

SVEA COURT OF APPEAL  
Department 02  
Division 020108

**JUDGMENT**  
18 September 2014  
Stockholm

Case No.  
T 8851-13

**CLAIMANT**

Nordic Ground Support Equipment AB, Reg. No. 556754-3425  
Gelbgjutarevägen 4  
171 48 Solna

Counsel: Advokaten Henrik Wollsen and jur. kand. Erik Forsin  
Advokatfirma DLA Nordic KB  
P.O. Box 7315  
103 90 Stockholm

**RESPONDENT**

MT Management & Technology Partners Oy  
Lansankallio 15  
02630 Espo  
Finland

Counsel: Advokaten Viktor Magnell and jur. kand. Christine Hult  
Advokatfirman Törngren Magnell KB  
Västra Trädgårdsgatan 8  
111 53 Stockholm

**MATTER**

Challenge of arbitral award rendered in Stockholm on 3 July 2013

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**JUDGMENT OF THE COURT OF APPEAL**

1. The Court of Appeal does not allow Nordic Ground Support Equipment AB to, as alternative challenge grounds, reference that the arbitrator exceeded his mandate by not considering Nordic Ground Support Equipment AB's objection when determining the allocation of litigation costs.
2. The Court of Appeal rejects the motions of the claimant.
3. The Court of Appeal orders Nordic Ground Support Equipment AB to compensate MT Management & Technology Partners Oy for its litigation costs in the amount of SEK 173,900, out of which SEK 166,400 comprises costs for legal counsel. On the amount of SEK 173,900 interest shall be paid pursuant to Section 6 of the Swedish Interest Act from the day of the judgment of the Court of Appeal until payment is made.

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Document ID 1166201

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**MOTIONS**

Nordic Ground Support Equipment AB (NGSE) has moved that the Court of Appeal shall annul item 7.5 of the arbitral award given between the parties concerning NGSE's obligation to compensate MT Management & Technology Partners Oy (MTP) for value added tax.

MTP has disputed the motion.

The parties have claimed compensation for litigation costs.

**THE PARTIES' RESPECTIVE CASES**

NGSE

In the arbitration, MTP claimed compensation for costs for legal counsel as well as value added tax. NGSE stated that it did not attest MTP's claim for compensation for value added tax. Nevertheless, the arbitrator ordered NGSE to compensate MTP for the value added tax. This was incorrect, since the value added tax did not constitute a cost for MTP.

NGSE requested that the arbitrator should rectify the arbitral award in this respect, but the arbitrator did not grant the request and stated that NGSE's objection to MTP's claim for compensation for value added tax was too brief, unclear and lacked specificity. In this situation, the arbitrator ought to have guided the proceedings and sought to clarify NGSE's position with respect to the value added tax issue. The arbitrator's failure to guide the proceedings amounts to a procedural error that, without having been caused by NGSE, likely affected the outcome of the case. In the alternative, the arbitrator exceeded his mandate by not considering NGSE's aforementioned objection.

MTP

Only after the expiry of the period for challenge of the award did NGSE claim that the arbitrator had exceeded his mandate by not considering NGSE's objection when determining the allocation of litigation costs. Thus, these grounds for challenge shall be dismissed. As alternative grounds for

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dismissal reference is made to Article 31 of the Rules for Expedited Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce. NGSE has not without delay objected that the arbitrator failed to consider and review the objection. In any event, MTP disputes that the arbitrator exceeded his mandate.

The arbitrator has not committed a procedural error by failing to guide the proceedings sufficiently. There was no reason for the arbitrator to, through guiding the proceedings, clarify NGSE's position concerning value added tax since it was clearly stated, i.e. that NGSE objected to MTP's claim for compensation for value added tax. Any possible procedural error was not of such scope and nature as to warrant the annulment of the arbitral award as moved in these proceedings. In any event it is not likely that a possible procedural error affected the outcome of the arbitration. At all events, NGSE contributed to the error.

### NGSE

NGSE has disputed MTP's motion for dismissal.

### **GROUND OF THE COURT OF APPEAL**

The case has been decided without a main hearing. Documentary evidence has been referenced.

#### *New challenge grounds?*

On the issue whether NGSE has referenced new challenge grounds after the expiry of the period for challenge, the Court of Appeal concludes as follows. NGSE, which in its application for a summons maintained that the arbitrator in his review considered its objection, but failed to clarify it through procedural guidance, only after the expiry of the challenge period maintained in the alternative that the arbitrator did not consider the objection whatsoever. The Court of Appeal finds that NGSE hereby has referenced new challenge grounds. These shall consequently not be allowed.

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*Shall the arbitral award be annulled as moved?*

The parties agree on what transpired in the arbitration proceedings concerning the now relevant issue, which is to say the following. MTP claimed compensation for costs for legal counsel including value added tax. NGSE objected briefly that the company did not attest the value added tax as an eligible cost. Nevertheless, the arbitrator ordered NGSE to compensate MTP for the value added tax. In the arbitrator's decision, given in response to NGSE's request for a correction of the arbitral award, it was noted that NGSE's brief and poorly substantiated objection was insufficient to reject MTP's claim for compensation for costs for legal counsel including value added tax.

As grounds for its challenge NGSE has mainly maintained *that* the arbitrator ought to have guided the proceedings and clarified NGSE's position when he became aware that the company's objection was too brief and not sufficiently detailed and *that* this failure constitutes a procedural error which entails that the arbitral award shall be annulled as moved.

MTP has mainly maintained that the arbitrator did not have grounds to seek to clarify NGSE's position on the value added tax issue, since it was clear, namely that value added tax was not an eligible cost.

The Court of Appeal notes that the procedural situation was clear when NGSE had objected to liability to compensate the value added tax, meaning that MTP was obliged to establish its claim that the value added tax constituted a costs to the company. The arbitrator appears instead to have concluded that NGSE was obliged to argue or present evidence against MTP's claim, which the arbitrator apparently concluded NGSE had failed to do. The arbitrator's conclusion that MTP was entitled to compensation for value added tax is in the opinion of the Court of Appeal a decision on the merits. The decision may have been incorrect, but is not a procedural error. Thus, the motions shall be rejected.

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*Litigation costs*

Upon this outcome MTP is entitled to compensation for its litigation costs. Although the amount is rather high considering the limited scope of the dispute, it must be deemed reasonable considering the manner in which NGSE has conducted its case, *inter alia* by arguing and referencing evidence in support of value added tax not being a cost to MTP.

There are no grounds to grant leave to appeal the judgment of the Court of Appeal, the second paragraph of Section 43 of the Swedish Arbitration Act.

**The judgment of the Court of Appeal may not be appealed.**

[ILLEGIBLE SIGNATURES]

The decision has been made by: Judges of Appeal CS and PS, reporting Judge of Appeal, and Deputy Associate Judge ZT.