

**Warsaw Appellate Court judgment  
dated 29 November 2006  
Case No. I ACa 657/06**

**Summary by arbitraz.laszczuk.pl:**

Several individuals entered into a share sale agreement in 2000 with S. SA (later renamed M. SA) in which S. SA undertook to transfer to them shares in another company or pay a contractual penalty. S. SA entered arrangement proceedings, and an arrangement was confirmed in 2003, but the individuals' claim was excluded from the arrangement.

In 2004 Marek D., who had acquired the individuals' claims, commenced arbitration before the Court of Arbitration at the Polish Chamber of Commerce against M. SA for PLN 3 million in contractual penalties which had been provided for his legal predecessors in the 2000 agreement. The arbitration court found the demand to be excessive and issued an award in July 2005 for half the amount claimed.

In August 2005 M. SA filed a petition to set aside the award, alleging among other grounds that the award was internally inconsistent, failed to resolve all disputed issues, and improperly applied provisions of the former Law on Arrangement Proceedings (since replaced by the Bankruptcy and Reorganization Law of 2003) concerning creditors covered by the arrangement. The issue essentially had to do with whether the claim for contractual penalties was reduced in the award because claims against the company were reduced under the arrangement, or the claim was reduced under general principles as excessive. The regional court denied the motion.

M. SA then appealed to the appellate court, which denied the appeal, holding that whether the arbitration court properly applied the law in reducing the contractual penalties was beyond the scope of judicial review of the arbitration award.

**Excerpts from the text of the court's ruling:**

**1. An essential difference between proceedings before a state court and an arbitration court is that the arbitration court is not bound by provisions of civil law. Thus mere failure to apply a particular provision of substantive law, or**

**defective application, is insufficient to set aside an arbitration award. Violation of substantive law is grounds to set aside an arbitration award only if it results in a decision violating overriding legal principles in force in the Republic of Poland.**

**2. In a proceeding upon petition to set aside an arbitration award it is impermissible to review whether the arbitration court decided the case correctly in factual and legal terms.**

**3. An allegation that an arbitration award violated principles of social coexistence and good practice, or that it violated the principle of confidence in public authorities, is misplaced. An arbitration court is not a public authority.**