

Cargill International S.A. v. LZ Group Inc., Supreme Specialized Court of Ukraine for Civil and Criminal Cases, 25 October 2012

Yaroslav Petrov, Asters

In Cargill International S.A. v. LZ Group Inc. the Supreme Specialized Court of Ukraine for Civil and Criminal Cases upheld a judgment of the lower courts holding that an arbitral award of the International Commercial Arbitration Court of the Ukrainian Chamber of Commerce and Industry contained rulings on matters beyond the scope of the arbitration agreement, as well as contradicted Ukrainian law.

On 25 April 2012 the Supreme Specialized Court of Ukraine for Civil and Criminal Cases (the "Court") dismissed the petition of Cargill International S.A. (the "Claimant") against a lower courts' judgments that set aside the arbitral award of the International Commercial Arbitration Court of the Ukrainian Chamber of Commerce and Industry (the "ICAC") rendered on 28 November 2008.

The arbitration proceedings concerned recognition of the LZ Group Inc.'s breach (the "Respondent") of debt repayment schedule provisions of the Joint Activity Agreement (the "JAA") that was executed in 2001. The Respondent filed the counter claim stating that the JAA should be considered invalid because it was signed by the Respondent due to an error. The ICAC held that the Claimant is entitled to recover the debt from the Respondent in the amount of USD 8,396,169.71 including penalty in the amount of LIBOR +2% and 3%.

The Respondent did not agree with such arbitral award and filed a motion to set aside the ICAC's arbitral award with the Pecherskyi District Court of the City of Kyiv. On 12 May 2009 the court upheld the Respondent's motion reasoning that the arbitral award violated Ukrainian law as the ICAC lacked jurisdiction to consider the case. On 8 June 2009 the Court of Appeal of the City of Kyiv upheld the decision of the Pecherskyi District Court of the City of Kyiv.

The Court investigated that the Claimant and Respondent executed the JAA on 27 September 2001. According to Article 8 of the JAA the parties agreed that the agreement should be governed by and construed in accordance with English law and any dispute, controversy or claim arising out of or relating to this JAA should be settled by three arbitrators. The seat and place of arbitration should be London, England. Additionally, based on the JAA on 30 August 2006 the parties executed the Debt Recovery Agreement (the "DR Agreement"), which provided that any dispute arising out of the DR Agreement should be finally

Author

- Yaroslav Petrov

Jurisdiction

- Ukraine

Court

Supreme Specialized Court of Ukraine
for Civil and Criminal Cases

Case date

- 25 October 2012

Case number

- Case No. 6-4902ck12

Parties

- Claimant, Cargill International S.A. (Switzerland)
- Respondent, LZ Group Inc. (Ukraine)

Key words

- arbitral award violated Ukrainian law

Applicable legislation

- Ukrainian Commercial Law

Publication Source

- Unified State Register of Court Decisions

Source

Yaroslav Petrov, **Cargill International**

settled by the ICAC.

**S.A. v. LZ Group Inc., Supreme
Specialized Court of Ukraine for Civil
and Criminal Cases, 25 October
2012**, A contribution by the ITA Board
of Reporters, Kluwer Law International

The Court found that the parties should have followed Article 8 of the JAA since the arbitration agreement in the contested DR Agreement did not specifically define the arbitration procedure and laws that should apply to the merits, in contradiction with the JAA. Thus, the ICAC had no jurisdiction to consider the dispute according to Ukrainian law since the arbitration procedure did not meet the parties' consent reflected in the JAA.

Original source:
Kluwer Arbitration
© 2014 Kluwer Law International BV (All rights reserved).
<http://www.kluwerarbitration.com>

The summary of the case file and full text of summarized court decision are available on:
<http://www.kluwerarbitration.com/CommonUI/document.aspx?id=KLI-KA-1243640>