

5th seminar

Claims for breach of international sale of goods contract – overview, conditions. Damages. CISG. Arbitral award.

Case 1

See questions No. 13 to 20 from the assignment for the previous seminar.

Case 2

The company KORE spol. s.r.o. (registered office and place of business in Ostrava, Czech Republic) entered into an agreement with VAN (registered office and place of business in Novi Sad, Serbia) in August 2018. KORE is a manufacturer of small kitchen appliances and various kitchen equipment. Part of the business relationship is based on a license agreement with KEINZ (the license applies to some technical solutions for mixers and juicers). The contract concluded with VAN contained the following conditions:

"KORE is obliged to supply VAN from October 2018 to October 2021 in regular quarterly deliveries fitness mixers, kettles and juicers listed in the KORE catalog for 2018, at the prices given there. The order for each delivery, including the quantity of individual items, will be made in writing by the 30th day of the month preceding the quarter for which the delivery is intended. If the order is not delivered to the KORE headquarters by this time, it is understood that the delivery will not take place for the given period. If VAN does not order the goods in this way for two consecutive quarters, a contractual penalty of USD 20,000 is agreed. VAN shall not re-export the goods outside Serbia. Unless otherwise agreed for a specific delivery, deliveries under the terms of DDP INCOTERMS 2010 are made to the warehouse of the buyer Novi Sad, until the 25th first month of the FIX quarter. The purchase price will be paid based on the invoice within five days of delivery to the seller's account. In the event of a delay of payment of the purchase price, interest on arrears is agreed in the amount of 0.05% of the purchase price for each day of delay. This contract and partial purchase contracts are governed by Czech law. All disputes arising from this agreement will be resolved in accordance with the Arbitration Rules of the International Chamber of Commerce. The place of arbitration shall be Prague. "

1. Analyze the contractual structure and its legal regime considering all the issues involved. If an invoice is issued for a contractual penalty which VAN rejects on the grounds that the contractual penalty is invalid under Serbian law, please consider the possible legal regime of the matter, possibly using the general principles on which the Convention is based.
2. The interest rate is agreed in the contract in case of delay in payment of the purchase price. Explain the relationship between interest (Art. 78) and damages - whether it is possible to claim both at the same time. Please also consider whether interest and a contractual penalty could be claimed at the same time if it were also agreed in case of late payment of the purchase price.
3. The delivery made in April 2019 was delivered to the buyer's warehouse on April 24, 2019. Due to the Easter holidays in Serbia, the goods were not inspected until 15.5.2019. VAN found that it had received other goods than ordered, including other colors. KORE rejected the notification as late. Analyze the situation and find arguments in favor of VAN's position.
4. Delivery in October 2019 was not realized according to the delivery conditions. It was not delivered until November 10, 2019. VAN refused to take it into storage, saying it was late. Analyze VAN's position in terms of possible claims in a situation where VAN left the goods out of the warehouse where they were damaged.
5. In the spring of 2020, the KORE plant burned down. As a result of this event, the company was unable to meet its obligations. Analyze the situation from the point of view of VAN's claims, KORE's obligations and from the point of view of the existence of the contract.

6. Would the situation ad 5) change if it were not a burnout, but a decrease in the value of the currency in which KORE contracted (USD)?
7. Consider a situation in which the supply in March 2020 was not delivered on time due to the unexpected closure of borders in Europe due to the incipient pandemic covid-19. Assess this situation in the light of the VAN's claims.
8. During the contractual relationship, KORE found that VAN was in a difficult financial situation. Already in the first half of 2020, VAN was late with payments. KORE feared that the delivery price for 2021 (January) would not be paid. Explain a possible procedure for KORE.
9. If KORE wishes to sue VAN for non-payment of the purchase price, please indicate the method and place of resolution of the dispute. To answer this question, also consider whether the arbitration is before a permanent arbitral tribunal or *ad hoc* and consider how the number of arbitrators will be determined.
10. Let us now modify the arbitration clause; assume that an arbitration clause with a place of arbitration in Serbia has been validly concluded. An arbitration award was issued in Serbia ordering the Czech company to pay the amount of € 2,100. Czech company refuses to comply voluntarily. The Serbian company wants to achieve recognition and subsequent enforcement of the arbitration award in the Czech Republic. Name source of international origin common to the Czech Republic and Serbia, which regulates the recognition of the arbitral award. Also analyze the source of national origin in the Czech Republic that regulates this issue. Compare the two sources of law, state whether the Serbian company can choose which legal source to follow, and advise the Czech company on how to defend itself against recognition and enforcement of the arbitral award.
11. Alternatively, would it be possible in the Czech Republic to annul an arbitration award issued in Serbia?