

UNOFFICIAL TRANSLATION

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# THE SUPREME COURT

## DECISION

Case no

Rendered in Stockholm on 17 May 2023

Ö 4116-22

### **PARTIES**

#### **Claimant**

KB Components Plastunion AB, 556181-  
5209

Box 223

334 24 Anderstorp

Counsel: JN and SH

#### **Counterparty**

Husqvarna AB, 556000-5331

561 82 Huskvarna

Counsel: WL, EW, and IE

### **MATTER**

Inadmissibility of the case

### **APPEALED DECISION**

Göta Court of Appeal decision 2022-05-23 in case Ö 1758-21

Doc.Id 256014 \_\_\_\_\_

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## **THE DECISION OF THE SUPREME COURT**

The Supreme Court rejects the appeal.

KB Components Plastunion AB shall compensate Husqvarna AB for the costs of the proceedings before the Supreme Court in the amount of SEK 350 000, in respect of legal fees, and interest in accordance with section 6 of the [Swedish] Interest Act from the date of this decision.

## **MOTIONS IN THE SUPREME COURT**

KB Components Plastunion AB has requested that the Supreme Court set aside the District Court's and Court of Appeal's dismissal decisions and refer the case back to the District Court. KB Plastunion has also requested that the company be released from the obligation to compensate Husqvarna AB for its legal costs in the District Court and the Court of Appeal.

Husqvarna has opposed the appeal of the decisions of the District Court and the Court of Appeal.

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

## **REASONS FOR THE JUDGMENT**

### **Background to the dispute**

1. Husqvarna manufactures outdoor products such as robotic lawnmowers, garden tractors and chainsaws. KB Plastunion is part of a group that has for many years manufactured and supplied plastic components to Husqvarna. KB Components AB is the parent company of the group.
2. KB Plastunion commenced litigation proceedings against

Husqvarna before the District Court and claimed that Husqvarna should be ordered to pay just over SEK 330,000 to KB Plastunion regarding the remaining payment for tank caps delivered in 2020.

3. Husqvarna argued that the case should be dismissed as the dispute was governed by an arbitration agreement between the parties. KB Plastunion opposed the inadmissibility of case.

4. The District Court dismissed the case with reference to the fact that the parties' arbitration agreement prevents the case from being tried in a public court. The Court of Appeal has made the same assessment as the District Court.

### **The question in the Supreme Court**

5. The question is whether there is an arbitration agreement in force between KB Plastunion and Husqvarna which prevents the general court from examining KB Plastunion's action.

### **The parties' actions before the Supreme Court**

6. In brief, Husqvarna has stated the following. KB Plastunion is bound by arbitration clauses in agreements entered into by Husqvarna in 1995 and 2005 with other companies in the group. KB Plastunion is also bound by an arbitration clause in an agreement entitled Supply Agreement entered into by the parties in 2007. In 2014, Husqvarna sent Purchase Orders to KB Plastunion regarding the models of tank caps to which the deliveries in question relate. The purchase orders refer to Husqvarna's general terms and conditions which contain

an arbitration clause. Husqvarna's order and KB Plastunion's invoices for the deliveries in 2020 show that these are based on the purchase orders from 2014. As a result, KB Plastunion is also bound by the arbitration agreement.

7. KB Plastunion has briefly stated the following. The company is not a party to the 1995 or 2005 agreements and Husqvarna has also terminated these agreements in 2016. The agreement concluded in 2007 between KB Plastunion and Husqvarna has become null by the fact that Husqvarna did not place orders with KB Plastunion until after 2012, when some production was transferred to the company from another company within the group. In any event, Husqvarna has terminated the agreement as a result of what took place between the parties in 2016. The fact that the purchase orders from 2014 contained a reference to Husqvarna's general terms and conditions is not a circumstance that KB Plastunion had reason to pay attention to. The fact that the same number combinations were used in orders and invoices from 2020 as in the purchase orders does not mean that the company was bound by the arbitration clause in Husqvarna's general terms and conditions.

8. Husqvarna has objected that no termination of the agreements has taken place because KB Components and KB Plastunion refused to accept a termination of the contractual relationship. KB Plastunion has continued to manufacture Husqvarna's plastic components according to the same procedures as before. This meant that the parties accepted the previously applicable contractual terms, including the arbitration clauses.

### **Arbitration agreement**

9. Disputes on matters on which the parties can reach a settlement agreement may be submitted to arbitration. If such an arbitration agreement has been concluded, a court may not review the matter against a party's challenge (see sections 1 and 4 of the [Swedish] Arbitration Act (1999:116) and chapter 10, section 17a of the Code of Judicial Procedure [Swe '*rättegångsbalken*').

10. The question of whether an arbitration agreement has been concluded must be assessed according to general contract law principles. This also applies when there is an arbitration clause in a standard agreement and the question is whether the clause constitutes contractual content. Neither the [Swedish] Contracts Act nor other legislation indicates what is required for a standard term to be considered incorporated into the individual contract and thus form part of the parties' agreement.

11. As a general rule, a party must become aware of a standard contract before the conclusion of the contract in order for it to become part of the contract. A reference to a standard contract containing an arbitration clause may be sufficient for the parties to be bound by the clause. Binding effect will generally arise even if the other party has not actually read the standard contract prior to its conclusion if the reference to the standard contract is clear and the terms are available to the other party. If an arbitration clause is unexpected, surprising, or particularly burdensome, a higher standard should be set to create an obligation to arbitrate. In commercial contractual relationships, however, an arbitration clause is generally not considered to be either surprising or particularly burdensome (cf. "*Lastbilscentralen*" NJA 1980 p. 46).

### **Scope of the arbitration agreement**

12. An arbitration agreement may relate to future disputes concerning a legal relationship specified in the agreement (section 1, first paragraph of the [Swedish] Arbitration Act).

13. The concept of legal relationship also appeared in the Arbitration Acts of 1887 and 1929 without the meaning of the concept being discussed in detail in the preparatory works (cf. NJA II 1887 no. 4 p. 15 et seq. and NJA II 1929 p. 10). With respect to the 1929 Act, it has been stated that the

expression does not mean that the legal relationship identified in the arbitration agreement must already exist when the arbitration agreement is concluded; the requirement that the dispute must relate to a legal relationship specified in the arbitration agreement means that this must have been fully individualized (see Nils Dillén, *Bidrag till läran om skiljeavtalet*, 1933, pp. 84 et seq. and 107 et seq.).

14. According to the preparatory works to the current law, the expression indicates that an arbitration agreement cannot relate to all future disputes between the parties; it must be made specific to a certain legal relationship (see Government Bill 1998/99:35 p. 212). The concretization requirement is intended to give the parties the opportunity to survey the consequences of the arbitration agreement (see “*Belgor*” NJA 2019 p. 171 p. 12).

15. The interpretation of the concept of “legal relationship” in the Arbitration Act should take into account the principles underlying the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention provides that a party agreement to arbitrate shall be recognized if it relates to disputes concerning “a defined legal relationship” (see Article II.1). The principles of the Convention have been considered in foreign case law and international doctrine to justify a broad interpretation of the Convention’s concept of “legal relationship” (see “*Belgor*” p. 14).

16. It is common for parties to enter into agreements that regulate how future purchases between them are to proceed. Such framework agreements usually specify the terms and conditions that will apply to future call-off agreements in terms of prices, payment terms, delivery, quality, dispute

resolution, etc. When a party later calls off under the framework agreement, the terms and conditions of that agreement will, as a starting point, fill out the call-off agreement and become part of it. Framework agreements of this type often also contain provisions on how the cooperation between the parties should be structured.

17. The description of the contractual relationship established between the parties through a framework agreement may be sufficiently specified in the agreement for an arbitration agreement concerning future disputes arising from both the framework agreement and the subsequent call-off agreements to be considered to concern a legal relationship within the meaning of section 1, first paragraph of the Arbitration Act. The provision does not require that an arbitration agreement can only relate to disputes concerning already concluded agreements. An arbitration clause in the framework agreement may also become binding in respect of disputes concerning a call-off agreement, in that an arbitration clause in the framework agreement supplements and becomes part of the call-off agreement (cf. Stefan Lindskog, *Skiljeförfarande - en kommentar*, 3rd edition 2020, p. 266, note 1062).

18. The general scope of application of an arbitration agreement is determined by the usual principles of contract interpretation (see “Belgor” p. 13).

### **The assessment in this case**

19. KB Plastunion was not a party to the agreements concluded by Husqvarna in 1995 and 2005 with other companies in the group to which KB Plastunion belongs. The case file does not support the conclusion that the company subsequently became bound by those agreements.

20. In 2007, Husqvarna and KB Plastunion entered into an agreement entitled “Supply Agreement”, which contains conditions for future call-offs. The agreement states that the terms of the agreement are applicable to the purchase of products supplied by KB Plastunion to Husqvarna pursuant to a purchase order made by Husqvarna as described in an annex to the agreement. The agreement contains an arbitration clause stating that disputes “arising out of or in connection to this Agreement or Purchase Order” shall be settled by arbitration.

21. Husqvarna has stated that a purchase order is issued on one occasion and then forms the basis for subsequent orders for certain quantities of the products specified in the order.

22. In 2014, Husqvarna made purchase orders for the types of fuel caps at issue in the case, which were sent to KB Plastunion. Between 2014 and 2016, KB Plastunion repeatedly supplied fuel caps of the models specified in the purchase orders. In the invoices issued by KB Plastunion, reference is made both to the number of the orders and to the article numbers of the fuel caps in the orders.

23. Thus, the orders made by Husqvarna during this period of time related to products covered by purchase orders issued by Husqvarna in accordance with the 2007 agreement. Disputes arising from those orders were in principle covered by the arbitration clause in that agreement. This is regardless of the fact that no orders under the 2007 Agreement had been made for a number of years prior to that.

24. The question is whether the events of 2016 and thereafter mean that the arbitration clause has become null or that it should otherwise not apply to the supplies made by KB Plastunion in 2020.



25. The cafe file - mainly email conversations between representatives of Husqvarna and KB Components - shows the following.

26. In the second half of 2016, Husqvarna was unhappy mainly with the prices applied by KB Components and Husqvarna stated that it wished to end the cooperation. In some contacts, Husqvarna's representatives used expressions such as the agreement with KB Components has been terminated. It appears from this context that Husqvarna's intention was that the cooperation with its subsidiary KB Plastunion should also be terminated. However, there is no clear statement that the agreement with that company was also terminated.

27. During this period, discussions were held on how to end the cooperation. No agreement was reached. In contacts during the autumn of 2016, representatives of KB Components stated that they would continue to deliver according to normal procedures. KB Plastunion's deliveries of e.g. tank caps continued until spring 2020.

28. In conclusion, what has emerged about the parties' dealings in 2016 and thereafter does not mean that the arbitration clause in the 2007 agreement has ceased to apply or that it is not applicable to the supplies in question.

29. In addition, the following is added. The deliveries of fuel caps at issue in the dispute were initiated by an order - New Delivery Schedule - from Husqvarna. The order refers to the number of the relevant purchase order and the part number of the respective tank cap model in the order. In the purchase orders there is a clear reference to Husqvarna's general terms and conditions which contain an arbitration clause corresponding to the one in the 2007 agreement. The orders also state a web address where the terms and conditions can be found. The general terms and conditions have thus been available for KB Plastunion. KB Plastunion has delivered in accordance with the order without raising any

objection to the arbitration clause. If the 2007 arbitration clause had not applied, the company would thereby have been bound by the arbitration clause in the general terms and conditions (see “*Lastbilscentralen*”).

30. Since the dispute is to be considered by an arbitrator, KB Plastunion’s motions are inadmissible. The appeal must therefore be dismissed.

### **Legal costs**

31. On that basis, KB Plastunion must be ordered to pay compensation for Husqvarna’s legal costs also in the Supreme Court. Husqvarna has claimed compensation of SEK 497,500 for legal fees. The question of whether there has been an applicable arbitration agreement has admittedly had to be assessed on the basis of a rather lengthy and partly complicated course of events, and the parties have disagreed on many points about the legal significance of the measures taken. It must also be seen as justified that the parties in the Supreme Court have further deepened their legal analyses. At the same time, it must be taken into account that the basic conditions have been reviewed and elucidated in two previous instances and that the legal positions and issues have to a large extent been clarified and assessed there. The case in the Supreme Court has also concerned a limited issue. Husqvarna is therefore, in the light of the case’s nature and scope in the Supreme Court, considered reasonably accommodated by compensation of SEK 350 000.

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Justices Gudmund Toijer, Svante O. Johansson, Malin Bonthron, Johan Danelius and Jonas Malmberg (reporting judge) took part in the decision.  
The reporting clerk was Sofie Westlin.