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 - 15654/11

Moscow 12 December 2011

The panel of judges of the Highest Arbitrazh Court of the Russian Federation composed of the presiding judge T.N. Nyeshatayeva and judges A.I. Babkin and S.V. Sarbash, at a hearing, examined the application of Andrei Georgievich Ishuk (11a Lesnaya street, apt. 44 Samara; hereinafter – A.G. Ishuk) No. 15654/11 dated 15 November 2011 for a supervisory review of a resolution of the Federal Arbitrazh Court for the Volga District dated 9 August 2011, Case No. A55–27265/2010 rendered upon the application of the company Tabellion Limited (Republic of Cyprus, 3030, 18 Evagora Papachristoforou street, Petoussis Bros Building, 3rd floor) for recognition and enforcement of a final award of London Court of International Arbitration relating to claims in cases No. 81201 and No. 81214 of 3 December 2009, taking into account modifications introduced by the Memorandum on corrections of the final award of 22 December 2009, against A.G. Ishuk.

Other parties participating in the proceedings: Federalevel Holdings Limited (Republic of Cyprus, Nicosia, 8 Mabella Court, Acropolis), Irina Aleksandrovna Ishuk (11a Lesnaya street, apt. 44 Samara; hereinafter – I.A. Ishuk).

The Court established:

By the final arbitral award of the London Court of International Arbitration concerning claims in the consolidated arbitration proceedings of 3 December 2009 No. 81021 and No. 81214, taking into account modifications introduced by the Memorandum on corrections of the final award of 22 December 2009 (hereinafter – the arbitral award), the Tribunal ordered A.G. Ishuk to immediately pay or to secure payment by the limited liability company Federalevel Holdings Limited to Tabellion Limited the amounts of USD 43 426 229.51, 60 881.98 GBP, a share of the arbitration costs borne by the company Tabellion Limited, the attorneys' fees and other expenses in the amount of EUR 281 645.74 as well as interest according to the yearly legal rate of 3% above the base rate of the Bank of England subject to yearly review from 14 November 2008 until the date of enforcement of the final award of 22 December 2009.

By the ruling of 6 June 2011 in Case No. A55-27265/2010, the Arbitrazh Court of the Samara Region rejected the application for recognition and enforcement of the arbitral award.

By the resolution rendered in the same case on 9 August 2011, the Federal Arbitrazh Court for the Volga District annulled the ruling of the court of first instance and issued the writ for coercive enforcement of the arbitral award.

In the application for supervisory review of the resolution of the court of cassation instance, A.G. Ishuk requests its annulment on grounds that the challenged judicial act violates universally recognized

principles and norms of international law and it is contrary to the uniform interpretation and application of the rules of law by courts.

Having examined the arguments of the applicant, the content of the challenged judicial act and the case materials, the Court established that the conclusions of the courts were made in conformity with the applicable substantive and procedural norms of law.

From the case materials and from the content of the challenged judicial act it follows that Tabellion Limited and limited liability company Federalevel Holdings Limited concluded shares sale-purchase contract with a put option (hereinafter – the Contract) on 6 December 2007. At the same time, a guarantee agreement was concluded between the A.G. Ishuk and Tabellion Limited, whereby A.G. Ishuk provided Tabellion Limited with a personal guarantee with respect to all contractual liabilities of the limited liability company Federalevel Holdings Limited (the Guarantee).

Following the default by Federalevel Holdings Limited and by A.G. Ishuk on the obligations assumed under the Contract and the Guarantee, Tabellion Limited applied to the London Court of International Arbitration on the basis of the agreement reached between the parties in Article 17.2 of the Contract and Article 13.2 of the Guarantee. By an award rendered on 3 December 2009 in consolidated cases No. 81021 and No. 81214 and taking into account modifications introduced by the Memorandum on corrections of 22 December 2009, the relief sought by Tabellion Limited against Federalevel Holdings Limited and A.G. Ishuk was granted.

Pursuant to the text of the official Russian translation of the award submitted by Tabellion Limited with the application for recognition and enforcement of the award rendered against A.G. Ishuk on 3 December 2009 and taking into account modifications introduced by the Memorandum on corrections of the final award of 22 December 2009, the London Court of International Arbitration ruled the following:

a) A.G. Ishuk violated his obligations under the Guarantee;
b) A.G. Ishuk shall immediately pay, or secure payment of, by the limited liability company Federalevel Holdings Limited, to Tabellion Limited, the amount of USD 43 426 229.51, representing the price of the put option due pursuant to Article 9.1 of the Contract;
c) A.G. Ishuk shall immediately pay, or secure payment of, by the limited liability company Federalevel Holdings Limited to Tabellion Limited, interest according to the yearly legal rate of 3% above the base rate of the Bank of England subject to the yearly review from 14 November 2008 (maturity date of the put option) until the date of rendering the final arbitral award with respect to the claims;
d) A.G. Ishuk shall immediately pay, or secure payment of, by the limited liability company Federalevel Holdings Limited to the company Tabellion Limited, part of the arbitration costs in the amount of GBP 60 881.98, borne by the company Tabellion Limited by means of advance payments as well as the attorneys' fees and other fees in the amount of GBP 350 000.00.

Annulling the court of first instance ruling the cassation instance noted that the decision of the court of first instance, that arbitral award was contrary to the public policy of the Russian Federation on grounds that the spouse of A.G. Ishuk – I.A. Ishuk – had not joined the arbitration proceedings while her property rights were affected by the arbitral award, is incorrect.

Annulling the court of first instance ruling, the court of cassation instance held that reference to violation of public policy cannot be taken into account, as the ground relied upon by A.G. Ishuk cannot be considered as a violation of public policy within the meaning of Article V(b) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958) and Article 244(1) of the Arbitrazh Procedure Code of the Russian Federation.

The argument of A.G. Ishuk that while I.A. Ishuk had not participated in the arbitration proceedings, the enforcement of the arbitral award against financial assets is to be carried out against property belonging to her, cannot be taken into account.

As correctly held by the court of cassation instance, family law recognizes the possibility of separating A.G. Ishuk's share in common property of the spouses for the purposes of satisfying the creditors' claims.

According to Article 304(1) of the Arbitrazh Procedure Code of the Russian Federation, the grounds for the modification or annulment in supervisory proceedings of judicial acts that have entered into force are the following: violation of the uniformity in interpretation and application of the rules of law by the arbitrazh courts; violation of human and citizen's rights and liberties according to the universally recognized principles and rules of international law and international treaties of the Russian Federation; as well as violation of rights and legal interests of an undetermined group of persons or other public interests. Having examined presented documents and assessed the arguments provided in the application, judicial acts and case materials, the court concludes that no such grounds exist.

Taking into consideration the above, on the basis of Articles 299, 301 and 304 of the Arbitrazh Procedure Code of the Russian Federation, the Court

Ruled:

Referral of Case No. A55-27265/2010 of the Arbitrazh Court of the Samara 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 Volga District of 9 August 2011, shall be refused.

Presiding judge T.N. Nyeshatayeva

Judge A.I. Babkin

Judge S.V. Sarbash