English Commercial Court Enforces Multi-Billion Arbitral Award Over Failed Gas Project

August 28, 2019

On August 16, 2019, the England and Wales High Court of Justice (Commercial Court) released its decision in *Process & Industrial Developments Limited v The Federal Republic of Nigeria* ("***Process & Industrial Developments***"), [2019] EWHC 2241, in which it enforced a US$9 billion arbitral award against the Republic of Nigeria ("**Nigeria**"). The enforcement of this 'mega-award' is significant for oil and gas companies doing business abroad and also for the practice of international commercial arbitration.

The Decision

Process & Industrial Developments Ltd. ("**PID**"), a BVI entity, entered a "Gas Supply and Processing Agreement" with Nigeria (the "**Agreement**"). Under the Agreement, PID was to build and operate a gas processing plant for "wet gas" to be supplied from the Nigerian Ministry of Petroleum Resources. The Agreement had a 20 year term. Furthermore, the Agreement contained an arbitration clause, which stated:

"The Agreement shall be governed by, and construed in accordance with the laws of the Federal Republic of Nigeria. … The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004) which, except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement. … The arbitration award shall be final and binding upon the Parties. … The venue of the arbitration shall be London, England or otherwise as agreed by the Parties. The arbitration proceedings and record shall be in the English language. …" (emphasis added)

Subsequently, Nigeria failed to supply wet gas to PID, and PID commenced an arbitration against Nigeria for damages. After several "part" awards and procedural orders, the Tribunal (chaired by Lord Hoffmann) ruled that: (1) Nigeria had breached the Agreement; and (2) PID was entitled to damages of approximately US$9 billion, which reflected PID's lost profits over the 20 year life of the Agreement (the "**Final Award**").

PID then applied to the English Court to enforce the Final Award, pursuant to the UK *Arbitration Act 1996* (the "***UK Act***"). Nigeria opposed enforcement and argued that:

1. The arbitration had been legally "seated" in Nigeria, and Nigeria's Courts had set aside (part of) the award rendering it incapable of enforcement in England; and
2. Even if the arbitration was "seated" in London, and not Nigeria, the Final Award was excessive, punitive in nature and contrary to England's "public policy".

In a reasoned decision, the English High Court has dismissed Nigeria's objections and ordered that the Final Award be enforced as a judgment under the *UK Act*. Specifically, the English Court found that:

1. The language in the arbitration clause—that the "venue of the arbitration shall be London, England"—meant that the arbitration was legally seated in England, and not merely that the proceedings would be conducted in England;
2. There was a "strong public policy in favour of enforcing arbitral awards"; and
3. It was not contrary to public policy for the Court to enforce an award "even if the damages awarded are higher than this Court would consider correct".

Consequently, PID may now attach its multi-billion dollar award to Nigeria's assets in England, subject to any rights of appeals Nigeria may have under English laws..

Conclusion & Implications

Process & Industrial Developments is a significant decision for oil and gas companies doing business abroad and for the practice of international commercial arbitration.

1. ***Pro-Arbitration Policy***. First, *Process & Industrial Developments* sends a strong "pro-arbitration" message that arbitration awards should be enforced, even if damages awards are larger than courts might grant, and even if the respondents are States. This is significant for Canadian energy companies doing business abroad who often rely on arbitration clauses to ensure that their contractual rights are protected.
2. ***Importance of the "Seat" of Arbitration***. A fundamental principle of international arbitration is that the arbitral proceedings have a "legal seat", and that only the courts of the seat may "supervise" the proceedings. *Process & Industrial Developments* has affirmed the importance of the seat of arbitration. The decision should also encourage parties to pay significant attention when choosing the venue or place of arbitration, as that will be the seat of the arbitration.
3. ***Narrow Public Policy Exceptions***. Finally, the English Court has concluded that the public policy grounds "on which enforcement of an award can be refused are narrowly circumscribed". These findings should also provide oil and gas companies relying on arbitration clauses comfort that valid arbitration awards will be enforced.

By

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