

Yukos shareholders prevented from attaching tall ships in Antwerp

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In *Technical State University of Kaliningrad (16/2008/8)*, the President of the Court of First Instance in Antwerp considered whether to grant an order seeking to prohibit the former Yukos shareholders from attaching certain tall ships to secure performance of the Energy Charter Treaty (ECT) awards against the Russian Federation.

Jurjen de Korte, Eversheds Faasen B.V.

Speedread

The President of the Court of First Instance in Antwerp has prohibited the former majority shareholders in Yukos from levying any type of attachment of the Kruzenshtern and Sedov tall ships to secure performance of the Energy Charter Treaty (ECT) awards in their favour against the Russian Federation. The President held that in view of the District Court of The Hague judgment setting aside those ECT awards, in principle, no attachments may be levied.

The order regrettably does not make clear on what basis the Belgian court gave binding effect to the setting aside decision of the Dutch court of first instance. Under Dutch law, satisfaction of an arbitral award may in principle be secured by attachment even if a claim for setting aside the arbitral award or an appeal against the setting aside of the arbitral award is pending. Here, the Belgian court has expressed the opposite principle by holding that, in principle, no attachment is allowed to secure the outcome of any successful appeal against a setting aside claim. (*Technical State University of Kaliningrad (16/2008/8)*.)

Background

In July 2014, in three parallel awards, an international investment treaty tribunal awarded the former majority shareholders in Yukos over US\$50 billion in damages, the largest arbitral award in history. The claims were brought under the Energy Charter Treaty (ECT) and the arbitration was heard under the UNCITRAL Arbitration Rules 1976 (see *Legal update, Majority shareholders in Yukos awarded US\$50 billion (www.practicallaw.com/0-576-3965)*).

On 20 April 2016, the District Court of The Hague set aside the awards (both interim and final awards) holding that Article 45(1) of the ECT (which provides for provisional application of the ECT to a signatory state) only applies in relation to the provisions that do not violate the laws of that signatory state, and that provisional application of the dispute resolution provision of the ECT (*Article 26*) would violate the Russian constitution (see *Legal update, The setting aside of the Yukos awards: full update (www.practicallaw.com/8-627-1331)*). The setting aside would have become final if the investors had not filed an appeal by 20 July 2016, however the investors reportedly appealed on 18 July.

Facts

Two tall ships, the Kruzenshtern and Sedov, were to participate in the Tall Ships Races and were expected to moor in Antwerp for the period 6 to 10 July 2016. These tall ships were reportedly at the time operated by the Technical State University of Kaliningrad.

On 16 June 2016, the Technical State University of Kaliningrad made an ex parte application to the President of the Court of First Instance in Antwerp seeking an order to prohibit the former Yukos shareholders from attaching certain tall ships, including the Kruzenshtern and the Sedov.

Decision

By an order of 24 June 2016, the President of the Court of First Instance in Antwerp granted the request with respect to the two ships deemed operated by the University, Kruzenshtern and Sedov. The prohibition was limited to the period of the Tall Ships Races event in Antwerp (6-11 July 2016) and to the Belgian territorial waters. Further, a EUR 100,000 per hour penalty was imposed for any violation of the order. The President held that in view of the District Court of The Hague judgment setting aside the awards, in principle, no attachments could be levied on the basis of the ECT arbitral awards.

Comment

The investors have the right to file an appeal against the Antwerp order within one month after service thereof, but it seems unlikely that they will do so primarily because the Tall Ships Races are over. The Sedov actually never made it to the event due to necessary repair works and the Krusenshtern has since left Antwerp.

Other than invoking unspecified principles, the order regrettably does not make clear on what basis the Belgian court gave binding effect to the setting aside decision of the Dutch court of first instance. Under Dutch law, satisfaction of an arbitral award may in principle be secured by attachment even if a claim for setting aside the arbitral award, or an appeal against the setting aside of the arbitral award, is pending. Here, the Belgian court has expressed the opposite principle by holding that in principle no attachment is allowed to secure the outcome of any successful appeal against a setting aside claim.

The Antwerp order is reminiscent of Noga's attempts to attach the same ships in 2000 to secure payment of its claims against the Russian Federation. After several attempts to attach these ships in France, a number of Russian academic institutes secured an order from the Haarlem District Court in the Netherlands prohibiting Noga from attaching the tall ships Krusenshtern, Mir and Sedov during the Amsterdam Sail 2000 event. Noga's appeal against that decision was rejected on 18 August 2000, on the basis that under the applicable Russian laws, these ships could not be considered assets of the Russian Federation (see *ECLI:NL:GHAMS:2000:AA6850*).

Case

Technical State University of Kaliningrad (16/2008/8).

Resource information

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