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Bundesgericht

Tribunal fédéral

Tribunale federale

Tribunal federal



4A_492/2021 /COA

Order of 1 November 2021 First Court of Civil Law

Composition

Federal Judge Kiss, presiding judge.

Participants in the proceedings

Russian Federation,
represented by Elliott Geisinger and Anya George,
lawyers, rue des Alpes 15bis, 1201 Geneva, appellant,

against

Yukos Capital Limited,
(formerly Yukos Capital Sàrl),
Palm Grove House, P.O. Box 438, Road Town - Tortola,
British Virgin Islands,
represented by Mr. Matthias Scherer,
Domitille Baizeau and Catherine A. Kunz, lawyers,
rue de la Mairie 35, 1207 Geneva,
appellee.

Object

international arbitration,

appeal in civil matters against the incidental award on
jurisdiction of 18 January 2017 (No. 2013-31) and the final
award rendered on 23 July 2021 by an arbitral tribunal with
seat in Geneva (No. 2013-31).

The Presiding Judge:

Whereas the Final Award of 23 July 2021 by which an Arbitral Tribunal in Geneva, constituted under the Energy Charter Treaty (ECT) and the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and acting under the aegis of the Permanent Court of Arbitration (PCA) ordered, inter alia, the Russian Federation to pay to Claimant Yukos Capital Limited the sum of US\$ 2,630,706,272.17, plus interest;

Considering the challenge lodged on 14 September 2021 by the respondent (hereinafter: the appellant) against the said award and against the interim award on jurisdiction of 18 January 2017;

Considering the request for stay of enforcement submitted by the appellant;

Considering the orders of 21 September 2021, granting until 18 October 2021, for the claimant (hereinafter: the appellee) and the Arbitral Tribunal to determine the said request and to file their possible answers;

Having regard to the letter of 6 October 2021 by which the Arbitral Tribunal declares that it has no observations to make concerning the appeal and refers to its final award;

Considering the letter of 18 October 2021 in which the appellee requests the rejection of the request for stay of enforcement to the extent that it is admissible;

Considering the spontaneous submission of 25 October 2021 in which the appellant maintains its request for stay of enforcement;

Considering that, as a general rule, challenge does not have suspensive effect (Art. 103 para. 1 FTA),

that the examining magistrate may, however, of his own motion or at the request of a party, rule differently on the suspensive effect (art. 103 para. 3 FTA);

Whereas the appellant, in support of its request for suspensive effect, alleges a whole series of circumstances, described by it as exceptional, which are supposed to justify the granting of stay of enforcement to the challenge,

that it emphasises, in particular, the size of the amounts at stake, the allegedly aggressive recovery strategy adopted by the appellee, the uncertain nature of any reimbursement of the amounts paid to the appellee, and the lack of interest on the part of the appellee in obtaining immediate enforcement of the contested final award the possibility that the measures for enforcing the award might depend on the decision of the Court of Justice of the European Union in the event that a similar case is brought before it and, finally, the fact that its action has 'a serious chance of success',

that in support of its allegations that party furthermore refers to two orders of the Federal Tribunal, issued several years ago, where suspensive effect was granted in international arbitration matters on the grounds that the appellee was seated abroad (presidential orders of 13 June 2017 in case 4A_119/2017 and of 20 February 2017 in case 4A_12/2017);

Considering that these isolated orders do not, however, reflect the current practice of the Federal Tribunal with regard to the granting of stay of enforcement in the field of international arbitration,

that, for several years now, the practice of the Federal Tribunal has indeed been moving towards a strengthening of the requirements for granting stay of enforcement in international arbitration,

that, as a result, stay of enforcement is in principle granted only if it appears from an initial summary examination of the case that the challenge is very likely to be well founded,

that this practice also applies when the request for stay of enforcement relates to the enforcement of an award ordering the appellant to pay a sum of money;

Whereas it cannot be said, *prima facie*, from a reading of the challenge memorial and the spontaneous submission of 25 October 2021 in light of the challenged awards and the appellee's submission on the request for stay of enforcement, that the appellant's submissions will in all likelihood have to be accepted,

that the request for stay of enforcement will therefore be rejected;

Order:

1.

The request for stay of enforcement is rejected.

2.

This order shall be notified to the parties' representatives and to the arbitral tribunal seated in Geneva. The appellee and the arbitral tribunal shall simultaneously receive a copy of the spontaneous submission filed by the appellant on 25 October 2021 (act. 29).

Lausanne, 1 November 2021

On behalf of the First Civil Court of
the Swiss Federal Tribunal

The Presiding Judge:

A handwritten signature in blue ink, appearing to read "Kiss".

Kiss