THE HIGH COURT

RECORD NO 2024 280 MCA

[2024] IEHC 455

IN THE MATTER OF THE ARBITRATION ACT 2010

AND IN THE MATTER OF THE UNCITRAL MODEL LAW ON INTERNATIONAL COMERCIAL ARBITRATION

AND IN THE MATTER OF THE NEW YORK CONVENTION ON THE RECOGNITION OF FOREIGN ARBITRAL AWARDS, 1958

AND IN THE MATTER OF AN ARBITRATION

BETWEEN

VTG ENTREPRENAD AB

APPLICANT

-AND-

MAINLINE POWER LIMITED

RESPONDENT

JUDGMENT of The Hon. Mr Justice David Barniville, President of the High Court, delivered *ex tempore* on 10 July 2024

Introduction

1. This is an application by VTG Entreprenad AB ("VTG" or the "applicant") for various orders pursuant to s. 23 of the Arbitration Act 2010 (the "2010 Act"), Article 35 of the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") and Article III of the New York Convention on the Recognition of Foreign Arbitral Awards (the "New York Convention"), seeking to give effect to and to recognise and enforce in this jurisdiction an arbitral award (the "Award") made by an Arbitral Tribunal in Sweden (the "Tribunal"), on 27th May 2024 as against Mainline Power Limited (the "respondent"). The Tribunal was constituted under rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

2. The Award that the applicant seeks to have recognised and enforced in Ireland is a partial award, and a further award, which will be a final award, is likely to emerge sometime later this month or in early August.

Factual Background

3. The factual background and the circumstances in which the application is made are set out in the grounding affidavit of Ulf Niklas Eriksson, sworn 5th June 2024. In his affidavit, Mr. Eriksson explains that VTG is a Swedish company which provides machines and services in the construction, land, and transport sectors in Sweden. The applicant was engaged to carry out works in connection with a windfarm project called the "Nysäter Windfarm Project", one of the largest windfarms in Europe.

4. The principal employer on the windfarm project is Nysäter Wind AB. The general contractor for the project is Nordex Sverige AB, which engaged the respondent's Swedish sister company, Mainline Power Nordic AB, as subcontractor for certain works, including works relating to the laying of electrical cabling. Mainline Power Nordic AB in turn engaged VTG as its sub-contractor to excavate cable trenches, lay cables and refill the trenches and carry out other associated works.

5. The relevant contract, referred to as a 'Construction Contract Performance Contract' is dated 20th September 2019 (the "Contract"). The Contract is between Mainline Power Nordic AB and VTG. The respondent is also a party to the Contract. It was the guarantor under Schedule H of the Contract. In the Contract, the respondent guaranteed the due and punctual performance of the obligations and liabilities of Mainline Power Nordic under the Contract.

6. There was a dispute between the various parties involved in relation to the payment of claims made by VTG under the contract. Article 9 of the contract contains an arbitration agreement and provides for arbitration in the event of disputes in these terms:

> "*Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC").*"

7. The dispute was referred to a panel of three arbitrators (the Tribunal) by the Arbitration Institute of the Stockholm Chamber of Commerce. In due course, there were hearings before the Tribunal, and, ultimately, a very detailed partial arbitration award was issued by the Tribunal on 27th May 2024. In the Award, there were a series of findings made against the respondent and various sums were awarded in favour of the applicant as against the respondent.

8. There were some further issues left over to be determined at an anticipated subsequent hearing by the Tribunal in the event that the respondent wished that to be done. Those issues related to potential set-off that the respondent claimed to have had against the applicant. The Tribunal gave certain directions in relation to that issue. As the figures involved in that set-off were left over to be dealt with on another date, they have, for the purpose of this application, been deducted from the total amount awarded in favour of the applicant in the Award.

Procedural History of this Application

9. On 11th June 2024, the applicant issued an application to recognise and enforce the Award and for various other orders, including judgment in the total sum of SEK (Swedish Krona) 69,903,610. That application was given a return date of 26th June 2024.

10. On 17th June 2024, a petition was presented for the appointment of an examiner to the respondent company, and an interim examiner was appointed that day. The full hearing of the examinership petition was initially to be heard on 2nd July 2024, but is now to be heard on 11th July 2024, the day after the delivery of this judgment.

11. Initially, when the matter was before the Court on 26th June 2024, counsel on behalf of the respondent sought some time so that the respondent could put in a replying affidavit in response to the recognition and enforcement application. Counsel for the interim examiner appeared and indicated that the interim examiner was taking a neutral position on the application and that has since been confirmed in correspondence from Arthur Cox, the solicitors acting for the interim examiner.

12. The application was adjourned from 26th June 2024 to today's date, 10th July 2024. The directions given by the Court on that date were complied with by the parties. A replying affidavit was sworn by Mr Jamie O'Rourke on behalf of the respondent on 8th July 2024. In that affidavit, Mr O'Rourke explained that, while the respondent had a number of serious issues with the Award, which included alleged miscalculations in the figures awarded, and various other complaints about the manner in which the arbitral tribunal reached its findings, nonetheless the

respondent's position was that it was neither consenting nor objecting to the applicant's application. The respondent did, however, indicate to the Court that, from the respondent's point of view, the Award was deeply flawed, irregular and open to challenge. It appears from Mr. O'Rourke's affidavit that consideration is being given to challenging the award in Sweden, however, as of the date of this judgment, no such challenge has yet been issued there.

13. Notwithstanding the issues raised in the affidavit of Mr. O'Rourke directed towards the Award and notwithstanding the complaints made in the affidavit as to the manner in which the findings were made by the Tribunal, Mr O'Rourke explained in the affidavit that the focus of the respondent company's attention in this jurisdiction is on the examinership application and in trying to save several jobs in the company, and that, therefore, it is neither consenting nor objecting to the application, but it may consider issuing a challenge to the Award in Sweden.

14. The fact that such a challenge is being contemplated, and even the fact that a challenge may be brought, would not stop the Court in dealing with an application to recognise and enforce the award under s.23 of the 2010 Act, Article 35 of the Model Law or Article III of the New York Convention and would not stop the court making an order recognising and enforcing the Award, but, as it happens, no such challenge has yet, at least, been issued in Sweden. For a case where a challenge was being made to an international arbitral award, see *Danish Polish Telecommunication Group I/S v Telekomunikacja Polska S.A.* [2011] IEHC 369.

Relevant Law

15. The application is made under s. 23 of the 2010 Act and Article 35 of the UNCITRAL Model Law, which form part of the law of the State. The application is also made under Article III of the New York Convention.

16. There are very limited grounds on which such an application could be resisted, those being set out principally in Article 36 of the UNCITRAL Model Law and Article V of the New York Convention. Where there is, on the face of it, a valid arbitral award, there are very limited grounds where that award can be challenged or where recognition and enforcement of the award can be resisted. None of those grounds are being relied on by the respondent in this case.

Decision

17. The respondent company is not, in fact, resisting the recognition and enforcement application. The interim examiner is not resisting the application and no application has yet been made in Sweden to challenge the Award.

18. There is before the Court what is, on the face of it, a valid international arbitral award from a properly constituted arbitral tribunal. It is described as a partial award for the reasons explained in Mr Eriksson's affidavit. That is largely because the set-off issue was to be dealt with by way of a further hearing before the Tribunal sometime in June. That further hearing did not go ahead, and it appears is not being pursued by the respondent in the arbitration. It is likely, therefore, that a final award will issue in the near future.

19. In circumstances where there is, on the face of it, a valid international arbitral award and, where there is no ultimate resistance to its recognition and enforcement, and where, in any event, the grounds for resisting recognition and enforcement are so narrow and are not asserted here, it seems to me that I must enforce the Award. I am satisfied that this is an award that I should recognise and enforce under Article 35 of the Model Law and under Article III of the New York Convention.

Orders

20. I will, therefore, make an order recognising and enforcing the partial arbitral award made on 27th May 2024. I will also make an order entering judgment in favour of the applicant as against the respondent, in the total sum of SEK 69,903,610. I will give liberty to apply in respect of the deductions referred to in the originating notice of motion. I will note the undertaking by the applicant that the applicant will apply to vary the terms of this order, insofar as it may be necessary to reflect any final reduction in the award amount, once the final award is forthcoming from the Tribunal.

21. I will make an order for the applicant's costs as against the respondent of this application, to be adjudicated on in default of agreement. I also grant liberty to apply in the event that it is necessary to apply to vary or adjust the terms of the order made in light of the final award to be issued by the Tribunal.