

Unofficial translation

THE SUPREME COURT

DECISION

Case no

rendered in Stockholm on 27 December 2023

Ä 2885-23

PARTIES

Claimant

IL

Counsel: DMS

Counterparty

Naked Juicebar AB, 556727-0920 Kungsgatan 37, 4 tr.
111 56 Stockholm

Counsel: DU and SA

MATTER

Objection to enforcement

APPEALED DECISION

Svea Court of Appeal decision 2023-04-04 in case Ä 13377-22.

Doc.Id 272426

SUPREME COURT	Postal address	Telephone 08-561 666 00	Open hours
Riddarhustorget 8	Box 2066 103 12 Stockholm	E-mail: hogsta.domstolen@dom.se www.hogstodomstolen.se	08:00-12:00 13:15-16:00

THE DECISION OF THE SUPREME COURT

The Supreme Court rejects the appeal.

IL shall pay Naked Juicebar AB's legal costs in the Supreme Court in the amount of SEK 27 500, in respect of legal fees, plus interest in accordance with section 6 of the Interest Act from this day until payment is made.

MOTIONS IN THE SUPREME COURT

IL has requested the Supreme Court to dismiss Naked Juicebar AB's application for enforcement in Case U-43674-22/2110. She has also requested the Supreme Court to release her from the obligation to pay Naked Juicebar AB's legal costs in the District Court and the Court of Appeal and award her compensation for her legal costs in those instances.

Naked Juicebar AB has opposed the amendment of the Court of Appeal's decision.

The parties have claimed compensation for their costs in the Supreme Court.

REASONS FOR THE JUDGMENT

Background to the dispute

1. IL owned the company Kolboda Mat och Dryck AB, which in 2018 entered into a franchise agreement with Naked Juicebar AB. IL entered a guarantor's liability commitment for Kolboda's debts under the agreement.
2. According to an arbitration clause included in the agreement, disputes arising from the agreement were to be resolved by expedited arbitration according to the rules of the SCC Arbitration Institute.
3. Kolboda initiated arbitration proceedings against Naked Juicebar, which for its part, through a counterclaim, initiated arbitration proceedings partly

against Kolboda and partly against IL regarding the fulfilment of the guarantee liability commitment. The 2017 SCC Rules for Expedited Arbitration were applied in the case. The proceedings were settled by a final award which - as regards the award - was mainly drafted in accordance with the template provided by the SCC.

4. In the award, Kolboda and IL were ordered to jointly and severally pay a certain principal amount plus interest to Naked Juicebar, while Kolboda's claims in the arbitration were dismissed.

5. According to the award, IL, Kolboda and Naked Juicebar should jointly and severally pay the arbitration costs consisting of (a) fees to the arbitrator and (b) an administrative fee to the SCC. Between the parties, Kolboda and IL were ordered to finally pay these arbitration costs.

6. According to the award, Kolboda and IL were also to jointly and severally compensate Naked Juicebar for its legal costs in a certain amount. Finally, the award stated that Kolboda and IL would bear their own costs in the arbitration.

7. Kolboda was declared bankrupt after the conclusion of the arbitration proceedings.

8. Naked Juicebar applied to the Swedish Enforcement Authority (Swe. *Kronofogdemyndigheten*) for enforcement of the arbitral award against IL regarding, inter alia, the costs of the arbitration (the fees of the arbitrator and the SCC's fee). IL objected to the enforcement, but the Swedish Enforcement Authority rejected the objection and accepted the arbitral award as a basis for enforcement.

9. The District Court amended the Swedish Enforcement Authority's decision in the part concerning the arbitration costs and otherwise rejected IL's appeal. In its decision, the District Court noted that the arbitral award did not expressly contain an obligation for IL to pay a certain amount to Naked Juicebar for the arbitration costs and therefore found that the arbitral award was not

enforceable in that respect.

10. The Court of Appeal has amended the District Court's decision and granted Naked Juicebar's application for enforcement. The Court of Appeal has stated that the arbitral award cannot be understood in any other way than that IL and Kolboda are ultimately liable for all arbitration costs and that Naked Juicebar - if the company has paid any part of these costs - has taken over the arbitrators' right to compensation. According to the Court of Appeal, there was therefore no obstacle to enforcement.

The question in the Supreme Court

11. The question is whether the award is enforceable in respect of the losing party's obligation to reimburse the winning party for the arbitrator's fees and charges to the arbitration institution.

Arbitration costs

12. The [Swedish] Arbitration Act (1999:116) contains, inter alia, provisions on arbitration costs. These costs include compensation to the arbitrator (section 37) and the parties' costs for the proceedings (section 42).

13. Under section 37, the parties shall jointly and severally pay reasonable compensation to the arbitrator for work and expenses and the arbitrator may, in a final award, order the parties to pay that compensation plus interest. The district court may, upon application by a party, review the award with respect to the question of compensation to the arbitrator (see section 41).

14. Unless the parties have agreed otherwise, the arbitrator may, at the request of a party, order the other party to pay the costs of the party, together with interest, and determine the final distribution of the compensation to the arbitrator between the parties (see section 42). The fee to an arbitration institution may be included in the party's costs and the arbitrator thus has the power to decide which of the parties will finally bear this cost in the arbitral award (cf. Government Bill

1998/99:35, p. 239 and Stefan Lindskog, *Skiljeförfarande - en kommentar*, 3rd edition 2020, p. 1096 f., note 4352).

15. Provisions on costs in arbitration proceedings are also contained in the rules for expedited arbitration agreed between the parties (see point 3). According to article 49 (1), the costs of the arbitration consist of the arbitrator's fee, the administrative fee and the expenses of the arbitrator and the SCC. The other costs of the parties are dealt with in article 50. Thus, according to these arbitration rules, the fee to the arbitration institution is included in the costs of the arbitration and not in the other costs of the party.

16. Under article 49(5) of the SCC Rules, the arbitrator shall specify the costs of the arbitration in the final award. Unless otherwise agreed by the parties, the arbitrator shall, pursuant to article 49(6), at the request of a party, apportion the costs of the arbitration between the parties, taking into account the outcome of the case, the extent to which the parties have contributed to an efficient and expeditious procedure and other relevant circumstances. (Cf. Stefan Lindskog, *Något om verkställighet och internt partsansvar avseende skiljekostnader*, JT 2021/22 pp. 720–733, at p. 728 f.)

Conditions for enforcement

17. In order for enforcement to take place, the obligation must be based on an enforcement order (Swe. *exekutionstitel*) that includes a payment obligation or other obligation (see chapter 1, section 1 of the [Swedish] Enforcement Code). An order that only relates to the establishment of a legal relationship cannot therefore constitute an enforcement order (see e.g. “*Bodelningen i Ljusdal*” NJA 1985 p. 140).

18. What determines whether an enforcement order entails such an obligation to perform is the real meaning of the words used in the judgment or decision, and not the words themselves (see Torkel Gregow, *Utsökningsrätt*, 5th edition 2020, p. 76; cf. also “*Skifteslaget i Torsåker*” NJA 1974 p. 261 compared to

“*Aktiebolagets radioapparat*” NJA 1979 p. 264).

19. An arbitral award may constitute an enforcement order (see chapter 3, section 1, first paragraph 4). The detailed conditions for enforcement are regulated in chapter 3, sections 15–18.

20. An arbitral award based on an arbitration agreement may be enforced if the arbitration agreement does not contain a reservation of the party’s right to challenge the award or, where there is such a reservation, the time for the party to challenge the award has expired without being challenged, and the award complies with the provisions of the Arbitration Act concerning writing and signature. With regard to the arbitrator’s fees, the award may be enforced if the award in this respect has not been challenged within the prescribed time and complies with the requirements of in writing and with signature (see chapter 3, section 15).

21. It is for the Swedish Enforcement Authority to determine whether the conditions for enforcement are met. However, it is the applicant who must show that none of the parties have challenged the decision on the arbitrator’s fees within the prescribed time (cf. Torkel Gregow, *op. cit.*, p. 99 ff.).

22. If the respondent shows that payment of the debt has been made, or that some right of set-off exists, enforcement may not take place. Furthermore, it is stated that enforcement may also not take place if the respondent raises an objection that other circumstances relating to the parties’ dealings constitute an obstacle to enforcement and the objection cannot be disregarded (see chapter 3, section 21 and Government Bill 1980/81:8, p. 323 ff., cf. also “*Räknefelet och verkställigheten*” NJA 2015 p. 527).

The assessment in this case

23. The arbitration costs to which this enforcement case relates are such costs that an arbitrator, pursuant to section 42 of the Arbitration Act, may, at the request of a party, order the opposing party to pay. The section is dispositive, but

the SCC rules that are to be applied according to the parties' agreement do not deviate from section 42 other than by specifying the basis for the allocation of costs and by dividing and naming the costs differently. This is to some extent reflected in the award.

24. Paragraph 104 of the award states that, as between the parties, Kolboda and IL are ordered to pay the final costs of the arbitration. Although it is not expressly stated, the wording cannot be understood in any other way than that there is joint and several liability between Kolboda and IL. This shows that IL is obligated to pay Naked Juicebar what the company has paid of the arbitration costs.

25. With regard to the costs of the arbitration, the amounts are set out in paragraph 103 of the judgment, namely that the arbitrator's fee amounts to EUR 13 227 and the administrative fee to the SCC amounts to EUR 4 642, plus in both cases a specified amount of value added tax. It can be seen from the advances paid and the settlement made that each party has paid half of those costs.

26. Against this background, it can be concluded that the judgment contains a sufficiently clear obligation for IL to compensate Naked Juicebar for what it has paid of the arbitration costs and that the amount to which the obligation relates can be calculated without difficulty.

27. There is therefore no obstacle to the enforcement of the award. The appeal must therefore be dismissed.

28. On that basis, IL must compensate Naked Juicebar for its legal costs. The compensation claimed is reasonable.

Justices Agneta Bäcklund, Stefan Johansson, Petter Asp, Stefan Reimer (reporting

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judge) and Christine Lager took part in the decision.
The reporting clerk was Norah Lind.