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Case No. 476

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DUPLICATE ORIGINAL
نسخہ برابر اصل

Case No. 476

Chamber Two

Award No. ITL 43-476-2

ITEL INTERNATIONAL CORPORATION,
Claimant,

and

SOCIAL SECURITY ORGANIZATION OF
IRAN, THE ISLAMIC REPUBLIC OF
IRAN and THE BANK OF IRAN AND
THE MIDDLE EAST,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داری داری
ایران - ایالات متحدہ
ثبت شد = FILED
۱۳۶۲ / ۴ / ۸
29 JUN 1984
476

INTERLOCUTORY AWARD

Appearances

For Claimant:

Mr. Jonathan Blackman,
Attorney for Claimant

For Respondents:

Mr. Mohammad Eshragh,
Agent of the Islamic
Republic of Iran
Mr. Akbar Shirazi,
Legal Adviser to the
Agent
Mr. Hasan Sheikholislami,
Representative of
Respondent Social
Security Organization
Mr. Mohsen Kakavand,
Representative of Respon-
dent Bank Tejarat

Also Present:

Mr. John Crook,
Agent of the United States
of America

I. The Claim

On 18 January 1982, the Claimant, ITEL International Corporation ("ITEL"), filed a Statement of Claim against the Social Security Organization of Iran, The Islamic Republic of Iran and The Bank of Iran and the Middle East. The relief sought included, inter alia, a declaration by the Tribunal that the Claimant had fully satisfied its obligations under an Advanced Systems and Equipment Sales Agreement (the "Sales Agreement") entered into with the Social Security Organization; that the Claimant and its controlled subsidiary, IMEC Engineering Services Company, Ltd. ("IMEC"), had no further obligations to the Respondents under a Maintenance Agreement between IMEC and the Social Security Organization and that such agreement should be deemed cancelled. The Claimant also sought an order from the Tribunal requiring the Respondents to cancel and release the guarantees and counter-guarantees securing ITEL's and IMEC's obligations under these two agreements and a declaration that the Respondents' 31 December 1981 demand for payment under the counter-guarantees was a breach of such agreements and was null and void.

In its Statement of Defense filed 13 December 1982, the Social Security Organization argued, inter alia, that the Sales Agreement and the Maintenance Agreement both provided that all disputes were to be resolved by Iranian courts and the Tribunal, therefore, was without jurisdiction to adjudicate ITEL's claim.

A hearing solely on this preliminary jurisdictional issue was held on 30 January 1984 and was attended by representatives of both parties.

II. The Merits

A. The Sales Agreement

Article 13(f) of the Sales Agreement between Itel and the Social Security Organization provides as follows:

This Agreement shall be governed by and construed according to the laws of Iran and the courts of Iran shall be competent to attend to any disputes or claims arising hereunder

Article II, paragraph 1, of the Claims Settlement Declaration excludes from the jurisdiction of the Tribunal only "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts..." (emphasis added). The Tribunal has consistently interpreted and applied this provision of the Claims Settlement Declaration in the light of the Rules applicable to the interpretation of treaties between states. See Interlocutory Award No. ITL 1-6-FT (Gibbs & Hill, Inc. and Iran Power Generation and Transmission Co., et al.) dated 5 November 1982; Interlocutory Award No. ITL 3-68-FT (Howard Needles Tammen and Bergendoff and The Government of the Islamic Republic of Iran, et al.) dated 5 November 1982; Interlocutory Award No. ITL 2-51-FT, part III (Halliburton

Company, et al. and Doreen/IMCO, et al.) dated 5 November 1982. As explicitly stated in Interlocutory Award No. ITL 2-51-FT, the Tribunal "... derives its jurisdiction only from the terms of the Declaration". Accordingly, the Tribunal has not entered into the question of the intention, actual, implied or presumed, of the parties to a dispute settlement clause in a contract, nor into the question of the connecting factors between the performances under the contract and the jurisdiction of a particular state and the circumstances under which the contract was concluded. The Tribunal concerns itself only with the wording of the relevant clauses of the contract in order to decide whether it meets the requirements of the Declaration by "... specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts". The test applied by the Tribunal is whether the particular dispute settlement article of the contract "... does (not) with sufficient clarity fulfill the requirements laid down in the exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration" (Interlocutory Award No. ITL 1-6-FT; Interlocutory Award No. ITL 3-68-FT). Obviously dispute settlement provisions in contracts differ more or less in their wording, and there is not only one specific wording which meets the test of "sufficient clarity".

In this connection there is a clear difference between a wording which obligates the parties to the contract to

bring all their disputes under the contract before a particular court, and a wording which merely recognizes an existing competence of such a court. While Article 13(f) of the Sales Agreement recognizes that Iranian courts are competent to resolve contractual disputes, it does not purport to state that other courts are incompetent or to restrict jurisdiction exclusively to the courts of Iran. Article 13(f), therefore, does not satisfy the requirements set forth in the exclusion clause of Article II, paragraph 1, of the Claims Settlement Declaration.

The Tribunal, therefore, holds that Article 13(f) of the Sales Agreement between ITEL and the Social Security Organization of Iran does not fall within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. Consequently, this article in the agreement does not exclude the Tribunal from jurisdiction over claims based on the said agreement.

B. The Maintenance Agreement

Article 9(A) of the Maintenance Agreement between IMEX and the Social Security Organization provides as follows:

This Agreement shall be governed by the laws of Iran. Any dispute or claim arising herefrom shall be referred to the Iranian court.

Article 9(A), which by its terms specifically provides for the sole jurisdiction of the Iranian courts, clearly falls within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement

Declaration. The Claimant has argued, however, that the Sales Agreement, the Maintenance Agreement and the guarantees issued pursuant to those two agreements were inter-related; that under the terms of the Sales Agreement, any payment under the Maintenance Agreement guarantee required a reduction in the amount of the Sales Agreement guarantee; and that when the Social Security Organization made a demand for the full amount of the Maintenance Agreement guarantee without simultaneously reducing the amount of the Sales Agreement guarantee, it breached not only the Maintenance Agreement but also the Sales Agreement. Under this theory, the Claimant asserts that the Tribunal, which has jurisdiction over Itel's claims under the Sales Agreement, also has jurisdiction over Itel's claim relating to the Respondents' demand on the Maintenance Agreement guarantee since that claim arises independently under both the Sales Agreement and the Maintenance Agreement.

The Tribunal does not agree. Although both the Sales Agreement and the Maintenance Agreement relate to the same computer equipment, the two agreements are distinct, separate contracts, entered into by different parties, each of whom provided separate bank guarantees to ensure its contractual performance. Each agreement clearly provides that it constitutes "the entire agreement" between the parties with respect to its subject matter. Any claims arising from the bank guarantee and related counterguarantee securing IMEX's obligations under the Maintenance Agreement relate

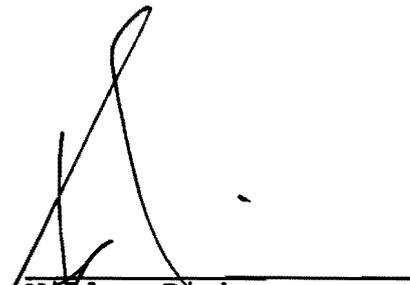
only to the Maintenance Agreement and can be adjudicated only in conjunction with an adjudication of the parties' obligations under that agreement. While it is true that any drawing upon either of the bank guarantees requires a corresponding reduction in the other, that does not require or justify the conclusion that the two agreements have somehow merged into one.

The Tribunal, therefore, holds that Article 9(A) of the Maintenance Agreement between IMEX and the Social Security Organization falls within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. Consequently, the Tribunal does not have jurisdiction over the claims to the extent that they are based on the Maintenance Agreement.

The Claimant has also argued that since neither the Maintenance Agreement guarantee nor the related counter-guarantee contain any provision vesting exclusive jurisdiction in the Iranian courts, the Tribunal has jurisdiction over its claims relating to those guarantees. The Tribunal notes, however, that the Claimant is not a direct party to either the Maintenance Agreement guarantee or the counter-guarantee, but merely the account party for whose benefit the guarantees were issued. Although the Claimant requests certain action from the Tribunal regarding those guarantees,

it is clear that its claims in that regard are based on the underlying Maintenance Agreement and as such are excluded from our jurisdiction.

Dated, The Hague
22 June 1984



Willem Riphagen
Chairman
Chamber Two



George H. Aldrich

In the Name of God,



Shafie Shafeiei
Concurring in part,
Dissenting in part