

ORIGINAL DOCUMENTS IN SAFE

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Case No. 486

Date of filing: 29. Feb 88

** AWARD - Type of Award Final
 - Date of Award 25. Feb 88
7 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
 _____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

 - Date _____
 _____ pages in English _____ pages in Farsi

INTERNATIONAL ORE & FERTILIZER CORPORATION,
INTERORE CORPORATION OF SAUDI ARABIA
and INTERORE TRADING LTD.,

Claimants

and

RAZI CHEMICAL COMPANY LTD. (formerly known
as SHAHPUR CHEMICAL COMPANY LTD.),
GOVERNMENT TRADING CORPORATION,
NATIONAL PETROCHEMICAL COMPANY,
and FERTILIZER DISTRIBUTION COMPANY,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL		دیوان داورى دعاوى ایران - ایالات متحدہ	
ثبت شد - FILED			
Date	29 FEB 1988	تاریخ	
	۱۳۶۶ / ۱۲ / ۱۰		
No.	486	شماره	

DUPLICATE
ORIGINAL

نسخه برابر اصل

AWARD

I. PROCEEDINGS

1. On 18 January 1982 the Claimants INTERNATIONAL ORE & FERTILIZER CORPORATION ("IOFC"), INTERORE CORPORATION OF SAUDI ARABIA ("Interore SA") and INTERORE TRADING LTD. ("Interore Trading") (collectively the "Claimants") filed a Statement of Claim requesting an award in the amount of U.S.\$1,081,604.46, allegedly owing to the Claimants pursuant to four contracts entered into with RAZI CHEMICAL COMPANY LTD. (formerly known as SHAHPUR CHEMICAL COMPANY LTD.) ("Razi"), GOVERNMENT TRADING CORPORATION ("GTC"), NATIONAL PETROCHEMICAL COMPANY ("NPC") and FERTILIZER DISTRIBUTION COMPANY ("FDC") (collectively the "Respondents"). On 10 January 1983 Razi, GTC and FDC filed Statements of Defense. Razi's Statement of Defense also included a Statement of Counterclaim in the amount of \$1,098,013.15 against IOFC. Respondent NPC filed no Statement of Defense. However, the Statement of Defense of Razi addresses the claims brought against NPC.

2. On 21 February 1983 the Claimants filed a Reply. GTC's Rejoinder was submitted on 22 August 1984, that of Razi and NPC on 12 September 1984, and that of FDC on 13 September 1984.

3. In its Rejoinder, GTC requested the Tribunal "to reach a decision with respect to separating the jurisdiction question from merits of the case." On 27 September 1984 the Tribunal requested the Claimants to comment on GTC's request. The Claimants replied on 30 October 1984 that they had no objection to deciding the jurisdictional issues first. Accordingly, on 1 November 1984 the Tribunal ordered the Parties to submit Memorials on "all jurisdictional aspects related to this case." The Claimants' Memorial on jurisdictional issues was filed on 7 January 1985. Memorials by FDC and GTC were submitted on 2 May 1985 and 31 July

1985, respectively. On 2 September 1985 Razi and NPC stated that "they have no need to file a separate memorandum on jurisdiction issues."

4. On 16 September 1985 the Tribunal informed the Parties that it intended "to decide the jurisdictional issues of this case on the basis of the documents already submitted by the Parties" and invited the Parties to submit final briefs relating to the Tribunal's jurisdiction over this claim. The Claimants filed such a memorandum on 31 October 1985 and GTC did so on 7 February 1986.

II. JURISDICTION

5. In the Statement of Claim IOFC, Interore SA and Interore Trading were all described as Claimants in this Case. Issues relating to their status are discussed below.

1. IOFC

6. The Claimants state that IOFC is a national of the United States as defined by Article VII of the Claims Settlement Declaration, alleging specifically that it is a United States corporation owned by natural persons who are citizens of the United States. In support thereof, the Claimants submitted a "certificate of good standing" issued by the Secretary of State of Delaware certifying that IOFC was incorporated under the laws of Delaware and as of 20 November 1984 remained in existence and in good standing. IOFC stated that it is wholly owned by Occidental Petroleum Corporation ("Occidental") through several intervening wholly owned subsidiary corporations also incorporated in

the United States.¹ The Claimants submitted certification from the Secretary of State of California that on 20 May 1920 Occidental was incorporated under the laws of California and that it remained in good standing as of 20 November 1984. In addition, the Claimants submitted an affidavit of P.C. Hebner, the Executive Vice President and Secretary of Occidental, stating that 98.9 percent of the voting stock of Occidental was held by shareholders of record with addresses in the United States as shown on the shareholder lists of 27 December 1976 and 21 May 1981.

7. In response thereto GTC argued that the certificate produced by the Claimants does not sufficiently establish the United States nationality of the majority of IOFC's shareholders and that IOFC's relationship with Occidental has not been evidenced.

8. The Tribunal finds that if Occidental's United States nationality is properly evidenced, the documentation submitted by the Claimants does not establish Occidental's ownership of IOFC through the alleged chain of subsidiaries listed in this documentation and therefore IOFC's United States nationality as defined in Article VII, paragraph 1 of the Claims Settlement Declaration is not established.

9. In arriving at such a conclusion, the Tribunal does not lose sight of the fact that, due to the specific problems raised by the issue of evidencing the nationality of a corporation the shares of which are widely disseminated in public, the Tribunal has adopted a flexible approach

¹These companies include: Oxy Ch Corporation, Oxy Chemical Corporation, Occidental Chemical Holding Corporation, Occidental Petroleum Investments Co. and Occidental Petroleum Corporation, all of which are California corporations.

regarding the required proof of nationality. In relation to the evidentiary requirements for proving the United States nationality of publicly held corporations the Tribunal has issued a few guidelines, of a purely indicative value, in order to help the parties practically to solve this problem (see Flexi Van Leasing, Inc. and The Islamic Republic of Iran, Case No. 36, Order filed 20 December 1982, reprinted in 1 Iran-U.S. C.T.R. 455, and General Motor Corporation and The Islamic Republic of Iran, Case No. 94, Order filed 21 January 1983, reprinted in 3 Iran-U.S. C.T.R. 1). Actually, the Claimants followed these guidelines when establishing, to the Tribunal's satisfaction, Occidental's nationality.

10. The proof required to establish whether or not a corporation is wholly owned by another corporation, however, is quite a different issue. In such cases the Claimants have at their disposal documents officially filed with governmental agencies or emanating from independent certified public accountants which may be conclusive evidence. Furthermore, other publicly available documents and reference sources recording such ownership are also accessible, at least for U.S. corporate affiliates. It is therefore not justifiable to apply as flexible a standard of evidence as for the nationality of publicly held companies. Indirect and uncertain indications like the fact that persons with the same name and address appear in documents relating to several corporations do not suffice to establish that some of these corporations are wholly owned by others. In the absence of any evidence relating to the ownership of the corporate stock of certain of the corporations listed in the alleged chain of sole ownership running from Occidental down to IOFC the Tribunal cannot conclude that IOFC's nationality, which, according to the Claimants, depends on this chain, is proved. Furthermore, to the extent that IOFC's claim is an indirect claim of Interore SA and Interore Trading, the Claimants have also failed to

establish to the satisfaction of the Tribunal that these entities were wholly owned by IOFC. On these two critical issues the mere fact that the Respondents have not offered any evidence in support of their denial of the Claimants' allegations does not suffice to shift the burden of proof and to relieve the Claimants from their duty to evidence its own contentions. Consequently, on the basis of the record before it and pursuant to Article II, paragraph 1 of the Claims Settlement Declaration the Tribunal lacks jurisdiction over the claim of IOFC.

2. Interore SA and Interore Trading

11. Interore SA and Interore Trading are introduced as Claimants in the Statement of Claim. They state, however, that if the Tribunal finds that it does not have jurisdiction over the claims asserted by them, IOFC would be entitled indirectly to assert the same claims on behalf of Interore SA and Interore Trading pursuant to Article VII, paragraph 2 of the Claims Settlement Declaration.

12. The evidence submitted by the Claimants establishes that Interore SA and Interore Trading are Liberian corporations. It is thus clear that Interore SA and Interore Trading are not proper Claimants before the Tribunal. For the reasons expressed in paragraph 10 above, IOFC has no standing to assert indirectly the claims that they submitted to the Tribunal.

13. In light of these holdings, the Tribunal need not reach other jurisdictional issues raised by the Respondents.

3. Counterclaim

14. In view of the fact that the Tribunal lacks jurisdiction over the Claimants in this Case, it necessarily has no jurisdiction over the Counterclaim.

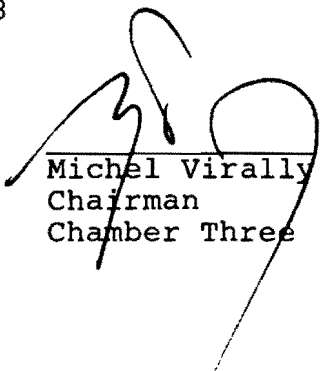
III. AWARD

15. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

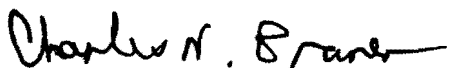
- a) the Claims of INTERNATIONAL ORE & FERTILIZER CORPORATION, INTERORE CORPORATION OF SAUDI ARABIA AND INTERORE TRADING LTD. are hereby dismissed for lack of jurisdiction.
- b) Consequently, the Counterclaim of RAZI CHEMICAL COMPANY LTD. is dismissed.
- c) each Party shall bear its own costs of arbitration.

Dated, The Hague,
25 February 1988



Michel Virally
Chairman
Chamber Three

In the Name of God



Charles N. Brower
Dissenting Opinion



Parviz Ansari Moin