

Enforcing award against state-owned strategic enterprise does not violate public policy (Moscow Commercial Court)

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In *case No. A40-148306/2018*, the Moscow Commercial Court granted enforcement of an arbitral award issued against a state-owned strategic enterprise, despite arguments on the subjective non-arbitrability of the dispute, unfair consequences of sanctions and the perspective threat to public interest.

Part of space technology corporation MacDonald, Dettwiler and Associates (Canada) (MDA) brought a claim before the International Chamber of Commerce against the Scientific Research Institute of Radio (NIIR) under two supply agreements. Under the agreements, MDA supplied NIIR with facilities for two satellites, but NIIR did not fully pay. The arbitrator upheld the claim and MDA filed a motion with the Russian state court to recognise and enforce the award.

NIIR presented arguments against enforcement to the Moscow Commercial Court, based on the status of NIIR as a strategic state-owned enterprise (SSOE). NIIR argued that enforcement of the award would lead to a significant gap in its budget, meaning NIIR would be unable to perform defence industry contracts and pay salaries. Therefore, enforcement of the award would threaten Russian public interests.

NIIR also argued that the agreements were for a special purpose, which is why the satellite facilities supplied by MDA were paid from state budget funds. Additionally, at the time of the award, the US dollar rate to the ruble was significantly more expensive than at the time of the agreements execution, so recovering compensation of the award at a higher rate would be unjust and disproportionate.

The Moscow Commercial Court rejected NIIR's arguments and granted enforcement. The court stated that there is no rule prohibiting a SSOE being subject to arbitration. It held that there was no direct link between MDA's actions under the agreements and the alleged budget gap, and NIIR's obligations under the defence industry contracts. Exchange rates also cannot be considered as grounds to refuse enforcement. Accordingly, the award did not violate Russian public interests.

Although the decision has been positively welcomed by Russian lawyers, it is too early to declare a change in the conservative attitude of Russian state courts, which extensively use public policy as grounds to refuse recognition and enforcement against state affiliates (see *Legal update, Russian Supreme Court dismisses application to set aside arbitral award against state funded entity on grounds of public policy*).

The case is notable for the judges' remarks on arbitrability issues; previously Russian state courts refused to enforce awards against SSOEs, mostly on public policy grounds and thus were silent on arbitrability. This case develops the Decree of the Supreme Court in *case No. A40-165680/2016*, where the Russian Supreme Court denied the idea of absolute subjective non-arbitrability of disputes with state affiliates.

Case: *Case No. A40-148306/2018*.

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