

# Commencement of bankruptcy proceedings against respondent renders award unenforceable (Commercial Court of Moscow Region)

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In *Case No. A40-108783/18*, the Commercial Court of Moscow Region refused to enforce an arbitral award because bankruptcy proceedings had been commenced against the respondent.

Logika, a Russian company within the Air Liquid Group, brought a claim before the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC) against Angstrom-T due to violation of contractual obligations by Angstrom-T. The ICAC upheld the claim, but the Russian state courts refused to enforce the award, referring to Angstrom-T's bankruptcy.

Russian bankruptcy law prescribes that most claims against a bankrupt entity should only be filed within the bankruptcy proceedings. However, in this particular case, Angstrom-T had not yet been recognised as insolvent or bankrupt, although bankruptcy proceedings had been initiated by one of its creditors.

Nevertheless, the court found that Russian public policy had been violated by the "creation of a private-law dispute on the threshold of bankruptcy and consideration of the dispute by the arbitration court for subsequent simplifying the inclusion of unjustified debt in the register".

Interestingly, the bankruptcy proceedings were terminated soon after the court refused to enforce the award.

Given that the initiation of bankruptcy against a company is a relatively simple procedure in Russia (a creditor must have a RUB300,000 (£3,500) claim confirmed by a court judgment which has not been paid for three months), the state court's approach creates heavy risks for creditors looking to enforce their awards before Russian courts.

In other words, to resist recognition of an arbitral award, it will be enough for a respondent to negotiate commencement of bankruptcy proceedings by its affiliate which may, for instance, acquire the respondent's debt before the third party.

It is hoped that the Russian Supreme Court will annul the decision, in the event that JSC Logika decides to appeal the decision.

Case: *Case No. A40-108783/18 (26 September 2018)*.

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