SCC ARBITRATION V (2015/150)

IN THE MATTER OF AN ARBITRATION UNDER THE ENERGY CHARTER TREATY AND THE ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

In the arbitration proceeding between

(1) FORESIGHT LUXEMBOURG SOLAR 1 S.À.R.L.
(2) FORESIGHT LUXEMBOURG SOLAR 2 S.À.R.L.
(3) GREENTECH ENERGY SYSTEMS A/S
(4) GWM RENEWABLE ENERGY I S.P.A.
(5) GWM RENEWABLE ENERGY II S.P.A.

Claimants

-and-

THE KINGDOM OF SPAIN

Respondent

PROCEDURAL ORDER NO. 4

Members of the Tribunal
Dr Michael J Moser, Presiding Arbitrator
Prof Dr Klaus Michael Sachs, Co-Arbitrator
Dr Raúl Emilio Vinuesa, Co-Arbitrator

Date
8 January 2019

I Introduction

1 On 14 December 2018, the Respondent submitted a Request for the Correction of the Final Award dated 14 November 2018 ("**Request**").

2 On 14 December 2018, the Tribunal invited the Claimants to comment on the Request on or before 28 December 2018.

3 On 28 December 2018, the Claimants submitted their Response to Request for Correction of Final Award ("**Response**").

II Parties' Submissions

4 The Respondent makes its Request pursuant to Article 41 of the 2010 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce ("**SCC Rules**"). The Respondent requests that the Tribunal corrects "computational errors contained in the Award regarding the damages awarded…so as to make it consistent with the Award's findings on jurisdiction and liability".[1] In particular, the Respondent contends that the Tribunal did not exclude the post-30 June 2014 effect of the measures that the Tribunal found to be outside its jurisdiction (Law 15/2012) or lawful under the ECT (RD 1565/2010; RDL 14/2010; RDL 2/2013).[2] The Respondent has submitted an amended financial model that purports to include the effect of these measures on the but-for value of the Claimants' investments.[3] On the basis of these calculations, the Respondent contends that damages should be reduced from €39 million to €7.8 million.[4] The Respondent also contends that the Costs of the Arbitration should be reallocated to reflect this substantial reduction in damages.[5]

5 The Claimants contend that the Tribunal must reject the Request because the Respondent does not seek to correct a "computational error" but has in fact submitted an entirely new quantum case.[6] The Claimants contend *inter alia* that: the Tribunal correctly excluded the Claimants' losses prior to the enactment of the New Regulatory Regime;[7] the damages awarded by the Tribunal are attributable to the New Regulatory Regime only;[8] the Respondent's new quantum case is inconsistent with its own prior position that the pre-New Regulatory Regime measures did not have a substantial impact;[9] the Respondent's new quantum case suggests that the pre-New Regulatory Regime measures also breached the Claimants' legitimate expectations;[10] and the Respondent's new calculations are inaccurate.[11] In any event, the Claimants contend that the Tribunal may only correct "obvious" errors and therefore the Tribunal lacks the power to grant the Request, which "seeks reconsideration of the merits the Tribunal's

1 Request, 3, 5.
2 Request, 31.
3 Request, 6, 42.
4 Request, 53.
5 Request, 57.
6 Response, 1.
7 Response, 3, 7.
8 Response, 7.
9 Response, 14-21.
10 Response, 26.
11 Response, 33.

decision regarding the quantum of damages".[12] The Claimants observe that the tribunal in *Novenergia II – Energy & Environment (SCA), SICAR v. Kingdom of Spain* rejected an identical request by the Respondent.[13]

III Decision

6 The Tribunal has decided to reject the Respondent's Request.

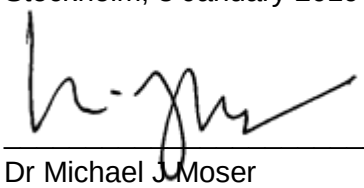
7 The Tribunal is bound by the applicable arbitral rules and the *lex arbitri*, which afford only limited exceptions to the fundamental rule that an arbitral award is final and binding on the parties when rendered.[14] Article 41 of the SCC Rules provides that a party may "request that the Arbitral Tribunal correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award". Similarly, Section 32 of the Swedish Arbitration Act empowers the Tribunal to correct "any obvious inaccuracy as a consequence of a typographical, computational, or other similar mistake".

8 The Tribunal finds that the Respondent's Request clearly does not fall within the scope of Article 41 of the SCC Rules. Indeed, the Request does not identify any "clerical, typographical or computation error in the award". Nor has the Respondent identified an "obvious" error by the Tribunal. Rather, the Respondent has submitted an amended financial model that the Respondent contends is consistent with the Tribunal's findings on jurisdiction and liability.

9 The Tribunal must reject the Respondent's Request on this basis alone. The Tribunal agrees with the *Novenergia* tribunal, which considered a very similar application by Spain to correct the damages awarded in that case. The *Novenergia* tribunal stated:

> It is clearly beyond the scope of the Tribunal's mandate to correct any damages calculation based on a re-evaluation of the substantive issues or evidence in dispute, and much less so to consider and base such evaluation on new arguments and evidence presented after the Final Award has been rendered.[15]

Stockholm, 8 January 2019



Dr Michael J. Moser
For the Tribunal

12 Response, 35-37.
13 Response, 38; *Novenergia*, Procedural Order No. 17, CL-193.
14 See, e.g., Article 40, SCC Rules.
15 *Novenergia*, Procedural Order No. 17, CL-193, p. 4.