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English Court of Appeal Discharges the Anti-Suit Injunction in Favour of UniCredit: Winning the Battle But Losing the War?

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The *UniCredit* saga has taken an unexpected turn, and the cascading legal drama shows no signs of abating. The English Court of Appeal ("EWCA") in its recent decision dated 11th February 2025 (''Revocation Order") in *UniCredit v. RusChemAlliance* revoked the earlier granted anti-suit injunction by the EWCA ("ASI Order"), which was affirmed by the UK Supreme Court (''UKSC''). Previous coverage of the ASI Order can be found on this Blog here and here. This blogpost analyses the overarching implications of the Revocation Order and the resulting impediments in arbitrating disputes concerning Russian parties seated in the UK.

Background

The dispute originated from European Union ("EU") sanctions, which incapacitated UniCredit's ability to pay RusChemAlliance ("RusChem") under performance guarantee bonds. In disregard of the arbitration agreement between the parties, RusChem initiated proceedings under Article 248 of the Russian Arbitration Procedure Code ("RAPC") before the Arbitrazh Court of St Petersburg and Leningrad ("Arbitrazh Court"). This provision confers exclusive jurisdiction to the Arbitrazh Court disregarding arbitration agreements entered into between sanctions-affected Russian parties and foreign entities.

Against this, UniCredit secured an ASI from the English courts. UniCredit, despite being armed with an ASI, was dealt a blow when RusChem pursued the Russian proceedings—deviating from its affirmation that it would comply with UKSC's order.

Arbitrazh Court, in relation to the bonds, prohibited UniCredit from (1) initiating or continuing any arbitration or court proceeding against RusChem outside Russia, and (2) enforcing any judgments, except in Russian courts. To make matters worse, the Arbitrazh Court directed UniCredit to take all measures within its control to cancel the effect of ASI. The Arbitrazh Court—leveraging UniCredit's Russian assets—threatened the imposition of a €250 million penalty for non-compliance, prompting UniCredit to seek revocation of the injunctive relief in English courts.

Revocation Order of the EWCA

In this case, the EWCA was confronted with an unusual situation where a successful party seeks to revoke or vary an order granted in its favour. UniCredit's application to reopen the appeal was in response to the change in circumstances and the impending threat of an "eye-watering" penalty leviable by the Arbitrazh Court, which are grounds for such applications pursuant to Rule 52.30 of the Civil Procedure Rules ("CPR"). Despite the consensus between the parties to revoke or vary the ASI, the EWCA had to answer four questions in granting the requested relief.

Before delving into its powers, ECWA ***first*** determined whether UniCredit was at imminent risk of being forced to pay a penalty. The Arbitrazh Court obliged UniCredit to "take all measures within its control" to nullify the ASI Order. It was, however, uncertain if the penalty would be imposed on UniCredit if the EWCA rejects the application for revocation, despite UniCredit's positive action seeking revocation. The mere unpredictability of the circumstance was identified as a risk.

The ***second*** concern was whether courts were vested with the power to revoke or vary a final order granting an ASI. At the outset, Part 3.1(7) of the CPR empowers a court to vary or revoke its order. However, on account of the "finality principle," this power is an exception rather than a rule. It was concluded that the reopening of the ASI Order was necessitated "in order to avoid real injustice." Furthermore, parties to a private commercial litigation are entitled to seek a discharge of a final injunction in response to a change in circumstances.

Thirdly, the question was whether UniCredit has been coerced to seek a discharge of the ASI. An ASI, by its very nature, is a coercive remedy. EWCA recognized that financial penalties threatened by the Arbitrazh Court, in effect, coerced UniCredit to apply for vacation of the ASI Order. Nevertheless, holding that UniCredit is acting in furtherance of its own commercial interests, the EWCA did not consider it a "weighty factor" to be placed in the balance against the revocation application. Insofar as the issue of the impending threat of penalty is concerned, the EWCA, though it considered it to be a relevant ground, held that this threat does not itself militate against condoning the application.

The ***fourth*** point of contention was whether there existed any public policy concerns under English law in granting the relief. The decision of the Arbitrazh Court would have flagged a major concern if it was a mechanism to exert pressure on the English courts. A decision *in personam* against UniCredit did raise this concern, according to EWCA. Regardless, from an international law perspective, Russian courts, as a signatory to the New York Convention ("NYC"), are required by Article II(3) of the NYC to refer parties under an arbitration agreement to arbitrate when seized of such matters. Quick to dismiss this concern, EWCA reasoned that UniCredit, by applying for discharging the ASI, in effect, has waived its right to arbitrate—a ground never raised by the parties. Once the right to arbitrate is waived, the basis for the court to adjudicate upon the issue of breach is eliminated.

Furthermore, the EWCA found it axiomatic to rule out the possible UK Sanctions preventing it from granting UniCredit's application. The incongruency in international dispute resolution resulting from the application of Article 248 of the RAPC is recognised under European Union Council Regulation 2024/3192. The EU has taken a resolute stand against the Russian practice of circumventing exclusive forum clauses, holding it to be "in clear violation of established international principles and long-standing practices in the resolution of international business disputes." The amended Article 11(c) of Regulation (EU) No. 833/2014 places an embargo on the recognition of any injunction, order, relief, judgement, or other court decision issued under Article 248 of the RAPC. However, given that there are no relevant UK Sanctions to this effect and

Regulation (EU) No. 833/2014 is inapplicable in the UK, the EWCA was not precluded from revoking the ASI Order.

Pertinently, RusChem has no assets under the jurisdiction of the English court, whereas UniCredit holds assets in Russia. The potential imposition of a €250 million penalty by the Arbitrazh Court thus posed a significant risk to UniCredit's assets in Russia, whereas initiating contempt proceedings against RusChem would have had little practical impact. Consequently, despite disapproving of RusChem's disregard for the ASI Order, the EWCA acknowledged that RusChem held an advantageous position due to UniCredit's exposure in the Russian Federation. Therefore, a part of the ASI Order was revoked, keeping intact the earlier decisions on jurisdiction made by the EWCA and the UKSC.

Concluding Remarks

This decision in *UniCredit v. RusChemAlliance* discharging the earlier granted ASI introduces a new dimension to the enforcement of arbitration agreements in light of Russia-related sanctions. While the ruling was based on exceptional circumstances—including the risk of extreme financial penalties—it nonetheless could weaken the reliability of anti-suit injunctions as a tool for the enforcement of arbitration agreements. The EWCA, in discharging the ASI, factored in the imminent risk of UniCredit facing financial penalties from the Arbitrazh Court. It underscored the necessity for courts to consider the commercial realities faced by the parties. This decision is of paramount significance for international arbitration proceedings concerning Russian entities, especially arbitration proceedings seated in England, for the following reasons:

Firstly, the Russian Court's resolute stand in overriding arbitration agreements on the basis of Article 248 of the RAPC may create a hostile environment and casts strong doubts regarding the recognition and enforcement of agreements to arbitrate involving Russian entities in the UK.

Secondly, it reveals the deficiency under English law to counteract the exploitative regime set forth in Russia by the introduction of Article 248 of the RAPC. In the absence of State-imposed sanctions to this effect, unlike other jurisdictions in the EU, the English courts are rendered powerless to deal with the draconian approach adopted by Russian courts which violates the principle of party autonomy and the mandate of Article II of the NYC.

Thirdly, this decision raises the question of whether English law should introduce stronger protections to prevent courts from revoking anti-suit injunctions solely based on commercial pressures faced by applicants, especially in light of Article 248 of the RAPC. *Per contra*, it may be argued that the absence of similar legislation like the EU Regulation No. 833/2014 in the UK is beneficial as it gives flexibility to parties to make a commercially viable choice, adding to the attractiveness of English courts, as demonstrated in this case.

Finally, it raises concerns regarding the effectiveness of the NYC in times of geopolitical tensions and its ability to protect arbitration agreements in light of nationalistic judicial tendencies prevalent, for the time being, in Russia. The *exclusive jurisdiction* approach undertaken by the Russian courts, arguably, is in blatant violation of Article II of the NYC, undermining years of established treaty practice.

This chaos begs the question: Did UniCredit win the battle through the ASI Order, only to lose the

war?

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