



Stockholm, 15 January 2020

Svea Court of Appeal

SVEA HOVRÄTT
020102INKOM: 2020-05-27
MÅLNR: T 731-20
AKTBIL: 95**STATEMENT OF CLAIM**

- Claimant:** Oleg Vladimirovich Deripaska
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Russia
- Counsel:** Attorneys Ginta Ahrel, Therese Isaksson, Emma Bliman
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- Respondent:** The State of Montenegro
Government of Montenegro
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81000 Podgorica
Montenegro
- Forum:** Section 43 of the Arbitration Act (1999:116)
- Matter:** Action against an arbitral award in accordance with Section 36 of the
Arbitration Act
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As counsel for Oleg Vladimirovich Deripaska, hereinafter **Deripaska**, we hereby bring an action against the award in Permanent Court of Arbitration ("PCA") Case No. 2017-07 (the "Arbitration") between Deripaska and the State of Montenegro, hereinafter **Montenegro**, dated 15 October 2019, hereinafter the **Award** (Exhibit 1), as follows.

INTRODUCTION

1. The Arbitration concerned an investment dispute regarding Montenegro's measures that deprived Deripaska of his investment in the country. Deripaska's requests were denied by way of the Award for lack of jurisdiction of the Arbitral Tribunal.
2. Deripaska is Russian citizen and used to be a majority beneficial shareholder of En+ Group Limited, a holding company that holds 100 percent of the shares in CEAC Holdings Limited ("CEAC"), a company registered in Cyprus.
3. In 2005, Deripaska acquired through CEAC ca. 65 per cent of the shares in aluminum smelting plant Kombinat Aluminijuma Podgorica A.D. ("KAP") and ca. 58 percent of shares in bauxite mine Rudnici Boksita A.D. Nikšić ("RBN") from Montenegro.
4. Shortly after the acquisition, some misrepresentations and shortcomings were discovered in KAP and RBN, whereupon a dispute arose between CEAC and Montenegro. However, the parties reached a settlement in 2009, which provided, among other things, that CEAC transferred 50 per cent of its shares in KAP and RBN back to the state for a nominal amount of one euro, while the state undertook to issue certain guarantees and subsidies to secure KAP's continued operations. However, Montenegro subsequently took measures that created a situation resulting in KAP's default under its loan to Deutsche Bank, which was secured by Montenegro's state guarantee. After the event of default, Montenegro paid off KAP's loan to Deutsche Bank pursuant to the state guarantee and became KAP's major creditor. Thereafter, in June 2013, Montenegro's Ministry of Finance filed a bankruptcy petition against KAP. From the outset of KAP's bankruptcy proceedings, Montenegro has overtaken control over KAP. In November 2013, a Montenegrin bank filed for bankruptcy also against RBN. Both KAP and RBN bankruptcy proceedings are still pending. Deripaska's attempts to challenge Montenegro's acts and omissions in Montenegrin courts were of no avail.
5. Following Montenegro's measures, CEAC initiated in 2014 arbitration proceedings before the World Bank's International Centre for Settlement of Investment Disputes (ICSID) in Washington, under the Bilateral Investment Protection Agreement between Cyprus and Montenegro. The Arbitral Tribunal dismissed CEAC's action in 2016 for lack of jurisdiction as the majority of the Tribunal considered that CEAC did not have its seat in Cyprus.

6. The remaining option for Deripaska was to personally initiate arbitral proceedings against Montenegro under the Agreement between the Government of Russian Federation and the Federal Government of the Republic of the Federal Republic of Yugoslavia (“**FRY**”) for Promotion and Mutual Protection of Investments (the “**BIT**”), which entered into force on 19 July 1996 (Exhibit 2).
7. FRY was a two-state federation consisting of Serbia and Montenegro, two of the republics of the former Socialist Federal Republic of Yugoslavia. The Federal Republic, FRY, was created in 1992, reduced to a two-state union in 2003 (the State Union of Serbia and Montenegro) and ceased to exist in 2006 when Montenegro declared its independence, and Serbia and Montenegro became two independent states.
8. It follows from Article 8 of the BIT that the Contracting States undertake to settle disputes with investors of the other State by arbitration under the UNCITRAL Rules:

Disputes between one Contracting Party and the investor of the other Contracting Party which may arise in connection with the investments, including disputes concerning the amount, terms and procedure for payment of compensation shall, as far as possible, be settled through negotiations.

If a dispute cannot thus be settled within a period of six months from the time that it arose, it shall be submitted to:

(a) The competent court or arbitral body of the Contracting Party in the territory in which the investments were made; or

(b) An ad hoc arbitration tribunal established in accordance with the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL). The award of the arbitration tribunal shall be final and binding on both parties to the dispute. Each Contracting Party shall undertake to execute such an award in conformity with its respective legislation.

9. Deripaska instituted arbitral proceedings on 5 December 2016. The Arbitral Tribunal, consisting of Prof. Zachary Douglas QC, Prof. Brigitte Stern and Jean E. Kalicki (Chairperson), was constituted on 20 March 2017, and determined that the seat of the Arbitration should be Stockholm, Sweden.
10. Montenegro raised once more objections to the jurisdiction of the Tribunal, claiming, inter alia, that the BIT was not valid and binding on Montenegro as an independent state.
11. The arbitral proceedings were bifurcated to first determine the issue of the Tribunal’s jurisdiction. The Tribunal found that the BIT was not binding between Montenegro and Russia, due to lack of automatic succession and that Montenegro and Russia could neither be considered to have agreed (explicitly or implicitly) on the continued validity of the BIT. As a result, the Tribunal erroneously concluded

that there was no general offer to resolve investment disputes through arbitration. For that reason, the Tribunal considered itself prevented from deciding the dispute and dismissed Deripaska's action through the Final Award rendered on 15 October 2019.

12. Deripaska finds that the Tribunal made an erroneous assessment in the issue of whether the BIT is in force between Montenegro and Russia. The Tribunal has thus erroneously declared itself not competent to hear Deripaska's case.

MOTIONS

13. Deripaska requests that the Court of Appeal amends the Award by way of setting aside the Award in its entirety.
14. Deripaska requests reimbursement for his legal costs which will be stated at a later time.

FOUNDATIONS

15. The Tribunal's conclusion that it lacks jurisdiction to hear the dispute because the BIT is not binding between Montenegro and Russia is incorrect.
16. Montenegro is bound by the BIT in relation to Russia. In the BIT, Montenegro leaves a general offer to settle investment disputes through arbitration. Deripaska has accepted the offer and, by instituting arbitral proceedings, a valid arbitration agreement has been concluded between Deripaska and Montenegro. The Arbitral Tribunal was competent to hear Deripaska's case.
17. The Award shall therefore be set aside in accordance with Section 36, paragraph 1 of the Arbitration Act.

REQUEST FOR EXTENSION OF TIME

18. With regard to the fact that the Counsel for Claimant received the assignment only on 7 January 2020, an extension of time to elaborate the case and submit evidence is requested until 15 April 2020.

MISCELLANEOUS

A copy of power of attorney to Counsel is enclosed. The original will be submitted as soon as Counsel receive it.

The application fee has been paid to Svea Court of Appeals account no. 76 11 15-5, with Deripaska as payment reference.

As above

/signature/

Ginta Ahrel

Therese Isaksson

/signature/

Emma Bliman Blomstervall

/signature/

Kristians Goldsteins

Exhibits:

1. Final Award in PCA Case No. 2017-07 dated 15 October 2019.
2. Agreement between the Government of Russian Federation and the Federal Government of the Republic of the Federal Republic of Yugoslavia for Promotion and Mutual Protection of Investments dated 11 October 1995.
