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IRAN-US CLAIMS TRIBUNAL CASES

CMI International, Inc. v. Ministry of Roads and Transportation and The Islamic Republic Of Iran (Case No. 245)

Chamber Two: Riphagen (Chairman); Shafeiei; Aldrich

I. Facts

I(i) The investment

The Claimant, an Oklahoma corporation, brought a claim against the Ministry of Roads and Transportation ("**MORT**") and the government of Iran, alleging breach of two purchase orders concluded in September 1978. These two purchase orders for road construction equipment arose out of a highway construction project in Iran; one for an aggregate purchase price of US$ 3,182,240; the other for US $218,850 (4 Iran-U.S. C.T.R 264).

I(ii) The taking

The Claimant alleged that MORT was in breach of both purchase orders by failing to establish the necessary letters of credit to pay for the purchased equipment. MORT denied that the two purchase orders were binding contracts, alleging that the opening of letters of credit was a condition precedent to any binding agreement. In the event the Tribunal found a breach of contract (as in fact it did), MORT denied that any damages were suffered by the Claimant (4 Iran-U.S. C.T.R 264).

II. Relevant findings

II(i) Applicable law

Although the purchase orders provided that they were governed by the laws of Idaho in the US, the Tribunal held that it was not "rigidly tied to the law of the contract, at least insofar as the assessment of damages is concerned." The Tribunal pointed out that Article V of the Claims Settlement Declaration provided that "the Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances." The Tribunal noted that it was "difficult to conceive of a choice of law provision that would give the Tribunal greater freedom in determining case by case the law relevant to the issues before it." The Tribunal remarked that such freedom was "consistent with, and perhaps almost essential to, the scope of the tasks confronting the Tribunal". This was because the Tribunal had to hear "not only claims of a commercial nature, such as the one involved in the present case, but also claims involving alleged expropriations or other public acts, claims between the two Governments, certain claims between banking institutions, and issues of interpretation and implementation of the Algiers Declarations." The Tribunal said that its assessment of compensation entailed a "search…for justice and equity, even in cases where arguably relevant national laws might be designed to further other and doubtless quite legitimate goals" 4 Iran-U.S. C.T.R 267-8).

For example, in assessing whether profits on re-sales of the equipment (Claimant re-sold certain items of equipment at prices higher than those specified in the purchase order) should be deducted from the damages for which compensation was awarded, the Tribunal applied the general principle of law that such profits should be taken into account and accordingly reduced Claimant's compensation. The Tribunal held that its assessment of damages was not "controlled by the law of Idaho" (even though this was the governing law of the purchase order), and accordingly rejected the Claimant's argument, based on an application of the law of Idaho, that it was not obliged to account for any profits on re-sale and therefore such profits should not serve to reduce the amount of compensation due to it (4 Iran-U.S. C.T.R 270).

II(ii) Discrete expropriation or nationalization scheme

No expropriation was alleged; rather, Claimant alleged that MORT had breached its contractual obligation to establish letters of credit. The Tribunal held that the fact that no deadline was fixed for the establishment of letters of credit did not change the conclusion that MORT was contractually obliged to do so. The Tribunal held that the purchase orders implicitly required establishment of the letters of credit within a reasonable time, in no event later than the time set for first delivery.

II(iii) Lawful or unlawful taking

No taking was alleged by Claimant.

II(iv) Description of the assets

Two purchase orders concluded between MORT and the Claimant in terms of which MORT would establish letters of credit to pay for road construction equipment supplied by the Claimant.

II(v) Date for calculating compensation

The Tribunal awarded the Claimant's actual damages proved, which (for reasons discussed elsewhere in this document), comprised its costs incurred in meeting its obligations under the purchase orders. The Tribunal therefore had to determine when, under the purchase orders, payment to Claimant would have been due. It appeared that Claimant had slowed production (owing to the fact that the letters of credit had not been opened) and would not be able to meet the second delivery date under the each of purchase orders, 15 February and 15 March 1979 (although the Tribunal held that it would have been in a position to meet the first delivery dates). The Tribunal therefore examined the costs incurred by the Claimant in fulfilling the purchase orders and established that most of its expenses had been incurred prior to 1 April 1979. It accordingly estimated this as the date on which payment was due on the remaining items (4 Iran-U.S. C.T.R 271).

II(vi) Choice of remedy (restitution/compensation)

The Tribunal awarded compensation for the losses Claimant had suffered by reason of MORT's breach of its obligations under the purchase orders (4 Iran-U.S. C.T.R 267-8).

II(vii) Standard of compensation

The Tribunal considered its main task to be "determining what are the losses suffered by the Claimant and to award compensation therefore" (4 Iran-U.S. C.T.R 268).

II(ix) Elements of compensation

Lost profits

The Tribunal accepted that lost profits might form part of the losses suffered by Claimant. These might include its lost profits as a 'lost volume' seller, that is, a seller whose capacity to sell exceeded the available market and who would have sold other, identical machines to the buyers who eventually bought the machines produced under the purchase orders breached by MORT. The argument was that such a seller would not be

made whole merely by being compensated for any losses on resale and for incidental expenses or other damages, because its profits for the year would have been diminished by the profits on the sales it had lost. The Tribunal considered, however, that on the basis of the evidence presented, the Claimant had failed to discharge the burden of proving that it was entitled as a lost volume seller to lost profits on the two contracts at issue (4 Iran-U.S. C.T.R 268-270).

Other recoverable losses
The Tribunal held that the Claimant was entitled to claim the cost of re-sales, such as commissions, and other costs caused by the breach, such as carrying and administrative costs (including insurance premiums, property taxes, and custodial costs), and, most significantly, the financial costs of the delays in payment from the dates on which payment was due until the dates of resale of the equipment (4 Iran-U.S. C.T.R 270).

Accounting for profits on re-sale
The Tribunal applied the general principle of law that *profits* on re-sales of equipment should be deducted from the damages for which compensation was awarded. It accordingly reduced the compensation by the value of the Claimant's overall profit on the re-sale of certain items of equipment subject to the purchase orders (4 Iran-U.S. C.T.R 270). (Had the Claimant suffered *losses* on re-sale of this equipment, such losses would obviously have been recoverable).

Adjusting purchase prices to account for inflation
The Claimant argued that it should have been compensated for inflation in the United States by adjusting MORT's contract price by application of changes in the United States Producer's Price Index during the period from breach to resale. The Tribunal found no legal basis for providing compensation for inflation, except to the extent that some compensation is provided through the award of interest (4 Iran-U.S. C.T.R 270-1).

II(x) Principles of valuation

The Tribunal said that "the Claimant, like any seller whose buyer has breached the contract of sale, is entitled to compensation for the actual damages that can be proved" (4 Iran-U.S. C.T.R 270).

II(xi) Method of valuation

The Tribunal examined the documents submitted by the Claimant, in order to determine its actual damages suffered, including its cost accounts in respect of the equipment (4 Iran-U.S. C.T.R 271).

II(xii) Approximation of compensation

The Tribunal estimated the date on which payment for the equipment would have been due (1 April 1979), based on what it felt was justifiable in the light of the evidence submitted (4 Iran-U.S. C.T.R 271).

II(xiii) The impact of equitable considerations

As noted under II(i) above, the Tribunal noted that its assessment of compensation, applying "the law relevant to the issues before it", had to be based on a search for justice and equity, even where arguably applicable national laws might lead to a different result (4 Iran-U.S. C.T.R 268).

II(xiv) Amount of award

US$675,000, inclusive of interest (4 Iran-U.S. C.T.R 271).

II(xv) Interest

The Tribunal's award of compensation included interest, but the Tribunal did not specify the rate of interest it had applied, or explain whether compound or simple interest was awarded (4 Iran-U.S. C.T.R 271).

III Conclusion

The award is based on breach of contract and did not involve an alleged expropriation. The award is of interest, however, for the Tribunal's findings on the impact that the applicable law to be applied by the Tribunal, under the Claims Settlement Agreement, has on the assessment of compensation for breach of contract. The Tribunal found that, at least insofar as the assessment of damages was concerned, it was not "rigidly tied to the law of the contract". The Tribunal noted that the choice of law clause in the Claims Settlement Agreement was very wide and that it was "difficult to conceive of a choice of law provision that would give the Tribunal greater freedom in determining case by case the law relevant to the issues before it." The Tribunal accordingly said that its assessment of compensation entailed a "search…for justice and equity, even in cases where arguably relevant national laws might be designed to further other and doubtless quite legitimate goals." The Tribunal therefore refused to apply certain rules of the law of Idaho, the governing law of the purchase orders, which the Claimant argued would have served to increase the amount of compensation due to it; the Tribunal instead applied general principles of law to determine the amount of compensation. With respect to the principles to be applied in awarding compensation for breach of contract, the Tribunal held that the Claimant was entitled to compensation for the "actual damages that [could] be proved". Compensation might include damages for lost profits as a "volume seller", if such damages could be proved (the Tribunal found, however, that the Claimant had not proved its claim for lost profits).