jurmala, Latvia, individual registration number: 50003957251 (hereinafter – "OOO LEKS LV") filed with the Arbitrazh Court of the Kaliningrad Region an application for recognition and enforcement in the Russian Federation of the award rendered on 16 November 2010 by the Riga Independent Court of Arbitration in case No. 40/01/2010 ordering recovery from the Kaliningrad Regional Public Organization of Disabled Persons ASSA, legal address: Piechatnaya street, 26A, Kaliningrad, Russia, Company State Registration Number 1033918505323 (hereinafter – "KROOI ASSA", the Public Organization) in favour of OOO LEKS LV, of the principal debt in amount of 13, 358.13 Latvian lats, contractual interest on debt for 135 days of delay in amount of 180,33 Latvian lats as well as the legal interest for 4,5 calendar months in amount of 601,11 Latvian lats, having determined the right of OOO LEKS LV to recover legal interest in amount of 6% yearly for a period until the rendering of the award, to be charged against the immovable and movable property, financial means belonging to KROOI ASSA, including property and financial means held by third parties.

By the ruling of 23 June 2011, the abovementioned Arbitrazh Court ruled to recognize and enforce the award of 16 November 2010 rendered by the Riga Independent Court of Arbitration in case No. 40/01/2010 (hereinafter – "the foreign arbitral award").

In the cassation complaint KROOI ASSA requests to annul the ruling of 23 June 2011 and adopt a new judicial act denying OOO LEKS LV's application for recognition and enforcement in the Russian Federation of the foreign arbitral award.

According to the applicant, the foreign arbitral award is unenforceable as it was rendered by an incompetent court. The applicant considers that the dispute concerning the recovery from KROOI ASSA in favour of OOO LEKS LV of debt under the supply contract No. 0107/2009 concluded between them on 1 July 2009 should have been heard by the Arbitrazh Court of the Kaliningrad Region in accordance with Article 247 of the Arbitrazh Procedure Code of the Russian Federation (hereinafter – "RF APC"). In addition, the rules of Russian law should have applied to relations between litigating parties, as the international agreement between the Russian Federation and the Republic of Latvia on recognition and enforcement of the foreign arbitral award has not been concluded.

In addition, KROOI ASSA alleged in its complaint that it was not given proper notice of time and place of the court proceedings before the Riga Independent Court of Arbitration and, as a consequence , the award rendered by that court should not be considered legitimate and its recognition and its enforcement in the Russian Federation should be denied.

In reply to the cassation complaint OOO LEKS LV requests the challenged judicial act pointing to the groundlessness of arguments in the cassation complaint is upheld.

At the court hearing, the representative of OOO LEKS LV requested the dismissal of the cassation complaint.

The Public Organization was notified of the time and place of the hearing, however, it did not sent its representatives to the court and the complaint was therefore examined in their absence.

The legality of the challenged judicial act was verified in the cassation review.

As it results from the materials of the case, on 1 July 2009 the supply contract No. 0107/2009 was concluded between OOO LEKS LV (seller) and KROOI ASSA (buyer).

Within the framework of this contract, the Company, on basis of an invoice No. 1570004Lv dated 9 April 2010, delivered to the Public Organization 19 080 kg of thermochemical paper for the total sum of 17 585.16 Latvian lats.

Referring to the fact that the payment for the delivered thermochemical paper was not made in full by the buyer, the seller filed a lawsuit with the Riga Independent Court of Arbitration for recovery from KROOI ASSA of debt in amount of 13 358.13 Latvian lats.

Moreover, the reason for filing the lawsuit specifically in the abovementioned court was part of the agreement of the parties laid down in clause 8.1 of the 1 July 2009 contract No. 0107/2009 providing that all disputes, disagreements and claims related to this contract, which were not settled by the parties through negotiations, shall be considered according to laws of the Latvian Republic at the option of the claimant either by the Court or by the Riga Independent Court of Arbitration in accordance with its rules, composed of a sole arbitrator, in a written procedure.

By an award of the Riga Independent Court of Arbitration of 16 November 2011 in case No. 40/01/2010 KROOI ASSA was ordered to pay OOO LEKS LV 13 358.13 Latvian lats of the debt principal, 180.33 Latvian lats of contractual interest on debt for the 135 days of delay, as well as 601.11 Latvian lats of the legal interest for 4,5 calendar months conferring to OOO LEKS LV a right to recover legal interest in amount of 6% yearly for a period until the rendering of the arbitral award to be charged against the immovable and movable property, financial means belonging to KROOI ASSA, including property and financial means held by third parties.

The award states that it enters into force on the date of its adoption and shall be voluntarily complied with until 25 November 2010.

Because the Public Organization did not voluntarily comply with the award in the fixed timeframe, the Company filed the present application with the Arbitrazh Court of the Kaliningrad Region.

According to Article 241(1) of the RF APC the awards rendered by courts of arbitration and international commercial arbitral tribunals on territories of foreign States in disputes and other matters arising from the conduct of entrepreneurial or other economic activity (foreign arbitral awards) shall be recognized and enforced in the Russian Federation by arbitrazh courts, provided that recognition and enforcement of such awards is envisaged by an international treaty of the Russian Federation and by federal legislation.

With that respect Article 6(3) of the Federal Constitutional Law of 31 December 1996 No. 1-FKZ “On the Judicial System of the Russian Federation” provides that the binding effect on the territory of the Russian Federation of resolutions of foreign state courts, international courts and arbitral tribunals is determined by international agreements of the Russian Federation.

The procedure for recognition and enforcement of foreign arbitral awards is provided for by the New York Convention of the United Nations “On the Recognition and Enforcement of Foreign Arbitral Awards” of 10 June 1958 (hereinafter – “the Convention”) to which the Russian Federation and the Republic of Latvia are parties.

Pursuant to Article III of the Convention, the Russian Federation recognizes arbitral awards as binding and enforces them in accordance with the domestic rules of procedure, under the conditions laid down in the Convention.

According to Article V of the Convention the recognition and enforcement of the award may be refused in cases where the party against which the award is rendered furnishes, to the competent court where the recognition and enforcement is sought, proof that:

(a) the parties to the agreement 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 rendered 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, 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 (paragraph 1).

In addition, the competent court has the right to refuse the recognition and enforcement of an arbitral award in case: (a) the subject matter of the difference 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 (paragraph 2).

Analogous principles were enshrined in Article 36(1) of the Law of the Russian Federation of 7 July 1993 No. 5338-1 "On International Commercial Arbitration" (hereinafter – "Law No. 5338-1").

Article 244(2) of the RF APC provides that an arbitrazh court shall refuse, fully or in part, recognition and enforcement of a foreign arbitral award on grounds provided for by paragraph 7 of Article 244(1) and Article 239(4) of the RF APC for refusing the issuance of an enforcement writ for the coercive enforcement of an award of an international commercial arbitral tribunal, unless otherwise provided by an international treaty of the Russian Federation.

By virtue of Article 243(4) of the RF APC the Arbitrazh Court is not allowed to review the foreign award on the merits.

As it results from the case materials, KROOI ASSA did not present to the Arbitrazh Court of the Kaliningrad Region evidence of circumstances provided for in Article V paragraphs "a" to "e" of the Convention impeding the recognition and enforcement of the foreign arbitral award on the territory of the Russian Federation.

Objecting to the recognition and enforcement of the Riga Independent Court of Arbitration award, KROOI ASSA invoked in its cassation complaint that the enforcement of this award contradicts the public policy of the Russian Federation, which includes, according to the applicant, the principles of the Russian legal system. Respondent believes that the dispute arising between him and the applicant within the framework of the supply contract should have been decided not by a court of arbitration of the Latvian Republic, but by the Arbitrazh Court of the Kaliningrad Region and according to rules of Russian not of Latvian law.

Nevertheless, the court of cassation instance cannot recognize these arguments as grounded in light of the following.

According to Article 1186(1) of the Civil Code of the Russian Federation (hereinafter – "RF CC"), the law applicable to civil legal relations involving the participation of foreign citizens or foreign legal entities or civil legal relations complicated by another foreign factor, including cases when the object of civil rights is located abroad, shall be determined on the basis of international treaties of the Russian Federation, the Civil Code of the Russian Federation, other laws (Article 3(2) of the RF CC), and the usages recognised in the Russian Federation. Moreover, the peculiarities of determining the law applicable to an international commercial arbitral tribunal shall be established by the law on international commercial arbitration.

Article 28 of the Law No. 5338-1 provides that the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute (paragraph 1). In addition, in all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the trade usages applicable to the transaction (paragraph 3).

In this case the parties to the supply contract of 1 July 2009 No. 0107/2009 (the Company and the Public Organization) agreed that all disputes, disagreements and claims related to this contract, which were not settled by the parties through negotiations, are to be considered according to laws of the Latvian Republic at the option of the claimant either by the court or by the Riga Independent Court of Arbitration in accordance with its rules, composed of a sole arbitrator, in a written procedure (clause 8.1 of the contract).

Therefore, the application of Latvian law to legal relations between the parties and the examination of the case by an arbitration tribunal of the Latvian Republic itself cannot be considered a violation of the public policy of the Russian Federation.

Consequently, the arguments of the applicant that the dispute should have been heard by a Russian arbitrazh court shall be rejected in light of the fact that the relations formed between the parties in the performance of the supply contract No. 0107/2009 comply with the provisions of Article 247 of the RF APC with regard to the place of business of the respondent.

In this situation, the nature of the dispute as well as the terms of contract do not allow to refer their examination to the exclusive jurisdiction of the arbitrazh courts of the Russian Federation provided for in Article 248 of the RF APC.

In verification of the legality of the challenged ruling cannot be taken into account the contention advanced by KROOI ASSA as a ground for the denial of recognition and enforcement of the foreign arbitral award that it was not notified of the time and place of the court proceedings in the Riga Independent Court of Arbitration.

According to mail notifications provided in pages 56-58, the Public Organization was notified of the time and place of the arbitration proceedings as soon as the 9 November 2010, however it did direct to the court neither its representatives nor the written submissions.

The applicant's allegation of improper notification of the time and place of proceedings in the Arbitrazh Court of the Kaliningrad Region it is also unfounded, as it is denied by the postal notices exhibited under positions 83-84.

According to these notices, notifications on the court hearing at the Arbitrazh Court of the Kaliningrad Region scheduled on 16 June 2011 were sent to both addresses of KROOI ASSA (P. Morozov street 96 and Piechatnaya street, 26A in Kaliningrad) available in the case as confirmed by the extract from the Uniform State Register of Legal Entities (Ex. 23). The reason for the non-delivery of notifications to the addressee was the expiry of delay of their conservation, confirmed by the organs of postal communication.

By virtue of the second part of Article 123 (2) RF APC, the persons, taking part in the case, and other participants in the arbitrazh procedure are considered to have been properly notified by the arbitrazh court if, despite the postal notification, the addressee did not appear to receive the copy of the judicial act, directed by the arbitrazh court in accordance with the established procedure, about which the organ of postal communication informed the arbitrazh court.

Therefore, the court considers groundless the contention of KROOI ASSA of its improper notice of the time and place of proceedings.

In light of the above it should be recognized that the challenged ruling was based on a correct determination by the court of first instance of the factual circumstances of the case and on application of rules of substantive as well as of procedural law, taking them into account the court has lawfully granted the application of OOO LEKS LV

From the lack of grounds for a reassessment of the conclusions made by the court of first instance, the Court of Cassation dismisses the complaint.

Based on Articles 286, 287, 289 and 290 of the Arbitrazh Procedure Code of the Russian Federation, the Federal Arbitrazh Court for the North-Western District

resolved

to upheld the ruling of the Arbitrazh Court of the Kaliningrad Region of 23 June 2011 in the case No A21-2498/2011 and to dismiss the cassation complaint of the Kaliningrad Regional Public Organization of Disabled Persons ASSA.

Presiding judge	K.Yu. Korobov
Judges	R.V. Kazanceva
	N.N. Malysheva