

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

Table with case details: INDEX NO. 656980/2020, MOTION DATE, MOTION SEQ. NO. 001, and DECISION + ORDER ON MOTION.

HON. BARRY R. OSTRAGER

Before the Court is a petition by Olin Holdings Limited ("Olin") for an order pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38, "the New York Convention") and Chapter 2 of the Federal Arbitration Act (9 U.S.C. § 201, et seq.), confirming a Foreign Arbitral Award and directing that a judgment be entered in favor of Olin against the State of Libya. The Award at issue is the Final Award rendered on May 25, 2019 by a three-person arbitral tribunal under the auspices of the International Chamber of Commerce ("ICC") after a hearing at which the State of Libya appeared by counsel (NYSCEF Doc. No. 4). For the reasons stated below, the petition is granted.

Briefly stated, the underlying facts asserted in the Petition are as follows (see NYSCEF Doc. No. 1). Olin, a limited liability company organized and existing under the laws of Cyprus, invested in a dairy and juice factory ("the Factory") in Libya and sought government approval to build and operate the Factory in the Tripoli area. After Olin obtained all necessary governmental approvals and completed the Factory, Libya issued an Expropriation Order in 2006 assuming control and ownership of the land on which the Factory was built. Efforts by Olin over a period of years to obtain an exemption from the Expropriation Order were unsuccessful.

Olin then commenced litigation which was ultimately successful, and the Tripoli Court of Appeal cancelled the 2006 Expropriation Order in 2010, but the dispute between the parties nevertheless continued. By October 2015, the obstacles erected by Libya were so great that Olin was allegedly forced to suspend operations at the Factory, leaving Olin with claimed cumulative losses substantially greater than its capital. Pursuant to the Agreement on the Promotion and Reciprocal Protection of Investments between the Government of the Republic of Cyprus and the Great Socialist Libyan Arab Jamahiriya, dated June 30, 2004 (“the BIT”, NYSCEF Doc. No. 5), Olin commenced the arbitration at issue here, alleging that Libya had breached various provisions in the BIT (NYSCEF Doc. No. 7).

The Arbitral Tribunal held an evidentiary hearing on the merits from July 3-5, 2017 at the ICC’s hearing facility in Paris, France, during which the Tribunal heard testimony from witnesses. Libya’s counsel participated fully in the hearing. The Tribunal issued its 142-page Final Award on May 25, 2018, analyzing in detail the evidence and making specific findings of fact and law. Succinctly stated, in the Award, the Tribunal unanimously found that Libya had violated its obligations under the BIT with respect to Olin’s investments and found Libya liable to Olin in the amounts of: (i) €18,225,000 as compensation for the losses suffered by Olin as a result of Libya’s breaches of the BIT; (ii) US \$773,000 regarding the ICC’s costs, including the amount awarded to Olin in the Partial Award on Costs; and (iii) € 1,069,687.70 representing seventy-five percent of Olin’s legal expenses. The Tribunal further ordered Libya to pay Olin simple interest at the commercial rate of 5% per annum as applicable in Cyprus from the date of the Award until full payment.

In this proceeding to confirm the Final Award, Olin has submitted a Memorandum of Law, at the request of the Court, detailing the provisions of law governing the service of process

on the State of Libya and establishing to the satisfaction of the Court that service here was proper, providing this Court with jurisdiction over the State of Libya (NYSCEF Doc. No. 16). Despite proper service pursuant to 28 USC 1608(a)(3) and evidence of actual notice to the Ministry of Foreign Affairs of Libya, the State of Libya has not appeared in this proceeding or submitted any papers. Based on the record before the Court, Olin is entitled to the relief it requested confirming the Final Award and for a money judgment in its favor as detailed below, with the conversion of any amount stated in Euros to US Dollars using the conversion procedure set forth below or as otherwise directed by the County Clerk.

Accordingly, it is hereby

ORDERED that the petition of Olin Holdings Limited to confirm the May 25, 2018 Final Award rendered by the ICC Arbitral Tribunal (NYSCEF Doc. 4) is confirmed; and it is further

ORDERED that the Clerk of the Court is direct to enter judgment on the Final Award in US Dollars in favor of petitioner Olin Holdings Limited against respondent State of Libya as follows:

- (i) € 18,225,000.00 as compensation for the losses suffered by Olin;
- (ii) US Dollars \$773,000.00 regarding the ICC's costs;
- (iii) € 1,069,687.70 representing seventy-five percent of Olin's legal expenses; and
- (iv) Simple interest at the commercial rate of 5% per annum as applicable in Cyprus from the date of the Award, May 5, 2018, through the entry of judgment in an amount calculated by the Clerk of the Court, with such interest continuing to accrue until full payment is made; and it is further

ORDERED that the Clerk of the Court is directed to convert any amount stated in Euros to US Dollars upon petitioner's provision of the exchange rate provided in the Wall Street

Journal on the date the judgment is entered (<https://www.wsj.com/market-data/currencies>), and petitioner shall provide evidence of the exchange rate to the County Clerk upon request.

Petitioner shall also promptly efile a Proposed Judgment with Bill of Costs directed to the County Clerk and take all steps necessary thereafter to proceed with the entry of judgment.

Dated: April 27, 2021


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE