

**The Russian courts recognized a German court judgment in a bankruptcy case on the reciprocity basis breaking the vicious circle of non-recognition by Russia and Germany of each other's court judgments**

On 07.09.2005 the court of the city of Frankfurt am Main (Germany) delivered a judgment declaring the debtor (a Germany citizen) bankrupt and appointing the receiver authorized to dispose of the property owned by the debtor. The receiver applied to the Arbitrazh court of the city of Saint-Petersburg and the Leningrad region with application for recognition and enforcement of that judgment as well as for recognition of validity of his/her powers to dispose of the debtor's property situated in the territory of Russia.

On 08.11.2007 the Arbitrazh court of the city of Saint-Petersburg and the Leningrad region refused recognition and enforcement of that judgment. The court referred to the provision of paragraph 1 of the Article 1 (6) of the Federal Law "On insolvency (bankruptcy)" stating that "The foreign court judgments in the insolvency (bankruptcy) cases shall be recognized in the territory of the Russian Federation in compliance with the international agreements of the Russian Federation". As Russia and Germany never entered into such an agreement, the court found the recognition and enforcement of the said judgment impossible. At the same time, the court recognized validity of the receiver's powers to dispose of the debtor's property located in the territory of the Russian Federation, that is, an apartment in Saint-Petersburg, noting that in its essence the actions for disposing of the debtor's property largely resemble a purchase and sale transaction.

The debtor filed an appeal against that court ruling in the court of cassation (Federal Arbitrazh court of the North-Western circuit) which on 11.01.2008 set it aside and remanded the case for a new trial, specifying, *inter alia*, the following:

«...Article 1 (6) of the Law No. 127-FZ provides that, in absence of the international agreements of the Russian Federation the foreign court judgments in

cases on insolvency (bankruptcy) shall be recognized in the territory of the Russian Federation on the basis of reciprocity unless otherwise is provided for by the federal law.

In this context the principle of reciprocity implies the possibility of enforcement of a foreign court judgment in the case on insolvency (bankruptcy) in the territory of the Russian Federation if analogous judgments of the Arbitrazh (Commercial) courts of the Russian Federation delivered in compliance with the Law No. 127-FZ have been recognized in the territory of such foreign state.”

The court also declared that the trial court should check the claimant’s argument about the principle of reciprocity in respect of the German courts being complied with, as the Federal Republic of Germany legislation does not fix any restrictions for recognition of analogous judgments of the Russian courts.

In terms of recognition of the receiver’s powers, the court said that:

“As it follows from the case files, the powers of the receiver, Becker K., to dispose of the debtor’s property have been granted to her by the judgment of the trial court in the bankruptcy cases of the city of Frankfurt am Main [...], and not by any contract of purchase filed to substantiate the application.” The court of cassation tier also instructed the trial court to check whether that apartment, situated in the territory of the Russian Federation, should be included in the bankruptcy assets, and whether it may be covered in the territory of the Russian Federation by the receiver’s powers to dispose of it on the basis of reciprocity.

After the new trial which took place on 28.05.2008, the trial court ruled to recognize and enforce the German court judgment stating, in particular, the following:

“The claimant included in the case files the attorney Anne Fabel’s reply [...] as to the recognition of a foreign bankruptcy proceedings being regulated in

Germany by paragraph 1 (343) of “The law on insolvency and bankruptcy”, whereby foreign bankruptcy proceedings on are recognized.

The aforesaid provisions of the German legislation do not exclude the possibility of recognition of the Russian courts’ judgments in bankruptcy cases in the territory of Germany”.

The court did not take into consideration the argument of the debtor’s representative that the apartment in Saint-Petersburg should not be included in the bankruptcy assets as it had been acquired by him for his parents and with their funds while the debtor had only been the trustee of his parents’ property.

Upon consideration of the issue of recognition of validity of the receiver’s powers in respect of the debtor’s property situated in the territory of Russia, the court declared that the receiver’s powers were already confirmed by the judgment of the trial court of the city of Frankfurt am Main having come into effect, and no additional orders as to the recognition of his powers were needed. Besides, the effective Arbitrazh Code of Procedure of the Russian Federation does not provide for such procedure of recognition.

The debtor filed another appeal against the court ruling in the court of cassation tier. The latter set it aside and remanded the case for a new trial, specifying the following:

«... the trial court unjustifiably ignored the relevant instruction of the court of cassation tier given in the resolution of 11.01.2008, while, bearing in mind that, as is evidenced by the case files, the actual owner of the disputed property is not H. Albrecht but Emmanuel and Barbara Albrecht [...], the resolution of this issue immediately influences the possibility of recognition and enforcement of a foreign court judgment in the territory of the Russian Federation.”

At present, due to the filing of claim by the aforementioned property owners to the Land court of the city of Frankfurt am Main demanding not to include the

said property in the bankruptcy assets, the proceedings in the case were suspended following the debtor's appeal by the trial court ruling of 10.12.2008 until coming into effect of the German court judgment upon results of the case consideration.

Two conclusions may be drawn from the above-said. Firstly, a foreign court judgment in a bankruptcy case is subject to recognition and, in relevant cases, enforcement in Russia, if it is proved that the Russian judicial acts **may be recognized** (with no need to prove that they **have actually been recognized**) and, in relevant cases, enforced in such state. Secondly, the receiver's powers to dispose of some specific property included in the bankruptcy assets depends on whether the debtor had ownership of that property prior to being declared bankrupt. And so does the possibility of enforcement of the foreign court judgment in a bankruptcy case in respect of that property in the territory of Russia.