

Case 2049: CISG 35(2)

Italy: Corte di Cassazione, Sezione II Civile

Case No. 36144/2022

Salzgitter Flachstahl GmbH v. Riveco Generalsider S.p.A.

13 July 2022

Original in Italian

A company with place of business in Germany (seller) and a company with place of business in Italy (buyer) concluded a contract for the sale of steel. The seller sued the buyer for non-payment of two invoices. The buyer responded by alleging that the seller had previously delivered non-conform steel, which had been paid for in full, and that the debt to the seller should be offset against the debt to the buyer for damages arising from the processing of the non-conform steel.

The court of first instance agreed to offset part of the debt owed by the buyer, while finding no non-conformity with the steel. In particular, the court noted that the steel had a percentage of silicon lower than average, but that issues with its processing arose only when the buyer changed the size and thickness of the pipes that it produced with the steel without informing the seller.

The buyer appealed the decision. Acknowledging that the CISG applied, the Court of Appeal recalled that, according to article 35(2)(a) CISG, the goods should be “fit for the purposes for which goods of the same description would ordinarily be used” and that the peculiar composition of the steel, although not in itself making the steel defective, prevented its use for purposes for which it would ordinarily be used. As a result, the Court of Appeal significantly increased the offset amount.

The seller appealed the decision of the Court of Appeal before the Court of Cassation. The seller argued that article 35(2)(a) CISG applied only in the absence of an agreement of the parties, and that the parties had agreed in the contract that the quantity of silicon contained in the steel should not exceed a specified maximum percentage, without indicating a minimum percentage. The parties therefore agreed that the steel with a lower percentage of silicon was conform to the contract.

The Court of Cassation, citing precedents (CLOUT Case No. 867), explained that article 35(2)(a) CISG applied only in the absence of an agreement of the parties, and found that the parties had agreed on a maximum percentage of silicon to be contained in the steel. The Court of Cassation found, however, that the parties did not agree on a minimum percentage of silicon to be contained in the steel, and that the lower-than-average percentage of silicon in the steel delivered under the contract made it unfit for further processing according to ordinary use. It therefore concluded that the parties were bound by article 35(2)(a) CISG unless they agreed otherwise and referred to the UNCITRAL Digest of Case Law on the CISG (2016 ed., p. 141) as supporting this conclusion. Accordingly, the Court of Cassation upheld the decision of the Court of Appeal.