

Russian Supreme Court upholds enforcement of SCC award rendered by tribunal seated in Russia

by *Practical Law Arbitration*, with KK&P

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In *Resolution No 306-ES21-5440*, the Russian Supreme Court upheld the enforcement of an SCC arbitral award that was rendered by a Russia-seated tribunal even though the SCC does not have "permanent arbitral institution" status in Russia.

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Speedread

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The Russian Supreme Court has upheld the enforcement of an Stockholm Chamber of Commerce (SCC) arbitral award that was rendered by a tribunal seated in Russia.

Article 44(20) of the Arbitration Law prohibits the administration of arbitrations in Russia by entities that have not obtained "permanent arbitral institution" (PAI) status. The SCC has not obtained this status.

Upholding lower court decisions to enforce the award, the Supreme Court reiterated that awards rendered by tribunals seated in Russia in arbitrations administered by a foreign arbitral institution without PAI status can be enforced under the special exemption in article 44(3) of the Arbitration Law. Under that provision those awards can be deemed rendered by an ad hoc tribunal and therefore enforceable.

The Supreme Court's decision is a welcome development for the arbitral community (*Siemens v Caspian Energy Projects, Resolution No 306-ES21-5440 (29 June 2021)*).

Background

Article 44(20) of the Arbitration Law prohibits the administration of arbitrations in Russia by entities that have not obtained "permanent arbitral institution" (PAI) status.

Article 44(3) of the Arbitration Law provides that, for the purposes of this law, awards rendered by foreign arbitral institutions without PAI status are deemed as having been rendered by an ad hoc tribunal and therefore enforceable.

Facts

The facts of this case are set out in [Legal update, Commercial Court of Astrakhan Region enforces award rendered by Russian seated SCC tribunal](#), which discusses *Siemens v Caspian Energy Projects (Case No A06-2352/2020)*. In that decision, the Commercial Court of the Astrakhan Region enforced an award rendered by a Russia-seated arbitral tribunal acting under the SCC arbitration rules, notwithstanding that the SCC does not have PAI status in Russia.

Caspian appealed to the Cassation Commercial Court, invoking article 44(20) of the Arbitration Law and raising a public policy defence (among other things) based on the fact that the arbitration was administered by the SCC which lacks "PAI" status in Russia.

However, the Cassation Commercial Court upheld the lower court judgment and reiterated that awards rendered by a tribunal seated in Russia and administered by a foreign arbitral institution without PAI status can be enforced under the special exemption in article 44(3) of the Arbitration Law (*Judgment of the Commercial Court of the Povolzhskiy circuit of 11 March 2021*).

Decision

The Supreme Court has now upheld the lower courts' judgments disallowing Caspian's appeal.

The Supreme Court reiterated the lower courts' reasoning, particularly noting that it was Caspian which commenced arbitration and therefore implying that it should not have used the PAI argument to overturn an award that was adverse to it.

Comment

The Supreme Court's decision is a welcome development for the arbitral community.

Its refusal to reconsider the case also removes uncertainty brought about by another recent case, *Case No A27-5147/2019 (Helsinki Arbitration)*, heard by the Supreme Court. In that case, the Supreme Court refused to apply the exemption in article 44(3) to enforce an award rendered by a rather peculiar ad hoc tribunal: "Helsinki International Commercial Arbitration". The court found that there had been an abuse of rights in the arbitral proceedings in an attempt to evade the law. The institution was only "pseudo-foreign", since the arbitration was in fact administered in Russia by an institution that did not have "PAI" status. Therefore, the factual matrix was completely different in that case.

However, in both cases the parties that appealed the awards argued that the relevant arbitration clauses did not provide for ad hoc arbitration. In the *Helsinki Arbitration*, the Supreme Court took heed of the argument citing lack of such agreement, whereas in the present case it concurred with the lower courts' findings that it was not necessary to sign a separate agreement to that effect. Even so, there appears to be no contradiction in the Supreme Court's approaches in these cases because article 44(3) allows an arbitration seated in Russia and administered by a foreign arbitral institution (not the case in the *Helsinki Arbitration*) without a "PAI" status to be deemed an ad hoc arbitration. Therefore, it follows that no separate agreement for ad hoc arbitration should be required.

Based on that, it appears that the Supreme Court in the *Helsinki Arbitration* excessively pointed out that the parties did not agree to an ad hoc arbitration to avail themselves of the exemption in article 44(3). (This controversial point also found its way in the Supreme Court's Case Law Review No 2 (2020) where this case was reported to serve as guidance for lower courts).

To sum up, in the *Helsinki Arbitration* case, the Supreme Court found that the arbitration was only pseudo-foreign and aimed at evading the Arbitration Law, but the court's conclusion (that an "ad hoc arbitration agreement" was needed) was controversial. Meanwhile, in the *Siemens* case, no such issue existed (the SCC is a legitimate foreign arbitral institution) and the Supreme Court applied the exemption, acknowledging that there was no need for an ad hoc arbitration agreement to be entered into.

Case

Resolution No 306-ES21-5440 (29 June 2021).

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