000. Supreme *Arbitrazh* Court of the Russian Federation, 11 September 2009, No. 9899/09
Presidium of the Supreme *Arbitrazh* Court of the Russian Federation, 13 September 2010, No. 1795/11 and No. 9899/09[1]

Parties: *First decision:*
Petitioner: Stena RoRo AB (Sweden)
Respondent: Open Joint Stock Company Baltiysky Zavod (Russian Federation)

Second decision:
Petitioner: Shareholders of Open Joint Stock Company Baltiysky Zavod (Russian Federation)
Respondents: (1) Stena RoRo AB (Sweden);
(2) Open Joint Stock Company Baltiysky Zavod (Russian Federation)

Published in: Both decisions available online at <www.arbitrations.ru>

Articles: V(1)(*a*); V(2)(*b*)

Subject matters: – existence of contract containing arbitration clause
– court review of validity of contract
– review of merits of award (no)
– public policy and lack of arbitration agreement
– public policy and contractual penalty

Topics: [11] + [18]-[20] = ¶ 507 (no main contract); [12]-[14] + [17] = ¶ 502; [15]-[18] + [21]-[27] = ¶ 524 (lack of valid arbitration agreement; contractual penalty)

Summary

1.The General Editor wishes to thank Mr. Roman Zykov, Helsinki, for his invaluable assistance in providing and translating these decisions from the Russian original.

First decision: a panel of the Supreme Arbitrazh Court found that a Swedish (SCC) award should be granted enforcement and referred the case to the Presidium of the Court. The courts below erred in holding that there was no arbitration agreement because the main contract between the parties had not come into existence: this issue had been decided by the arbitrators and pertained to the merits, which meant that it could not be reviewed by the enforcement court. Nor was there a violation of public policy because the arbitrators awarded liquidated damages, as such damages are known in Russian law. Second decision: the Presidium affirmed the panel's reasoning. It also reversed a lower court's decision granting the claim of the Russian company's shareholders that the contracts were a nullity because they had been simulated and harmed the shareholders' interest. The Presidium found the reasons given by the court below to be unfounded: the parties did not provide for contractual conditions that could not be fulfilled, and the Russian party's violation of the obligation to act reasonably and in good faith in the interest of the other party did not by itself invalidate its acts.

By two Shipbuilding Contracts of 7 July 2005, Open Joint Stock Company Baltiysky Zavod (Baltiysky Zavod) undertook to build two vessels for Stena RoRo AB (Stena RoRo). On the same day, the parties also executed an Option Agreement, under which Baltiysky Zavod undertook to build two more ships with similar characteristics, at the same conditions, provided that the Shipbuilding Contracts entered into force upon approval by the boards of directors of Baltiyskiy Zavod and Stena RoRo. The Contracts provided for liquidated damages of € 5,000,000 for each undelivered ship. The Shipbuilding Contracts and the Option Agreement contained clauses referring disputes to the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

A dispute arose between the parties when Baltiyskiy Zavod did not fulfill its obligations under the Shipbuildings Contracts and the Option Agreement. Stena RoRo commenced SCC arbitration in Stockholm, claiming that Baltiyskiy Zavod was in breach of contract. In the arbitration, Baltiyskiy Zavod argued that the Contracts did not enter into force because they were not approved by Stena RoRo's board of directors by a protocol, or written minutes, as is required under Russian law. On 24 September 2008, the SCC arbitrators rendered an award in Stena RoRo's favour, directing Baltiyskiy Zavod to pay liquidated damages in the contractually agreed amount. The arbitrators reasoned that a letter by Stena RoRo confirming that the Shipbuilding Contracts had been approved by its board of directors was received by Baltiyskiy Zavod, which did not object at the time that Stena RoRo's board should have given its approval in the form of a protocol. Under the applicable Swedish law, the Contracts had entered into force as they had been approved by the board of directors of Stena RoRo and Baltiyskiy Zavod –

the form of such approval was irrelevant. Baltiyskiy Zavod was therefore in breach and liable to pay liquidated damages.

Baltiyskiy Zavod sought annulment of the SCC award in Sweden. On 20 May 2010, the Svea Court of Appeal dismissed the annulment application, finding that the lack of formal approval by Stena RoRo's board of directors did not affect the coming into force of the Shipbuilding Contracts.

Stena RoRo sought enforcement of the Swedish award in the Russian Federation. On 20 February 2009, the State *Arbitrazh* (Commercial) Court of the City of Saint Petersburg and Leningrad District denied the request. The Saint Petersburg court reasoned that enforcement of the SCC award against Baltiyskiy Zavod, a strategic enterprise managed by the State, could cause its bankruptcy and damage the sovereignty and security of the Russian State. Enforcement would therefore be in conflict with the public policy of the Russian Federation. Further, the award was not based on a valid arbitration agreement: the Shipbuilding Contracts had not entered into force because Stena RoRo's board of directors failed to approve them by protocol.

On 24 April 2009, the Federal *Arbitrazh* Court for the Northwestern District affirmed the decision below. The court held that enforcement would violate public policy because of the infringement of fundamental principles of Russian civil law – freedom of contract, equality of the contracting parties and attribution of liability – as the Shipbuilding Contracts had not come into force and Baltiyskiy Zavod could not be held liable for their non-performance.

By the first decision reported, rendered on 11 September 2009, a panel (*Collegium*) of the Supreme *Arbitrazh* Court of the Russian Federation decided to refer the case to the Presidium of the Court.

The Court reasoned at the outset that enforcement of a foreign award may be refused under the 1958 New York Convention when the arbitration agreement on which it is based is not valid, and when enforcement would violate the public policy of the enforcement court. It then held that the courts below erred in reviewing the arbitrators' findings in respect of the validity of the procedure followed by Stena RoRo's board of directors for approving the Contracts. This issue concerned the merits and could not be reviewed by the enforcement court. Nor was there a violation of public policy because the procedure for approval under the applicable Swedish law differed from the procedure to be followed under Russian law: similar discrepancies do not violate the public policy principle of the equality of the parties. Further, liquidated damages are known in Russian law and cannot by themselves be contrary to the public policy of the Russian Federation. This is the first decision reported.

In the meantime, the shareholders of Baltiysky Zavod had filed an action in the Saint Petersburg court against Stena RoRo and Baltiysky Zavod, seeking a declaration that the Shipbuilding Contracts and the Option Agreement were invalid as they had been entered into with the sole aim of having Stena RoRo receive liquidated damages.

On 16 March 2010, the court granted the shareholders' claim, holding that the Contracts and the Option Agreement were a nullity. This decision was affirmed by the Thirteenth *Arbitrazh* Appellate Court on 7 July 2010 and by the Federal *Arbitrazh* Court for the Northwestern District on 25 October 2010.

By the second decision reported, rendered on 13 September 2010, the Presidium of the Supreme *Arbitrazh* Court of the Russian Federation decided on the enforcement case referred to it by the *Collegium* and on Stena RoRo's appeal from the decisions finding that the Contracts and the Agreement were a nullity.

The Presidium (1) reversed the 25 October 2010 decision granting the shareholders' claim to invalidate the Contracts and the Option Agreement and (2) affirmed the *Collegium*'s finding that Stena RoRo's request for enforcement of the SCC award should be granted.

The Presidium held that the reasons given by the courts below to find that the Shipbuilding Contracts and the Option Agreement were null and void because they had been concluded with the intent to cause harm to Baltiysky Zavod and its shareholders were unfounded. Russian law and the ICC Uniform Rules for Demand Guarantees allow a Russian bank to issue a bank guarantee under Swedish law, so that the parties could not have agreed on this condition being well aware that it was impossible. Also, the courts below found that Baltiysky Zavod could not fulfill its contractual obligations because it could not receive advance payments from Stena RoRo without the above bank guarantee. The Presidium disagreed, finding that Baltiysky Zavod could have commenced work on the ships at its expense.

Nor was there a violation of public policy. The lower courts held that Baltiysky Zavod's management had been guilty of unfair practices, but failed to establish that there had been collusion between Baltiysky Zavod's management and Stena RoRo, or that Stena RoRo was aware of such practices. The violation by Baltiysky Zavod's management of the obligation to act reasonably and in good faith in the interest of Stena RoRo was not in itself a ground for finding that the managements's acts were invalid. Similarly, the low contractual price and the later realization that the Contracts were unprofitable did not by themselves indicate that Stena RoRo abused its rights by concluding the Contracts. This is the second decision reported.

A detailed report of this decision is available online at <www. kluwerarbitration.com/document.aspx?id=KLI-KA-.......>.

Excerpt

Supreme *Arbitrazh* Court of the Russian Federation, 11 September 2009

[1] "In the appeal submitted to the Supreme *Arbitrazh* [Commercial] Court of the Russian Federation for a review of court decisions through supervisory proceedings, Stena RoRo asked that those decisions be annulled, because of a breach of the uniform interpretation and application of the rules of law by the state *arbitrazh* courts. In Stena RoRo's opinion, Russian courts, in breach of the provisions of the [1958 New York Convention] and Art. 243(4) of the *Arbitrazh* Court Procedure Code of the Russian Federation [the *Arbitrazh* Procedure Code], reviewed the SCC arbitral award on its merits under Russian law, which is not applicable to the legal relations of the parties.
[2] "Having reviewed Stena RoRo's appeal and the case materials, the Supreme *Arbitrazh* Court concludes that the case shall be transferred to the Presidium of the Supreme *Arbitrazh* Court of the Russian Federation, which will decide on the review of the disputed court decisions through supervisory proceedings."

I. BACKGROUND

[3] "As established by the courts, Baltiyskiy Zavod was obligated, under the provisions of Contracts Nos. 443 and 444 dated 7 July 2005, to design, build, place in the water, equip, deliver and sell two ships, class ROPAX, with a parking line length of 4,020 linear meters. On 7 July 2005, [Baltiyskiy Zavod and Stena RoRo] also executed an Option Agreement under which Baltiyskiy Zavod undertook to build two additional ships with similar characteristics, provided that Contracts Nos. 443 and 444 entered into force. The Contracts and the Option Agreement (which referred to the Contracts in this respect) provided that any disputes arising from or in connection with them would be heard by the Arbitration Institute of the Stockholm Chamber of Commerce in accordance with its rules.

[4] "The Contracts' entry into force was conditioned on their approval by Baltiyskiy Zavod's board of directors and Stena RoRo's board of directors. Believing that all the conditions precedent for Contracts Nos. 443 and 444 to enter into force were fulfilled, Stena RoRo applied to the Arbitration Institute of the Stockholm Chamber of Commerce to recover losses when Baltiyskiy Zavod refused to fulfill its obligation to transfer the ships.

[5] "In the arbitration, Baltiyskiy Zavod argued that Contracts Nos. 443 and 444 did not enter into force because they were not duly approved by Stena RoRo's board of directors, were not documented and were not sent to Baltiyskiy Zavod. The arbitral tribunal specifically examined this issue and found that the Contracts had been duly executed. It established that Contracts Nos. 443 and 444 and the Option Agreement were governed by Swedish substantive law. In respect of the Contracts' approval, [the arbitral tribunal found that] Stena RoRo and Baltiyskiy Zavod exchanged e-mails through a third-party legal entity, an intermediary; in this correspondence, Stena RoRo repeatedly confirmed that the transactions would be approved by its board of directors, and at the same time gave information as to the new composition of Stena RoRo's owners.

[6] "Relevant clarification was given at a meeting between Baltiyskiy Zavod's management and Stena RoRo's management on 17 August 2005 in Saint Petersburg, which was scheduled for the official signing of the Contracts and to confirm that the Contracts had entered into force. At this meeting, Stena RoRo's managing director presented, signed and issued to Baltiyskiy Zavod's management a letter stating the following: 'Stena RoRO AB's board of directors hereby confirms its approval of Shipbuilding Contracts Nos. 443 and 444 dated 7 July 2005, Gothenburg, 17 August 2005'.

[7] "The arbitral tribunal established that Baltiyskiy Zavod received that letter, did not comment thereon and did not request to review a copy of the protocol issued by Stena RoRo's board of directors Additional agreements were signed at the meeting, and both parties acted in such manner as if the Contracts had entered into force. In particular, Baltiyskiy Zavod issued a press release on the execution of the Contracts, accepted members of Stena RoRo's design group, participated in meetings and maintained correspondence concerning the Contracts, asked to increase the price for the ships and only informed Stena RoRo on 23 June 2006 that there was no legal obligation to fulfill the Contracts.

[8] "Under these circumstances, the arbitral tribunal concluded that the meeting Stena RoRo's board of directors took place and that the board approved the Contracts, which is confirmed by the letter issued on 17 August

2005 at the meeting in Saint Petersburg, which suffices as it was accepted by Baltiyskiy Zavod.

[9] "The arbitral tribunal noted that documentation of such approval is not required by law, nor was it required by the Contracts, and the lack of documentation is relevant only as an element in determining the real question: was approval granted by Stena RoRo's board of directors?

[10] "The arbitral tribunal then held – pursuant to Swedish substantive law, which had been chosen by the parties to Contracts Nos. 433 and 444 and was applicable to their relationship – that whether the Contracts and the Option Agreement entered into force depended on whether the Contracts had actually been approved by Stena RoRo's and Baltiyskiy Zavod's board of directors, not on the form of such approval. As the Contracts were approved by Stena RoRo and its board of directors, and the approval was duly communicated to Baltiyskiy Zavod, the Contracts entered into force, were not fulfilled by Baltiyskiy Zavod, and Stena RoRo was entitled to claim compensation of losses for the non-fulfillment of Baltiyskiy Zavod's obligations."

II. DISCUSSION

[11] "According to Art. V(1) of the New York Convention, recognition and enforcement of a foreign arbitral award may be refused at the request of the party against whom it is invoked only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof, inter alia, that the agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the country where the award was made.

[12] "Under Art. 243(4) of the *Arbitrazh* Procedure Code, when reviewing a case a state *arbitrazh* court may not review a foreign arbitral award on its merits.

[13] "In this case, the question whether Stena RoRo's board of directors complied with the procedure for approving the Contracts was decided by the arbitral tribunal in Stockholm, under the substantive and procedural laws of Sweden which governed the legal relationship of the parties to the Contracts. Hence, the state *arbitrazh* courts had no legal ground to review the factual circumstances established by the arbitral tribunal and to evaluate those circumstances by applying the rules of Russian law.

[14] "The Swedish Arbitration Act 1999 (SFS (1) 1999:116), which applies to arbitration proceedings taking place in Sweden, sets out the rules for the

annulment of arbitral awards (Sects. 33, 34 and 46). By its decision of 20 May 2010, the Svea Court of Appeal dismissed the annulment application filed by Baltiyskiy Zavod, ruling that the lack of approval by Stena RoRo's board of directors had no impact on the conclusion of the Contracts.

[15] "Under Art. V(2) of the New York Convention, recognition and enforcement of an arbitral award may also be refused if the competent authority of the country where recognition and enforcement is sought finds that the recognition and enforcement of the award would be contrary to the public policy of that country.

[16] "It appears from the decision of [the Federal *Arbitrazh* Court for the Northwestern District, 24 April 2009] that the conclusion that enforcement of the arbitral award would be contrary to the public policy of the Russian Federation was based on the lack of a contractual relationship between Stena RoRo and Baltiyskiy Zavod, because the Contracts did not enter into force due to Stena RoRo's board of directors not approving them in the form of a protocol.

[17] "The issue of the entry into force of Contracts Nos. 443 and 443 concerns the merits of the award of the arbitral tribunal and could not be reassessed and reevaluated by a state *arbitrazh* court.

[18] "The procedural requirements for the approval of large-scale transactions by legal entities, if any, is determined by the legislation of the country under whose laws the corresponding legal entity was established. Discrepancies in these rules in the legislation of different countries do not violate the principle of the equality of the parties to a foreign economic contract, and are not a ground for ascertaining the legality of the actions of a contracting party under the regulatory requirements applicable to the other contracting party under the laws of its country.

[19] "Under the legislation of the Russian Federation, Baltiyskiy Zavod should have and actually did draft a protocol relating to its board of director's approval to execute Contracts Nos. 443 and 444. However, it does not follow from this circumstance that Stena RoRo has, solely by virtue of Baltiyskiy Zavod's actions, to comply with any requirements of Russian legislation or with the civil law principle of the parties' equality under a corresponding obligation to draft the approval of its board of directors in the form of a protocol.

[20] "The rule for corporate approval provided for in Russian legislation does not apply to Stena RoRo. By executing Contracts Nos. 443 and 444 on the condition that they would be governed by Swedish substantive law, Baltiyskiy Zavod accepted the risks connected with that [provision]; accordingly, the legal procedure may differ from the rules of Russian law which regulate such

relationships. Further, the procedure for approving the transaction, which Baltiyskiy Zavod calls irregular, protects the interest of Stena RoRo's shareholders and does not relate to circumstances which could possibly violate Baltiyskiy Zavod's rights.

[21] "The arbitral tribunal awarded damages in favour of Stena RoRo and against Baltiyskiy Zavod, for breach of the Contracts, in the amount of € 5,000,000 for each of the four ships that were not built.

[22] "Damages were determined by the arbitral tribunal on the basis of the applicable Swedish law, in accordance with the terms and conditions of the Contracts and the Option Agreement, which provide for the possibility to recover damages in a fixed, previously agreed amount (Art. X1.B2(b) of the Shipbuilding Contracts). The arbitral tribunal considered these damages to be an agreed penalty; by their legal nature, such penalty is similar to the concept of penalty in Russian civil law.

[23] "Under Art. 393(1) of the Civil Code of the Russian Federation, a debtor shall compensate a creditor for damages incurred because of the non-fulfillment or improper fulfillment of obligations. According to Art. 330(1) CC, fines (penalties) are monetary amounts, determined by law or by agreement, which a debtor must pay to a creditor in the event of the non-fulfillment or improper fulfillment of obligations. When demanding payment of a penalty, creditors do not have to prove that damages were caused to them. Thus, both penalties and damages are provided for by civil legislation and have entered into the legal system of the Russian Federation. In and of itself, the recognition of these liabilities cannot be contrary to the public policy of the Russian Federation, as was indicated in Resolution No. 5243/06 of the Presidium of the Supreme *Arbitrazh* Court of the Russian Federation, dated 19 September 2006.[2]

[24] "Under Art. 1(1) CC, the civil legislation of the Russian Federation is founded on the recognition of the equality of the participants in civil legal relations, the sanctity of ownership, the freedom of agreements, the impermissibility of arbitrary interference in private matters, the necessity of the unfettered exercise of civil rights, and the assurance of the restoration of violated rights and their legal protection.

[25] "In this case, liquidated damages for the non-fulfillment of obligations in the amount of € 5,000,000 for each of the four ships that were not built was provided for in the Contracts and the Option Agreement between Stena RoRo and Baltiyskiy Zavod, voluntarily executed between them as equal parties by

2.Reported in Yearbook XXXII (2007) pp. 485-488 (Russian Federation no. 13).

their free expression of will and approved by their competent management bodies.
[26] "Baltiyskiy Zavod violated its contractual obligations, and Stena RoRo took measures to restore those violated rights, by going to arbitration to defend its contractual rights. There are no case materials which evidence otherwise.
[27] "Moreover, in its statement of response submitted to the arbitral tribunal, Baltiyskiy Zavod agreed that 'if the tribunal examines the Shipbuilding Contracts and the Option Agreement and considers them to be in force and enforceable according to their conditions, Baltiyskiy Zavod agrees to pay a fine in the amount of € 20,000,000 i.e., a sum equal to "estimated" damages in accordance with Art. X1.B2(b) of the Shipbuilding Contracts, including the Option Agreement'. Therefore, Baltiyskiy Zavod itself recognized the amount of damages awarded by the tribunal to be a commensurate consequence of its violation of obligations.
[28] "In the opinion of the Supreme *Arbitrazh* Court, under these circumstances, the courts had no ground to hold that the recognition and enforcement of the arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce in Case No. V054-56/2007 dated 24 September 2008 was contrary to the public policy of the Russian Federation."

III. CONCLUSION

[29] "In light of the above considerations and pursuant to Arts. 299, 300 and 304 of the *Arbitrazh* Procedure Code, the Court rules to transfer Case No. A56-60007 of the State *Arbitrazh* Court of the City of Saint Petersburg and Leningrad District [*Oblast*] to the Presidium of the Supreme *Arbitrazh* Court of the Russian Federation for a review through supervisory proceedings of the ruling of 20 February 2009 on the case and the resolution of the Federal *Arbitrazh* Court for the Northwestern District dated 24 April 2009…."

Presidium, Supreme *Arbitrazh* Court of the Russian Federation, 13 September 2010

[30] "The shareholders of the Open Joint Stock Company Baltiysky Zavod submitted a claim to the State *Arbitrazh* Court of the City of Saint Petersburg and Leningrad District against Stena RoRo AB and Baltiysky Zavod to

invalidate Shipbuilding Contracts Nos. 443 and 444 dated 7 July 2005, as well as an Option Agreement dated 7 July 2005.

[31] "By a decision of 16 March 2010, the State *Arbitrazh* Court of the City of Saint Petersburg and Leningrad District granted the claim. Pursuant to Art. 268(6)(1) of the *Arbitrazh* Procedure Code, the Thirteenth *Arbitrazh* Appellate Court reviewed the case under the rules for the review of cases in the state *arbitrazh* court of first instance. By resolution of the appellate court of 7 July 2010, the decision of the court of first instance was affirmed and the [shareholders'] claim was granted. On 25 October 2010, the Federal *Arbitrazh* Court for the Northwestern District upheld the resolution of the appellate court. By a petition filed with the Supreme *Arbitrazh* Court of the Russian Federation for a review of court decisions through supervisory proceedings, Stena RoRo asked that [the decisions below] be reversed because the courts incorrectly applied substantive law rules. In their statement of defense, the shareholders requested that the contested court decisions remain unaltered.

[32] "After reviewing the case, the Presidium considers that the petition shall be granted on the following grounds.

[33] "As established by the courts and confirmed by the case materials, Shipbuilding Contracts Nos. 443 and 444 dated 7 July 2005 were executed between Stena RoRo and Baltiysky Zavod for the construction of two ships, class ROPAX with a parking line length of 4,020 linear meters (the 'Shipbuilding Contracts', or 'Contracts'). According to [these Contracts], Baltiysky Zavod was to design, build, place in the water, equip, deliver and sell the two ships, and Stena RoRo must accept and pay for them.

[34] "In addition to the Contracts dated 7 July 2005, the defendants signed an Option Agreement, under which Baltiysky Zavod gave Stena RoRo the option to purchase two additional ships with similar characteristics to the ships specified in the Contracts and on the same conditions and provisions contained in the stipulated Contracts. The Contracts and Option Agreement were not fulfilled by the parties.

[35] "The shareholders submitted a statement of claim seeking to invalidate the Contracts on the basis of Arts. 10 and 168 CC because the Contracts aimed at harming Baltiysky Zavod and its shareholders. In the opinion of the shareholders, the partes knew, when executing the Contracts, that they could not fulfill their obligations [thereunder]. For example, the provisions in the Contracts obligated Baltiysky Zavod to provide a bank guarantee from a Russian bank, such guarantee to be governed by the laws of Sweden: this is known to be impossible. Additionally, the contract price was undervalued, and obviously could not cover Baltiysky Zavod's expenses to fulfill its contractual obligations. The shareholders also believed that Stena RoRo's

actions were not aimed at purchasing ships, but rather at receiving a penalty of over € 20,000,000 from Baltiysky Zavod.

[36] "In granting the claims, courts of three instances held that the facts established in this case confirm that the parties did not intend to fulfill their obligations under the Contracts and the Option Agreement, and that it was known that it was impossible to fulfill the transactions. Taking into account the arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. V054-56/2007 dated 24 September 2008, which directs Baltiysky Zavod to pay an amount exceeding € 20,000,000 to Stena RoRo for breach of contract, the courts came to the conclusion that the challenged transactions were unprofitable and that they were made with the intent to cause harm to Baltiysky Zavod and its shareholders' interest.

[37] "The courts concluded, pursuant to Art. 1192(1), Art. 1210(5) and Art. 1217 CC, that it was impossible to fulfill the obligations stipulated in the Contracts at the time they were executed. The obligations that could not be fulfilled required a Russian bank, Sberbank, to issue a bank guarantee on conditions that were known to be impossible. The courts also referred to Stena RoRo's unfair practices taking advantage of the situation in Baltiysky Zavod's managing bodies, which bodies took actions aimed at damaging Baltiysky Zavod's interest and its shareholders.

[38] "However, the courts' conclusion that a Russian bank cannot provide a guarantee under the laws of Sweden contradicts the rules of Russian law, in particular Arts. 1186 and 1217 CC, and the provisions of Art. 27 of the ICC Uniform Rules for Demand Guarantees. These rules and provisions stipulate that the laws regulating a (counter)guarantee, unless otherwise specified, will be the laws of the location of the guarantor or instructing party (depending on the circumstances). If the guarantor or instructing party has multiple locations, the law of the location of the branch office that issued the (counter)guarantee will apply.

[39] "Other facts that the courts have indicated as evidence of the obvious impossibility of Baltiysky Zavod to fulfill its contractual obligations – simply because Baltiysky Zavod could not receive advance payments without providing Stena RoRo with a bank guarantee – should have not precluded Baltiysky Zavod from commencing work. Work could have been commenced at the expense of Baltiysky Zavod until the payments were received.

[40] "Further, the courts' conclusion that Stena RoRo abused its rights when executing the disputed transactions does not conform to the substantive law rules of the Russian Federation and violates the provisions of Arts. 10 and 168 CC and their application.

[41] "The courts concluded that these rules applied as a whole because of unfair practices by Baltiysky Zavod's management. However, in order to invalidate the Contracts, it should have been necessary to establish the existence of collusion between Baltiysky Zavod's management and Stena RoRo, or Stena RoRo's awareness of these actions by Baltiysky Zavod's management. The courts did not establish such facts. Violation by Baltiysky Zavod's managing bodies of the obligation to act in the interest of Stena RoRo reasonably and in good faith, which is evidenced by Baltiysky Zavod's seemingly disadvantageous conditions in the project, is not by itself a reason to invalidate the transaction made by the management on behalf of Baltiysky Zavod.

[42] "The undervalued price of the contracts and the subsequent understanding of the unprofitability of the transactions do not by themselves indicate an abuse of Stena RoRo's rights, nor the presence of legal grounds to deem that the transactions were insignificant at the date of their execution.

[43] "Hence, the challenged court decisions violate the uniformity of the interpretation and application of Arts. 10, 168, 1186 and 1217 CC by the state *arbitrazh* courts, and shall be reversed pursuant to Art. 304(1)(1) of the *Arbitrazh* Procedural Code.

[44] "On the basis of the remarks above and pursuant to Art. 303, Art. 305(3)(1) and Art. 306 of the *Arbitrazh* Procedure Code, the Presidium of the Russian Federation rules:

(1) To reverse the ruling of the State *Arbitrazh* Court of the City of Saint Petersburg and Leningrad District in Case No. A56-6656/2010 dated 16 March 2010; the resolution of the Thirteenth *Arbitrazh* Appellate Court dated 7 July 2010, and the resolution of the Federal *Arbitrazh* Court for the Northwestern District in the same case;

(1) To recognize and enforce the arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce dated 24 September 2008, case No. V054-56/2007;

(3) To order the State *Arbitrazh* Court of the City of Saint Petersburg and Leningrad District to issue the enforcement order.

(4) To deny the claim of the shareholders."