

SVEA COURT OF APPEAL
Department 02

JUDGMENT
5 September 2013

Case No.
T 10060-10

Division 020108

Stockholm

CLAIMANT

The Russian Federation
c/o His Excellency the Foreign Minister
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121200 Moscow G-200
Russia

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RESPONDENT

RosInvestCo UK Ltd
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MATTER

Challenge of arbitral award rendered in Stockholm on 12 September 2010

JUDGMENT OF THE COURT OF APPEAL

The Court of Appeal annuls the arbitral award rendered between the parties on 12 September 2010 under the rules of the Arbitration Institute of the Stockholm Chamber of Commerce case No V(079/2005), with the exception of item 5 of the operative part of the arbitral award.

Department 02

BACKGROUND

On 28 October 2005 RosInvestCo UK Ltd (RosInvest) requested arbitration against the Russian Federation claiming compensation from the Russian Federation. The request was based on the bilateral investment protection treaty applicable between the Russian Federation and the United Kingdom over Great Britain and Northern Ireland (the “Investment Protection Treaty”). An arbitral tribunal was formed to settle the dispute.

In an “Award on jurisdiction” of October of 2007, the arbitral tribunal held on therein stated grounds that it had jurisdiction to settle some of RosInvest’s motions in the arbitration proceedings.

In December of 2007, the Russian Federation sued RosInvest before Stockholm District Court with respect to the jurisdiction of the arbitral tribunal. As finally determined, the Russian Federation moved that the District Court should affirm that the arbitration agreement that had arisen as a result of RosInvest’s request for arbitration of 28 October 2005 against the Russian Federation with respect to liability for the Russian Federation as towards RosInvest did not grant the arbitrators jurisdiction to settle whether the Russian Federation had undertaken expropriation measures against RosInvest.

The arbitral tribunal rendered an arbitral award on 12 September 2010. The operative part of the award is set out in appendix A to this judgment. In the arbitral award the arbitral tribunal confirmed, amongst other things, its decision in the “Award on jurisdiction” whereby it established that it had jurisdiction to settle RosInvest’s claims with respect to expropriation.

Thereafter, in December of 2010, the Russian Federation sued RosInvest before the Court of Appeal and moved for the annulment of the arbitral award. The present case is for that motion. Upon the request of the parties, the Court of Appeal stayed these proceedings to await a final, unappealable decision in the case for affirmation being settled by the District Court.

Department 02

On 9 November 2011, Stockholm District Court affirmed, by way of a default judgment, that the arbitration agreement arisen as a result of RosInvest's request for arbitration of 28 October 2005 against the Russian Federation with respect to the Russian Federation's liability to compensate RosInvest, does not grant the arbitral tribunal jurisdiction to settle whether the Russian Federation has undertaken expropriation measures against RosInvest. The default judgment has become final and unappealable.

MOTIONS ETC.

The Russian Federation has moved that the Court of Appeal shall annul the arbitral award of 12 September 2010 in the Arbitration Institute of the Stockholm Chamber of Commerce arbitration case No. V(079/2005), with the exception of item 5 of the operative part of the arbitral award.

RosInvest has objected to the annulment of the arbitral award.

Upon the request of the parties, the Court of Appeal has settled the case without a main hearing.

THE PARTIES' GROUNDS ETC.

The Russian Federation has mainly referenced the following in support of its case.

There is no valid arbitration agreement between the parties covering the disputed issues in the arbitration proceedings. Thus, the arbitrators did not have jurisdiction to settle the arbitration proceedings. Further, the arbitral tribunal has committed procedural errors – willingly disregarding applicable law to a certain issue in the case related to a provision on the choice of law and failing to consider some of the objections referenced by the Russian Federation in the arbitration proceedings – that entail that the arbitral tribunal has exceeded its jurisdiction as well as, at least when viewed together, have affected the outcome of the arbitration proceedings. In addition, the arbitral tribunal, by incorrectly placing the burden of proof on the Russian Federation,

Department 02

committed yet another procedural error, which has affected the outcome of the case.

After the District Court's default judgment had become final and unappealable, the Russian Federation has maintained mainly the following with respect to the effects of the default judgment to the present case. Through the default judgment it has been finally settled that the arbitration agreement upon which the arbitration proceedings between the RosInvest and Russian Federation were based, did not grant the arbitrators jurisdiction to settle the issue of whether expropriation measures had been undertaken against RosInvest. The arbitral tribunal's decision in the arbitral award that the Russian Federation had unlawfully expropriated RosInvest's investment and thereby breached the Investment Protection Treaty in a manner giving rise to liability to compensate RosInvest's damages is such a decision for which the arbitral tribunal did not have jurisdiction. Since the arbitral tribunal did not have jurisdiction to settle whether the relevant measures comprised expropriation measures and consequently did not have jurisdiction to render an award for damages, and because any settlement of the issue of liability for damages is dependent on a settlement of the existence of expropriation measures, the arbitral award shall be annulled entirely with respect to the merits (items 1-4 of the operative part of the award). Item 6 of the operative part of the award relates to the parties' litigation costs and shall be annulled if the arbitral award is annulled in other parts. In item 7 of the operative part of the award, the arbitral tribunal has rejected each and all of the parties' other claims and counterclaims. This item is a consequence of the arbitral tribunal's conclusions on the other issues of the case and cannot be separated from them. Thus, also this item shall be annulled.

In its Statement of Defense, RosInvest has maintained that the arbitration proceedings were governed by a valid arbitration agreement between the parties and that the arbitral tribunal did have jurisdiction to settle the case. Further, RosInvest has disputed that the arbitral tribunal exceeded its

Department 02

jurisdiction and committed procedural errors affecting the outcome of the case.

The Court of Appeal has not heard from RosInvest after the District Court's default judgment.

Documentary evidence has been referenced.

GROUND OF THE COURT OF APPEAL

Through the default judgment of 9 November 2011 it has been finally settled that the arbitration agreement that arose as a result of RosInvest's request for arbitration of 28 October 2005 against the Russian Federation, did not grant the arbitral tribunal jurisdiction to settle whether the Russian Federation had undertaken expropriation measures against RosInvest. In the arbitral award of 12 September 2010, the arbitral tribunal did settle this issue as well as the effects thereof. As maintained by the Russian Federation, as a result of the default judgment, the arbitral award is not entirely covered by a valid arbitration agreement between the parties in the sense set out in item 1 of the first paragraph of Section 34 of the Swedish Arbitration Act. Thus, the motions of the Russian Federation shall be granted.

Pursuant to the second paragraph of Section 43 of the Swedish Arbitration Act the judgment of the Court of Appeal may not be appealed.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Senior Judge of Appeal CR and Judges of Appeal UB and PS, reporting Judge of Appeal.