

SVEA COURT OF APPEAL  
Department 02  
Division 020101

**DEFAULT JUDGMENT**  
26 November 2014  
Stockholm

Case No.  
T 6877-13

**CLAIMANTS**

1. YBA

*[INFORMATION OMITTED]*

2. YB

*[INFORMATION OMITTED]*

Counsel: YBA

**RESPONDENT**

Republic of Moldova  
Department of Justice  
MD-2012 Chisinau  
Moldova

**MATTER**

Challenge of arbitral award rendered in Stockholm on 16 April 2013

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**JUDGMENT OF THE COURT OF APPEAL**

1. The Court of Appeal dismisses YBA's and YB's motion that the Republic of Moldova shall be ordered to pay compensation for advance payments paid to cover costs in the arbitration.

2. The Court of Appeal annuls the arbitral award given between the parties on 16 April 2013 in Arbitration Institute of the Stockholm Chamber of Commerce's case No. V (091/2012) in the following parts: item 1 of the operative part of the arbitral award, item 3 of the operative part of the arbitral award that YB and YBA shall pay a portion of the costs for the arbitration.

3. The Republic of Moldova is ordered to compensate YB and YBA for its litigation costs before the Court of Appeal in the amount of SEK 30,000, plus interest pursuant to Section 6 of the Swedish Interest Act (1975:635) from this day until the day of payment.

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## **BACKGROUND**

On 5 July 2012, YBA and YB (the claimants) requested arbitration against the Republic of Moldova concerning the Republic of Moldova's liability to compensate them. The request for arbitration was based on a bilateral investment protection treaty between the Russian Federation and the Republic of Moldova (the "investment protection agreement").

In an arbitral award on 16 April 2013, the arbitrator concluded that the Republic of Moldova had not breached the investment protection agreement and rejected the claimants' case.

## **MOTIONS ETC. BEFORE THE COURT OF APPEAL**

The claimants have, as their case must be understood, moved that the Court of Appeal shall annul item 1 of the operative part of the arbitral award and item 3 of the operative part of the arbitral award concerning their liability to cover part of the costs for the arbitration. They have also moved that the Court of Appeal shall order the Republic of Moldova to compensate them for advance payments for costs in the arbitration that they have made. They have finally claimed compensation for litigation costs before the Court of Appeal.

As grounds in support of their motions, the claimants have maintained mainly as follows. Procedural errors occurred in the arbitration that likely affected the outcome of the case. The arbitrator has failed to consider relevant circumstances and has failed to consider them in the relevant legal context, which has affected the outcome of the arbitration. The arbitrator has failed to consider vital documentary evidence and questioned the claimants' statements without the respondent having raised objections. In his review of the case, the arbitrator also violated the principles of independence and impartiality and exceeded his mandate by, amongst other things, basing his conclusions on a comparison with another company without granting the claimants argue the conditions of the comparison.

The Republic of Moldova has been ordered to submit a written statement of defense; the order sanctioned by default judgment. A submission has been

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received signed by an LA, and the Court of Appeal has ordered the Republic of Moldova to submit a power of attorney for LA. The Republic of Moldova has not complied with the order.

The claimants have moved that the Court of Appeal shall grant their motions by way of a default judgment.

### **GROUNDS OF THE COURT OF APPEAL**

There are no legal grounds to, within the scope of challenge proceedings, review repayments of advance payments to cover costs for arbitrations. Thus, the claimants' case shall be dismissed in this respect.

The Republic of Moldova has, despite having been ordered, failed to submit a power of attorney or other document authorizing LA to represent the Republic of Moldova in the case. The submission signed by LA can as a result not be the basis for the continued dealings in the case. In light thereof, and since the claimants' motions are not obviously unfounded, they shall be granted by way of a default judgment.

Upon this outcome the Republic of Moldova shall be ordered to compensate the claimants' litigation costs before the Court of Appeal. The claimants have, in addition to compensation for expenses, claimed compensation for time spent in the amount of EUR 7,200. Considering the nature and scope of the case, the claimed amount appears too high. The compensation shall instead be determined to a reasonable SEK 30,000.

### **APPLICATION FOR THE REOPENING OF THE CASE – for the Republic of Moldova**

The Republic of Moldova is entitled to apply for the reopening of the case by the Court of Appeal. Should you wish to do so, you should address the Court of Appeal in writing. Your application must be received by the Court of Appeal by 26 December 2014. If you do not apply for the reopening of the case, you cannot have the judgment reviewed by courts. An application for the reopening of the case must be signed by an authorized representative for

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the Republic of Moldova or by a representative authorized by power of attorney.

**The default judgment may not be appealed** – relates to the claimants (second paragraph of Section 43 of the Swedish Arbitration Act).

[ILLEGIBLE SIGNATURES]

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