

# Supreme Court of Russia restricts insolvency creditor's right to appeal enforcement of award against insolvent debtor

by [Maxim Kulkov \(Managing Partner\)](#), [Kristina Aleksa \(Associate\)](#), *KK&P*

Legal update: case report | [Published on 21-Mar-2018](#) | Russian Federation

In *Case No. #32-1593/2016*, the Supreme Court of the Russian Federation reconsidered its approach to the burden of proof in cases where an insolvency administrator appeals the enforcement of an arbitral award against an insolvent debtor.

A Seychellois company, Grain Export LLS, (claimant Buyer), brought a claim before the Grain and Feed Trade Association (GAFTA) against Russian RIF LLC (respondent Seller) arising under an agreement to supply corn. After the tribunal satisfied the claim, the claimant filed a motion with a Russian state court to recognise and enforce the award which was granted on 2 February 2017.

Four days later, the Russian state court confirmed insolvency proceedings in respect of the Seller and appointed an insolvency administrator. Shortly after the appointment, the administrator and several insolvency creditors filed an appeal of the court ruling granting enforcement of the GAFTA award.

The appellants claimed they had evidence of a fake debt and affiliation between the Buyer and the Seller. Therefore, the Buyer tried to obtain control over the Seller's insolvency proceedings. In the administrator's view, these circumstances should have been taken into account by the court that granted enforcement of the GAFTA award. The appellants also noted that according to the court's previous approach established in *Decree of the Presidium of the Supreme Commercial Court No 1446/14, dated 13 May 2014*, the Buyer, in whose favour the award had been made, had the onus of proving the validity of the award.

After the lower courts dismissed the appeal, it was eventually considered by the Supreme Court of Russia and dismissed finally on 21 February 2018. In particular, the Supreme Court confirmed that insolvency creditors or administrators may appeal enforcement proceedings against an insolvent debtor on the basis of a considerably lower burden of proof. It stated: "In such cases, it will suffice for the insolvency creditor to show prima facie evidence and prove a substantial degree of doubt" as "a bona fide award creditor is not expected to have any obstacles in rebutting such doubt". However, the Court stated, that this procedural standard does not completely shift the burden of proof from the insolvency creditor to the award creditor. However, the insolvency creditor should not only declare his doubt, but also justify it.

By this decision the Supreme Court restricted its previously broad approach on the declarative character of such appeals as set out in *Decree of the Presidium of the Supreme Commercial Court No. 1446/14 dated 13 May 2014, Ruling of the Supreme Court No. 305-ЭС16-19572 dated 28 April 2017* which presumed the correctness of insolvency creditor's or administrator's' doubt.

Case: [Case No. A32-1593/2016, 21 February 2018](#).

END OF DOCUMENT

## Related Content

### Topics

[Applications to Court](#)

[Enforcement - Arbitration](#)

### Standard Clauses

[Arbitration: Cross-border](#)

[Grain and Food Trade Association \(GAFTA\): standard arbitration clause](#)•Maintained

### Country Q&A

[Arbitration procedures and practice in the Russian Federation: overview](#)•Law stated as at 01-Oct-2016

[Litigation and enforcement in the Russian Federation: overview](#)•Law stated as at 01-Jun-2017