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POLICING PARALLEL PROCEEDINGS: THE COURT OF APPEAL CONFIRMS THE ENGLISH COURT'S POWER TO ENFORCE ARBITRAL ORDERS PREVENTING FOREIGN LITIGATION

INTRODUCTION

The Court of Appeal's (the "**CoA**") recent decision in *LLC Eurochem North-West-2 v Tecnimont S.P.A. & MT Russia LLC*¹ clarifies that the English Court (the "**Court**") may, under section 42 of the Arbitration Act 1996 ("**Section 42**"), compel compliance with a tribunal's peremptory order ("**PO**") granting interim anti-suit relief, provided that the tribunal has jurisdiction to make that order.

In other words, where a contract contains an English seated arbitration clause or is governed by English law, and one party nevertheless starts proceedings in another jurisdiction (as happened in Russia in this case), the other party may ask the arbitral tribunal to order that the foreign litigation be stopped (this is known as an anti-suit injunction ("**ASI**")). If the party litigating abroad ignores the tribunal's ASI order and continues the foreign proceedings, the Court can support the tribunal by ordering compliance with the ASI.

BACKGROUND

On 1 June 2020, LLC Eurochem North-West-2 ("**NW2**") (a Russian entity owned and controlled by Mr Melnichenko)² instructed Tecnimont S.P.A³ and MT Russia LLC⁴ (together the "**Contractors**") to build a urea and ammonia fertiliser plant in Kingisepp, Russia, pursuant to three linked contracts (together the "**Contracts**"). The Contracts contained materially identical ICC arbitration clauses, providing for London-seated arbitration under the ICC Rules. Two of the Contracts were expressly governed by English law.

Following the imposition of EU sanctions in response to Russia's invasion of Ukraine, the Contractors suspended the Contracts, arguing that they could not obtain items essential to perform the Contract. Further, Mr Melnichenko's connection to NW2 meant that any performance involving the Contractors providing economic resources to NW2 would breach the EU sanctions regime.

¹ [2026] EWCA Civ 5. The full judgment can be found [here](#).

² Mr Melnichenko was an EU sanctioned Russian individual. See *LLC EuroChem North-West 2 v Société Générale SA* [2025] EWHC 1938 Comm.

³ An Italian entity and majority owner of MT Russia LLC.

⁴ A Russian entity.



NW2 disputed the validity of the Contractors' suspension and terminated the Contracts.

THE PROCEEDINGS

As a result of NW2's termination of the Contracts, the parties underwent the following proceedings:

1. **ICC Arbitration** – In August 2022, the Contractors commenced ICC arbitration against NW2 in London, seeking relief for what they contended was unlawful termination. NW2 filed a defence and a counterclaim amounting to around €1 billion, for breach of contract and return of advance payments (“**ICC Counterclaim**”).
2. **Russian Proceedings** – In August and September 2025, NW2's parent company and NW2 launched a series of Russian court proceedings (together the “**Russian Proceedings**”):
 - a. NW2's parent commenced proceedings in the Moscow Arbitrazh Court (the “**Moscow Court**”) against the Contractors seeking to claim on NW2's behalf the sums in the ICC Counterclaim.
 - b. Then, NW2 itself commenced proceedings in the same court, again seeking to recover the ICC Counterclaim. On the same day, the ICC tribunal directed NW2 to apply to stay these proceedings and NW2 did so. The Moscow Court nevertheless listed a preliminary hearing (the “**Second Russian Proceedings**”).
 - c. NW2 also issued anti-arbitration proceedings in the St Petersburg Arbitrazh Court against the Contractors, seeking injunctions to prevent them from continuing the ICC Arbitration or bringing similar foreign proceedings, arguing that EU sanctions law was contrary to Russian public order and that a London-seated arbitration was in an “unfriendly” foreign state (the “**Third Russian Proceedings**”).

The ICC tribunal ordered NW2 to stay or withdraw the Russian Proceedings; NW2 ignored this order. The ICC tribunal then issued POs requiring NW2 to withdraw the Russian Proceedings immediately and to provide written evidence of withdrawal, and gave the Contractors permission to apply to the High Court under Section 42 to enforce these POs. NW2 ignored the POs.

THE HIGH COURT PROCEEDINGS

The Contractors applied to the High Court under Section 42, under which the Court may order a party to comply with a PO made by the tribunal.⁵ Such an application has two criteria:

- a. The applicant must have exhausted any available arbitral process in respect of failure to comply with the PO.⁶
- b. The Court must be satisfied that the party directed by the PO has failed to comply within the prescribed time, or within a reasonable time if no time is prescribed.⁷ There was no dispute that this requirement was met.

The High Court was content that there was no further arbitral process available to the Contractors to enforce the POs or otherwise restrain NW2, and held that Section 42 had been satisfied and granted an ASI in the form peremptorily ordered by the ICC tribunal (the “**ASI Order**”).

NW2 did not comply with the ASI Order and applied for a stay of execution (an order that prevents a party from enforcing a judgment). The Contractors opposed the stay, which was subsequently dismissed.

Meanwhile, the Contractors were unsuccessful in the Russian proceedings: The Moscow Court handed down a judgment against the Contractors in the Second Russian Proceedings, awarding damages of approximately US\$2.19 billion. In the Third Russian Proceedings, NW2's anti-arbitration applications against the Contractors were granted.

⁵ Section 42(1) of the Arbitration Act 1996.

⁶ Section 42(3) of the Arbitration Act 1996.

⁷ Section 42(4) of the Arbitration Act 1996.



The stakes were high: Non-compliance with the outcomes of the Russian Proceedings exposed the Contractors to penalties of approximately €860 million.

THE COURT OF APPEAL PROCEEDINGS

NW2's sole ground of appeal was that the Court has no power under Section 42 to enforce the tribunal's peremptory orders granting anti-suit relief. This power is only to be concerned with failures "to do something necessary for the proper and expeditious conduct of the arbitration,"⁸ and therefore matters "internal" to the conduct of a particular reference. Anti-suit relief enforces the negative promise not to litigate elsewhere, which NW2 characterised as something "external" to the reference.⁹ Should the Court wish to enforce an ASI, it must use its general power.¹⁰

Popplewell LJ, giving the lead judgment, held that:

1. So long as the tribunal has the power to make the PO, the Court's power to enforce it applies to POs relating to ASIs.
2. Compliance with any PO is part of the parties' statutory duty, and is treated as necessary for the "proper and expeditious conduct of the arbitral proceedings."¹¹
3. Anti-suit relief, particularly where it restrains anti-arbitration proceedings or parallel proceedings that threaten the arbitration, is capable of being necessary for the "proper and expeditious conduct"¹² of the arbitration.

The CoA therefore dismissed the appeal and confirmed that the Contractors were entitled to the Section 42 relief granted at first instance.

COMMENT

Where arbitration proceedings are seated in London and governed by English law, the Court can, and will, align their powers with a tribunal, and enforce any POs they make (provided the tribunal has the power to make the PO). The Court's willingness to support tribunals extends to policing abusive foreign proceedings, including anti-arbitration measures backed with contempt sanctions. This judgment reiterates the effectiveness of London-seated arbitration under English law; parties' choice of forum will be respected and tribunals' POs - whether dealing with case management or hostile competing foreign proceedings - can be backed by effective Court enforcement.

AUTHOR



ANNA MCDOWELL

Associate

+ 44 20 7809 2314

anna.mcdowell

@stephensonharwood.com

⁸ Section 41(1) of the Arbitration Act 1996.

⁹ NW2 relied on Section 41(5) of the Arbitration Act 1996, which provides that "if without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate."

¹⁰ See [36] of judgment. The Court's general powers in relation to injunctions are dealt with in Section 37 of the Senior Courts Act 1981.

¹¹ Section 41(1) of the Arbitration Act 1996.

¹² Section 41(1) of the Arbitration Act 1996.