SPC Guiding Case No. 123: Yu Hongyan v. Xilin Gol League Longxing Mining Co., Ltd. (Enforcement Supervision)

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Keywords

Enforcement; enforcement supervision; transfer of mining rights; assistance in enforcement; administrative approval.

Holding

Where an effective judgment determines that a mining right transfer contract was lawfully formed but not yet effective, and orders the transferor to handle the mining right transfer procedures in accordance with the contract, this does not constitute a determination of the ownership of the mining right. Where the enforcement court issues a notice to the relevant competent authority to assist in handling the mining right transfer procedures on this basis, it only serves to initiate the competent authority's approval procedures for the mining right transfer; whether the mining right can be transferred shall be decided by the relevant competent authority in accordance with law. A request by the applicant for enforcement to change the transferee of the mining right shall also be judged by the relevant competent authority in accordance with law.

Basic Facts

On August 1, 2008, Xilin Gol League Longxing Mining Co., Ltd. (hereinafter "Longxing Mining") as Party A and Yu Hongyan as Party B signed a "Mining Right Transfer Contract," agreeing that Longxing Mining would transfer the mining right of the Li Ying fluorite mine of the Bayantuga Third Team, Abag Banner, to Yu Hongyan for consideration. Yu Hongyan paid the mining right transfer fee of RMB 1.5 million as agreed, and after taking over the mining area, carried out preliminary design and mining work on the mining area. However, Longxing Mining failed to handle the mining right transfer procedures for Yu Hongyan in accordance with the Mining Right Transfer Contract. In October 2012, a dispute arose between the two parties and they sued in the Xilin Gol League Intermediate People's Court of Inner Mongolia Autonomous Region (hereinafter the "Ximeng Intermediate Court"). The Ximeng Intermediate Court held that the Mining Right Transfer Contract signed between Longxing Mining and Yu Hongyan reflected the true intent of the two parties, and the contract had been lawfully formed. However, under the relevant legal provisions, the contract was one that took effect only after the administrative authority completed the administrative approval procedures, and the examination of the qualifications of the mining right transferee was the approval power of the administrative authority, not within the court's scope of authority. Therefore, the court did not support Longxing Mining's claim that Yu Hongyan did not meet the application conditions for a mining right holder under the law and its request that the court confirm the Mining Right Transfer Contract void and award liquidated damages. With respect to Yu Hongyan's counterclaim requesting an order that Longxing Mining continue to perform the various approval procedures for the mining right transfer, since the two parties expressly agreed in the Mining Right Transfer Contract that the mining right transfer procedures would be handled by Longxing Mining, the court supported it. With respect to Yu Hongyan's claim that Longxing Mining bear liquidated damages, since the Mining Right Transfer Contract, though lawfully formed, was in a state of pending approval and not yet effective, and liability for breach of contract presupposes that the contract is validly formed and effective, the court did not support it. The Ximeng Intermediate Court rendered a civil judgment, the main content of which was that Longxing Mining shall, within fifteen days after the judgment takes effect, handle the mining right transfer procedures for Yu Hongyan in accordance with the Mining Right Transfer Contract.

Longxing Mining refused to accept it and appealed. The High People's Court of Inner Mongolia Autonomous Region (hereinafter the "Inner Mongolia High Court") held that the Mining Right Transfer Contract reflected the true intent of Longxing Mining and Yu Hongyan, and the contract was formed upon the signing and sealing by both parties. Under Article 44 of the Contract Law of the People's Republic of China, a contract formed in accordance with law takes effect upon formation. Where laws or administrative regulations provide that a contract shall take effect upon approval, registration, or other procedures, those provisions apply. Article 10 of the Measures for the Administration of the Transfer of Exploration Rights and Mining Rights provides that where an application is made to transfer exploration rights or mining rights, the approval administrative authority shall, within 40 days from receipt of the transfer application, make a decision to approve or disapprove the transfer and notify the transferor and the transferee; where the transfer is approved, the transfer contract shall take effect from the date of approval; where the transfer is disapproved, the approval administrative authority shall state the reasons. Article 9, Paragraph 1 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China (I) provides that, under Article 44, Paragraph 2 of the Contract Law, where laws or administrative regulations provide that a contract shall be subject to approval procedures, or that a contract shall take effect only upon approval or registration procedures, and the parties have still not completed the registration procedures, or have still not completed the approval or registration procedures, before the conclusion of the first-instance court debate, the people's court shall determine that the contract has not taken effect. The Mining Right Transfer Contract signed by the two parties had not yet completed the approval and registration procedures, so the Mining Right Transfer Contract was lawfully formed but not yet effective, and the validity of the contract was pending determination. Whether Yu Hongyan met the conditions for a mining right transferee, and whether the Mining Right Transfer Contract could be approved by the relevant department, were not within the scope of the court's trial. It was not improper for the court of first instance to determine that the Mining Right Transfer Contract was formed and that Longxing Mining should continue to perform the handling of the mining right transfer procedures in accordance with the contract. If the approval administrative authority did not approve the Mining Right Transfer Contract, the two parties could separately assert their rights in accordance with the relevant provisions of the Contract Law. The Inner Mongolia High Court rendered a civil judgment, affirming the original judgment.

Based on Yu Hongyan's application, the Ximeng Intermediate Court accepted and enforced the case, and issued an enforcement notice to the person subject to enforcement Longxing Mining, requiring it to voluntarily perform the obligations determined in the effective legal instrument. Because Longxing Mining did not voluntarily perform, the court issued a notice of assistance in enforcement to the Xilin Gol League Land and Resources Bureau, requesting it to assist in handling the mining right transfer and registration procedures for the applicant for enforcement Yu Hongyan in this case in accordance with the content of the effective judgment and the Mining Right Transfer Contract. The Xilin Gol League Land and Resources Bureau replied that, after Longxing Mining and Yu Hongyan signed the Mining Right Transfer Contract, it had not submitted a transfer application to it, and that the contract was a mining right transfer contract signed between an enterprise legal person and a natural person. Under the provisions of laws, administrative regulations, and local regulations, with respect to the content that the Ximeng Intermediate Court requested it to assist in enforcing, it was, in the actual circumstances, unable to provide assistance and could not complete the content of the assistance notice.

On May 19, 2014, Yu Hongyan established Xilin Gol League Huilan Fluorite Sales Co., Ltd., a natural-person sole proprietorship, and applied to the Ximeng Intermediate Court to change the applicant for enforcement to that company.

Judgment

On December 14, 2016, the Xilin Gol League Intermediate People's Court of Inner Mongolia Autonomous Region rendered Enforcement Ruling (2014) Xi Zhong Fa Zhi Zi No. 11, dismissing Yu Hongyan's

application to change the applicant for enforcement to Xilin Gol League Huilan Fluorite Sales Co., Ltd. Yu Hongyan refused to accept it and applied to the High People's Court of Inner Mongolia Autonomous Region for reconsideration. On March 15, 2017, the High People's Court of Inner Mongolia Autonomous Region rendered Enforcement Ruling (2017) Nei Zhi Fu No. 4, dismissing Yu Hongyan's reconsideration application. Yu Hongyan refused to accept the reconsideration ruling of the High People's Court of Inner Mongolia Autonomous Region and filed a petition with the Supreme People's Court. On December 26, 2017, the Supreme People's Court rendered Enforcement Ruling (2017) Zui Gao Fa Zhi Jian No. 136, dismissing Yu Hongyan's petition request.

Reasoning

The Supreme People's Court held that the operative part of the enforcement basis in this case was that Longxing Mining handle the mining right transfer procedures for Yu Hongyan in accordance with the Mining Right Transfer Contract. Under the provisions of current laws and regulations, an application to transfer exploration rights or mining rights must be approved by the approval administrative authority; where the transfer is approved, the transfer contract takes effect from the date of approval. In this case, both the first-instance and second-instance courts held that the examination of the qualifications of the mining right transferee was the approval power of the approval administrative authority, and that whether Yu Hongyan met the conditions for a mining right transferee and whether the Mining Right Transfer Contract could be approved by the relevant department were not within the scope of the court's trial; because the contract had not yet been approved by the approval administrative authority, it was determined that the contract was lawfully formed but not yet effective. The second-instance judgment also determined that, if the approval administrative authority did not approve the contract, the two parties could assert their rights regarding the legal consequences, rights, and obligations of the contract through other remedial channels. Given that the failure of a transfer contract to take effect due to lack of approval does not affect the validity of the clauses in the contract concerning the obligation to perform the reporting-for-approval procedures, and in combination with the reasoning part of the judgment, the "handling of mining right transfer procedures for Yu Hongyan by Longxing Mining in accordance with the Mining Right Transfer Contract" stated in the effective judgment in this case was not a determination of the ownership of the mining right, but should first refer to the performance of the contractual reporting-for-approval obligation to facilitate the effectiveness of the contract; only after the contract was approved by the approval administrative authority would the handling of the mining right transfer and registration be involved. Therefore, the notice issued by the Ximeng Intermediate Court to the Xilin Gol League Land and Resources Bureau to assist in handling the mining right transfer procedures was merely equivalent to completing the act of Longxing Mining applying to the approval administrative authority to handle the mining right transfer procedures, and it initiated the administrative authority's approval procedure; at the current stage, it could only be understood as requiring the Xilin Gol League Land and Resources Bureau to perform its function of approving the transfer contract in accordance with law.

Because mining rights involve the approval and licensing of administrative authorities, they differ from ordinary civil rights; the issue of the succession of rights under a mining right transfer contract that has not been approved differs greatly from the succession of rights and assignment of creditor's rights in ordinary civil judgments, and cannot be finally resolved through the method of changing the enforcement applicant in the enforcement procedure. In this case, Yu Hongyan's claim to handle the mining right transfer procedures in the name of Xilin Gol League Huilan Fluorite Sales Co., Ltd. established by him is, in essence, still within the scope of administrative approval of whether the subject qualification of the mining right transferee meets the statutory conditions, and should be judged by the approval administrative authority in accordance with the relevant provisions on mining right management. Yu Hongyan argued that, in the process of performing the rights and obligations determined in the effective judgment, establishing Xilin Gol League Huilan Fluorite Sales Co., Ltd. was to improve the relevant procedures for handling the mining right transfer in accordance with the administrative management provisions of the administrative authority, and was not an assignment of

the rights under the Mining Right Transfer Contract to a third party, nor did it harm the interests of the state or any party; that his application to have the mining right transfer procedures handled under the name of Xilin Gol League Huilan Fluorite Sales Co., Ltd. fully complied with the Mineral Resources Law of the People's Republic of China, the Interim Provisions on the Administration of the Transfer of Mining Rights, the Measures for the Administration of Mining Registration, and the Supplementary Notice of the Department of Land and Resources of Inner Mongolia Autonomous Region on Several Issues Concerning the Standardization of the Administration of Exploration Rights and Mining Rights, and other administrative management provisions of the administrative authority for handling mining right transfer procedures where a natural person signs a mining right transfer contract. This view should be asserted to the relevant approval administrative authority. The rulings of the Ximeng Intermediate Court and the Inner Mongolia High Court dismissing Yu Hongyan's application to change the subject were consistent with the opinions expressed in the effective judgment of this case on the approval of the mining right transfer contract, and did not violate the relevant provisions of the enforcement procedure law and judicial interpretations.

(The judges of the effective judgment: Huang Jinlong, Liu Shaoyang, and Zhu Yan.)

Relevant Legal Provisions

1. Article 204 of the Civil Procedure Law of the People's Republic of China.

2. Article 10 of the Measures for the Administration of the Transfer of Exploration Rights and Mining Rights.

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