

Ink 2022-11-14

Månr
Aktbilaga

SCC Case 2020/074

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE
ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE (2017)**

SVEA HOVRÄTT
020113
INKOM: 2022-11-11
MÅNDR: 2022-11-14-22
AKTBIL: 6

- between -

KOMAKSAVIA AIRPORT INVEST LTD

(the “Claimant”)

- and -

THE REPUBLIC OF MOLDOVA

(the “Respondent”, and together with the Claimant, the “Parties”)

CORRECTION OF THE FINAL AWARD

Tribunal

Ms. Jean Kalicki (Chair)
Prof. Philippe Sands QC
Prof. Brigitte Stern

Administrative Secretary to the Chair
Dr. Joel Dahlquist

Seat of Arbitration: Stockholm, Sweden

13 September 2022

I. PROCEDURAL HISTORY

1. The Tribunal rendered its Final Award on 3 August 2022 (the “**Final Award**”).
2. On 24 August 2022, Moldova submitted a request for corrections of the Final Award, pursuant to Article 47 of the SCC Rules. On that same date, the Tribunal invited Komaksavia to submit comments on the Respondent’s request by 31 August 2022. Komaksavia did not submit any comments, by that date or subsequently.
3. In the below, the Tribunal sets out its decisions on the corrections requested by Moldova.

II. TRIBUNAL’S ANALYSIS

4. Article 47 of the SCC provides in its entirety:
 - (1) Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award. After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the correction or provide the interpretation within 30 days of receiving the request.
 - (2) The Arbitral Tribunal may correct any error of the type referred to in paragraph (1) above on its own motion within 30 days of the date of an award.
 - (3) Any correction or interpretation of an award shall be in writing and shall comply with the requirements of Article 42.
5. The scope of a tribunal’s power to decide on corrections is limited to “clerical, typographical or computational” errors in an award. As further explained by the authors of *A Guide to the SCC Rules*, “[t]he intention is to provide an opportunity to adjust clear mistakes of an administrative nature. Thus, it is not possible for the Arbitral Tribunal to reassess its decision on the merits [...]”.¹
6. With this in mind, the Tribunal now turns to Moldova’s requests for corrections.
7. Moldova has requested that the Tribunal make 17 corrections. Having carefully reviewed the requests, it is evident that nine² of the 17 requests are for corrections that undoubtedly fall within the scope of Article 47 of the SCC Rules. These are all either typographical errors (such as a few stray letters added to the street name of the Respondent’s counsel in paragraph

¹ Ragnwaldh, Andersson, Salinas Quero, *A Guide to the SCC Rules*, Wolters Kluwer 2020, p. 143.

² Requests No. 1, 2, 4, 5, 6, 7, 8, 9 and 14.

4, and the two references to “3 September 2000” instead of “3 September 2020” in paragraphs 7 and 14), or of a clerical nature (such as the inconsistent reference to Moldova’s post-hearing brief in footnote 71, and the misnaming of three corporate entities in paras. 60 and 63). Requests No 1, 2, 4, 5, 6, 7, 8, 9 and 14 are therefore granted.

8. Seven requests³ concern the manner in which the Tribunal has referred to Moldova’s two cost submissions. On two separate instances, the Tribunal has in the main body of the Final Award referred generically to Moldova’s submissions, without using a defined term, and in five instances the Tribunal has referred to the same submissions with the defined terms “Respondent’s First Cost Submission” and “Respondent’s Second Cost Submission,” respectively. Moldova now seeks to “correct” this by asking the Tribunal to instead refer to the two submissions in a different manner, using different defined terms. While these requests conceivably may fall within the scope of Article 47 of the SCC Rules, as granting them would not involve changing a decision on the merits but rather a change of a clerical nature, the Tribunal does not share Moldova’s view that the Tribunal’s references need to be “corrected.” It is squarely within a tribunal’s discretion to use (or not use) defined terms in an award, notwithstanding that a party may prefer a different defined term to be used. Requests 10, 11, 12, 13, 15, 16 and 17 are therefore denied.
9. The one remaining request, Request No. 3, calls for a bit more consideration. In paragraph 60 of the Final Award, the Tribunal stated at the end of a sentence that Mr. Modris Karklinsh “from 23 December 2019 was the holder of 30% of Komaksavia shares.” Moldova has requested that this part of the sentence be deleted, as the provided information is incorrect. On first glance, this request could be viewed as going to the merits of the Tribunal’s determinations as to an issue of fact. However, as is made clear from reading the Final Award in its entirety – and as Moldova has pointed out – the Tribunal refers in two other instances to the correct information, *i.e.*, that it was Mr. Andrey Goncharenko who was the holder of 30% of Komaksavia shares from 23 December 2019. Consequently, it is clear that the sentence referred to in Request No. 3 is a mistake of a clerical nature. Request No. 3 is therefore granted.

³ Requests No. 10, 11, 12, 13, 15, 16, and 17.

III. DECISIONS

10. For the reasons stated above, the Tribunal decides that the Final Award is corrected in the following ways:

- a) In paragraph 4, “Ap. 220 HaHarash St” is corrected to “Ap. 2”;
- b) In paragraph 60, first bullet point, “Modrish” is corrected to “Modris”;
- c) In paragraph 60, sixth bullet point, the phrase “and from 23 December 2019 was the holder of 30% of Komaksavia shares” is deleted;
- d) In paragraph 60, tenth bullet point, “OOO Komaksavia Investment Ltd” is corrected to “OOO Komaksavia, Komaksavia Investment Ltd”;
- e) In paragraph 60, last bullet point, “NR Investments” is corrected to “NR Investments Limited”;
- f) In paragraph 63, first line, “Komaksvia OOO” is corrected to “OOO Komaksavia”;
- g) In footnote 37, “3 September 2000” is corrected to “3 September 2020”;
- h) In footnote 70, “Resp. Memorial ¶¶ 347-376” is corrected to “Resp. Memorial ¶¶ 404-411”;
- i) In footnote 71, “PHB” is corrected to “Resp. PHB”;
- j) In footnote 216, “3 September 2000” is corrected to “3 September 2020”.

Seat of Arbitration: Stockholm, Sweden



Professor Philippe Sands QC
Arbitrator

Date: 13 September 2022

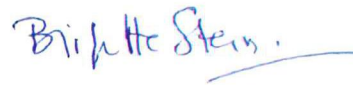
Professor Brigitte Stern
Arbitrator

Date:

Ms. Jean E. Kalicki
President of the Tribunal

Date:

Seat of Arbitration: Stockholm, Sweden



Professor Philippe Sands QC
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