



ICSID (INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES)

ICSID Case No. ARB/16/9

ITALBA CORPORATION V. ORIENTAL REPUBLIC OF URUGUAY (I)

ORDER OF THE AD HOC COMMITTEE TAKING NOTE OF THE DISCONTINUANCE OF THE
PROCEEDING

16 June 2020

Tribunal:

[Andrés Rigo Sureda](#) (President of the Ad Hoc Committee)

[Gabriel Bottini](#) (Member)

[Mónica Pinto](#) (Member)

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Order of the Ad Hoc Committee Taking Note of the Discontinuance of the Proceeding

I. PROCEDURAL HISTORY

1. On July 2, 2019, the International Centre for Settlement of Investment Disputes ("ICSID" or the "Centre") received an Application for Annulment of the Award rendered on March 22, 2019 in *Italba Corporation v. Oriental Republic of Uruguay* (ICSID Case No. ARB/16/9) (the "Application"). The Application was brought by Italba Corporation ("Italba" or the "Applicant") against the Oriental Republic of Uruguay (the "Respondent") (together, the "Parties").
2. On July 10, 2019, the Secretary-General of ICSID registered the Application and notified the Parties of the registration in accordance with Rule 50(2)(a) and (b) of the ICSID Rules of Procedure for Arbitration Proceedings (the "Arbitration Rules"). In the Notice of Registration, she also informed the Parties that enforcement of the Award was provisionally stayed pursuant to Rule 54(2) of the Arbitration Rules.
3. On August 27, 2019, in accordance with Article 52(3) of the ICSID Convention, the *ad hoc* Committee was constituted. The Secretary-General, in accordance with Rule 6(1) and 53 of the Arbitration Rules notified the Parties that all members of the *ad hoc* Committee, namely, Dr. Andrés Rigo Sureda, a national of the Kingdom of Spain; Mr. Gabriel Bottini, a national of the Argentine Republic; and Professor Mónica Pinto, a national of the Argentine Republic, had accepted their appointments, with Dr. Rigo Sureda serving as the President of the Committee; and that the annulment proceeding was deemed to have begun on that date. Ms. Celeste E. Salinas Quero, ICSID Legal Counsel, was designated to serve as Secretary of the Committee.
4. On September 3, 2019, pursuant to ICSID Administrative and Financial Regulations 14(3)(d) and (e), the Centre invited the Applicant to make an advance payment of US\$ 250,000.00 to cover the initial costs of the proceeding (the "Advance").
5. On September 13, 2019, the Applicant proposed to disqualify Mr. Bottini pursuant to Article 57 of the ICSID Convention and Rule 9 of the Arbitration Rules (the "Proposal"). The proceeding was suspended in accordance with Rules 9(6) and 53 of the Arbitration Rules.
6. On September 16, 2019, the Committee members not subject to the Proposal, Dr. Rigo Sureda and Prof. Mónica Pinto, set the schedule for submissions.
7. On September 23, 2019, the Respondent filed its Reply to the Proposal.
8. On September 30, 2019, Mr. Bottini furnished his explanations on the Proposal.

9. On October 7, 2019, the Parties filed simultaneous observations on the Proposal.
10. On October 29, 2019, Dr. Rigo Sureda and Prof. Mónica Pinto, rendered their Decision on the Proposal to Disqualify Mr. Gabriel Bottini. The Proposal was rejected, and the proceeding resumed on that day.
11. On November 1, 2019, ICSID invited the Applicant to provide an update on the status of its payment of the Advance. On the same date, the Secretary of the Committee transmitted to the Parties a Draft Procedural Order No. 1 and invited them to confer and submit comments on the Draft by November 25, 2019. The Parties were also consulted on their availability for the first session and asked to revert by November 8, 2019.
12. On November 8, 2019, the Respondent indicated its availability to participate in the first session. The Respondent further stated that it "oppose[ed] holding the first session [...] before Italba pa[id] the required fees for this annulment proceeding to continue."
13. On November 11, 2019, the Secretary of the Committee acknowledged receipt of Respondent's communication of November 8, 2019 and noted that no communications had been received from the Applicant.
14. On November 13, 2019, ICSID notified the Parties of the Applicant's default and invited either Party to make the outstanding payment of the Advance by November 28, 2019. On the same date, and following exchanges with the Parties, the Committee informed the Parties that the first session would be held on December 5, 2019, subject to receiving payment of the Advance.
15. On November 20, 2019, the Applicant requested that the Committee members not subject to the Proposal (i) reconsider their Decision rejecting the Proposal; and (ii) failing such reconsideration, that Mr. Bottini resign from the Committee (the "Request for Reconsideration").
16. On November 21, 2019, by letter transmitted by the Secretary of the Committee, the Committee informed the Parties that upon receipt of the outstanding payment, the Committee would invite comments from the Respondent on the Applicant's Request for Reconsideration.
17. On December 3, 2019, ICSID informed the Parties that, as no payment was received by the deadline, the Secretary-General had moved the Committee to stay the proceeding pursuant to ICSID Administrative and Financial Regulations 14(3)(d) and (e). On the same date, by letter transmitted by the Secretary of the Committee, the Committee informed the Parties that (i) it decided to stay the proceeding and that the first session was cancelled; (ii) upon receipt of the payment of the Advance by either Party, the proceeding may be resumed and the first session rescheduled; and (iii) if the proceeding was stayed for non-payment of the Advance for a consecutive period in excess of six months, the Secretary-General may, after notice to and as far as possible in consultation with the Parties, move that the Committee discontinue the proceeding.
18. On May 4, 2020, ICSID reminded the Parties that the proceeding had been stayed since December 3, 2020, and that the six-month period referenced in ICSID Administrative Financial Regulation 14(3)(d) would expire on June 3, 2020. The Parties were invited to pay the outstanding Advance before that date.

19. On June 4, 2020, ICSID notified the Parties that the Secretary-General was considering moving the Committee to discontinue the proceeding pursuant to ICSID Administrative and Financial Regulation 14(3)(d), since the proceeding had been stayed for non-payment of the Advance since December 3, 2019; *i.e.* the stay had lapsed for more than six consecutive months without payment of the outstanding Advance. The Parties were invited to submit observations by June 11, 2010.
20. On June 11, 2020, the Respondent filed its observations. Among others, the Respondent stated that "[t]o [its] knowledge, Italba has not responded to any of ICSID's requests for payment. Nor has Italba informed ICSID when to expect such payment. By now it is clear that Italba does not intend to fulfill its payment obligations. To be sure, Uruguay will not assume Italba's responsibility to pay the required advance under any circumstances."
21. On June 12, 2020, the Secretary of the Committee acknowledged receipt of Respondent's communication of June 11, 2020 and noted that no communications had been received from the Applicant. On the same date, after having provided notice to and consulted with the Parties as far as possible, the Secretary-General moved the Committee to discontinue the proceeding pursuant to ICSID Administrative and Financial Regulations 14(3)(d) and (e), in light of the Applicant's lack of payment and the Respondent's express statement that it would not undertake the payment of the outstanding Advance.
22. On June 15, 2020, the Committee informed the Parties that it had decided to accept the Secretary-General's motion and would proceed to issue an order taking note of the discontinuance of the proceeding.

II. APPLICABLE PROVISIONS AND ORDER

23. ICSID Administrative and Financial Regulations 14(3)(d) and (e) provide in relevant part:

"(d) [...] All advances and charges shall be payable, at the place and in the currencies specified by the Secretary-General, as soon as a request for payment is made by him. If the amounts requested are not paid in full within 30 days, then the Secretary-General shall inform both parties of the default and give an opportunity to either of them to make the required payment. At any time 15 days after such information is sent by the Secretary-General, he may move that the Commission or Tribunal stay the proceeding, if by the date of such motion any part of the required payment is still outstanding. If any proceeding is stayed for non-payment for a consecutive period in excess of six months, the Secretary-General may, after notice to and as far as possible in consultation with the parties, move that the competent body discontinue the proceeding.

(e) in the event that an application for annulment of an award is registered, the above provisions of this Rule shall apply *mutatis mutandis*, except that the applicant shall be solely responsible for making the advance payments requested by the Secretary-General to cover expenses following the constitution of the Committee, and without prejudice to the right of the Committee in accordance with Article 52(4) of the Convention to decide how and by whom expenses incurred in connection with the annulment proceeding shall be paid."

24. The Committee notes that no payment of the Advance was made by the deadline of October 3, 2019, nor by November 28, 2019, after which the proceeding was stayed for a period in excess of six months. The Committee further notes that the Secretary-General confirmed that to date no payment has been received, despite repeated reminders to both Parties. Accordingly, after consultations with the Parties, the Secretary-General moved that the Committee discontinue the proceeding.
25. In light of the above, the Committee has decided to discontinue this proceeding due to non-payment of the Advance in accordance with ICSID Administrative and Financial Regulations 14(3)(d) and (e).

III. ORDER

For the reasons set forth above, the Committee:

- (1) Orders the discontinuance of the proceeding pursuant to ICSID Administrative and Financial Regulations 14(3)(d) and (e); and
- (2) In accordance with Rule 54(3) of the Arbitration Rules the provisional stay is automatically terminated.