SPC Guiding Case No. 199: Application by Gao Zheyu, Shenzhen Yunsilu Innovation Development Fund Enterprise, and Li Bin to Set Aside an Arbitral Award

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil litigation / application to set aside an arbitral award / Bitcoin / social public interest

Holding

Where an arbitral award orders the respondent to compensate in U.S. dollars equivalent to Bitcoin, and then to convert the U.S. dollars into RMB, this constitutes disguised support for the exchange and payment transaction between Bitcoin and legal tender, violates the state's provisions on the financial regulation of virtual currency, and contravenes social public interest. The people's court shall rule to set aside the arbitral award.

Basic Facts

On December 2, 2017, Shenzhen Yunsilu Innovation Development Fund Enterprise (hereinafter "Yunsilu Enterprise"), Gao Zheyu, and Li Bin entered into an Equity Transfer Agreement. Under the agreement, Yunsilu Enterprise transferred its 5% equity interest in Shenzhen Jiqu Technology Co., Ltd. (hereinafter "Jiqu Company") to Gao Zheyu for RMB 550,000; Li Bin agreed to pay RMB 300,000 of the equity transfer price to Yunsilu Enterprise on Gao Zheyu's behalf, and Gao Zheyu would directly pay RMB 250,000 of the equity transfer price to Yunsilu Enterprise, while Gao Zheyu would return all the Bitcoin that Li Bin had entrusted to him for wealth management to Li Bin's electronic wallet. After the agreement was signed, Gao Zheyu failed to perform his contractual obligations.

Yunsilu Enterprise and Li Bin applied for arbitration before the Shenzhen Arbitration Commission, with the main claims being: to transfer the 5% equity interest in Jiqu Company held by Yunsilu Enterprise into Gao Zheyu's name; to require Gao Zheyu to pay Yunsilu Enterprise the equity price of RMB 250,000; to require Gao Zheyu to return to Li Bin USD 493,158.40 equivalent to the Bitcoin assets plus interest; and to require Gao Zheyu to pay Li Bin liquidated damages of RMB 100,000.

After trial, the arbitral tribunal held that Gao Zheyu's failure to deliver the Bitcoin and other items that the parties had jointly agreed upon and regarded as having property significance in accordance with the contract in issue constituted a breach of contract, and should be compensated. With reference to the public information on the closing price of Bitcoin at the time of performance stipulated in the contract published on the okcoin.com website provided by Li Bin, the arbitral tribunal estimated the property loss to be compensated as USD 401,780. The arbitral tribunal ruled: to transfer the 5% equity interest in Jiqu Company held by Yunsilu Enterprise into Gao Zheyu's name; Gao Zheyu shall pay Yunsilu Enterprise the equity transfer price of RMB 250,000; Gao Zheyu shall pay Li Bin USD 401,780 (settled in RMB at the USD-RMB exchange rate on the date the award was rendered); and Gao Zheyu shall pay Li Bin liquidated damages of RMB 100,000.

Gao Zheyu considered that the arbitral award contravened social public interest and requested the people's court to set it aside.

Source: https://www.danyoungcpa.com/spc-guiding-case-199-china/

Judgment

On April 26, 2020, the Shenzhen Intermediate People's Court of Guangdong Province rendered Civil Ruling (2018) Yue 03 Min Te No. 719, setting aside Arbitral Award (2018) Shen Zhong Cai Zi No. 64 rendered by the Shenzhen Arbitration Commission.

Reasoning

The court in its effective judgment held: The Notice of the People's Bank of China, the Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the China Securities Regulatory Commission, and the China Insurance Regulatory Commission on Preventing the Risks of Bitcoin (Yin Fa [2013] No. 289) expressly provides that Bitcoin does not have legal status equivalent to currency, and cannot and should not be circulated and used in the market as currency. In 2017, the People's Bank of China and seven other ministries and commissions jointly issued an announcement on preventing the risks of token issuance financing, reiterating the aforesaid provisions, and further proposing, from the perspective of preventing financial risks, that no so-called token financing trading platform may engage in the exchange business between legal tender and tokens or virtual currency, may not buy or sell tokens or virtual currency or act as a central counterparty to buy or sell tokens or virtual currency, and may not provide pricing, information intermediary, or other services for tokens or virtual currency. The aforesaid documents in substance prohibit the payment, trading, and circulation of Bitcoin, and acts such as speculating in Bitcoin are suspected of engaging in illegal financial activities, disrupting the financial order, and affecting financial stability. The arbitral award in issue ordered Gao Zheyu to compensate Li Bin in U.S. dollars equivalent to Bitcoin, and then to convert the U.S. dollars into RMB, which in substance was disguised support for the payment and trading between Bitcoin and legal tender, was inconsistent with the spirit of the aforesaid documents, and contravened social public interest. The arbitral award should therefore be set aside.

Relevant Legal Provisions

Article 58 of the Arbitration Law of the People's Republic of China.

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