

Moscow Commercial Court denies recognition and enforcement of an SCC award

by Maxim Kulkov (Managing Partner), Alexandra Chilikova (Associate), *KK&P*

In Case No. A40-230545/16, the Moscow Commercial Court considered whether to recognise and enforce an arbitral award rendered by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

Speedread

On 16 March 2017, the Moscow Commercial Court denied recognition and enforcement of an Arbitration Institute of the Stockholm Chamber of Commerce (SCC) arbitral award issued in proceedings between an Italian company and an indirectly state-owned Russian company. It found that enforcement of the award:

- Would be contrary to public policy because it would affect the proper functioning of a state-owned power plant.
- Breached the arbitration agreement because it was rendered by only two arbitrators instead of the full panel of three.

The approach taken by the court in assessing a breach of public policy in this case appears to be rather archaic and does not reflect the general practice of the Russian courts. Also, the analysis of the procedural issues in this case appears debatable and may be subject to further discussion at the cassation stage. (*Case No. A40-230545/16.*)

The Moscow Commercial Court has denied recognition and enforcement of an Arbitration Institute of the Stockholm Chamber of Commerce (SCC) arbitral award issued in proceedings between an Italian supplier (SPIG) and JSC "Promkontroller" (a Russian buyer, indirectly owned by the Russian Federation).

Public policy grounds

In the arbitral proceedings, SPIG, among other things, claimed avoidance of the contract. The tribunal, applying the United Nations Convention on Contracts for the International Sale of Goods (CISG), recognised that the contract had been rightfully avoided by the supplier. This implied that the supplier's guarantee for the equipment was terminated following the notice of the avoidance.

Denying recognition and enforcement of the award, the court took into consideration that the equipment was supplied for a state power plant. The court found that enforcement of the award terminating the guarantee

obligations of the supplier would endanger the proper functioning of the state power plant and therefore would be contrary to public policy.

This approach reiterates the position taken in *United World Ltd Inc v PJSC "Krasny Yakor"* (Resolution of the Federal Commercial Court of Volgo-Vyatsky region of 17.02.2003 in *Case No. A43-10716/02-27-10ISP*) in which the court stated that when enforcing an award, it should consider not only legal issues, but also the factual consequences of an award. The court found that enforcement of the award would be contrary to public policy, since recovery of the awarded sums would lead to bankruptcy of the strategic enterprise and cause social and economic damage to the city.

Today, this approach appears rather archaic and does not reflect the general practice of Russian courts (see for example, Resolution of the Supreme Commercial Court N9899/09 of 13.09.11 in *Case No. A56-60007/2008*, where the court rejected the public policy argument in similar circumstances).

Improper composition of the arbitral tribunal

In the arbitral proceedings, the presiding arbitrator resigned after the final hearings. Consequently, the award was signed by the two remaining party-nominated arbitrators. The court considered this to be a violation of the arbitration agreement, since the latter provided for a three-arbitrator panel. Notably, the court took into consideration that the arbitrator appointed by the claimant was a reputable lawyer which, in the judge's opinion, could and apparently did influence the arbitrator appointed by the respondent, who was not a lawyer.

The issue of arbitral panel reduction is not new to Russian court practice. In *Case No. A40-96594/09-68-760*, considered by the Supreme Commercial Court (Resolution N 4325/10 of 20.07.10), an arbitrator in International Commercial Arbitration Court (ICAC) proceedings died after the final hearing, and the award was signed by the two remaining arbitrators. The court set aside the award due to the improper composition of the arbitral tribunal. In its reasoning, the court stated that the award could only be rendered by a reduced panel in exceptional circumstances, when the third arbitrator had participated in the decision-making process and had expressed his or her position to the other arbitrators.

However, contrary to the above-mentioned case, the award in the present case was rendered under SCC rules which contain different provisions to those under ICAC regarding the reduction of the arbitral tribunal (*Article 17(2), SCC Rules*).

Therefore, the analysis of the procedural issues in this case appears debatable and may be subject to further discussion at the cassation stage.

Case: [Case No. A40-230545/16](#) (Moscow Commercial Court).

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