

ARABOV A & ANOR v DALEYOT E

2020 SCJ 310

SCR 119851 – 5A/70/20

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

- 1. Alon Arabov**
- 2. Arabov Group Ltd**

Applicants

v

Erez Daleyot

Respondent

JUDGMENT

On an *ex-parte* application made by the present applicants pursuant to section 23 of the International Arbitration Act (IAA), an interim order was granted in Chambers on 5 March 2020 in the following terms:

- (i) *the respondent, by himself and/or through his servants, préposés, agents or otherwise, was restrained and prohibited from transferring, ceding, reducing the value of, assigning, selling, alienating, distributing and/or disposing (or purporting to do so) of his shareholding and/or interest and/or title and/or right and/or benefit in Mauridiam Investments and Consulting, and from taking, directly or indirectly, any action whatsoever whether in Mauritius, Cyprus or elsewhere on the basis that he is a shareholder of Mauridiam Investments and Consulting; and*
- (ii) *the respondent was restrained and prohibited from engaging in any other act whatsoever which may frustrate the enforcement and execution of the final arbitral award delivered by Hon. Arbitrator Tamir Livschitz on 26 February 2018 in the matter bearing International Chamber of Commerce (“ICC”) No. 19751/AGF/ZF.*

The above interim order was to remain in force until 28 May 2020 when the respondent was ordered to appear before a panel of 3 Designated Judges to show cause why the above interim order should not be enlarged, discharged or otherwise dealt with after hearing parties.

It was further ordered that the service be effected within a delay of two months from 05 March 2020, outside the jurisdiction upon the respondent at 25 Dennclaan, 2510 Wilrik, Antwerp, Belgium in the same manner as a court process is served in Belgium.

An extension of time was subsequently granted in view of the COVID-19 pandemic and the lockdown, and pursuant to section 42(1A) of the IAA, the application was made returnable before us on 10 November 2020 and the respondent ordered to show cause why the interim order should not be converted into an interlocutory injunction.

On that day learned Counsel for the applicants filed the return of service which consisted of an affidavit by a Belgian bailiff, confirming that service had duly been effected on 28 August 2020 on the respondent according to Belgian law. Default was therefore recorded against the respondent. Learned Counsel further stated that Mauridiam Investments and Consulting had been restored on the register of the Registrar of Companies as per an order given on 27 October 2020 by the Bankruptcy Division of the Supreme Court.

Moreover, learned Counsel drew our attention to a Provisional Order issued by the Honourable Chief Justice on 05 March 2020 granting the recognition and enforcement of the Final Arbitral Award, in the same manner as a judgment of the Court and ordering the applicants to effect service of the Order, together with all relevant documents, upon the respondent outside the jurisdiction of Mauritius in Belgium, within two months from the date of the Provisional Order. He further stated that the respondent has failed to make an application to set aside the Provisional Order within two months after service had been effected on him according to Belgian law.

At a subsequent sitting learned Counsel filed an additional affidavit appending copies of the order made by the Bankruptcy Division on 27 October 2020 as well as the Provisional Order issued by the Honourable Chief Justice on 05 March 2020.

After having considered the application, the return of service as well as the additional affidavit, we grant the application and make interlocutory the interim order made on 05 March 2020, restraining and prohibiting –

- (i) *the respondent, by himself and/or through his servants, préposés, agents or otherwise, from transferring, ceding, reducing the value of, assigning, selling, alienating, distributing and/or disposing (or purporting to do so) of his shareholding and/or interest and/or title and/or right and/or benefit in Mauridiam Investments and Consulting, and from taking, directly or indirectly, any action whatsoever whether in Mauritius, Cyprus or elsewhere on the basis that he is a shareholder of Mauridiam Investments and Consulting; and*
- (ii) *the respondent from engaging in any other act whatsoever which may frustrate the enforcement and execution of the final arbitral award delivered by Hon. Arbitrator Tamir Livschitz on 26 February 2018 in the matter bearing International Chamber of Commerce (“ICC”) No. 19751/AGF/ZF.*

Our order shall remain in force until the determination of the enforcement claim before the Supreme Court of Mauritius and the execution of the arbitral award in Mauritius.

The respondent will bear the costs of the present application.

R Teelock
Judge

J. Benjamin G. Marie Joseph
Judge

A D Narain
Judge

27 November 2020

Judgment delivered by Hon R. Teelock, Judge

For Applicants: Mrs D. Ghose-Radhakeesoon, Attorney at Law
Mr A. Halkhoree, of Counsel