IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

MOHAMED ABDEL RAOUF BAHGAT Aleksis Kiven Katu 11 Ab36 Helsinki, 00519 Finland, *Petitioner,* *v.* THE ARAB REPUBLIC OF EGYPT Egyptian State Lawsuits Authority 42 Gameat El Dowal El Arabiya St. Mohandeseen, Giza, Egypt, *Respondent.*	Civil Action No. 20-2169

PETITION TO CONFIRM ARBITRATION AWARD

Mohamed Abdel Raouf Bahgat ("**Petitioner**") by and through his undersigned counsel, Dan Tan Law, alleges as follows for his petition against the Arab Republic of Egypt ("**Egypt**" or "**Respondent**"):

Nature Of The Action

1. Petitioner brings this proceeding to confirm an international arbitration award (the "**Final Award**") and to have a judgement entered thereon, pursuant to Section 207 of the Federal Arbitration Act, 9 U.S.C. § 207, and in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38, T.I.A.S. No. 6997 (hereinafter "**New York Convention**"). The Final Award was rendered on December 23, 2019, in PCA Case No. 2012-07, by an international arbitral tribunal duly constituted under the auspices of the Permanent Court of Arbitration ("**PCA**"), and was conducted in accordance with the *Arbitration Rules of the United Nations Commission on International Trade Law 1976* (the "**UNCITRAL Rules**"). The Tribunal was comprised of (i) Professor W. Michael Reisman, a national of the United States of America, who was appointed by Petitioner; (ii) Mr. Laurent Lévy, a national of Switzerland and Brazil, who was appointed by Respondent on 30 October 2018 following the death on 2 October 2018 of Respondent's original appointee, Professor Francisco Orrego Vicuña; and (ii) Professor Rüdiger Wolfrum, a German national appointed by the two original co-arbitrators as the Presiding Arbitrator. A copy of the Final Award dated December 23, 2019 is attached as **Exhibit I** in support of this Petition.

The Parties

2. Petitioner is a businessman born in Egypt who later acquired Finnish nationality.

3. Respondent is a sovereign state within the meaning of the Foreign Sovereign Immunities Act ("**FSIA**"). 28 U.S.C. § 1603(a). 28 U.S.C. § 1332, 1391(f), 1441(d), 1602-1611.

Jurisdiction and Venue

4. This proceeding arises under the New York Convention. Chapter 2 of the Federal Arbitration Act, codified at 9 U.S.C. § 201 *et seq*., applies the New York Convention to award-recognition actions brought in the courts of the United States.

5. This Court has subject matter jurisdiction over this proceeding under 9 U.S.C. § 203, which provides that:

> An action or proceeding falling under the Convention [the New York Convention] shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. § 203.

6. The proceeding "fall[s] under" the New York Convention because it arises out of a commercial legal relationship between Petitioner and Egypt, neither of which are citizens of the United States. *See* 9 U.S.C. § 202. In addition, the Final Award was made in the territory of the Netherlands, a nation that is a contracting State to the New York Convention, and is a State other than the State where Petitioner seeks recognition and enforcement.

7. This court has subject matter jurisdiction to confirm a foreign arbitral award against Egypt, a foreign state, pursuant to 28 U.S.C. § 1330(a) which provides that:

> The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

28 U.S.C. § 1330(a).

8. Under 28 U.S.C. § 1605(a)(6), Egypt is not entitled to immunity from the jurisdiction of this Court because this action seeks confirmation of an award governed by a treaty in force in the United States calling for the recognition and enforcement of arbitration awards—that is, the New York Convention. 28 U.S.C. § 1605(a)(6) (providing that a "foreign state shall not be immune from jurisdiction…in any case…in which the action is brought…to confirm an award...governed by a treaty or other international agreement in force for the United States calling for recognition and enforcement of arbitral awards").

9. It is well settled that the New York Convention falls within the meaning of § 1605(a)(6). *See Chevron Corp. v Ecuador*, 795 F.3d 200, 203 (D.C. Cir. 2015).

10. Furthermore, Egypt is subject to this Court's Jurisdiction under 28 U.S.C § 1605(a)(1), because by virtue of Egypt's entry into force of the Agreement between the Government of the Republic of Finland and the Government of the Arab Republic of Egypt on the Mutual Protection of Investments, dated 5 May 1980 ("**1980 BIT**") and the Agreement Between the Government of the Republic of Finland and the Government of the Arab Republic of Egypt on the Promotion and Protection of Investments dated 3

March 2004 ("**2004 BIT**", collectively with the 1980 BIT referred to as the "**BITs**"), Egypt agreed to arbitrate disputes under the BITs and hence waived its sovereign immunity as to any action to confirm an award issued pursuant to the BITs . Copies of the 1980 BIT and 2004 BIT are attached to the accompanying declaration of Stephen Fietta QC ("Fietta Decl") as **Exhibit A** and **Exhibit B** respectively. A copy of the Notice of Dispute of 8 July 2011 is attached as **Exhibit C** to the Fietta Decl. A copy of the Notice of Arbitration of 3 November 2011 is attached as **Exhibit D** to the Fietta Decl.

11. This Court has personal jurisdiction over Egypt pursuant to 28 U.S.C. § 1330(b), which states that:

> Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

28 U.S.C. § 1330(b).

12. Petitioner is making service on Egypt pursuant to 28 U.S.C. § 1608(a)(2) "by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents." 28 U.S.C. § 1608(a)(2). Petitioner is making service in accordance to 28 U.S.C. § 1608(a)(3)

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(f)(4), which provides that a civil action against a foreign state may be brought in the United States District Court for the District of Columbia.

Factual Background

I. Summary of the Underlying Dispute

14. This petition concerns an arbitration initiated by Petitioner against Egypt under the BITs and the UNCITRAL Rules.

15. Petitioner is the founder of and investor in the Aswan Development and Mining Company (**"ADEMCO"**) and the Aswan Iron & Steel Company ("**AISCO**", and together with ADEMCO, the "**Companies**"). Petitioner founded the Companies after he was selected by Respondent to develop the iron ore resources located near Aswan, Egypt (the "**Project**") and to build a facility to develop the Project. ADEMCO was granted a 30-year mining concession and AISCO was created in order to run the steel operations. (Fietta Decl., ¶5.)

16. However, following a change in government in October 1999, the newly instated Prime Minister Dr Atef Ebied took measures to reverse the legacy of former Prime Minister Dr Ganzouri.

17. Developments in the Project were underway when, on 5 February 2000, the Respondent's police arrested and imprisoned the Petitioner. Petitioner's personal assets as well as the assets of the Companies were frozen pursuant to an order of the Public Prosecutor that was confirmed by the Cairo Criminal Court on 20 February 2000 (the "**Freezing Order**"). The police raided the offices of Petitioner and the Companies, and shut down and took over the Project Site. (Fietta Decl., ¶6.) Petitioner was incarcerated for over three years and was subject to a travel ban preventing him from returning home to Finland until June 2005. (Fietta Decl., ¶7.) The Freezing Order over the Petitioner's personal assets was lifted by a court in October 2006. The Freezing Order with respect to

the assets of both ADEMCO and AISCO continues in place. (Fietta Decl., ¶8.) The Project site was seized and Petitioner prevented from any access to the Companies' bank accounts. (Fietta Decl., ¶8.)

18. Petitioner filed his UNCITRAL claim in 2011 under two successive bilateral investment treaties between Egypt and Finland, dated 1980 and 2004 respectively, as well as Egypt's Investment law. He sought damages for the loss of his concession and his other assets in Egypt. (Fietta Decl., ¶9.)

II. Summary of the Arbitration Proceedings

19. Through 2013 and 2019 the parties filed submissions and presented arguments at hearings. During the proceedings, Petitioner contended that the actions taken by Egypt with respect to the Project are in violation of the investor protections contained in the BITs; in particular, that Respondent's actions amounted to an unlawful expropriation and unfair and inequitable treatment.

20. Respondent initially argued that the arbitral tribunal lacked jurisdiction *ratione personae* and *ratione temporis* over the Petitioner's claims. Egypt's jurisdictional objections were dismissed in the Tribunal's Decision on Jurisdiction of 30 November 2017 (the "**Jurisdiction Decision**"). In its Jurisdiction Decision, the arbitral tribunal unanimously decided that it has jurisdiction over the dispute, and reserved all questions concerning the merits, costs, fees, and expenses for subsequent determination. (Fietta Decl., ¶10.) A copy of the Jurisdiction Decision is attached as **Exhibit E** to the Fietta Decl.

21. In the subsequent phase of the proceedings, Respondent described Petitioner's investment as one that was doomed to failure due to the poor quality of the iron ore and that lack of

profit was not caused by any 'political vendetta' or conduct of the Egyptian Government. Respondent maintained that it had not breached the BITs and submitted that Petitioner had failed to plead or prove causation or actual damages. Accordingly, Respondent sought dismissal of the claim and the reimbursement of its costs.

III. The Final Award

22. On 23 December 2019, the arbitral tribunal issued the Final Award finding that Respondent had expropriated Petitioner's investment and failed to accord fair and equitable treatment, in violation of the 1980 and 2004 BITs. In the Final Award, the Tribunal:

> "A. Dismisses Respondent's request for a declaration that [Petitioner]'s claims are not covered by the 1980 BIT and the 2004 BIT and confirms its jurisdiction;
>
> B. Declares that Respondent has breached Articles 2(1) and 3(1) of the 1980 BIT;
>
> C. Dismisses [Petitioner]'s request for a declaration that Respondent has breached Articles 2(2) of the 1980 BIT;
>
> D. Declares that Respondent has breached Article 2(2) of the 2004 BIT;
>
> E. Dismisses Petitioner's request for a declaration that Respondent has breached Articles 3, 5 and 12 of the 2004 BIT;
>
> F. Dismisses Petitioner's request for a declaration that Respondent has breached Articles 8, 9, and 12 of the Egyptian Investment Law;

G. Orders Respondent to pay Petitioner damages in the sum of USD 43.77 million as compensation for the losses caused by Respondent's breaches of the 1980 BIT and 2004 BIT;

H. Dismisses Petitioner's request for moral damages;

I. Orders Respondent to pay interest on the amount of USD 43.77 million at the rate of USD 12 month LIBOR + 2% compounded annually from the date of expropriation (19 February 2000) until the date upon which payment is made;

J. Orders Respondent to pay Petitioner the amount of EUR 650,584.85, GBP 6,169,320.48 and USD 900,000 representing 90% of the reasonable costs fixed by the Tribunal;

K. Orders Respondent to pay interest on the amounts in Paragraph J above at the rate of USD 12 month LIBOR + 4% compounded annually from the date of this Award until the date upon which payment is made; and

L. Save as aforesaid, dismisses all other claims made by the Parties."

(Exhibit I, para. 618.)

23. As of 7 August 2020, the full value of the Award, which remains unpaid is approximately USD 115,000,000. Interest of approximately USD 13,000 per day (or approximately USD 400,000 per month) is currently accruing on this sum.

BASIS FOR CONFIRMATION OF THE FINAL AWARD

24. The Final Award is a well-reasoned award, issued by prominent jurists, in a proceeding in which both parties actively participated. There is no reason why the award should not be confirmed,

25. Under the New York Convention, as incorporated into U.S. law through the Federal Arbitration Act, an arbitral award must be confirmed unless one of a limited number of grounds for refusal or deferral applies: "Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral or recognition or enforcement of the award specified in the said Convention." 9.U.S.C. § 207.

26. The party opposing confirmation bears the burden of demonstrating that such a ground applies. *See Int'l Trading Indus. Inv. Co. v. DynCorp Aero. Tech.*, 763 F.Supp. 2d 12, 20 (D.D.C 2011). (Under the New York Convention, "confirmation proceedings are generally summary in nature. The showing required to avoid summary confirmation is high and the burden of establishing the requisite factual predicate to deny confirmation of an arbitral award rests with the party resisting confirmation.") Egypt cannot satisfy that burden in this case.

27. The grounds on which a court can refuse or defer confirmation are:

- the lack of a valid arbitration agreement between the parties;

- that the award resolves a dispute outside the scope of the parties' arbitration agreement; that the award resolves a dispute that, under the laws of the country where confirmation is sought, cannot be resolved through arbitration;
- that the award debtor had no notice of the arbitration proceedings or was unable to meaningfully participate;
- that the tribunal was composed and/or the arbitration used procedures inconsistent with the parties' arbitration agreement;
- that the award is not yet binding or has been set aside by a competent authority of the country in which, or under the law of which, the award was made; or
- that confirming the award would contravene the public policy of the country where confirmation is sought.

See New York Convention art. V.

28. As further particularized in the accompanying Memorandum of Law, none of these grounds are engaged here. By virtue of the BITs, Egypt agreed that certain disputes could be resolved by arbitration. Nothing in the laws of the United States prohibit resolving this type of dispute through arbitration; to the contrary, the United States has long favoured arbitration for the resolution of international commercial disputes. *See Belize Soc. Dev. Ltd. V. Gov't of Belize*, 668 F.3d 724, 727 (D.C. Cir. 2012) (noting Supreme Court's endorsement of "an emphatic federal policy in favour of arbitral dispute resolution," which "applies with special force in the field of international commerce") (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985)). Egypt had notice of the Arbitration and actively participated in each of its phases. The Tribunal was composed in accordance with the BITs. Pursuant to Article 32(2) of the

UNCITRAL Rules, which Egypt accepted as governing the arbitration, the Final Award is "final and binding" on Egypt, and Egypt must comply with it "without delay". To date, it has failed to do so despite the fact that the Final Award has not been set aside at the seat of arbitration (i.e., the Netherlands). Lastly, confirming the award would offend no public policy of the United States.

29. Therefore, the New York Convention requires confirmation of the Final Award.

CLAIMS FOR RELIEF

(9 U.S.C. § 207)

FIRST CLAIM FOR RELIEF

(CONFIRMATION, RECOGNITION AND ENFORCEMENT OF THE FINAL AWARD)

30. Petitioner repeats and realleges each and every allegation contained in paragraphs 1 through 29, above, inclusive, and incorporates them herein by reference.

31. The New York Convention is implemented by the Federal Arbitration Act. 9 U.S.C. §§ 201 *et seq.* (1999). The United States is subject to the reciprocity and commercial activity reservations set forth in Article I of the New York Convention.

32. The Final Award is governed by the New York Convention because the Final Award arises out of a commercial relationship between Petitioner and Egypt—the development of iron ore resources, and because the Final Award was rendered in the Netherlands, a nation that is a contracting State to the New York Convention, and which is a State other than the State where recognition and enforcement is hereby sought.

33. The Petition is timely pursuant to 9 U.S.C. § 207 because it is being filed within three years of the issuance of the Final Award.

34. Accordingly, this Court has jurisdiction to confirm the Final Award against Egypt.

35. No grounds exist for this Court to refuse recognition and enforcement of the Final Award.

36. The Final Award includes an award in the amount of **USD 43.77 million**. (Exhibit I, para. 618G.)

37. Therefore, this Court should confirm the Final Award pursuant to 9 U.S.C. § 207, and enter judgement for the relief awarded therein.

SECOND CLAIM FOR RELIEF

(INTEREST ON AMOUNTS DUE UNDER THE AWARD)

38. Petitioner repeats and realleges each and every allegation contained in paragraphs 1 through 37, above, inclusive, and incorporates them herein by reference.

39. Under the terms of the Final Award, Petitioner is entitled to interest on the amount of USD 43.77 million at the rate of USD 12 month LIBOR + 2% compounded annually from the date of expropriation (19 February 2000) until the sums awarded in the Final Award are paid in full. (Exhibit I, para. 618I.)

THIRD CLAIM FOR RELIEF

(COSTS IN ARBITRATION PROCEEDING)

40. Petitioner repeats and realleges each and every allegation contained in paragraphs 1 through 39, above, inclusive, and incorporates them herein by reference.

41. Under the terms of the Final Award, Petitioner is entitled to the amount of EUR 650,584.85, GBP 6,160,320.48 and USD 900,000, representing 90% of Petitioner's reasonable costs in the 8-year arbitration proceeding, as fixed by the arbitral tribunal. (Exhibit I, para. 618J.)

FOURTH CLAIM FOR RELIEF

(INTEREST ON COSTS)

42. Petitioner repeats and realleges each and every allegation contained in paragraphs 1 through 41, above, inclusive, and incorporates them herein by reference.

43. Under the terms of the Final Award, Petitioner is entitled to interest on the amount of EUR 650,584.85, GBP 6,160,320.48 and USD 900,000 at the rate of USD 12 month LIBOR +4% compounded annually from 23 December 2019 until the date upon which payment is made. (Exhibit I, para. 618K.)

Prayers For Relief

WHEREFORE, Petitioner respectfully requests that this Court enter an order and judgement:

(a) Confirming the Final Award pursuant to 9 U.S.C. § 207 and entering a judgement in favour of Petitioner and against Egypt in accordance with the Final Award;

(b) Awarding interest, legal expenses, and arbitration costs in accordance with the Final Award; and

(c) Ordering the Respondent to pay the costs of this proceeding; and

(d) Granting such other and further relief as the Court deems just and proper.

Dated: August 7, 2020

Respectfully submitted,

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