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terms of the contract, it held that 'the parties did not agree that the arbitration agreement covers the renewal of the contract, thereby they limited the scope of the arbitration agreement to disputes arising out of or in connection with the lease contract that expired' in 2008. The Presidium did not make any comments as to the opinion of the panel of judges on the arbitrability of issues that involve the state registration of real estate rights.

Comments

This case calls for the following comments:

Unless the parties have agreed otherwise, the renewal of a contract is not covered by an arbitration agreement contained in the original contract, even if the arbitration clause is drafted so as to cover a broad range of disputes. This is because under Russian law, the renewal of a contract constitutes a new contract. An arbitration clause referring 'all disputes arising out of or in connection with the contract' to arbitration does not extend to a new contract. Therefore, an arbitration agreement does not cover the renewal of a contract, unless it provides otherwise.

The Presidium of the Supreme Arbitrazh Court refused to comment on the arbitrability of real estate title issues, despite the fact that the panel of judges at the Supreme Arbitrazh Court had raised this question. This question thus remains unsettled.

Notes

- 1 Ruling of the Presidium of the Supreme Arbitrazh Court of Russian Federation No 17481/08 of 19

May 2009, available at: http://arbitr.ru/bras.net/filepage.aspx?id_doc=c32ec2ba-e549-44b7-9050-40f2b3dab736&filename=c32ec2ba-e549-44b7-9050-40f2b3dab736.pdf; Ruling of the Presidium of the Supreme Arbitrazh Court of Russian Federation No 17476/08 of 19 May 2009, available at: http://arbitr.ru/bras.net/filepage.aspx?id_doc=21e16177-c994-4d24-8e70-a2847bcfb8df&filename=21e16177-c994-4d24-8e70-a2847bcfb8df.pdf.

- 2 See, for example, Decision of the Federal Arbitrazh Court of the North-West Circuit, April 05, 2004, Case A42-5554/03-10, in *Tretyeskiy Sud*, No 6(36) 2004, pp 36-38; Decision of the Federal Arbitrazh Court of the West-Siberian Circuit, 8 October 2003, Case 004/5261-1528/046-2003, in *Tretyeskiy Sud*, No 4(34) 2004, pp 46-48.
- 3 See, for example, Decision of the Federal Arbitrazh Court of the North-West Circuit, 4 December 2007, Case No A56-44076/200, available at: http://arbitr.ru/bras.net/filepage.aspx?id_doc=2_53_74170114_0&filename=2_53_741701140.pdf; Decision of the Federal Arbitrazh Court of the West-Siberian Circuit, 9 March 2006, Case No 004-786/2006(20237-A45-17), Informational Letter of the Presidium of the Supreme Arbitrazh Court of Russian Federation of 22 December 2005 N 96, in *Vestnik VAS* No 3, 2006; Letter of the Supreme Arbitrazh Court of Russian Federation of 23 January 2009 No BAC-YMNC-197, in *Tretyeskiy Sud*, No 3(63)2009, pp 76-78.
- 4 Order of the Panel of judges of the Supreme Arbitrazh Court of Russian Federation No 17481/08 of 3 March 2009, available at: http://arbitr.ru:80/bras.net/filepage.aspx?id_doc=139cf0f4-0326-4939-8de9-39eb4e22c5f3&filename=139cf0f4-0326-4939-8de9-39eb4e22c5f3.pdf; Order of the Panel of judges of the Supreme Arbitrazh Court of Russian Federation No 17476/08 of 3 March 2009, available at: http://arbitr.ru:80/bras.net/filepage.aspx?id_doc=18c9cbb2-2650-41f8-a683-e3663f8e184a&id_src=B6D30B1C6E7712D2E54B820C0F0CD785&filename=18c9cbb2-2650-41f8-a683-e3663f8e184a.pdf.

Impartiality test for arbitrators

In 2007, the Russian Supreme Arbitrazh (State Commercial) Court in *OAO NK Rosneft v Yukos Capital Sarl* ruled that arbitrators must disclose their connection to the parties' counsel at the time of their appointment. The facts of the case suggested that one of the arbitrators had spoken at a conference organised and sponsored by the law firm representing Yukos Capital Sarl. in the arbitral proceedings.¹

Russian law stipulates that an arbitrator must disclose any circumstances which may give rise to justifiable doubts as to his impartiality or independence.² Based on such disclosure, a party to the arbitration may

decide whether to challenge the arbitrator. The arbitrator's failure to provide such information at the time of his appointment may serve as a ground to set aside the award.³

In the case at hand, the court set aside the award on the ground that one of the arbitrators had failed to disclose circumstances which could give rise doubts as to his impartiality or independence. However, the court did not explicitly say that the participation of an arbitrator in a conference organised and sponsored by one of the parties' counsel constitutes per se a circumstance giving rise to justifiable doubts as to his impartiality or independence. This

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led to a vivid discussion among practitioners over whether arbitrators are biased if they appear at academic events organised and sponsored by the opposite party's counsel (law firm).

There was no subsequent case law regarding this matter until the recent decision of the Court of Cassation of the Moscow Federal Circuit in *Erick van Egeraat Associated Architects B V (Netherlands) v Capital Group LLC (Russia)*, which involved a similar set of facts.⁴ In this case, Capital Group LLC requested that the court refuse the enforcement of a Swedish arbitral award (rendered under the SCC Arbitration Rules) on the ground that the co-arbitrator appointed by the claimant was biased because she had once spoken at a conference organised and sponsored by the law firm of the opposite party's counsel. In support of its argument that the co-arbitrator was biased, Capital Group LLC also relied on the fact that the counsel representing Erick van Egeraat had spoken at the same conference.

The court rejected Capital Group LLC's argument. It based its ruling on two specific grounds. First, it was established that the law firm had acted only as a so-called 'information sponsor' (promoting the conference among its clients and partners) and had certainly not had any influence on either the program of the conference or on the speakers' list. Secondly, the participation of the co-arbitrator in the conference did not create any dependence on, or commercial interest with, the counsel (law firm). On that basis, the court found that the arbitrator fulfilled the impartiality requirements set forth by international provisions⁵ and the SCC Arbitration Rules (which governed the arbitration proceedings).

Comments

The decision of the Court of Cassation of the Moscow Federal Circuit is timely and welcome as it brings some clarity to the impartiality requirements for arbitrators in Russia.

Russian courts had adopted the position that an arbitrator's involvement in academic events organised by the law firm of the

parties' counsel must be disclosed to the other party and failure to disclose such circumstance is a ground for setting aside the award. Yet, the courts had not answered the main question of whether the mere participation in such a conference biases the arbitrator.

The recent decision illustrates that the impartiality test comes down to determining whether there are any interactions creating a dependence or commercial interest between the counsel (law firm) and the arbitrator. It is within the court's discretion to decide whether, in a specific case, any form of sponsorship for a conference in which an arbitrator participated creates such dependence or interest and thus gives rise to justifiable doubts as to his impartiality. In this particular case, the court ruled that 'information sponsorship' does not create any special relationship between the counsel (law firm) and arbitrator.

Furthermore, the court held that the fact that the arbitrator and counsel had spoken at the same conference does not necessarily give rise to justifiable doubts as to his impartiality.

The court underlined that the impartiality requirements also depend on the applicable arbitration rules. Thus, in our opinion, any applicable rules or guidelines of the arbitration institution chosen by the parties on the arbitrators' impartiality are of significant relevance in the context of setting aside or enforcement proceedings in Russia.

Notes

- 1 Ruling of the Supreme Arbitrazh Court of 10 December 2007 No 14956/0, cases No 040-4576/07-69-46, 040-4581/07-69-47.
- 2 Article 12.1 of the Federal Law on International Commercial Arbitration, 7 July 1993, No 5338-1.
- 3 Article 34.2.1. (3) of the Federal Law on International Commercial Arbitration, 7 July 1993, No 5338-1.
- 4 Resolution of the Federal Arbitrazh Court of the Moscow Circuit, No KG-A40/8155-09, case No 040-51596/09-68-437, 27.08.2009
- 5 The court did not refer to a specific provision. However, it can be understood that the court was referring to Article 5.1 (d) of the New York Convention, which in turn, in the absence of an agreement between the parties on the matters, refers to *lex arbitri*, ie, the Swedish Arbitration Act.