



LLC EUROCHEM NORTH-WEST-2 V TECNIMONT S.P.A [2026] EWCA Civ 5

KEY TAKEAWAYS:

1. The court has the power to enforce preemptory orders for anti-suit relief under s.42 Arbitration Act 1996.
2. The anti-suit relief sought in this case fell within the scope of something necessary for the proper and expeditious conduct of the arbitration.

ISSUE

Whether as a matter of law the court has power under section 42 of the Arbitration Act 1996 to make an order enforcing a preemptory order of an arbitration tribunal granting anti-suit relief.

FACTUAL BACKGROUND

LLC Eurochem North-West-2 (the Appellant) engaged Tecnimont S.P.A (the First Respondent) and MT Russia LLC (the Second Respondent), a company majority owned by the First Respondent, as engineering procurement and construction contractors (the Contractors) in Russia. The Contractors contended that export controls and refusals from vendors and service providers to supply items for use in Russia precluded them from obtaining numerous items that were necessary to perform their contractual services. The Contractors also maintained that as the Appellant was owned by a designated person under the Russia (Sanctions) (EU Exit) Regulations 2019 and subjected to EU sanctions, they could not perform the contract in any manner that would involve the First Respondent providing economic resources to the Appellant in any event. The Appellant disputed the validity of the Contractors' suspension of performance and purported to terminate the contracts on account of the Contractors' alleged breach of contract.

GROUND OF APPEAL

"...the learned Judge was wrong to grant an anti-suit injunction under s.42 of the Arbitration Act 1996, because orders under s.41 and s.42 of the Arbitration Act 1996 are concerned with a party's conduct of the arbitral reference, as opposed to the pursuit of different proceedings in a different forum... An anti-suit injunction therefore cannot be granted by the Court under s.42 of the Arbitration Act 1996 (just as it cannot be granted under s.44 of the Arbitration Act 1996), but must instead (if at all) be granted under s.37 of the Senior Courts Act 1981; or, alternatively, in appropriate cases, by s.66 of the Arbitration Act 1996 i.e. by way of enforcement of an arbitral tribunal's final award."

ARBITRATION ACT 1996 SECTION 42

Enforcement of peremptory orders of tribunal or emergency arbitrator

(1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal or (as the case may be) the emergency arbitrator.

(2) An application for an order under this section may be made -

(a) by the tribunal or the emergency arbitrator (upon notices to the parties),

(b) by a party to the arbitration proceedings with the permission of the tribunal or the emergency arbitrator (and upon notices to the other parties), or

(c) where the parties have agreed that the powers of the court under this section shall be available.

(3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the peremptory order.

(4) No order shall be made under this section unless the court is satisfied that the person to whom the peremptory order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.

LONDON ARBITRATION

Claims were brought against the Appellant by the Contractors in a London seated tribunal. The Tribunal made peremptory orders against the Appellant granting interim anti-suit relief to restrain and/or remedy proceedings brought by the Appellant in Russia in breach of the arbitration agreement.

FIRST RUSSIAN PROCEEDINGS

The Appellant's immediate parent company commenced proceedings against the Contractors, naming the Appellant as a third party, in the Moscow Arbitrazh Court to claim the sums counterclaimed by the Appellant in the arbitration.

SECOND RUSSIAN PROCEEDINGS

The Appellant filed further proceedings seeking recovery of the sums counterclaimed in the arbitration against the Second Respondent in the Moscow Arbitrazh Court, to which the First Respondent was later added as a co-defendant.

ANTI-ARBITRATION PROCEEDINGS

The Appellant filed two sets of proceedings in the St Petersburg Arbitrazh Court, one against the First Respondent and one against the Second Respondent, seeking injunctions to prevent the Contractors from continuing the arbitration proceedings or instituting similar foreign proceedings.

LONDON ARBITRATION

The Tribunal concluded that the Second Russian Proceedings and the Anti-Arbitration Proceedings constituted flagrant breaches of the arbitration agreements between the parties.

s42 AND AMENDMENT APPLICATION

Butcher J granted anti-suit relief in the form which the tribunal had peremptorily ordered pursuant to s.42 Arbitration Act 1996. Butcher J granted leave to appeal.

COURT OF APPEAL

The sole ground of appeal by the Appellant was that, although it accepted that the Tribunal had power to make the original non-peremptory anti-suit orders, nevertheless the court had no power to enforce peremptory orders for anti-suit relief under s.42.

THE COURT OF APPEAL DISMISSED THE APPEAL.

COURT OF APPEAL - REASONS

The Court of Appeal outlined that the Appellant's argument depended on establishing each of **TWO PROPOSITIONS**:

(1) the tribunal has jurisdiction to make a peremptory order under s.41(5) Arbitration Act 1996 only if the failure to comply with a non-peremptory order or directions is a failure to do something which is necessary for the proper and expeditious conduct of the arbitration; and

(2) compliance with orders or directions for anti-suit relief are not capable of being something necessary for the proper and expeditious conduct of the arbitration.

The Court **REJECTED BOTH** propositions.

(1) Is s.41(5) Arbitration Act 1996 qualified?

The Court of Appeal held that **s.41(5) IS NOT QUALIFIED**, but allows a peremptory order to be made for any failure to comply with an order or directions of the tribunal, whether or not necessary for the proper and expeditious conduct of the arbitration, subject only to the possible qualification that the order or directions must be ones which the tribunal had power to make.

The court found nothing in the wording of s.41(5) which restricts the kind of non-peremptory orders or directions which may give rise to peremptory orders.

On the contrary, the court held that the **WIDE AND UNQUALIFIED WORDS** used in the subsection, "any order or directions", should be taken to mean "no matter which or what" (Lord Bingham in R(Jackson) v Attorney General [2005] UKHL 56 at [29]).

Any **AMBIGUITY**, the court said, was **RESOLVED BY s.41A** Arbitration Act 1996.

(2) Necessary for the proper and expeditious conduct of the arbitration proceedings?

According to the Court of Appeal, compliance with the non-peremptory orders for anti-suit relief fell within the scope of something **"NECESSARY FOR THE PROPER AND EXPEDITIOUS CONDUCT OF THE ARBITRATION"**, both because:

(i) compliance with an order of the tribunal acting within its powers is always something necessary for the proper and expeditious conduct of the arbitration as s.40(2)(a) makes clear; and

(ii) in any event, anti-suit relief of the kind granted in this case is capable of being necessary for the proper and expeditious conduct of the arbitration.

The court held that it is obviously conducive to the proper conduct of the arbitral reference that "a party should not be free simply to thumb its nose at an order made against it by the tribunal" and that that imperative **EXTENDS TO ALL ORDERS PROPERLY MADE** against a party, without exception (Pearl Petroleum Company Ltd v Kurdistan Regional Government of Iraq [2015] EWHC 3361 (Comm)).

The court held that that conclusion was supported by the Supreme Court case of AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC [2013] UKSC 35 and paragraph 212 of the Report on the Arbitration Bill by the Departmental Advisory Committee on Arbitration Law (the DAC Report).

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