

Statute of limitation deemed suspended from commencement of arbitration through enforcement, even if enforcement refused (Russian Supreme Court)

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In *Ruling No. 305-ES19-11815*, the Russian Supreme Court held that where a party proceeds with an arbitration and receives an award, and where enforcement is subsequently denied, the statute of limitation will be deemed suspended from the day the arbitration commenced, up to the date of the decision not to enforce the award.

The Russian Supreme Court has held that where a party proceeds with an arbitration and receives an award, and where enforcement is subsequently denied, the statute of limitation will be deemed suspended from the day the arbitration is commenced until the date of the decision not to enforce the award.

JSC Mosteplosetstroy (JSC) entered into a construction agreement with LLC MosTeploSetStroy (LLC), in which LLC had an obligation to pay to JSC for works. Payment was due in September 2014 but was never made.

On 12 January 2017, JSC commenced arbitration and later obtained an award against LLC. However, in October 2017, the Russian state courts refused to enforce the award, holding that the dispute was not arbitrable.

In 2018, JSC filed a new claim against LLC with the state courts, which dismissed the claim without hearing the merits, finding that the three-year limitation period, which they considered began in September 2014, had expired.

The Russian Supreme Court annulled the lower courts' decisions and remanded the case for a retrial on the merits. In particular, it stated that Article 204(1) of the Russian Civil Code, according to which the statute of limitation is suspended from the day a party commences litigation, should extend not only to state courts, but also to arbitration and enforcement proceedings, even if enforcement of an arbitration award is denied on the grounds of non-arbitrability. The statute of limitation should only continue to run from the date when enforcement is refused.

The court reasoned that consideration of the dispute by a tribunal, which lacked jurisdiction, should not deprive a party from the constitutional right to enforce its rights in courts. It also noted that it is only after the state court refused to enforce the award that JSC was able to file a new claim in the courts.

The approach of the Russian Supreme Court has been welcomed by arbitration practitioners in Russia. It gives comfort to parties against the risks of a dispute being considered non-arbitrable during enforcement proceedings, after significant time has been spent in arbitral proceedings and the three-year period has expired. It also appears that this position could be extended to other grounds for refusing to enforce awards (not just non-arbitrability), as well as to situations where the award is set aside.

Case: [Ruling No. 305-ES19-11815 \(10 September 2019\)](#).

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