

Supreme Court's DECISION

delivered in Stockholm on 27 December 2023

Case no.

Ä 2885-23

PARTIES

Appellant

IL

Counsel: Attorney DMS

Respondent

Naked Juicebar AB, 556727-0920

Kungsgatan 37, 4 tr

111 56 Stockholm

Counsel: Attorneys DU and SA

THE MATTER

Objection to debt enforcement

RULING APPEALED

Decision of the Svea Court of Appeal of 04/04/2023 in case Ä 13377-22

THE SUPREME COURT'S RULING

The Supreme Court rejects the appeal.

IL shall compensate Naked Juicebar AB for its costs of litigation in the Supreme Court in the amount of SEK 27,500, relating to counsel fees, plus interest in accordance with Section 6 of the Interest Act from the date of this decision until payment is made.

CLAIMS IN THE SUPREME COURT

IL has claimed that the Supreme Court shall dismiss Naked Juicebar AB's application for debt enforcement in Case U-43674-22/2110. She has further requested that the Supreme Court relieve her of the obligation to compensate Naked Juicebar AB for its costs of litigation in the District Court and the Court of Appeal and award her compensation for her own litigation costs in those instances.

Naked Juicebar AB has opposed modification of the decision of the Court of Appeal.

The parties have requested payment of their costs of litigation incurred in the Supreme Court.

REASONS FOR THE DECISION

Background

1. IL owned the company Kolboda Mat och Dryck AB, which in 2018 entered into a franchise agreement with Naked Juicebar AB. Under this agreement, IL assumed liability under a guarantee for Kolboda's debts.
2. The agreement further stipulated, under an arbitration clause, that disputes arising therefrom were to be resolved through expedited arbitration in

accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC”).

3. Kolboda initiated arbitration proceedings against Naked Juicebar, which for its part, through a counterclaim, initiated arbitration proceedings partly against Kolboda and partly against IL regarding fulfilment of her guarantee commitment. SCC’s 2017 Expedited Arbitration Rules were applied in these proceedings. The proceedings were settled by a final award which – as far as the operative part of the judgment is concerned – was essentially modelled on the template provided by SCC.

4. The judgment ordered Kolboda and IL to pay, jointly and severally, a principal amount plus interest to Naked Juicebar, while Kolboda's claims in the dispute were dismissed.

5. Further, the judgment ordered IL, Kolboda and Naked Juicebar to pay, jointly and severally, the arbitration costs consisting of (a) the arbitrator’s fee and (b) SCC’s administrative fee. Among the parties, Kolboda and IL were ordered to finally pay these arbitration costs.

6. According to the judgment, Kolboda and IL were also required to compensate, jointly and severally, Naked Juicebar for its litigation costs in a certain amount. Finally, the judgment affirmed that Kolboda and IL were to bear their own costs in the arbitration.

7. Kolboda declared bankruptcy following the finalisation of the arbitration.

8. Naked Juicebar applied to the Swedish Enforcement Authority for enforcement of the award against IL in respect of, inter alia, the costs of the arbitration (the cost of the arbitrator and SCC's fee). IL objected to enforcement,

but the Enforcement Authority rejected this objection and accepted the award as enforceable.

9. The District Court amended the part of the Enforcement Authority's decision relating to the arbitration costs, and otherwise rejected IL's appeal. In its decision, the District Court found that the award did not expressly make IL liable to pay a certain amount to Naked Juicebar for arbitration costs, and the District Court therefore found that the award was not enforceable in that respect.

10. The Court of Appeal reversed the decision of the District Court and granted Naked Juicebar's application for debt enforcement. The Court of Appeal has stated that the award unequivocally imposes liability on IL and Kolboda for all arbitration costs and grants Naked Juicebar, to the extent the company has paid any part of these costs, the arbitrators' right to remuneration. According to the Court of Appeal, there was therefore no impediment to enforcement.

What is at issue in the Supreme Court

11. At issue is whether the award is enforceable, with respect to the losing party's obligation to reimburse the winning party for the arbitrator's fee and fees to the arbitration institution.

Arbitration costs

12. The Arbitration Act (1999:116) includes, inter alia, provisions on arbitration costs. These costs include remuneration to the arbitrator (Section 37) as well as the parties' costs for the proceedings (section 42).

13. Under Section 37, the parties shall pay, jointly and severally, reasonable remuneration to the arbitrator for work and expenses, and in a final award, the arbitrator may order the parties to pay this remuneration, together

with interest. A district court may, at the request of a party, review the award with respect to the question of the remuneration of the arbitrator (see Section 41).

14. Unless otherwise agreed by the parties, the arbitrators may, upon the request of a party, order the opposing party to pay compensation for the party's costs together with interest and determine the manner in which the remuneration to the arbitrator shall be finally allocated between the parties (see Section 42). The fee paid to an arbitral institute may be included in the party's costs, and the arbitrator is thus empowered to, in the final award, decide which parties will ultimately bear this cost (cf. Govt. bill 1998/99:35 p. 239 and Stefan Lindskog, *Skiljeförfarande - en kommentar*, 3rd ed. 2020, p. 1096, note 4352).

15. Provisions on arbitration costs are also included in the rules for expedited arbitration as agreed upon by the parties (see para. 3). According to Article 49 (1), the costs of the arbitration consist of the arbitrator's fee, the administrative fee and the expenses of the arbitrator and the SCC. Other costs of the parties are addressed in Article 50. Under these arbitration rules, the arbitral institute's fee is thus included in the costs of the arbitration, and not in the party's other costs.

16. According to Article 49 (5) of the SCC Rules, the arbitrator shall include the costs of the arbitration in the final award. Unless otherwise agreed by the parties, the arbitrator shall, pursuant to Article 49 (6), at the request of a party, apportion the costs of the arbitration between the parties, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances. (Cf. Stefan Lindskog, *Något om verkställighet och internt partsansvar avseende skiljekostnader*, JT 2021/22 pp. 720–733, at pp. 728 et seq.)

Conditions for enforcement

17. In order for enforcement to take place, liability must be based on an enforcement title that includes a payment obligation or other obligation (see Chapter 1, Section 1 of the Enforcement Code). Thus, an order that consists solely of a declaratory judgment establishing a legal relation cannot constitute an enforcement title (see, e.g., "Bodelningen i Ljusdal" NJA 1985 p. 140).

18. The actual meaning of the terms of the judgment or decision, rather than the words themselves, is what determines whether an enforcement title entails such an obligation (see Torkel Gregow, *Utsökningsrätt*, 5th ed. 2020, p. 76; cf. also "Skifteslaget i Torsåker" NJA 1974 p. 261 compared with "Aktiebolagets radioapparat" NJA 1979 p. 264).

19. An arbitration award can constitute an enforcement title (see Chapter 3, Section 1, first paragraph, item 4). The detailed conditions for enforcement are regulated in Chapter 3, Sections 15–18.

20. A final award that is based on an arbitration agreement may be enforced, provided the arbitration agreement does not contain any reservation concerning the right of a party to institute an action against the award or, where there is such a reservation, the time for the party's action has expired without the action having been presented, and the award satisfies the rules concerning writing and signature of the Arbitration Act. As regards matters concerning remuneration for arbitrators, an arbitration award may be enforced, provided the time for the party's action against the award in that respect has expired without an action having been instituted and the award satisfies the rules concerning writing and signature. (See Chapter 3, Section 15)

21. It is up to the Swedish Enforcement Authority to examine whether the conditions for enforcement are met. However, the onus is on the applicant to show that none of the parties has instituted an action challenging the decision

on remuneration to the arbitrator within the prescribed period (cf. Torkel Gregow, *op. cit.*, p. 99 et seq.).

22. If the respondent shows that the debt has been paid, or that some right of set-off exists, enforcement may not take place. Furthermore, enforcement may not take place if the defendant claims that another circumstance involving the relationship of the parties constitutes an impediment to enforcement and if the objection cannot be ignored (see Chapter 3, Section 21 and Prop. 1980/81:8 p. 323 et seq. and see also “Räknefelet och verkställigheten” NJA 2015 p. 527).

The assessment in this case

23. The arbitration costs to which the enforcement proceedings relate are those costs that an arbitrator, pursuant to Section 42 of the Arbitration Act, may order one party to pay at the request of another party. This Section is discretionary, but the SCC rules to be applied under the parties' agreement do not deviate from Section 42 other than in specifying the basis for the allocation of costs and dividing and naming the costs differently. This is to some extent reflected in the judgment.

24. Item 104 of the judgment states that, between the parties, Kolboda and IL are ordered to pay the final costs of the arbitration. Although this is not explicitly stated, the wording cannot be understood in any other way than that Kolboda and IL are jointly and severally liable. IL is thus liable to Naked Juicebar for the arbitration costs paid by Naked Juicebar.

25. As regards the costs of the arbitration, the amounts are set out in Item 103 of the operative part of the judgment, namely that the arbitrator's fee amounts to EUR 13,227 and SCC's administrative fee amounts to EUR 4,642, together with, in both cases, a specified amount of value added tax. The

advance amounts paid and the settlement made show that each party has paid half of these costs.

26. Against this background, it can be concluded that the judgment contains a sufficiently clear obligation for IL to compensate Naked Juicebar for the arbitration costs it has paid, and that the amount to which the obligation relates can be calculated without difficulty.

27. There is therefore no impediment to the enforcement of the final award. The appeal is therefore denied.

28. In light of this outcome, IL and LR shall jointly and severally compensate Naked Juicebar's costs of litigation incurred in the Supreme Court. The compensation claimed is reasonable.

Justices of the Supreme Court Agneta Bäcklund, Stefan Johansson, Petter Asp, Stefan Reimer (reporting Justice) and Christine Lager participated in the ruling.

Judge referee: Norah Lind