

HIGHEST ARBITRAZH COURT
OF THE RUSSIAN FEDERATION

RULING

Refusing to Refer the Case to the Presidium of the Highest Arbitrazh Court
of the Russian Federation

No. VAS-8786/10

Moscow

3 August 2010

A panel of judges of the Highest Arbitrazh Court of the Russian Federation, composed of Presiding Judge T.N. Neshatayeva and Judges A.I. Babkin and D.I. Dedov, examined in a hearing an unnumbered complaint of 17 June 2010 submitted by OOO MedBusinessService-2000 (Okruzhnoy Avenue, Building 30A, Moscow, 105187, hereinafter – the Entity) for the supervisory review of a ruling of the Moscow Arbitrazh Court of 15 April 2010, rendered in Case No. A40-24208/10-63-209, and a resolution of the Federal Arbitrazh Court for the Moscow District of 26 May 2010, rendered in the same case, following an application of the company Ansell S.A. (2, Boulevard du Moulin à Vent, BP 78395, Cergy, F-95805 Cergy-Pontoise Cedex, France; for correspondence: Dolgorukovskaya Street, Building 7, Moscow, 127006, Baker & McKenzie CIS, Limited) for the recognition and enforcement of a foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009 ordering the Entity to pay to the company USD 342,984.99, plus interest on the amount of USD 274,715.60 at the rate of 0.05 percent per day from 1 February 2009 until the date of payment; SEK 733,500 and EUR 39,240 for reimbursement of the arbitration expenses; EUR 32,655, of which EUR 26,124 correspond to the arbitrator's fees and EUR 6,531 to the VAT; and SEK 39,804 for compensation of expenses, of which SEK 7,961 correspond to the VAT (hereinafter – the Award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009, Arbitral Award).

The court established:

By the ruling of 15 April 2010, the Moscow Arbitrazh Court granted the application for the recognition and enforcement of the Award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009 ordering the Entity to pay to the company the debt, interest and expenses related to the arbitral proceedings.

By the resolution of 26 May 2010, the Federal Arbitrazh Court for the Moscow District upheld the first instance court's ruling.

In the complaint for the supervisory review of the judicial acts, the Entity requests their cancellation and the rendering of a new judicial act. It invokes the violation by the challenged judicial

Unofficial translation

acts of the uniformity in interpretation and application of the rules of law by the arbitrazh courts arguing that the lower courts should have refused granting recognition and enforcement of the Arbitral Award because it is contrary to the public policy of the Russian Federation and was rendered in the absence of an arbitration agreement between the parties.

The court, having examined the complainant's arguments, the challenged judicial acts and the case materials, established that the Entity's complaint shall be rejected on the following grounds.

The Entity's argument that the Arbitral Award should not be recognized and enforced in the territory of the Russian Federation because it is contrary to the public policy shall not be taken into account. The enforcement of the Arbitral Award would not produce results contrary to the universally recognized moral and ethical rules or threatening the citizens' life and health, or the State's security.

The Entity's argument that there is no arbitration agreement between the Entity and the company shall also be rejected on the following grounds.

The Arbitral Tribunal and the lower courts established that paragraph 8.1 of Contract No. AN40409 of 9 April 2004 (hereinafter – the Contract) contains an arbitration agreement providing that all disputes arising from the Contract or in relation to it, shall be submitted to Arbitration in Stockholm, Sweden, under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The Contract was recognized as a frame contract entering into force when the relevant specifications and invoices would be signed. These documents are in the case materials and contain references to the abovementioned Contract. Thus, despite the Entity's arguments, nor the Contract nor the arbitration agreement contained therein can be considered as not entered into.

In addition, the arbitration agreement was not declared invalid.

Furthermore, by filing an answer and a counterclaim, the Entity confirmed its willingness to submit the dispute for examination to that international commercial arbitral tribunal and, during its participation in the arbitral proceedings it did not raise any objections to the tribunal's jurisdiction.

Therefore, the Entity's argument that there is no arbitration agreement between the Entity and the company is unfounded.

According to Article 299(4) of the Arbitrazh Procedure Code of the Russian Federation, a case can be transferred to the Presidium of the Highest Arbitrazh Court of the Russian Federation for the supervisory review in the presence of grounds provided for in Article 304 of the Arbitrazh Procedure Code of the Russian Federation.

According to Article 304(1) of the Arbitrazh Procedure Code of the Russian Federation, the grounds for the modification or cancellation in supervisory proceedings of judicial acts that have entered into force are the following: violation by challenged judicial acts of the uniformity in interpretation and application of the rules of law by the arbitrazh courts; violation of human and citizen's rights and freedoms under 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 indefinite group of persons or other public interests.

Having examined the submitted documents, having assessed the arguments in the complaint, the judicial acts and the case materials, the court concludes that no such grounds exist.

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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:

The referral of Case No. A40-24208/10-63-209 of the Moscow Arbitrazh Court to the Presidium of the Highest Arbitrazh Court of the Russian Federation for the supervisory review of the ruling of the Moscow Arbitrazh Court of 15 April 2010, and of the resolution of the Federal Arbitrazh Court for the Moscow District of 26 May 2010, rendered in the abovementioned case, shall be refused.

Presiding Judge

T.N. Neshatayeva

Judge

A.I. Babkin

Judge

D.I. Dedov