ICC panel resolves Mexican drinks dispute

Tuesday, 5 April 2016 *(2 weeks ago)* by Tom Jones

Italian beverage manufacturer San Benedetto has prevailed in an ICC dispute with a Mexican subsidiary of the Dr Pepper Snapple Group over a joint venture to sell bottled water.

In a final award on 14 March, a tribunal chaired by France's Yves Derains ruled that Peñafiel – a Mexican mineral water brand acquired by Dr Pepper Snapple after being spun off from Cadbury Schweppes in 2008 – had breached its obligations under the joint venture agreement.

The panel, which also included Mexico-based DLA Piper LLP partner Gerardo Lozano Alarcón and Italian arbitrator Alberto Mazzoni, awarded San Benedetto US$3.5 million in damages for a breach of a distribution services agreement, while rejecting its US$24 million claim for losses in competitiveness and market position.

Each side was ordered to pay its own costs. The parties signed a joint venture agreement in 2002 to produce and sell bottled water in Mexico. Under the agreement, San Benedetto was to provide certain manufacturing technology while Peñafiel would contribute commercial know-how and production capabilities in the country.

Peñafiel initiated an arbitration in 2012 under the joint venture agreement, claiming that the parties had reached "deadlock" – a contractually defined situation where shareholders fail to agree on specific corporate resolutions at two consecutive meetings – meaning the joint venture had been terminated and the parties were required to negotiate a settlement.

The Mexican company claimed that San Benedetto refused its buyout offer and failed to make a counter-offer – as required under the deadlock provision– and that therefore Peñafiel was entitled to acquire San Benedetto's shareholding. It also claimed US$3.5 million in damages, alleging that the machinery provided by San Benedetto had been defective.

San Benedetto then brought its own arbitration, accusing Peñafiel of breaching several terms of the joint venture agreement, including an obligation to rotate the chairman of the board of directors and provide access to the premises and financial records.

It also alleged that a Peñafiel subsidiary had overcharged San Benedetto in an attempt to offset promotional costs. The Italian company sought US$24 million for the diminished competitiveness of the product and US$3.5 million in direct damages for a breach of a distribution services agreement.

In a consolidated arbitration seated in Mexico, the tribunal concluded that there was a "deadlock" situation, which entitled the parties to begin discussions to transfer shares from one partner to the other – but rejected Peñafiel's suggestion that it was automatically entitled to San Benedetto's holding.

The panel also concluded that Peñafiel's claims for the defective equipment were time-barred under the UNIDROIT Principles of International Commercial Contracts.

Turning to San Benedetto's claims, the tribunal found that Peñafiel had breached the joint venture agreement, but dismissed the Italian company's US$24 million claim after finding there was "no causal link" between Peñafiel's breaches and any decreases in productivity and competitiveness.

However, the panel did find that Peñafiel had overcharged San Benedetto under the distribution agreement and was required to pay compensation.

San Benedetto was represented in the arbitration by NCTM Studio Legale Associato in Rome and Von Wobeser y Sierra SC in Mexico City. Peñafiel used Mexican firm Santamarina y Steta.

Acqua Minerale San Benedetto v Peñafiel

Tribunal

Yves Derains (France) (Chair)

Gerardo Lozano Alarcón (Mexico)

Alberto Mazzoni (Italy)

Counsel to Peñafiel

Santamarina y Steta

Partner Fernando del Castillo in Mexico City

Counsel to San Benedetto

NCTM Studio Legale Associato

Partners Angelo Anglani and Raffaele Caldarone in Rome

Von Wobeser y Sierra SC

Partners Claus von Wobeser and Diego Sierra in Mexico City

Comments

There are currently no comments.