SPC Guiding Case No. 200: Application by Svensk Honey Processing Company for Recognition and Enforcement of a Foreign 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 for recognition and enforcement of a foreign arbitral award / expedited arbitration / ad hoc arbitration

Holding

Where an arbitration agreement provides only that disputes shall be resolved by expedited arbitration and does not expressly designate an arbitral institution, and an award is rendered by an ad hoc arbitral tribunal, this does not constitute a circumstance prescribed in paragraph 1 of Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Where the respondent claims that recognition and enforcement of the ad hoc arbitral award should be refused on the ground that the use of ad hoc arbitration is inconsistent with the arbitration agreement, the people's court shall not support such a claim.

Basic Facts

On May 17, 2013, the seller, Nanjing Changli Bee Industry Co., Ltd. (hereinafter "Changli Bee Industry Company"), and the buyer, Svensk Honey Processing Company (Svensk Honungsförädling AB) (hereinafter "Svensk Company"), entered into an English-language honey sales Contract numbered NJRS13001. The dispute resolution clause agreed therein was "in case of disputes governed by Swedish law and that disputes should be settled by Expedited Arbitration in Sweden." The Contract also stipulated the corresponding quality standards: the honey's other parameters conformed to European standards (2001/112/EC, December 20, 2001), free of American foulbrood, Nosema, and Varroa mites, among other requirements.

During the performance of the Contract, the parties had a dispute over the quality of the honey. On February 23, 2015, Svensk Company, with Changli Bee Industry Company as the respondent, applied for arbitration before the Arbitration Institute of the Stockholm Chamber of Commerce in Sweden with respect to the Contract in issue, claiming compensation from Changli Bee Industry Company. On December 18, 2015, that arbitral institution rendered Arbitral Award SCC F2015/023, dismissing Svensk Company's application on the ground that it lacked jurisdiction.

On March 22, 2016, Svensk Company again applied for ad hoc arbitration in Sweden with respect to the Contract in issue, with Changli Bee Industry Company as the respondent. During the arbitration review, the ad hoc arbitral tribunal and the Stockholm District Court mailed the corresponding materials to Changli Bee Industry Company and its legal representative. However, as of May 4, 2017, apart from receiving two emails from Changli Bee Industry Company stating that the Contract did not contain an arbitration clause and that Swedish law should not apply, the ad hoc arbitral tribunal received no other comments. Thereafter, the ad hoc arbitral tribunal received a written submission from Changli Bee Industry Company's attorney opposing the tribunal's jurisdiction and requesting an extension of time to submit a statement of defense. On March 5 and 6, 2018, the ad hoc arbitral tribunal organized a hearing for both parties. At the hearing, Changli Bee Industry Company's attorney no longer raised any objection to the tribunal's jurisdiction, and Changli Bee

Industry Company's legal representative, Zhao Shangsheng, likewise raised no such objection. On June 9, 2018, the ad hoc arbitral tribunal rendered an arbitral award pursuant to the Swedish Arbitration Act: 1. Changli Bee Industry Company breached the Contract and shall pay Svensk Company USD 286,230 plus corresponding interest; and 2. Changli Bee Industry Company shall compensate Svensk Company SEK 781,614 and HKD 1,021,718.45.

On November 22, 2018, Svensk Company applied to the Nanjing Intermediate People's Court of Jiangsu Province for recognition and enforcement of the aforesaid arbitral award.

During the court's review, both parties agreed that the arbitration clause in the Contract should be understood in accordance with Swedish law. Svensk Company considered that the Chinese meaning of the dispute resolution clause was "if any dispute arises, Swedish law shall apply and the dispute shall be resolved by expedited arbitration in Sweden." Changli Bee Industry Company, however, considered that the Chinese meaning of the aforesaid clause was "disputes under the jurisdiction of Swedish law shall be resolved by expedited arbitration in Sweden."

Judgment

On July 15, 2019, the Nanjing Intermediate People's Court of Jiangsu Province rendered Civil Ruling (2018) Su 01 Xie Wai Ren No. 8, recognizing and enforcing the arbitral award rendered on June 9, 2018 by the ad hoc arbitral tribunal composed of Peter Thorp, Sture Larsson, and Nils Eliasson against Svensk Company and Changli Bee Industry Company with respect to Contract NJRS13001.

Reasoning

The court in its effective judgment held: Based on the facts ascertained and determined, the arbitral award in issue rendered by the ad hoc arbitral tribunal composed of Peter Thorp, Sture Larsson, and Nils Eliasson did not fall within the circumstances for refusal of recognition and enforcement prescribed in subparagraphs (b), (c), and (d) of paragraph 1 of Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, nor did it violate the reservations declared by China upon acceding to the Convention, or China's public policy, or the circumstance that the subject matter of the dispute could not be resolved by arbitration. Therefore, the award should be recognized and enforced.

On the question of whether there was any circumstance in which the procedure of the ad hoc arbitral award was inconsistent with the arbitration agreement. This dispute concerned the parties' understanding of the dispute resolution clause in the Contract: "in case of disputes governed by Swedish law and that disputes should be settled by Expedited Arbitration in Sweden." From the parties' expressions of the Chinese meaning of this clause, both parties had no objection to resolving the dispute by expedited arbitration in Sweden, and only disputed whether expedited arbitration could be resolved through ad hoc arbitration. Compared with ordinary arbitration, expedited arbitration is more efficient, convenient, and economical; its core lies in simplifying the arbitration procedure, shortening the arbitration time, and reducing arbitration costs, thereby enabling the parties' dispute to be resolved in a more efficient and economical manner. Compared with permanent arbitral institutions, an ad hoc arbitral tribunal likewise has the characteristics of efficiency, convenience, and economy. Specifically in this case, the parties agreed to resolve the dispute by expedited arbitration, but such expedited arbitration did not exclude resolution by ad hoc arbitration, and the parties likewise raised no objection to ad hoc arbitration during the arbitration hearing. Under these circumstances, the award rendered by the ad hoc arbitral tribunal conformed to the consensus of both parties. Therefore, it should be determined that the dispute in issue was handled by the ad hoc arbitral tribunal, and there was no circumstance inconsistent with the arbitration agreement.

Relevant Legal Provisions

1. Article 290 of the Civil Procedure Law of the People's Republic of China (this case applied Article 283 of the Civil Procedure Law of the People's Republic of China, as amended on June 27, 2017).

2. Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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