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Magomedov & Ors v PJSC Transneft & Ors [2024] EWHC 1176 (Comm)

The English Commercial Court in *Magomedov & Ors v PJSC Transneft & Ors*¹ granted (i) the continuation of an anti-anti suit injunction ("**AASI**")² and (ii) an anti-enforcement injunction ("**AEI**")³, thereby preventing the Russian Defendants to English proceedings from enforcing anti-suit injunctions ("**ASI**")⁴ made by the Arbitrazh (Commercial) Court in Moscow (the "**Moscow Court**") against the Claimants.

The Parties

There were numerous parties involved in the underlying dispute, but the key parties to *Magomedov & Ors v PJSC Transneft & Ors* are as follows:

1. The first Claimant, Mr Ziyavudin Magomedov ("**Mr Magomedov**"). Mr Magomedov is a Russian citizen. He was arrested on 30 March 2018 and is currently in prison in Russia.
2. The tenth Claimant, Port-Petrovsk Limited ("**Port Petrovsk**"). Port Petrovsk is a BVI company that was in Mr Magomedov's ownership and control.
3. The twentieth Defendant, PJSC Transneft ("**Transneft**"). Transneft is a Russian state-owned oil pipeline/transportation company, which is currently the subject of US, EU and UK sanctions.

Facts

On 20 July 2023, Mr Magomedov and Port Petrovsk commenced proceedings in England against, amongst others, Transneft for conspiracy to injure by unlawful means. Transneft filed an acknowledgment of service on 5 October 2023, indicating that it intended to challenge the English Court's jurisdiction.

On 31 January and 5 February 2024, Transneft sought ASIs against Mr Magomedov and Port Petrovsk from the Moscow Court (the "**Russian ASI Proceedings**") pursuant to Articles 248.1 and 248.2 of the Arbitration Procedural Code of the Russian Federation (the "**APC**"), which purport to give Russian arbitration courts exclusive jurisdiction over disputes between Russian and foreign persons arising from foreign sanctions or involving sanctioned persons, and to permit them to apply for a Russian ASI. In the event of failure to comply with the Russian ASI, Articles 248.1 and 248.2 of the APC give the Russian arbitration courts the power to award a sum of money up to the quantum of the claim brought outside Russia in breach of the Russian ASI.

Transneft subsequently issued its jurisdictional challenge before the English Court on 14 February 2024. The jurisdictional challenge is pending, to be heard in November 2024.

Upon learning of the Russian ASI Proceedings, on 19 February 2024, Mr Magomedov and Port Petrovsk applied for an AASI against Transneft before the English Court, which was granted on 21 February 2024, such that Transneft was (i) not to pursue the Russian ASI Proceedings until the return date hearing of the AASI, and (ii) to stay and/or adjourn the Russian ASI Proceedings, pending determination of its jurisdictional challenge.

On 11 April 2024, Transneft asked the Moscow Court to adjourn its claims in the Russian ASI Proceedings. Instead, on 11 April 2024 and 25 April 2024, the Moscow Court granted the Russian ASIs and ordered that a failure to comply would result in Transneft being

¹ [2024] EWHC 1176 (Comm).

² An AASI prohibits a party from taking steps to enforce an anti-suit injunction granted by a foreign court.

³ An AEI prohibits a party from taking steps to enforce an order by a foreign court.

⁴ An ASI prohibits a party from commencing or continuing foreign proceedings when it is necessary in the interests of justice to do so.

entitled to recover the rouble equivalent of US\$ 2.5 billion and US\$ 5 billion from Mr Magomedov and Port Petrovsk respectively.

Mr Magomedov and Port Petrovsk sought (i) a continuation of the AASI, and (ii) an AEI, which would prevent Transneft from enforcing the Russian ASIs against them before the English Court. In response, Transneft submitted that Mr Magomedov and Port Petrovsk failed to make full and frank disclosure to the English Court when applying for the AASI, as they knew that Transneft was not able to pay its lawyers in England due to sanctions, which, in turn, indicated Transneft's difficulties with litigating in England.

Issues

Ordinarily, ASIs are granted by the English Court if (i) England is the natural forum, and (ii) further pursuit of the foreign proceedings would be vexatious and oppressive or unconscionable, per *Deutsche Bank AG v Highland Crusader Offshore Partners LP*⁵. However, there are no appellate decisions on AASIs, or any cases where an AASI has been granted in a non-contractual case where the claimant was not domiciled in England.

The English Court therefore considered how the usual ASI requirements should be applied in AASIs where (i) the English proceedings have not yet reached the point where it has been or can be decided whether England is the natural forum, and (ii) the purpose of the foreign ASI (i.e. the Russian ASI, which the AASI is intended to forestall) is to prevent the English Court from deciding whether it is the natural forum.

Decision

In deciding to (i) continue the AASI, and (ii) grant the AEI on an interim basis until the determination of Transneft's jurisdictional challenge or until an earlier order, the English Court applied the following principles:

1. **Regard for principles of comity**⁶. The English Court observed that the broad principle underlying the jurisdiction to grant ASIs was that it is to be exercised when the ends of justice require it, and, in doing so, regard must be had to comity, and respect for comity must not lead to injustice either. To that end, the English Court examined Mr Magomedov and Port Petrovsk's conduct and found that the terms of the AASI sought by them were calibrated so as to minimise the offence to the Moscow Court and any collateral damage to comity. This included seeking not a permanent AASI but rather an interim AASI until the determination of Transneft's jurisdictional

challenge, such that it was intended only to allow the English Court to make its own assessment of its own jurisdiction, just as the Moscow Court had already done.

2. **In an appropriate case, the English Court must be able to grant an interim AASI, to last until it is able to decide on its own jurisdiction.** In view of the above, whilst the English Court did not determine whether England or Russia was the natural forum here (that was to be determined at the November hearing), it held that the English Court must have the power to give itself the chance to decide the natural forum. This is particularly important where not doing so would expose the claimant in England to an ASI granted in a foreign jurisdiction, which might have penal consequences if the claimant resists the defendant's challenge to English jurisdiction.
3. **Whether AASIs will be granted is fact specific.** It will not necessarily be appropriate to grant an interim AASI in every case where an ASI is sought in a foreign court. That said, the AASI may be granted where there is a challenge to the jurisdiction of the English Court, and where the foreign ASI (i.e. the Russian ASI) is intended to hinder the proper determination of the jurisdictional challenge in England.
4. **The exercise of granting an AASI must be finely balanced between (i) full and frank disclosure requirements, and (ii) the consequences of not granting the AASI.** Whilst the English Court recognised that Mr Magomedov and Port Petrovsk failed to make full and frank disclosure of Transneft's difficulties with litigating in England, if the AASI were to be set aside, with the result that there is no AASI and no AEI, Mr Magomedov and Port Petrovsk would be exposed to a penalty in Russia of a combined US\$ 7.5 billion merely for proceeding with the English Court proceedings to the extent of resisting Transneft's jurisdictional challenge. Mr Magomedov and Port Petrovsk's failure to make full and frank disclosure was not so serious as to warrant exposing them to the risk of having to pay US\$ 7.5 billion.

Analysis

Articles 248.1 and 248.2 of the APC were introduced in 2020 following Russia's full-scale invasion of Ukraine and in reaction to the subsequent new sanctions imposed by the US, EU, UK, and UN.

⁵ [2009] EWCA Civ 725 at paragraph 50.

⁶ The principle of comity requires the English Court to recognise that different judges operating under different legal systems and policies may legitimately arrive at different answers, without

occasioning a breach of customary international law or injustice. In such circumstances, it is not for an English Court decide how a foreign court should determine the matter: see paragraph 96.

Restrictions imposed on Russian imports as part of those sanctions regimes are generally broad in scope (for example, in the UK, Regulation 4624 of the Russia (Sanctions) (EU Exit) Regulations 2019⁷ prohibits the import of oil and oil products consigned from or originating in Russia).

This broad scope of the types of commodities caught by the sanctions regimes means that many disputes arising from contracts relating to them are likely to fall within Articles 248.1 and 248.2 of the APC on the basis that those articles apply to all disputes arising from foreign sanctions or involving sanctioned persons.

Where that is the case, and non-Russian parties are vulnerable to Articles 248.1 and 248.2 of the APC (despite the applicable contract providing for English law and jurisdiction), non-Russian parties may be at risk of suffering the consequences of not complying with Russian ASIs, in particular if they have assets in Russia or countries which have reciprocal agreements with Russia on the enforcement of judgments, such as China and India.

To that end, *Magomedov & Ors v PJSC Transneft & Ors* is a welcome decision as it offers non-Russian parties an additional layer of protection in the face of Articles 248.1 and 248.2 of the APC by granting interim AASIs where the determination of the English Court's jurisdiction remains outstanding.

The full decision of *Magomedov & Ors v PJSC Transneft & Ors* can be accessed [here](#).

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⁷ Most recently amended by the Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2024.