

CESKOSLOVENSKA OBCHODNI BANKA, A.S.

v.

SLOVAK REPUBLIC
(ICSID CASE No. ARB/97/4)

Procedural Order No. 2

Whereas on September 4, 1998 the Tribunal received an application from the Claimant in the instant case, invoking ICSID Arbitration Rule 39, seeking a recommendation of provisional measures and of emergency interim restraining measures (or “provisional measures of the second degree”) in accordance with Articles 47 and 26 of the ICSID Convention;

Whereas the Claimant requests the Tribunal specifically “to recommend that Respondent take all necessary measures immediately to stay until the issuance of the final award in this arbitration the bankruptcy proceeding currently pending in the Regional Court of Bratislava relating to Slovenska inkasni spol. s.r.o. in which a hearing before the court is scheduled to be held on September 10, 1998”;

Whereas the Claimant contends that the bankruptcy proceeding to be conducted on September 10, 1998 will constitute “a hearing on the issues that form the core of the dispute on the merits submitted by CSOB to this Tribunal”;

Whereas Claimant supports the above contention as follows:

- (a) that it is evident from CSOB’s Request for Arbitration (paras 26 - 31) that the nature and extent of the Slovak Republic’s obligations to fund the Slovak Collection Company and the validity and quantum of CSOB’s claims against the Slovak Collection Company constitute the heart of the dispute submitted to the Tribunal, and
- (b) that these very issues will be the subject of the bankruptcy proceedings relating to the Slovenska inkasni spol. s.r.o. (the Slovak Collection Company) to be conducted on September 10, 1998 before the Bratislava Regional Court, where the CSOB will be the only creditor and where the following issues, among others, will be addressed: (i) the validity of CSOB’s claims against the Slovak Collection Company; (ii) the precise

quantum of such claims; and (iii) the composition of the “bankruptcy estate”, the latter necessarily including a determination as to whether the Slovak Collection Company has a valid asset in the form of a right to receive funds from the Slovak Republic to cover its losses as contemplated by the very Consolidation Agreement at issue in the instant ICSID arbitration proceeding, and, if so, the extent of that obligation.

Whereas the Respondent in its communication of September 8, 1998 submits that CSOB will suffer no irreparable injury if the hearing takes place as scheduled on September 10, 1998, since that hearing concerns Slovenska inkasni’s purported obligations to CSOB under the Loan Agreement and not the Slovak Republic - which is not party to the bankruptcy proceedings - and its purported obligations to CSOB under the Consolidation Agreement.

Whereas Article 26 of the ICSID Convention reads as follows:

“Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention”;

Whereas Article 47 provides: “Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party”;

Whereas Rule 39(1) of the ICSID Arbitration Rules provides in part that “any time during the proceedings a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal;” whereas Rule 39(2) requires the Tribunal to “give priority to the consideration of a request made pursuant to paragraph (1)”, and whereas Rule 39(4) stipulates that “the Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations”;

Whereas the documents submitted to the Tribunal in connection with this request for provisional measures do not indicate whether the parties hereto have informed the Regional Court in Bratislava of the pending proceedings in the instant arbitration and of the international treaty obligations applicable to it, nor whether they would be prevented from doing so;

Whereas, furthermore, this Tribunal has no reason to assume that the Bratislava Regional Court, if duly informed by the parties of the pendency of the instant arbitration, the request for provisional measures, and the international legal norms applicable thereto, would fail to suspend the September 10, 1998 hearing or defer consideration of the issues

relevant to the dispute submitted to this Tribunal until such time as this Tribunal has had an opportunity to decide on the request for provisional measures;

Now, therefore, the Tribunal

1. Denies the request for emergency interim restraining measures.
2. Reserves its decision on the Claimant's request for provisional measures until such time as it has been able to consider the observations of the parties.
3. Invites the Respondent to present its observations to the Tribunal by Monday, September 28, 1998, the Claimant to present its reply by Wednesday, October 7, 1998, and the Respondent to present its rejoinder by Thursday, October 15, 1998.

Washington, D.C.
September 9, 1998

Thomas Buergenthal
President of the Tribunal