

DECISION of the
SWEDISH SUPREME COURT

given in Stockholm on 18 March 2014

Case No.

Ö 2237-12

APPELLANT

The estate of JAR

c/o jur. kand. Gabriel Donner

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Counsel: Jur. kand. Gabriel Donner

Address as above

COUNTERPARTY

NCC International Aktiebolag, Reg. No. 556033-5100

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MATTER

Enforcement of foreign arbitral award

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CHALLENGED DECISION

Svea Court of Appeal's decision of 16 April 2012 in case No. Ö 8038-10

Decision of the Court of Appeal

see Appendix

DECISION OF THE SUPREME COURT

The Supreme Court amends the decision of the Court of Appeal under item 1 and dismisses the application.

The Supreme Court orders the estate of JAR to compensate NCC International Aktiebolag for its litigation costs before the Supreme Court in the amount of SEK 43,900, out of which SEK 42,896 comprises costs for legal counsel, plus interest thereon under Section 6 of the Swedish Act on Interest from the day of this decision.

MOTIONS BEFORE THE SUPREME COURT

The estate of JAR has moved that the Supreme Court shall grant the estate's application for enforcement of the arbitral award of 18 April 2008 given in Honduras.

NCC International Aktiebolag has objected to any amendment to the decision of the Court of Appeal.

NCC International Aktiebolag has claimed compensation for its litigation costs before the Supreme Court.

REASONS

1. The matter involves an arbitral award given on 18 April 2008 in Tegucigalpa, Honduras, in a dispute between JAR and, as it was stated, “The subsidiary in Costa Rica of the company NCC INTERNATIONAL A.S., a company incorporated in Sweden”. The operative part of the award ordered “NCC INTERNATIONAL A.S.” (NCC AS), amongst other things, to pay certain amounts to JAR. The estate of JAR has applied for enforcement of the arbitral award.
2. In its application, the estate has stated NCC International Aktiebolag (NCC AB) as the counterparty. As its grounds, the estate has maintained that NCC AB has assumed liability for NCC AS’s obligations under the arbitral award, that NCC AS in the arbitral award was listed as party by mistake and that the arbitral tribunal actually intended to state NCC AB as the party.
3. The Court of Appeal has rejected the application.
4. Section 53 of the Swedish Arbitration Act (1999:116) provides that foreign arbitral awards based on arbitration agreements shall be recognized and enforced in Sweden, unless Sections 54-60 provide otherwise. Thus, the main rule is that foreign arbitral awards shall be recognized and enforced in Sweden.
5. Sections 56-59 of the Swedish Arbitration Act contain provisions on the procedure for the application of enforcement. Section 56 provides that the original, or a certified copy, of the arbitral award shall be enclosed with the application. Section 57 provides that an application for enforcement shall not be granted unless the opposing party has been afforded an opportunity to express his opinion upon the application.
6. The review to be undertaken of an application for enforcement is mainly of a formal nature. In certain circumstances it is possible that, for

example, certain excesses of jurisdiction and material procedural errors during the arbitration proceedings could prevent recognition and enforcement (Section 54). Also impediments due to ordre public could be at hand (Section 55). However, no review of the merits of the issues decided by way of the arbitral award shall be carried out.

7. The counterparty in an application of enforcement is, in principle, the party that according to the arbitral award is obliged as against the applicant (cf. Section 57 of the Swedish Arbitration Act). The court shall in the review of who is the correct counterparty base its review on that which is stated in the arbitral award.
8. In the arbitral award the “subsidiary in Costa Rica of the company NCC INTERNATIONAL A.S., a company incorporated in Sweden” been stated as the respondent. The application for enforcement has been made against NCC AB. It is not obvious that this is a typo in such manner that NCC AB is the company intended by the said company name. A more detailed review of the identity of the respondent in the arbitration proceedings cannot be carried out in applications for enforcement of the present nature.
9. Further, also the question whether NCC AB is assumed liability for NCC AS’s obligations under the arbitral award may be not reviewed within the scope of the application for enforcement.
10. From the above, it follows that NCC AB is not the counterparty in the application for enforcement. Thus, there were no grounds for the Court of Appeal to review the application for enforcement. The Court of Appeal ought to have dismissed the estate’s application. Therefore, the decision of the Court of Appeal shall be amended so that the application shall be dismissed, instead of rejected.

11. Upon this outcome, NCC AB is entitled to compensation for its litigation costs before the Supreme Court (cf. NJA 2001 p. 738). The claimed amount is reasonable.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Supreme Court Justices SL, LM, IP, MB and AE (Reporting Supreme Court Justice)
Reporting clerk: AKL