

Doppelmayr Seilbahnen G.m.b.H v. Private Industrial Facility “Sirius”, Supreme Commercial Court of Ukraine, 910/19022/13, 13 September 2017

A contribution by the ITA Board of Reporters

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Headnote

Ukrainian High Commercial Court commented on deadline for providing information on arbitration agreement existence.

Summary

Facts of the case

Doppelmayr Seilbahnen G.m.b.H (“Doppelmayr”) and Private Industrial Facility “Sirius” (“Sirius”) entered into two contracts dated 9 September 2007 (“Contracts”).

First trial

In October 2013, Doppelmayr applied to the Commercial Court of Kyiv City (the first instance court), seeking to collect a debt from Sirius accumulated based on the Contracts.

The court of first instance partially satisfied the requirements of Doppelmayr. Its decision was upheld by the court of appeal.

Sirius applied to the High Commercial Court of Ukraine (court of cassation) that quashed the previous decisions based on the improper form of the submitted documents and lack of research by previous instances on some aspects of the case. The case was remanded to the court of first instance.

Second trial

On 24 March 2015, Doppelmayr provided the Commercial Court of Kyiv City (the first instance court) with the information that the Contracts contained an arbitration clause, and alleged that the court of first instance lacked jurisdiction. The court of first instance refused to satisfy the claim, which was upheld by the decision of the court of appeal. Doppelmayr applied to the High Commercial Court of Ukraine (court of cassation), quashed the decisions of previous instances based on the discrepancies regarding the amount of debt, and the previous decisions did not contain calculations of debt. The case was remanded to the court of first instance.

Third trial

Doppelmayr applied to the Commercial Court of Kyiv City (the first instance). On 20 February 2017, Sirius objected to court’s jurisdiction alleging the existence of arbitration clause between the parties. Based on this submission, the court of first instance suspended the court proceedings.

The court of appeal reversed the ruling of the court of first instance and remanded the case to the court of first instance.

Sirius applied to the High Commercial Court of Ukraine seeking the annulment of the decision of the court of appeal.

Question in Dispute

The national court was faced with a debt collection claim. Only after 3 years of court proceedings, the issue on the existence of arbitration clause was raised by the respondent.

Arguments of the Parties

Sirius claimed that the decision of the court of appeal on lack of jurisdiction based on the arbitration clause existence violated the Law of Ukraine “On International Agreements of Ukraine” No. 1906-IV dated 19 June 2004, as well as the Civil Procedure Code of Ukraine No. 1618-IV dated 18 March 2004 (the “Civil Procedure Code”), the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the “New York Convention”) and the Opinion of the Supreme Court of Ukraine in terms of application of paragraph 1 part 1 of Article 80 of the Civil Procedure Code.

Judgment of the Court

The High Commercial Court upheld the decision of the court of appeal.

The High Commercial Court analyzed part 1 of Article 8 of the Arbitration Law: *A court in which an action is brought in a matter which is the subject of an arbitration agreement shall, if any of the parties so requests not later than when submitting its first statement on the substance of the dispute, stay its proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being perform.*

Based on this provision, the provisions of the New York Convention (paragraph 1 of Article II) and the European Convention on International Commercial Arbitration (1961) (paragraph 1 of Article VI), the national court should decline jurisdiction, due to the existence of an arbitration agreement, only if the corresponding application is filed to a national court before filing a response to the merits of the claim. In that case, the appropriate deadline was missed and the ordinary court acquired jurisdiction to resolve the dispute.

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The summary of the case file and full text of summarized court decision are available on: <https://www.kluwerarbitration.com/document/kli-ka-ons-18-4-002?jurisdiction=Ukraine&type=Court%20Decisions>