

NIBULON SA v. PJSC "Kompaniya "Rayz" seeking recognition and enforcement of a GAFTA award, Supreme Specialized Court of Ukraine for Civil and Criminal Cases, 6-8077cv15, 23 September 2015

A contribution by the ITA Board of Reporters

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Headnote

The cassation court set aside the rulings of the previous instances, which upheld the motion of NIBULON SA for recognition and enforcement of GAFTA award dated 23 May 2014, and remanded the case to the appeal court.

Summary

Facts of the case

On 23 September 2014 NIBULON SA (Applicant) filed a motion with a Ukrainian court to recognize and enforce GAFTA award dated 23 May 2014 (Award).

The Award was rendered in favor of the Applicant against PJSC "Kompaniya "Rayz" (Debtor) regarding recovery of damages equal to USD 17,536,000.00, accrued interest in the amount of 4 % for the period from the date of the default of obligations (11 January 2011) until the date of full payment, as well as the arbitration costs equal to GBP 68,762.43.

The courts of previous instances upheld the Applicant's motion and granted permission for enforcement of the Award regarding the recovery of damages equal to USD 17,536,000.00, accrued interest in the amount of 4 % for the period from 11 January 2011 until 18 September 2014 equal to USD 2,774,705.75, as well as the arbitration costs equal to GBP 68,762.43.

Question in Dispute

Arguments of the Parties

The Debtor filed an appeal with the Supreme Specialized Court of Ukraine for Civil and Criminal Cases. The Debtor stated that the Applicant has submitted its own calculation of 4 % for the period from 11 January 2011 until 18 September 2014 in the amount of USD 2,774,705.75, which is inconsistent with the provisions of the 1958 New York Convention and the Code of Civil Procedure of Ukraine, because neither the Applicant nor the court are entitled to establish the exact amount of money payable under the Award.

Judgment of the Court

The cassation court cited the opinion of the Supreme Court of Ukraine stated in Resolution No. 12 of the Plenum as of 24 December 1999 "On Practice of Judicial Consideration of Motions Regarding Recognition and Enforcement of the Decisions of Foreign Courts and Arbitral Awards and on Setting aside the Awards of International Commercial Arbitration Rendered in Ukraine". According to that Resolution, the court shall consider a motion for recognition and enforcement of an arbitral award within the limits set out thereof and shall not amend them.

However, as it appears from the resolute part of the court ruling of the first-instance court, the latter has amended the Award regarding the exact amount of the accrued interest, which falls outside its competence. The arguments of the Debtor related to the amount of the accrued interest have not been taken in consideration by the courts of lower instances.

In view of the foregoing, the cassation court set aside the court rulings of the lower instances and remanded the case to the appeal court.

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The summary of the case file and full text of summarized court decision are available on:
<https://www.kluwerarbitration.com/document/kli-ka-16-6-008?jurisdiction=Ukraine&type=Court%20Decisions>