

Russian subsidiary may appeal court rulings issued against its foreign parent company if those rulings affect rights of the subsidiary and violate the law

Case background

A Russian court was hearing a [bankruptcy case*](#) concerning a company registered in the British Virgin Islands (the “Foreign Company”). The bankruptcy proceedings were initiated based on a court ruling ordering the Foreign Company to pay a debt to a creditor in Russia (the “Ruling”).

In the bankruptcy case, the court imposed interim measures against the Foreign Company’s Russian subsidiary (the “Russian Company”). The interim measures included the seizure of the Foreign Company’s majority stake and a prohibition on the Russian Company disposing of its real estate.

The Russian Company attempted to challenge the Ruling to prove that there were no grounds for declaring the Foreign Company bankrupt in Russia. The lower courts, however, held that the Russian Company had no right to seek a review of the Ruling. They emphasised that as a separate legal entity, it was not liable for the obligations of the Foreign Company, and the Russian bankruptcy law did not grant it the right to appeal the Ruling.

Position of the Supreme Court of the Russian Federation

The Russian Supreme Court disagreed with this approach. It held that, the Russian Company should have the opportunity to present arguments and evidence concerning the existence of the Foreign Company’s debt. One of the ways to exercise this opportunity is to appeal the Ruling.

When considering such an appeal, the courts should proceed from presumptions that the Ruling substantially affects the rights of the Russian Company. They should also examine the Russian Company’s substantiated and convincing arguments that the Ruling violates the law.

On these grounds, the Russian Supreme Court cancelled the previously adopted rulings and remanded the issue for reconsideration to the court of appeal.

Why this is important

Assets of Russian subsidiaries, as well as shares in them, can be seized in claims filed in Russia against foreign parent companies. Often, these claims are heard without the participation of the Russian subsidiaries, while legislation contains no provisions expressly granting subsidiaries the right to appeal in such cases.

The new position of the Russian Supreme Court partially fills this gap and can be used to justify an appeal by a subsidiary. Although this position was formulated in a bankruptcy context, it may potentially be extended to other types of disputes. When appealing, the subsidiary company will need to substantiate (1) the unlawfulness of the court ruling and (2) the violation of the subsidiary's rights and legitimate interests by that ruling.

* In Russian

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