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ECLI:NL:GHDHA:2021:2548

Court	The Hague Court of Appeal
Judgment Date	21-12-2021
Publication date	06-01-2022
Case number	200.300.263/01
Practice areas	Civil law
Particulars	Appeal
Summary	International arbitration. Request for the annulment of an arbitral award. Defendant has no objection against annulment as such.
Published on:	Rechtspraak.nl

Judgment

THE HAGUE COURT OF APPEAL

Civil Law Department

Case number: 200.300.263/01

judgment of 21 December 2021

in the matter of:

The Republic of India,
having its seat in New
Delhi, India, appellant,
hereinafter referred to as: India,
advocate: mr. G.J. Siegers in Rotterdam,

against:

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1 Capricorn Energy PLC (formerly called: Cairn Energy PLC),

2. Cairn UK Holdings Limited,

both having their seat in Edinburgh, Scotland, United Kingdom,

defendants,

hereinafter referred to as: Cairn,

advocate: mr. G.J. Meijer in Amsterdam.

1 Procedural history

1.1 India summoned Cairn to appear before the Hague Court of Appeal by summons of 22 March 2021. In short — and to the extent relevant here — India requested that the Court of Appeal annul the arbitral award (PCA Case No 2016-7) rendered among the parties on 21 December 2020.

1.2 By letter dated 3 November 2021, the parties jointly asked the Court of Appeal to order an oral procedure. The court granted that request. On the occasion of the oral procedure, the parties submitted on the record a joint letter dated 2 December 2021 (with annexes).

1.3 On 15 December 2021, there was an oral hearing in which the parties' attorneys commented on the case based on the skeleton arguments submitted to the Court of Appeal. Mr. M. van Leeuwen and Mr. A.J. van den Berg spoke for India, while mr. G.J. Meijer and mr. N. Peters spoke for Cairn. The oral hearing was recorded in a transcript.

1.4 Finally, the parties requested a judgment.

2 The court's assessment

2.1 The present case concerns the following.

- i) A dispute arose between the parties concerning (in summary) the capital gains tax imposed by India on Cairn.
- ii) Based on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Promotion and Protection of Investments of 14 March 1994, Cairn submitted this dispute to an arbitral tribunal in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules

1976 (hereinafter: the Arbitral Tribunal). The Hague was designated as the place of arbitration.

- iii) By arbitral award of 21 December 2020 (hereinafter: the arbitral award), the Arbitral Tribunal ordered India to pay the principal amount of US$ 984,228,274, US$ 240,645,158.81 and US$ 7,946,710.55, plus interest and costs.
- iv) Cairn requested the provisional relief judge of The Hague District Court for leave to enforce the arbitral award. By order of 8 January 2021 (case number: C09/568039/KG RK 21-2), the provisional relief judge granted leave to enforce the arbitral award.
- v) In the course of 2021, India enacted new tax legislation, the Taxation Laws (Amendment) Act, 2021 and the Income-Tax (31st Amendment) Rules, 2021 (hereinafter: the Tax Rules 2021).

2.2 By its action in these proceedings, India requests that the Court of Appeal annul the arbitral award, in summary because there is no valid arbitration agreement (Article 1065(1)(a) Civil Procedure Code) and/or because there has been a violation of public order (Article 1065(1)(e) Civil Procedure Code).

2.3 During the oral hearing, Cairn's attorneys made it known that, given the application of the Tax Rules 2021, Cairn had no objections to the granting of the request to annul the arbitral award as such and that Cairn would therefore not comment on the grounds for annulment of that award raised by India.

2.4 In view of this, the court shall annul the arbitral award without further investigation into the grounds raised by India. Pursuant to Article 1062(4) Civil Procedure Code, annulment of the arbitral award *ex lege* entails the annulment of the enforcement order issued on 8 January 2021 by the provisional relief judge.

2.5 The Court notes that during the oral procedure, India's representatives stated that India was happy to accept this solution. With respect to Cairn's view referred to in para 2.3 above, India pointed out that, insofar as the reference to the Tax Rules 2021 was concerned, it left the matter up to Cairn. It is of no relevance for the annulment of the arbitral award.

2.6 India requested the Court of Appeal to declare the judgment provisionally enforceable. As shown by mrs. Meijer's and Peters' skeleton arguments (para 19), Cairn is not opposed to that. The court will therefore declare the judgment provisionally enforceable.

2.7 India's remaining requests require no further discussion because, as follows from the letter of 2 December 2021 (in paras 17/18) and the discussion at the oral hearing, India no longer maintains those requests.

2.8 The parties agree that a costs judgment is not required.

3 Decision

The Court of Appeal:

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- annuls the arbitral award rendered among the parties on 21 December 2020 in PCA case number 2016-7;

- compensates the costs of proceedings in the sense that each party shall bear its own costs;

- declares this judgment provisionally enforceable.

This judgment was issued by mrs. C.A. Joustra, P. Glazener and A.J. Swelheim, and was pronounced in open court on 21 December 2021 in the presence of the registrar.