

# The People's Republic of China

## Suzhou Intermediate People's Court of Jiangsu Province

### Civil Ruling

(2015) S.Z.X.Z.R.Z. No. 00003

Applicant: OOO Transport Company "Skif-Cargo", Address: Bid. 7, Dzerzhinsk, Eastern Industrial Area, Nizhegoroder region, 606000, Russia

Legal representative: Kozhevnikov J.J., Chairman of the board

Entrusted agent: Luo Benjian, lawyer from Shanghai Kaizheng Law Firm

Respondent: Suzhou Tianma Specialty Chemicals Co., Ltd., Address: 199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou, Jiangsu Province, PRC

Legal representative: Xu Min, General Manager

Entrusted agent: Zhou Jie, lawyer from Jiangsu YiYouTianYuan Law Firm

Entrusted agent: Wang Jidong, lawyer from Jiangsu YiYouTianYuan Law Firm

An arbitration award of No. 34/2014 had been given by International Commerce Arbitration Court of the Russian Federation Chamber of Commerce and Industry (hereinafter referred to as "Russia Arbitration Court") on the dispute case of international goods sale contract between the Applicant, OOO Transport Company "Skif-Cargo" (hereinafter referred to as "Skif") and the Respondent, Suzhou Tianma Specialty Chemicals Co., Ltd. (hereinafter referred to as "Tianma") on November 10, 2014. Our court accepted the application of the Applicant, OOO Transport Company "Skif-Cargo", to recognize and enforce the arbitration award of Russia legally on November 3, 2015. We formed a collegiate bench legally and held a hearing on December 11, 2015 and March 17, 2016 respectively. Lawyer Luo Benjian, entrusted agent of the Applicant, lawyer Zhou Jie, entrusted agent of the Respondent appeared in court for intervention. The hearing of case has been completed now.

The Applicant claimed that Skif and Tianma signed an international goods sales contract of No. 18-2012/09 with the subject matter of Alkyl Ketene Dimer 1840 (a kind of sizing agent for paper making). Skif was the buyer and Tianma was the seller. Article 11 of the contract specified that, in case of any dispute which could not be solved through negotiation, it should be submitted to Russia Arbitration Court for arbitration. The arbitration award was final and binding to both parties. Article 12 of the contract specified that the applicable law of the contract was the laws in Russian Federation. After the contract was signed, Tianma would deliver goods in two batches. The first batch was delivered on August 8, 2013 with the amount of 52,520 USD. The second batch was delivered on August 16, 2013 with the amount of 52,530 USD. Skif found that quality of both batches of goods failed to meet the contract requirements after it received them. It raised an objection to Tianma and claimed for compensation. Tianma agreed to the compensation but

finally did not realize the compensation. Since the negotiation failed, Skif applied for arbitration to Russia Arbitration Court according to the arbitration clause. The court accepted the case legally and held hearings according to arbitration rules. It gave Arbitration Award No. 34/2014 (hereinafter referred to as “*Arbitration Award*”) on November 10, 2014, in which Tianma should compensate to Skif: 1. payment for goods of 105,050.00 USD; 2. losses of 21,330.62 USD; 3. loss on interest of 3,545.42 USD; 4. interest produced by loan principal between February 22, 2014 and the actual delivery date with the annual interest rate of 6%; 5. counsel fee of 5,078.72 USD; 6. arbitration application fee of 12,466.00 USD. After the arbitration award took effect, Tianma failed to perform its duty of compensation, so Skif requested to the court: 1. Recognize and enforce arbitration award No. 34/2014 given by Russia Arbitration Court; 2. Ask Tianma to pay 157,451.95 USD (converted to RMB 1,002,968.92 Yuan according to 1:6.37) according to the arbitration award; 3. Application fee of this case should be paid by Tianma.

In the court hearing, Skif specified that the amount of Item 2 of the claims was the sum of the amount of 6 items in *Arbitration Award* (The interest in Item 4 should be 9,981.19 USD temporarily until the application date of recognizing and enforcement. It was specified that it should be calculated until the actual payment date.)

The Applicant Skif submitted the following evidences to our court: Evidence 1. The arbitration award through notarial certification; Evidence 2. The sales contract through notarization; Evidence 3. Sales contract appendix through notarization; Evidence 4. Receipts of arbitration application, arbitrator assignment and court summons sent by Russia Arbitration Court to “199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” and “199 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” of Tianma through DHL; Evidence 5. Printout of official webpage of Tianma; Evidence 6. Receipt of *Arbitration Award* sent by Russia Arbitration Court to Tianma through DHL.

The Respondent Tianma argued that: 1. Tianma had never received any notice of summons from Russia Arbitration Court. It had never voiced any opinion on such case and it knew nothing about the contents of the arbitration award; 2. According to the agreement between both parties, related contents of arbitration award involved in this case were inconsistent with the agreement since the agreement did not appoint any article for loss compensation for cargo quality problems. The arbitration contents were wrong; 3. Results of such arbitration award were unreasonable because the arbitration contents only asked Tianma to return the payment for goods, while did not mention any content related to cargo return. But the cargo was still occupied by Skif at present; 4. Both parties agreed that the arbitration should use substantial laws of Russian Federation as the applicable law. Skif had no other evidence to prove that *United Nations Convention On Contracts For The International Sale Of Goods* was a component of substantial laws of Russian Federation, so the convention could not be applicable. In conclusion, it claimed that the arbitration award involved in this case should not be recognized and enforced.

Tianma submitted the following evidences to our court: A group of photocopies of property ownership certificate and land certificate to prove that “199 East Huayuan Road, Mudu Town,

Wuzhong District, Suzhou” and “199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” were two different addresses. 199-1 was the registered address of Tianma.

Tianma had no objection to the authenticity of Evidence 1 provided by Skif. It had no objection to the authenticity of Evidence 2 and 3. It did not recognize the form of Evidence 4 which was not certified. And it should be verified whether the recipients Ma Li and Ma Yulan were employees of Tianma. For Evidence 5, the website was made by a third party authorized by Tianma. The address showed on the website could not be affirmed as the registered address of Tianma. The registered address should be subject to business registration. The authenticity of Evidence 6 could not be confirmed. Even if the arbitration award was sent to the destination, it could not prove that the proceedings once notified Tianma.

Skif did not accept the authenticity and legality of the evidence provided by Tianma.

According to the evidences and cross-examination of the Applicant and the Respondent and after review of the court, the court verified the evidences of both parties as follows:

Tianma recognized the authenticity of Evidence 1, 2 and 3 of Skif. After comparing with the original copy, our court affirmed the authenticity of such evidences. Although Evidence 4 was not certified, it could prove each other with the records in *Arbitration Award*, so our court affirmed its authenticity. Evidence 5 was public information on the Internet. After logging in the Internet for investigation, our court affirmed the authenticity of such evidence. Tianma thought the authenticity of Evidence 6 could not be confirmed. Through our investigation, it was the original copy with the common seal and check seal of Russia Arbitration Court. Receiver of the evidence was Tianma and the consignee address was the registered address of Tianma, so our court affirmed the authenticity of it. Evidences submitted by Tianma were all photocopies and unrelated to the facts as the reference of arbitration award involved in this case, so our court did not affirm them.

Through hearing and investigation: On October 10, 2012, Tianma and Skif signed a contract in No. 18-2012/09. Skif purchased Alkyl Ketene Dimer 1840 (a kind of sizing agent for paper making) from Tianma and the contract specified contract price, payment conditions, supply conditions, shipment requirements, product quality and receiving, etc. Article 9.2.2 of the contract specified that “The buyer must send a written claim for compensation related to any and found unqualified or quality problem (unqualified according to the quality analysis certificate specified in the contract appendix) to the seller within 15 working days after receiving the goods”. Article 9.2.3 specified that “The seller must reply the buyer within 15 working days after receiving the written claim for compensation”. Article 11 specified that “Both parties shall try their best to settle the dispute in a peaceful way in the case of any dispute and divergence related to this contract. If it cannot be coordinated, the dispute or divergence shall be transferred to International Commerce Arbitration Court of the Russian Federation Chamber of Commerce and Industry (in Moscow) on the basis of substantial laws of Russian Federation”. Article 12 specified that “This contract is governed and interpreted according to Russian laws. Conditions of this contract are interpreted according to 2010 International Chamber of Commercial Terms”. An appendix No. N001 was signed to specify the quality standards for products in details.

On February 22, 2014, Skif applied for arbitration to Russia Arbitration Court and the court sent arbitration application materials to “199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” and “199 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” of Tianma through DHL in the form of letter on June 5, 2014. The letters were received and signed on June 9, 2014. But Tianma did not reply or choose its own arbitrator. The presidium of Russia Arbitration Court appointed the arbitrator according to arbitration rules. Russia Arbitration Court sent the notice to appoint arbitrator to the above-mentioned two addresses of Tianma through DHL in the form of letter on July 22, 2014. The letters were received and signed on July 24, 2014. Russia Arbitration Court sent the notice of trial to the above-mentioned two addresses of Tianma through DHL in the form of letter on August 12, 2014 to inform Tianma that the case hearing would be held on September 30, 2014. The letters were received and signed on August 14, 2014. In the summons, according to the direction of the Chairman of Arbitral Tribunal, Tianma should reply to the arbitration application before September 1, 2014. Tianma did not appear before the court or submit an application to delay the hearing of the case. On September 30, 2014, Russia Arbitration Court carried out default hearing according to Article 25 *Related to International Commercial Arbitration* of laws of Russian Federation and Article 32.4 of international commercial arbitration rules. On November 10, 2014, Russia Arbitration Court issued No. 34/2014 arbitration award, in which Tianma should compensate the following expenses to Skif: 1. Payment for goods of 105,050.00 USD paid by Skif; 2. Losses of 21,330.62 USD to be compensated to Skif; 3. Loss on interest, i.e. 3,545.42 USD produced by using other funds; 4. Interest produced by loan principal between February 22, 2014 and the actual delivery rate with the annual interest rate of 6%; 5. Counsel fee of 5,078.72 USD paid by Skif; 6. 12,466.00 USD of arbitration fee. Russia Arbitration Court sent the *Arbitration Award* to the address “199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou, Jiangsu Province, PRC” of Tianma on November 10, 2014 through DHL in the form of letter, which was received and signed on November 12, 2014.

Besides, it was found that the registered address of Tianma was 199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou. Registered address of Tianma recorded in the contract signed between Tianma and Skif was 199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou, PRC. Contact address recorded on the official website of Tianma was 199 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou.

Our court thought: The arbitration award involved in this case was made by Russia Arbitration Court in Moscow of Russian Federation. This is a case to recognize and enforce foreign arbitration award. Address of the Respondent Tianma was within the jurisdiction of our court. Our court accepted the application of Skif to recognize and enforce the arbitration award, which met the provisions of Article 283 of *Civil Procedural Law of the People’s Republic of China*.

According to Article 283 of *Civil Procedural Law of the People’s Republic of China* and the reciprocity reservation and commercial reservation made by our country to join the *New York*

*Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, the people's court shall apply the provisions in the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* for disputes arising from contracted and non-contracted commercial legal relationship according to Chinese laws and the recognition and enforcement of arbitration awards made in another contracting state. Since both China and Russia are contracting states of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the dispute of international goods sale contract submitted by Skif for the arbitration of Russia Arbitration Court belonged to the dispute due to commercial legal relationship, our court decided to examine the arbitration award involved in this case according to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. According to Article 3 and Article 5 of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, the examining authority can refuse to recognize and enforce the arbitration award according to the application of the Respondent only when the Respondent provides evidence to prove the existence of the situation specified in Article 5.1 or when the examining authority finds the existence of the situation specified in Article 5.2. Otherwise contracting states of the convention shall admit that the arbitration award is binding.

In this case, Tianma claimed that it had not received the arbitration proceeding notice from Russia Arbitration Court and the dispute involved in the arbitration did not belong to the range of arbitration agreement. For them, our court thought through investigation that:

I. Notice of arbitration proceeding

According to Article 5.1(b) of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where recognition and enforcement is sought, proof that: the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case. After Russia Arbitration Court accepted the case, it sent the arbitration application, notice to appoint arbitrator and notice of trial to “199-1 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” and “199 East Huayuan Road, Mudu Town, Wuzhong District, Suzhou” of Tianma in the form of letter. The receipts proved the receiving situation, so Russia Arbitration Court fulfilled its duty to inform Tianma of the arbitration proceedings. Tianma had no evidence to overturn the proceedings specified above. Its demurrer that it did not receive the notice of arbitration proceedings did not establish. Arbitration award involved in the case did not have the situation specified in Article 5.1(b) of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

II. Whether the dispute involved in the award is within the scope of arbitration agreement

According to Article 5.1(c) of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, recognition and enforcement of the award may be refused.

The arbitration award involved in the case dealt with the dispute due to product quality problems between Skif and Tianma. Article 9 of the contract signed between both parties specified the compensation issues. Article 11 of the contract specified that the scope of arbitration submission was “disputes and divergences related to this contract”. Our court thought the claim for compensation of product quality problems involved in the award was specified in the contract, which belonged to dispute produced during contract performance and was included in the dispute range specified in the arbitration agreement, so the demurrer of Tianma that the dispute involved in the award was not within the scope of arbitration agreement did not establish.

Besides, through the investigation of our court, the arbitration award involved in the case did not have the situation specified in Article 5.2 of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. As for the claim of Tianma that the arbitration award did not mention product return and should not apply the *United Nations Convention on Contracts for the International Sale of Goods*, our court would not accept since they did not belong to matters to be examined according to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

In conclusion, the reasons for Tianma not to recognize and enforce the arbitration award involved in the case did not establish. The award shall be recognized and enforced. According to Article 283 of *Civil Procedural Law of the People’s Republic of China*, Article 1.1, Article 3 and Article 5 of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, we judge as follows:

We admit and allow to enforce No. 34/2014 arbitration award made by International Commerce Arbitration Court of the Russian Federation Chamber of Commerce and Industry on November 10, 2014.

Litigation fee is 12,430 Yuan, which shall be paid by the Respondent Tianma.

Chief Judge: Zhu Jiechun

Acting Judge: Wang Weijue

Acting Judge: Xu Feiyun

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Suzhou Intermediate People's Court of Jiangsu  
Province

July 19, 2016

Court Clerk: Yan Changhai

## Appendix One: Legal Provisions Cited In The Ruling

### ONE. Civil Procedure Law of the People's Republic of China

#### Article 283

Where an arbitration award of a foreign arbitral institution requires recognition and enforcement by a people's court of the People's Republic of China, a party shall apply directly to the intermediate people's court at the place of domicile of the party against whom enforcement is sought or at the place where the property thereof is located, and the people's court shall process the application in accordance with an international treaty concluded or acceded to by the People's Republic of China or under the principle of reciprocity.

### TWO. Convention On The Recognition And Enforcement Of Foreign Arbitral Awards

#### Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

#### Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

#### Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submissions to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.