

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**RAND INVESTMENTS LTD., WILLIAM ARCHIBALD RAND, KATHLEEN
ELIZABETH RAND, ALLISON RUTH RAND AND ROBERT HARRY
LEANDER RAND (CANADA)**

AND

SEMBI INVESTMENT LIMITED (CYPRUS)

Claimants/Applicants

– v –

REPUBLIC OF SERBIA

Respondent

(ICSID Case No. ARB/18/8)

**PARTIAL WITHDRAWAL OF APPLICATION
FOR PARTIAL ANNULMENT**

14 June 2024

SQUIRE 
PATTON BOGGS

nstlaw/  **Stankovic
& Partners**

I. INTRODUCTION

1. On 24 February 2024, Mr. William Archibald Rand (“**Mr. Rand**”), Rand Investments Ltd. (“**Rand Investments**”), Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr. Robert Harry Leander Rand (“**Mr. Rand’s Children**” and, together with Mr. Rand and Rand Investments, “**Canadian Claimants**”) and Sembi Investment Limited (“**Sembi**”, Canadian Claimants and Sembi together as “**Claimants**”) filed the Application for Partial Annulment (“**Application**”) of the Award issued in the case of *Rand Investments Ltd. and others v. Republic of Serbia*, ICSID Case No. ARB/18/8, on 29 June 2023, as supplemented by the Decision on the Claimants’ Request for a Supplementary Decision dated 27 October 2023 (“**Award**”).
2. As Claimants explained in the Application, the majority of the Tribunal, including Prof. Gabrielle Kaufmann-Kohler and Mr. Baiju S. Vasani (“**Majority**”), rightfully upheld jurisdiction over Mr. Rand’s beneficial ownership of 75.87% of the shares in a Serbian agricultural company, BD Agro AD, Dobanovci (“**BD Agro**” and “**Beneficially Owned Shares**”).¹
3. However, as Claimants demonstrated in the Application, the Tribunal also made several errors that make parts of the Award annulable. To begin with, Claimants showed that the Tribunal failed to state reasons with respect to a number of key determinations made when valuing Mr. Rand’s 75.87% beneficial shareholding in BD Agro.²
4. In addition, Claimants demonstrated that the Tribunal manifestly exceeded its powers and, in parts, failed to state reasons for declining to exercise jurisdiction over:
 - a. the claim brought by Mr. Rand in relation to his additional 3.9% shareholding in BD Agro (“**Indirect Shareholding**”);³

¹ Award, ¶ 471, A-001.

² Application for Partial Annulment of Arbitral Award dated 24 February 2024, ¶¶ 52-124.

³ Application for Partial Annulment of Arbitral Award dated 24 February 2024, ¶ 127-138.

- b. Mr. Rand’s investment represented by loans that he provided to BD Agro in 2008 (“**Loans**”);⁴ and
 - c. all the claims of Sembi, Rand Investments and Mr. Rand’s Children (“**Rejected Claimants**”).⁵
5. In the Application, Claimants requested annulment of all parts of the Award affected by the above-mentioned errors.
6. Bearing in mind the objective of judicial economy, the Rejected Claimants have now decided to withdraw the Application in the part concerning the Tribunal’s refusal to exercise jurisdiction over their claims. This withdrawal shall also terminate the Rejected Claimants’ participation in this annulment proceeding. Going forward, the only Applicant shall be Mr. Rand and the annulment proceeding shall only address the requests for annulment described in paragraphs 3, 4(a) and 4(b) above.

II. PARTIAL WITHDRAWAL OF THE APPLICATION

7. One of Mr. Rand’s claims in the arbitration was for compensation of the fair market value of the Beneficially Owned Shares, estimated by Claimants at EUR 87.5 million.⁶ Mr. Rand raised this claim in the alternative to the Rejected Claimants’ claims for compensation of the fair market value of their respective interests in the Beneficially Owned Shares.⁷
8. The Tribunal upheld Mr. Rand’s claim for compensation of the fair market value of the Beneficially Owned Shares on jurisdiction and the merits, but it awarded a lower amount of damages because it disagreed with the valuation of the Beneficially Owned Shares proposed by Claimants.
9. In the Award, the Tribunal first concluded that “*Mr. Rand’s contribution towards the investment being an interest in BD Agro through the Beneficially Owned Shares is*

⁴ Application for Partial Annulment of Arbitral Award dated 24 February 2024, ¶ 139-151.

⁵ Application for Partial Annulment of Arbitral Award dated 24 February 2024, ¶ 152-168.

⁶ Claimants’ First Post-Hearing Brief dated 27 September 2021, ¶ 353(f), **A-037**.

⁷ Claimants’ First Post-Hearing Brief dated 27 September 2021, ¶ 350, **A-037**.

clear”⁸ and that “*the Tribunal has jurisdiction ratione materiae under the ICSID Convention over the claims brought by Mr. Rand under the Canada-Serbia BIT in respect of his interest in the Beneficially Owned Shares.*”⁹

10. The Tribunal then continued to state that the “*seizure of the Beneficially Owned Shares deprived Mr. Rand of the entirety of his investment*”,¹⁰ that it “*was carried out in the exercise of sovereign powers [and]...was wrongful*”¹¹ and that by seizing the Beneficially Owned Shares, “*Serbia breached Article 6(1) of the Canada-Serbia BIT.*”¹²
11. Based on the above, the Tribunal concluded that because “*Mr. Rand indirectly owned 75.87% of BD Agro’s shares*”, he is entitled to damages equal to 75.87% of the value of BD Agro’s equity as of the valuation date.¹³
12. The Tribunal’s holding that the full fair market value of the Beneficially Owned Shares shall be awarded to Mr. Rand is not subject to any annulment request. With respect to the Beneficially Owned Shares, Claimants have only requested annulment of the Tribunal’s valuation of BD Agro’s equity and, thus, also the Beneficially Owned Shares. Serbia has not filed any request for annulment, a fact Claimants did not know when filing the Application.
13. It follows that the Rejected Claimants’ claims on the merits are redundant because, in accordance with the parts of the Award that are not subject to any request for annulment, the entire compensation for the seizure of the Beneficially Owned Shares shall be awarded to Mr. Rand.
14. Therefore, Claimants hereby withdraw the Application in the part concerning the Tribunal’s refusal to exercise jurisdiction over Rejected Claimants’ claims. Specifically, Claimants no longer request the annulment of the following paragraphs

⁸ Award, ¶ 263, A-001.

⁹ Award, ¶ 277, A-001.

¹⁰ Award, ¶ 490, A-001.

¹¹ Award, ¶ 623, A-001.

¹² Award, ¶¶ 623, 632, A-001.

¹³ Award, ¶ 708, A-001.

of the Award: paragraphs 251-265, 276, second and third sentence of paragraph 277, paragraphs 717(b) and 717(g) to the extent they relate to claims of the Rejected Claimants.

15. Claimants’ decision to partially withdraw the Application is in line with previous decisions of ICSID *ad hoc* committees that acknowledged and accepted partial withdrawal of applications for annulment. For example, the *ad hoc* committee in *Amco v. Indonesia* expressly acknowledged and accepted that “*while maintaining that the Tribunal’s decision on jurisdiction constituted an excess of power*” the applicant “*withdrew that ground for annulment initially submitted in its Application for annulment [...]*”¹⁴ Similarly, the *ad hoc* committee in *NextEra v. Spain* acknowledged and accepted that Spain withdrew certain grounds for annulment originally raised in its pleadings, even though Spain did so only at the hearing.¹⁵
16. The possibility to partially withdraw an annulment application is also recognized by leading commentators. For example, Prof. Schreuer expressly states in his commentary to the ICSID Convention that the “*discretionary nature of the request for annulment would imply*” that “*a party may waive certain claims of nullity in the course of annulment proceedings, while continuing to press other claims.*”¹⁶

III. TERMINATION OF REJECTED CLAIMANTS’ PARTICIPATION IN THE ANNULMENT PROCEEDING

17. The requests for annulment subject to the present withdrawal constitute all requests for annulment relating to the Rejected Claimants. The remaining requests for annulment, which are not affected by the present withdrawal, relate exclusively to Mr. Rand.

¹⁴ *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Ad hoc Committee Decision on the Application for Annulment, 16 May 1986, ¶ 10, **ALA-014**.

¹⁵ *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11, Decision on Annulment, 18 March 2022, ¶¶ 54, 431, **ALA-045**.

¹⁶ Ch. Schreuer *et al.* (eds.), *Schreuer’s Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (3rd edn., 2022), Article 52, ¶ 52, **ALA-046**.

18. Therefore, Rejected Claimants shall no longer participate in this annulment proceeding because they have no remaining interest in the proceeding. The only remaining Applicant shall be Mr. Rand.

IV. MR. RAND'S REQUEST FOR RELIEF

19. For the avoidance of doubt, Mr. Rand maintains the Application in all parts not subject to the present withdrawal and, accordingly, respectfully requests that:
- a. pursuant to Article 52 of the ICSID Convention and Rule 50 of the 2006 ICSID Arbitration Rules, the Award issued in this case be annulled, concerning the quantification of damages, in paragraphs 693-697, 699(i.), 699(ii.), 699(iv.), 699(v.) and 699(vi.), 707 except items “*Other Construction Land*”, “*Agricultural land*”, “*Other fixed assets*” and “*Payment to Canadian suppliers*”, 708 first sentence, the second part of the second sentence starting with “*resulting*” and the last sentence, 717(d) before “*together*” and 717(g) to the extent it relates to claims for damages;
 - b. pursuant to Article 52 of the ICSID Convention and Rule 50 of the 2006 ICSID Arbitration Rules, the Award issued in this case be annulled, concerning the negative decision on jurisdiction, in paragraphs 228, 232 second sentence, 237 first, second and last sentence, 270-273, 274 third and last sentence, 275, 277 first sentence after “*Beneficially Owned Shares*”, the word “*only*” in first and second sentence of paragraph 281, the word “*only*” in paragraph 290, paragraph 333, 343 third sentence, 344-345, 471 the second part of the first sentence starting with the word “*but*”, 717(b) and 717(g) to the extent they relate to Mr. Rand’s claims under the Canada-Serbia BIT;
 - c. pursuant to Article 52 of the ICSID Convention and Rule 50 of the 2006 ICSID Arbitration Rules, the Award issued in this case be annulled, concerning the decision on costs, in paragraphs 716, 717(e) and 717(f); and
 - d. pursuant to Articles 61(2) and 52(4) of the ICSID Convention, the Respondent is ordered to pay Claimants’ costs of this annulment proceeding, together with the Centre’s costs.

20. Mr. Rand reserves the right to modify his request for relief, including the list of specific paragraphs that should be annulled, in his future pleadings.

* * *

21. For the reasons set out above, Claimants respectfully request that the Committee exercise its powers under Article 44 of the ICSID Convention, in conjunction with Article 52(4) of the ICSID Convention, and acknowledge:

- a. Rejected Claimants' partial withdrawal of the Application in the extent set out in paragraph 14 above; and
- b. that, as a result of the partial withdrawal of the Application, Rejected Claimants no longer participate in the annulment proceeding and the annulment proceeding shall continue as between Serbia and Mr. Rand as the sole applicant.

Submitted on behalf of Rand Investments Ltd., Mr. William Archibald Rand, Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand, Mr. Robert Harry Leander Rand and Sembi Investment Limited



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