Unofficial translation

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FEDERAL ARBITRAZH COURT FOR THE NORTH-WESTERN DISTRICT
Yakubovich street 4, Saint-Petersburg, 190000
http://fasszo.arbitr.ru

RESOLUTION

27 February 2012

Case No. A56-52029/2011

The Federal Arbitrazh Court for the North-Western District composed of the presiding judge O.Yu. Nyefyedova, judges R.V. Kazanceva and O.G. Sosnina,

S.V. Sandakov, on behalf of Baltikums Bank AO, (under Power of Attorney of 29 June 2011), V.O. Malyavin, on behalf of limited liability company BAFF Vyborg, (under Power of Attorney of 1 November 2011),

Having examined at the open hearing of 22 February 2012 the cassation complaint of Baltikums Bank AO against the ruling of the Arbitrazh Court of Saint Petersburg and the Leningrad Region of 22 December 2011 in the case No. A56-52029/2011(judge T.G. Pryesnecova),

established:

Baltikums Bank AO, legal address: Maza Pils 13, Riga, LV-1050, Latvia, individual registration number 40003551060 (hereinafter – "Bank") filed with the Arbitrazh Court of Saint Petersburg and the Leningrad Region an application for recognition and enforcement of the award rendered on 15 June 2011 by the Court of Arbitration of the Association of Commercial Banks of Latvia (hereinafter – "Court of Arbitration") in case No. 166/2011 for the recovery from the limited liability company BAFF Vyborg, legal address: Leningrad av. 9, Vyborg 188800, Leningrad Region, Company State Registration Number 1034700872546 (hereinafter – "Company") of debt under credit agreements of 24 January 2007 No KJG-04/2007 and of 4 October 2007 No KJG-51/2007.

By a ruling of 22 December 2011, the application was rejected.

In the cassation complaint, the Bank requests the annulment of the ruling rendered and remands the case for re-examination.

The applicant believes that the notice concerning time and place of the arbitration proceedings was served on the Company in due time.

In reply to the cassation complaint, the Company requests to uphold the challenged ruling, which it considers well-grounded and legitimate.

At the court hearing the Bank's representative maintained the arguments presented in the cassation complaint. The representative of the Company requested to dismiss it.

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

According to Article 241(1) of the Arbitrazh Procedure Code of the Russian Federation (hereinafter – "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.

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 a case if 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 had 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 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, 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.

In addition, the competent court has right to refuse the recognition and enforcement of the arbitral award in case when, (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.

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”.

By virtue of Article 244(1)(2) RF APC, an arbitrazh court shall refuse, entirely or in part, recognition and enforcement of a foreign arbitral award if the party against which the award was rendered was not timely and properly notified of the time and place of the proceedings or if for other reasons it was unable to present its case before the court.

According to Article 52 of the international Agreement between the Republic of Latvia and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (concluded on 3 February 1993 in Riga), the following should be enclosed together with the request for enforcement: 1) judicially certified copy of the arbitral award, official document on the entry into force of the award, if it does not result from the text of the award itself, as well as the certificate of enforcement; 2) the document demonstrating that the respondent who did not take part in the proceedings was, at least once, timely and in proper manner served with summons to appear in court.

Article 56(1) of the above Agreement provides that the recognition of a court judgment or enforcement thereof may be refused if the person who filed the motion or the respondent did not take part in the proceedings as a consequence of the fact that he or his representative was not timely and duly served with summons to appear in court.

The arbitration agreement between the Bank and the Company is contained in clause 6.2 of the Guarantee Agreement of 24 January 2007 No KJG-04/2007-2, in clause 15.2 of the Credit Agreement of 24 January 2007 No KJG-04/2007, in clause 8.2 of the Surety Agreement of 4 October 2007 No KJG-51/2007-2 and in clause 15.02 of the Credit Agreement of 4 October 2007 No KJG-51/2007.

In the challenged decision, the Court of Arbitration indicated that the respondent was not present in the court; [but the respondent] was informed of the date and time of the proceedings, which is confirmed by the list of registered dispatched mail, sent by the Court of Arbitration, with annotation of acceptance of letters by the Latvian Post and a printout by the Latvian post operator on franking the mails.

As a proof of timely and proper service of summons on the Company to appear in the Court of Arbitration, receipts of 14 April 2011 and 19 May 2011 were filed with the case materials.

However, in the case materials the documentary evidence, the receipt of the notice of hearing scheduled in the Court of Arbitration according to the above mails by the respondent located on the territory of the Russian Federation is missing.

Proof that the Company was otherwise duly notified of the hearing in the Court of Arbitration is missing from the case materials.

The Bank's representative clarified to the court of first instance that in the case materials of the Court of Arbitration there are no documents from Russia on the receipt by the Company or on the return of the post mailed to the Company.

The above circumstance are a ground for denial of recognition and enforcement of the challenged Court of Arbitration award.

The cassation instance agrees with the conclusion of the court of first instance that the mere fact of sending to the address of the Company of a post mail with proof of its receipt by the Latvian post operator does not evidence that information about the time and place of the court hearing was communicated to the Company, a party to the arbitration proceedings.

In these circumstances the complaint should be denied.

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 Saint-Petersburg and the Leningrad Region of 22 December 2011 in the case No A56-52029/2011 and to deny the cassation complaint of the Baltikums Bank AO.

Presiding judge	O.Yu. Nyefyedova
Judges	R.V. Kazanceva
	O.G. Sosnina