SPC Guiding Case No. 124: China Defense Science and Technology Institute v. United Resources Education Development (Yanjiao) Co., Ltd. (Enforcement Supervision)

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Keywords

Enforcement; enforcement supervision; settlement agreement; enforcement of the original effective legal instrument.

Holding

Where the applicant for enforcement and the person subject to enforcement have a dispute over the content of an enforcement settlement agreement, and it is objectively impossible to continue performance, the original effective legal instrument may be enforced. Matters not covered by the original enforcement basis in the enforcement settlement agreement, and disputes arising during performance, may be resolved by the parties through other remedial procedures.

Basic Facts

In a cooperative education contract dispute between United Resources Education Development (Yanjiao) Co., Ltd. (hereinafter "United Resources Company") and China Defense Science and Technology Institute (hereinafter "Zhongfang Institute"), the Beijing Arbitration Commission heard the case and on July 29, 2004 rendered Award (2004) Jing Zhong Cai Zi No. 0492 (hereinafter "Award No. 0492"), ruling: 1. terminate the contract in this case; 2. the respondent (Zhongfang Institute) shall cease all construction activities on its Yanjiao campus; 3. the respondent (Zhongfang Institute) shall vacate the Yanjiao campus; 4. dismiss the other arbitration claims of the applicant (United Resources Company) and the arbitration counterclaim of the respondent (Zhongfang Institute); 5. the arbitration fee of RMB 363,364.91 in this case shall be borne 50% by the applicant (United Resources Company), and the obligations of the respondent (Zhongfang Institute) in items 2 and 3 above shall be fully performed within 30 days from the date of service of this award.

United Resources Company applied for enforcement based on Award No. 0492, and the Sanhe Municipal People's Court accepted and enforced the case. On December 8, 2005, the two parties signed the "Settlement Enforcement Agreement for United Resources Education Development (Yanjiao) Co., Ltd.'s Application to Enforce China Defense Science and Technology Institute's Vacating of the Campus" (hereinafter the "Agreement"). The preamble of the Agreement stated: "To perform the award, through mediation under the auspices of the court, the two parties agree to execute according to the following plan. This execution plan shall be supervised by the people's court, and shall be completed in three steps." The specific contents were as follows: I. Assessment stage: (I) Assessment of assets. United Resources Company's assets: 1. The two parties agree to assess United Resources Company's assets under the auspices of the people's court. 2. The assessment includes an overall assessment of the investment in the buildings, roads, and facilities constructed by United Resources Company, and an assessment of the land ownership. 3. The assessment institution shall be jointly selected by the two parties, and the assessed price shall serve as the basic reference price for the transaction between the two parties. Zhongfang Institute's portion: 1. The two parties agree to assess, under the auspices of the people's court, the assets invested by Zhongfang Institute in United Resources Company's campus. 2. The assessment includes: (1) the fixed assets that United Resources Company agreed for Zhongfang Institute to invest in during the performance of the Cooperative Education Contract; (2) the fixed assets that United Resources Company did not agree for Zhongfang Institute to invest in during the performance of the Cooperative Education Contract; (3) the fixed

assets invested by Zhongfang Institute after the Cooperative Education Contract was terminated by the award. The specific circumstances shall be supported by relevant evidence jointly provided to the people's court by Zhongfang Institute and United Resources Company. (II) The campus occupancy fee shall be jointly determined by the two parties. (III) Regarding the construction of the teaching building, given that the foundation earthwork of the teaching building had been completed at the time of the arbitration by the Beijing Arbitration Commission, and that failure to carry out construction and backfilling would affect the surrounding buildings and student safety, while also being conducive to Zhongfang Institute's student recruitment, United Resources Company agreed that Zhongfang Institute continue the construction. (IV) Assessment of breach-of-contract losses. 1. Given that the actual payer of the RMB 10 million of Zhongfangwei Technical Service Center was Zhongfang Institute, and that the actual user of the campus was also Zhongfang Institute, United Resources Company agreed, based on the letter of intent reached by the parties in the past, that the RMB 10 million be taken into consideration during the performance of the plan. 2. The actual losses caused to United Resources Company by the breach of contract of Zhongfangwei Technical Service Center shall be borne by Zhongfangwei Technical Service Center. 3. This portion of fees shall be resolved by the two parties through negotiation; if negotiation fails, the two parties agree to hold an enforcement hearing under the auspices of the court, and the court shall rule based on the hearing results. II. Delivery stage: 1. United Resources Company agrees, where the two parties reach agreement, to transfer all its buildings and land use rights, and Zhongfang Institute shall acquire the above property. 2. Where Zhongfang Institute does not agree to acquire United Resources Company's assets, United Resources Company shall acquire Zhongfang Institute's assets. 3. Where both 1 and 2 cannot be realized, the two parties agree to commission an auction by the people's court. 4. The auction plan is as follows: A. Starting price: the total of all asset prices after assessment shall be the starting price. B. If the auction fails, the starting price of the next auction shall be reduced by 15%, but there shall be no more than two failed auctions. C. If the auction price is higher than the first starting price, payment shall be made in the following order: first, the fixed assets that United Resources Company agreed for Zhongfang Institute to invest in and United Resources Company's original assets shall be satisfied; if insufficient, satisfaction shall be made proportionally. Where the proceeds are insufficient to satisfy, United Resources Company agrees to transfer the portion of land occupied by the teaching building (including the surrounding land) to Zhongfang Institute, and the assets shall be independently enjoyed by Zhongfang Institute. Both parties shall have the right to purchase during the auction process.

After the above agreement was signed, the enforcement court commissioned Huaxin Asset Appraisal Company to assess the value of United Resources Company's plot and above-ground attachments in the Yanjiao Development Zone. After the appraisal report was served on the parties, United Resources Company raised objections to the appraisal report. Thereafter, under the auspices of the enforcement court, the two parties negotiated on multiple occasions but were never able to reach agreement on how to perform the above settlement agreement. The two parties respectively submitted written opinions to the enforcement court on the validity of the settlement agreement reached during the enforcement of this case.

Judgment

On May 30, 2016, the Sanhe Municipal People's Court rendered Enforcement Ruling (2005) San Zhi Zi No. 445:

1. The settlement agreement reached on December 8, 2005 between the applicant for enforcement United Resources Education Development (Yanjiao) Co., Ltd. and the person subject to enforcement China Defense Science and Technology Institute is valid.

2. The assets of the applicant for enforcement United Resources Education Development (Yanjiao) Co., Ltd. and the person subject to enforcement China Defense Science and Technology Institute on the campus shall be disposed of in the manner agreed in the settlement agreement reached by the two parties on December 8, 2005.

United Resources Education Development (Yanjiao) Co., Ltd. refused to accept it and applied to the Langfang Intermediate People's Court for reconsideration. On July 22, 2016, the Langfang Intermediate People's Court rendered Enforcement Ruling (2016) Ji 10 Zhi Fu No. 46: revoking Enforcement Ruling (2005) San Zhi Zi No. 445. On August 26, 2016, the Sanhe Municipal People's Court rendered Enforcement Ruling (2005) San Zhi Zi No. 445-1:

1. The settlement agreement reached on December 8, 2005 between the applicant for enforcement United Resources Education Development (Yanjiao) Co., Ltd. and the person subject to enforcement China Defense Science and Technology Institute is valid.

2. The assets of the applicant for enforcement United Resources Education Development (Yanjiao) Co., Ltd. and the person subject to enforcement China Defense Science and Technology Institute on the campus shall be disposed of in the manner agreed in the settlement agreement reached by the two parties on December 8, 2005.

United Resources Education Development (Yanjiao) Co., Ltd. refused to accept it and filed an enforcement petition with the Hebei Provincial High People's Court. On March 21, 2017, the Hebei Provincial High People's Court rendered Enforcement Ruling (2017) Ji Zhi Jian No. 130:

1. Enforcement Ruling (2005) San Zhi Zi No. 445 and Enforcement Ruling (2005) San Zhi Zi No. 445-1 made by the Sanhe Municipal People's Court, and Enforcement Ruling (2016) Ji 10 Zhi Fu No. 46 made by the Langfang Intermediate People's Court of Hebei Province, are revoked.

2. Continue to enforce items 3 and 5 of Award (2004) Jing Zhong Cai Zi No. 0492 made by the Beijing Arbitration Commission (i.e., the respondent China Defense Science and Technology Institute shall vacate the Yanjiao campus, and the respondent China Defense Science and Technology Institute shall pay the applicant United Resources Education Development (Yanjiao) Co., Ltd. the arbitration fee of RMB 173,407.45 advanced on its behalf).

3. Dismiss the other petition requests of petitioner United Resources Education Development (Yanjiao) Co., Ltd.

China Defense Science and Technology Institute refused to accept it and filed a petition with the Supreme People's Court. On October 18, 2018, the Supreme People's Court rendered Enforcement Ruling (2017) Zui Gao Fa Zhi Jian No. 344:

1. Items 1 and 3 of Enforcement Ruling (2017) Ji Zhi Jian No. 130 of the Hebei Provincial High People's Court are affirmed.

2. Item 2 of Enforcement Ruling (2017) Ji Zhi Jian No. 130 of the Hebei Provincial High People's Court is changed to: continue to enforce item 3 of Award (2004) Jing Zhong Cai Zi No. 0492 made by the Beijing Arbitration Commission, namely "the respondent China Defense Science and Technology Institute shall vacate the Yanjiao campus."

3. Dismiss the other petition requests of China Defense Science and Technology Institute.

Reasoning

The Supreme People's Court held:

First, the settlement enforcement agreement in this case does not constitute a novation (alteration of the debt) in the sense of civil law theory. The so-called novation refers to a civil juristic act that creates a new debt to replace the old debt and extinguishes the old debt. To constitute novation, there must be an explicit expression of intent between the parties that the creation of the new debt completely replaces and extinguishes the old debt. However, in this case, Zhongfang Institute and United Resources Company did not agree that the content of the award in Award No. 0492 would be extinguished upon the formation of the Agreement; rather, they expressly agreed that the purpose of the two parties reaching the enforcement

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settlement was to perform Award No. 0492. In essence, such an agreement merely uses the creation of a new debt as a means of performing the old debt; if the new debt is not performed, the old debt is not extinguished. Therefore, the settlement agreement in this case does not constitute novation. Under the general principles governing the relationship between enforcement settlement and the original enforcement basis, only through the complete performance of the settlement agreement can the creditor-debtor relationship determined by the original effective legal instrument be extinguished and the enforcement procedure be concluded. If the rights and obligations agreed in the settlement agreement are not performed, the creditor's rights determined by the original effective legal instrument still cannot be extinguished. The applicant for enforcement may still apply to continue enforcing the original effective legal instrument. Judging from the performance of the settlement enforcement agreement in this case, since the provisions concerning asset disposal in the agreement were not completely performed, it did not extinguish the creditor-debtor relationship determined by the original effective legal instrument, and the award content requiring Zhongfang Institute to vacate the Yanjiao campus still needed to be enforced. Zhongfang Institute's petition ground that the asset disposal plan in the settlement enforcement agreement constituted an effective alteration of the "vacate the campus" item in Award No. 0492 lacked sufficient basis and could not stand.

Second, part of the content of the settlement agreement involved lacked final certainty, making it impossible to determine the payment content of the agreement and the assumption of breach liability, so it was objectively impossible to continue performance. In the enforcement procedure, the enforcement settlement reached by the two parties has the nature of a contract. Since a contract is the basis for the parties to enjoy rights and assume obligations, this requires that the specific payment content of the rights and obligations must be certain. The settlement enforcement agreement in this case agreed on the disposal of the assets of the two parties, which was not covered by Award No. 0492, and at the same time, the agreement did not stipulate which party should bear breach liability if the two parties were unable to conclude a specific sale and purchase legal relationship. On the whole, the settlement agreement involved was objectively incapable of performance. Zhongfang Institute's understanding of the settlement agreement as an agreement with compulsory enforcement effect, and its belief that the court should implement it in accordance with the settlement agreement during enforcement, constituted a misunderstanding of the law.

Given that the settlement agreement in this case had reached an impasse in actual performance, with the two parties each insisting on their own views and unable to reach consensus on the asset acquisition, the case could not be fully enforced for more than ten years. If the case were to remain indefinitely deadlocked on the ground that there was a settlement agreement, the case would remain unresolved for a long time, seriously harming the lawful rights and interests of the creditor under the effective judgment document, and the people's court would have no reason to wait indefinitely for the two parties to implement the settlement agreement on their own without taking compulsory enforcement measures.

Third, from the overall progress of the case, neither party had actually strictly performed in accordance with the settlement agreement, and the enforcement court had always been advancing the enforcement of the case in accordance with Award No. 0492. On the one hand, from the asset assessment in 2006, United Resources Company raised objections and requested continued enforcement. Thereafter, although the two parties negotiated that Zhongfang Institute acquire the assets at a certain price, neither party actually performed. There was no situation, as claimed by Zhongfang Institute, that it had always strictly complied with the settlement agreement while United Resources Company had continuously breached it. In addition, the two parties also proposed a government land swap and resettlement plan and the like, which in fact exceeded the content agreed in the original settlement agreement and changed the content and conditions agreed in the original settlement agreement. The conclusion could not be drawn that the settlement enforcement agreement had always been strictly performed. On the other hand, during the enforcement process, since the two parties disagreed on the performance of the settlement agreement involved in 2006, the enforcement court had always based its enforcement measures on Award No. 0492, including multiple rounds of coordination, organizing mediation between the two parties, persuasion and education, on-site

investigation, ordering Zhongfang Institute to preserve the property, and ordering it to vacate within a time limit. The higher court also continuously supervised the case, demanding prompt enforcement. In the enforcement procedure, the enforcement court organizing the two parties to negotiate and promoting the implementation of the settlement agreement is merely a working method in practice, and in essence still constitutes enforcement of the effective judgment; it cannot be understood as compulsory enforcement of the settlement agreement. Zhongfang Institute's petition ground that the above enforcement conduct of the enforcement court did not constitute enforcement of Award No. 0492 had no legal basis and was inconsistent with the facts.

In addition, regarding the question of whether this case involves continued enforcement or resumed enforcement. From a procedural perspective, during the enforcement of this case, the enforcement court did not issue a suspension ruling to suspend the enforcement of Award No. 0492. From the actual progress of the case, based on the above analysis and review, after the two parties disputed the performance of the settlement enforcement agreement, the enforcement court had in fact never ceased enforcing Award No. 0492. Therefore, this case did not involve the resumption of enforcement of an award whose enforcement had previously been suspended, but rather continued enforcement of the enforcement basis. Zhongfang Institute's petition ground that this case involved resumed enforcement rather than continued enforcement lacked sufficient basis, and the determination in Ruling (2017) Ji Zhi Jian No. 130 of the Hebei Provincial High People's Court that the disputed focus of this case was whether Award No. 0492 should be continuously enforced was consistent with the facts of this case and was not improper.

Fourth, matters agreed in the settlement enforcement agreement that were not covered by the original enforcement basis, and the disputed portion arising during performance, may be resolved by the relevant parties through separate litigation or other procedures. Starting from the performance of the content of the enforcement basis, the explicit enforcement content of this case is that Zhongfang Institute vacate the Yanjiao campus, while disputes and disputes not covered by the enforcement basis of this case may be resolved by the two parties through separate litigation or other legal channels.

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

Relevant Legal Provisions

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

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