

SVEA COURT OF APPEAL
Department 02
Division 020106

DECISION
27 June 2014
Stockholm

Case No.
Ö 3377-13

APPLICANT

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RESPONDENT

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MATTER

Enforcement of foreign arbitral award

DECISION OF THE COURT OF APPEAL

1. The Court of Appeal declares that the arbitral award given in Shenzhen, China, on 25 July 2012, in the dispute between Yongchang Industrial & Trading Co. Limited and Hall-Miba AB (now Venturi Capital AB), see appendix A, may be enforced against Venturi Capital AB as a final and unappealable judgment given by a Swedish court.

2. The Court of Appeal orders Venturi Capital AB to compensate Yongchang Industrial & Trading Co. Limited for its litigation costs in the amount of SEK 185,000, plus interest thereon pursuant to Section 6 of the Swedish Interest Act from the day of the decision of the Court of Appeal until the day of payment. Out of the amount, SEK 163,500 comprises costs for legal counsel.

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MOTIONS BEFORE THE COURT OF APPEAL

Yongchang Industrial & Trading Co. Limited (Yongchang) has moved that the Court of Appeal shall recognize and declare an arbitral award given on 25 July 2012 by China International Economic and Trade Arbitration Commission, the local section for Southern China, enforceable in Sweden.

Venturi Capital AB (Venturi) has disputed the motion.

The parties have claimed compensation for their litigation costs.

THE PARTIES' RESPECTIVE CASES

In support of their respective cases, the parties have referenced mainly the following.

Yongchang: Under an agreement entered in 2005 between Yongchang and Venturi (formerly Hall-Miba AB) Yongchang produced products under license from Disney for Venturi. It was structured as a framework agreement under which Yongchang following orders from Venturi purchased supplies for future deliveries as well as molds for Venturi's products. The costs for the molds would be divided over future deliveries. In the event that the number of deliveries was not achieved, then the outstanding costs for the molds would be paid by Venturi. The agreement contained an arbitration clause. In connection with a reorganization at Venturi, complications arose in the parties' relationship and Yongchang requested arbitration in accordance with the arbitration clause. Venturi opted not to participate in the arbitration proceedings. The arbitral tribunal granted Yongchang's case in certain aspects and ordered Venturi to pay to Yongchang certain amounts plus interest, costs for legal counsel as well as to cover the costs for the arbitration. Venturi has been properly served all documents in the arbitration

proceedings, which were also opened in the correct order. There are no impediments to recognizing and enforcing the arbitral award in Sweden.

Venturi: The framework agreement included provisions on, amongst other things, the production of certain molds for future deliveries which Venturi could order, the number of deliveries, however, was unknown. Venturi ordered certain products regularly. Venturi disputes enforcement of items 2-4 of the operative part of the arbitral award, which relate to certain production and storage and thereto connected costs. These issues relate to agreements reached after the framework agreement and consequently do not fall within the scope of the framework agreement. Therefore, they are not covered by the arbitration clause of the framework agreement. Alternatively, the arbitration clause is invalid in these respects. Article 18 of the Arbitration Law of the People's Republic of China of 1994 provides that an arbitration agreement is invalid if it does not clearly specify the legal relationship which it governs. Corresponding provisions are set out in article II of the New York Convention of 1958, which provides that the arbitration agreement must relate to "a defined legal relationship". Both China and Sweden are parties to the convention. The same rules apply pursuant to Section 1 of the Swedish Arbitration Act (1999:116). Thus, there are impediments to enforcement under Section 54 of the Swedish Arbitration Act. The fact that Venturi did not object to the jurisdiction of the arbitral tribunal during the arbitration proceedings or opened challenge proceedings does not prevent the Court of Appeal to review whether impediments prevent enforcement.

Yongchang: It is disputed that the arbitration agreement does not cover the issues decided by items 2-4 of the arbitral award. The dispute in the arbitration involved the fact that Venturi failed to fulfill its obligations under the agreement of 2005 and thereby caused Yongchang to incur costs. The motions to which items 2-4 relate also involved compensation for costs caused by the breach of contract. Venturi did not, whether during the arbitration proceedings or in challenge proceedings maintain that the arbitral

tribunal lacked jurisdiction to review Yongchang's case in its entirety. It is disputed that the arbitration agreement is not sufficiently defined.

REASONS OF THE COURT OF APPEAL

Section 54 of the Swedish Arbitration Act provides that a foreign arbitral award will not be recognized and enforced in Sweden if the party against whom the arbitral award is relied upon can show that circumstances set out in items 1-5 of the said Section are at hand. The items relevant to these proceedings are 1 and 3. Item 1 deals with, amongst other things, cases where the arbitration agreement is invalid under the laws chosen by the parties or, in the absence of such choice, under the laws of the country in which the arbitral award was rendered. Item 3 provides that an arbitral award will not be recognized and enforced if it includes a decision that falls outside the scope of the arbitration agreement.

First, the Court of Appeal notes that the fact that Venturi did not participate in the arbitration proceedings or has challenged the arbitral award does not prevent the Court of Appeal to review Venturi's claims concerning impediments to the enforcement of the arbitral award.

It is undisputed that the parties have entered an agreement, under which Yongchang for Venturi should manufacture certain products under license. The agreement was a framework agreement under which Yongchang for Venturi purchased materials for future deliveries and molds for Venturi's products. The agreement contains the following arbitration clause:

“Arbitration: All disputes in connection with this contract or the execution thereof shall be settled friendly through negotiations. In case no settlement can be reached, the case may then be submitted for arbitration to China International Economic and Trade Arbitration Commission in accordance with the

provisional Rules of Procedures promulgated by the said Arbitration Commission. The arbitration shall take place in China and the decision of the Arbitration Commission shall be final and binding upon both parties; neither party shall seek recourse to a law court nor other authorities to appeal for revision of the decision. Arbitration fee to be borne by the losing party. Or arbitration may be settled in the third country if mutually agreed upon by both parties.”

The arbitral award provides that Yongchang as grounds for its motions in the arbitration proceedings referenced that Venturi failed to fulfill its obligations under the framework agreement and because of the breach of contract caused Yongchang to incur the costs for which compensation was sought. Nothing indicates that this did not apply also to the costs under items 2-4 of the arbitral award. Venturi has not presented evidence to support that these costs were insufficiently connected to the framework agreement between the parties. Thus, the Court of Appeal concludes that it has not been established that items 2-4 of the arbitral award includes a decision over an issue not connected with the framework agreement, the consequence of which would be that they would have fallen outside the scope of the arbitration clause.

The parties agree that Chinese law – which is undisputedly applicable in the present case – provides that an arbitration agreement is invalid if it does not clearly specify which legal relationship it governs. However, in the Court of Appeal’s opinion the relevant arbitration clause must be deemed worded so that it is clear which legal relationship it governs. Thus, there are no grounds to refuse enforcement of the arbitral award based thereon.

In sum, the Court of Appeal concludes that no such circumstance as enumerated in Section 54 of the Swedish Arbitration Act has been established, which would entail that the arbitral award should not be

recognized and enforced in Sweden. Therefore, the arbitral award shall be declared enforceable against Venturi in Sweden.

The provisions of Chapter 18 of the Swedish Code of Judicial Procedure are applicable in cases where a party claims compensation from the counterparty for costs in enforcement proceedings concerning foreign arbitral awards (NJA 2001 p. 738 II). Section 1 of Chapter 18 of the Swedish Code of Judicial Procedure provides that the losing party shall compensate the winning party's litigation costs.

Venturi has lost the case in the Court of Appeal and shall be ordered to compensate Yongchang's litigation costs. The Court of Appeal finds the claimed amount reasonable.

HOW TO APPEAL, see appendix B

Appeals to be submitted by 25 July 2014.

Leave to appeal is not required.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Senior Judge of Appeal KB, and Judge of Appeal AK, reporting Judge of Appeal, and Deputy Judge of Appeal ON.