[Deciding Court]
Tokyo District Court

[Date of Decision]
28 July 2009

[Case No.]
2008 (arbitration) No.3

[Source]
LEX/DB literature no.25451576, Hanrei Times No.1302 p.292

[Summary of Facts]

Non-party company A, a semiconductor manufacturer, was operating a manufacturing factory of semiconductors in Hsinchu City, Taiwan in 1997, using such things as a semiconductor manufacturing device manufactured, sold and established by X (hereinafter, the "Device") . However, a fire occurred in A's factory above on October 3, 1997 (hereinafter, the "Fire Incident") and the said factory was entirely destroyed. A received payment of insurance money from three (3) Taiwanese insurance companies for the damages incurred by the Fire Incident, and the insurance companies above received payment of insurance money from Y, a reinsurance company, for the payment of the insurance money above. Through the payment of the insurance money above, Y acquired, through subrogation, the right to claim for compensation of damages held by A against the person responsible for the Fire Incident, and filed a petition to the American Arbitration Association with Japan as the seat of arbitration pursuant to an arbitration agreement subsequently made with X.

On July 14, 2008, in relation to the cause of the Fire Incident, the arbitral tribunal in this case recognized Y's claims overall and granted an arbitral award with such contents as: (i) recognizing the breach of warning obligation by X (hereinafter, "Warning Obligation Breach"), (ii) recognizing the casual relationship between the Warning Obligation Breach and the Fire Incident, and (iii) partially affirming Y's claims by deciding that the negligence ratio between A and X in the Fire Incident was 65% to 35%, and issuing against X an order to pay an amount of NTD 2,688,000,000 and delinquency damages thereto.

This is a case in which X objected to such arbitral award and filed a petition requesting to set it aside.

[Summary of Decision]
Petition dismissed

Ⅰ "Article 44 Paragraph 1 Item 4 of the Arbitration Act provides that the impossibility of X to defend in the arbitration proceedings is an event to set aside the arbitral award. However, in light of the facts that arbitration proceedings are out-of-court dispute resolution proceedings based upon the intent of the parties without any appellate proceedings, and the decision thereof is positioned as being final, and furthermore, Article 4 of the said Act provides that the powers of arbitration proceedings may only be exercised when provided under the Arbitration Act, it is without saying that the arbitral award should be respected to the extent possible."

"It is reasonable to interpret that the intent of Article 44 Paragraph 1 Item 4 of the said Act is to recognize the setting aside of the arbitral award by the court only where there exists a material violation of procedural guarantee where the parties were not granted any opportunity whatsoever to defend, such as cases of the implementation of procedures which the parties were not able to attend, or the rendering of a decision with reliance upon materials which the parties were not aware."

"Therefore, it cannot be recognized that it falls under an event to set aside the arbitral award under the said item simply by the mere circumstances that the parties were not aware that something was a material issue."

Ⅱ "It is reasonable to interpret that it is not the intent of Article 44 Paragraph 1 Item 8 to recognize that the court may set aside arbitral award only where the fact-finding or legal decision by the arbitral tribunal is simply recognized to be unreasonable, but that its intent is to recognize that the court may set aside the arbitral award only where the legal consequence realized by the arbitral award is recognized to violate the public policy of Japan."

Ⅲ "It is reasonable to interpret that, generally speaking, it violates Article 44 Paragraph 2 and is unpermitted to newly add and assert the events to set aside the arbitral award under Article 44 Paragraph 1 Items 1 through 6 of the Arbitration Act after the period prescribed under Article 44 Paragraph 2 has elapsed, after petitioning to set aside the arbitral award."

"This is because, since the said paragraph restricts the period for petitioning to set aside the arbitral award to three (3) months from the date of sending a copy of the written arbitral award for the purposes of early clarification of the validity of the arbitral award,

if it is permitted to add or assert new events for setting aside the arbitral award after the petitioning period has elapsed, it would become difficult for Y to predict whether or not such arbitral award would be set aside, and it would result in causing impairment to the early clarification of the arbitral award."

"In this case, after petitioning to set aside the arbitral award on October 14, 2008, X added and claimed the events to set aside the arbitral award under Article 44 Paragraph 1 Item 6 of the Arbitration Act for the first time on March 6, 2009, …… and the adding and asserting of events for setting aside the arbitral award under the said item ……. is recognized as newly adding and asserting events for setting aside the arbitral award under Article 44 Paragraph 1 Items 1 through 6 after the petitioning period prescribed under Article 44 Paragraph 2 ……. elapsed."