Unofficial translation

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 - 17458/11

Moscow 27 August 2012

The Highest Arbitrazh Court of the Russian Federation composed of presiding judge S.V. Sarbash, judges D.I. Dyedov and S.B. Nikiforov, at a hearing examined the application of the company Ciments Français (Tour Ariane, 5 place de la Pyramide, 92800 Puteaux, France, hereinafter – "the company Ciments Français") for the supervisory review of a resolution of the Federal Arbitrazh Court for the West-Siberian District dated 5 December 2011 for a case of the Arbitrazh Court of the Kemerovo Region, Case No. A27–781/2011, by application of the company Ciments Français for recognition of a partial arbitral award rendered on 7 December 2010 by International Court of Arbitration of the International Chamber of Commerce in Istanbul with Case No. 1624/GZ (hereinafter – "partial arbitral award ICC ICA of 7 December 2012 No 1624/GZ"), rendered upon the request of the company Ciments Français against the open joint stock company Holding Company Siberian Cement (the Russian Federation, hereinafter – "the company Siberian Cement") joint-stock company Istanbul ÇimentoYatırımları (Istanbul ÇimentoYatırımları, the Turkish Republic) and on the counterclaim of the company Siberian Cement.

The Court established:

By the ruling of 20 July 2011, the Arbitrazh Court of the Kemerovo Region granted the application.

By a resolution of 5 December 2011, the Federal Arbitrazh Court for the West-Siberian District annulled the ruling of the court of first instance and rejected the application of the company Ciments Français.

By the ruling of the Highest Arbitrazh Court of the Russian Federation of 21 March 2012, the supervisory review No. VAS-17458/11 in case of the Arbitrazh Court of the Kemerovo Region, Case No. A27–781/2011 was suspended on the basis of Article 143(1)(1) of the Arbitrazh Procedure Code of the Russian Federation until the conclusion of the supervisory review No. VAS – 76/12.

By the ruling of the Highest Arbitrazh Court of the Russian Federation of 27 August 2012 the supervisory review No. VAS – 17458/11 was reopened.

In its application made within the supervisory review before the Highest Arbitrazh Court of the Russian Federation, the company Ciments Français requests the annulment of the resolution of the court of cassation instance arguing that it is contrary to the uniform interpretation and application of Article 6 of the Federal Constitutional Law No. 1-FKZ "On Judicial System of the Russian Federation" of 31 December 1996, Articles 16, 180, 239 and 244 of the Arbitrazh Procedure Code of the Russian Federation as well as Article 5 of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958; hereinafter – "New York Convention").

According to the company Ciments Français, at the moment when the court of first instance rendered a ruling dated 20 July 2011 in the present case, its ruling of 13 August 2010 in the case No. A27-4626/2009 on the challenges to the contract, had not yet entered into force. The company also noted that in the present case it sought the so-called declaratory judgment, which does not contain provisions requiring forced execution and therefore is not contrary to the public policy of the Russian Federation. On the other hand, recognition of a void transaction by an arbitral tribunal does not in itself

constitute a sufficient ground for denying recognition and enforcement of an arbitral award which is based on this transaction.

Besides this, the company referred to the unlawful application by the Arbitrazh Court of the cassation instance of grounds for non-recognition or enforcement of the arbitral award pursuant to Article 5(1)(e) of the New York Convention and to groundless reliance by the court of cassation decision on the fact that the partial arbitral award of ICC ICA of 7 December 2010 No. 1624/GZ was set aside by a state court of the Turkish Republic on specific, independent grounds, envisaged under Turkish legislation and serving as grounds for non-recognition of the partial arbitral award of the ICC ICA of 7 December 2010 No. 1624/GZ.

Pursuant to Article 299(4) of the Arbitrazh Procedure Code of the Russian Federation, the case may be referred to the Presidium of the Highest Arbitrazh Court of the Russian Federation for the supervisory review if the grounds provided for in Article 304 of the Arbitrazh Procedure Code of the Russian Federation are present.

In annuling the ruling of the court of first instance, the court of cassation held that the recognition and enforcement of the partial arbitral award of the ICC ICA of 7 December 2010 No. 1624/GZ in the event when there exists another decision of an arbitrazh court declaring void the contract on basis of which the partial arbitral award of ICC ICA of 7 December 2010 No. 1624/GZ was rendered, would lead to violation of the public policy of the Russian Federation (Articles 244(2) and 244(1)(7) of the Arbitrazh Procedure Code of the Russian Federation). The above conclusion corresponds to Article 5(2)(b) of the New York Convention.

The recognition of the partial arbitral award of ICC ICA of 7 December 2010 No. 1624/GZ which was rendered on the basis of a void contract, would result in the existence of mutually exclusive judicial acts of equal force on the territory of the Russian Federation which would contradict the binding nature of judicial acts (Article 6(1) of the law on judicial system).

In such circumstances, the panel of judges finds no grounds for the review of judicial acts adopted in this case.

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

Ruled**:**

The referral of Case No. A27-781/2011 of the Arbitrazh Court of the Kemerovo Region to the Presidium of the Highest Arbitrazh Court of the Russian Federation for the supervisory review of the resolution of the Federal Arbitrazh Court for the West-Siberian District of 5 December 2011, shall be refused.

Presiding judge: S.V. Sarbash

Judge D.I. Dyedov

Judge S.B. Nikiforov