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Enforcement of an Arbitration Award - New York Convention

February 2009

National Nigerian Petroleum Corporation v IPCO (Nigeria) Ltd [2008] EWCA Civ 1157 21 October 2008

A recent decision of the Court of Appeal has ruled that English courts have the power to enforce parts of an arbitration award under the New York Convention 1958 and the Arbitration Act 1996. This was an issue that had not been addressed previously. The Convention obliges contracting states to recognise foreign arbitration awards as binding and to enforce them in accordance with their own procedure.

IPCO is a Nigerian subsidiary of a Hong Kong company which entered into a contract with NNPC relating to the design and construction of a petroleum export terminal at Port Harcourt. The project was delayed because, so IPCO contended, NNPC sought substantial variations to the works. IPCO's claims to be paid more than the contract price were the subject of arbitration in Lagos under Nigerian law. IPCO's claims succeeded in a sum in excess of US\$152 million, split over six distinct heads of claim. NNPC sought to set aside the award before the Federal High Court of Nigeria whilst IPCO applied to the High Court of England and Wales to enforce the award.

In April 2005, IPCO's initial ex parte application was granted but then enforcement adjourned on NNPC's application, subject to NNPC lodging security of US\$50 million and making payment to IPCO of US\$13 million.

By February 2008, when it became apparent NNPC's challenge in Nigeria was taking significantly longer than anticipated, IPCO appeared before Mr Justice Tomlinson and renewed the application for enforcement. Tomlinson J found that judgment in Nigeria was still many years away and described what had happened in the Nigerian proceedings as "catastrophic". He ordered judgment for IPCO in an amount awarded on two of IPCO's six heads of claim, less credit for the sum paid earlier by NNPC.

It is that order of Tomlinson J that was the subject of appeal by NNPC on the grounds that he had no jurisdiction to order "part" enforcement of an award as neither the Convention nor the Act provided for part enforcement when an award was subject to challenge in the country in which it was made.

Lord Justice Tuckey, delivering the unanimous judgment of the Court of Appeal did not agree with NNPC. He thought it unlikely part enforcement was prevented by the terms of the Convention and the Act. The whole purpose of the Convention was to ensure:

"the effective and speedy enforcement of arbitration awards. An all or nothing approach to the enforcement of an award is inconsistent with this purpose and unnecessarily technical."

The fact of a challenge to an award in the "home court" does not prevent enforcement if the enforcing court thought the award manifestly valid and nothing in the language of either militated against part enforcement. Whilst reference is made to "an" award, to construe that as meaning only an award as a whole could be enforced would have unintended commercial consequences; say, for example, a very small amount of a large award was challenged. It would lead to minor challenges simply with the aim of frustrating enforcement.

To conclude, therefore, the Court of Appeal saw no prohibition under the Convention nor the Act to enforcing part of an award provided the part to be enforced could be readily ascertained on the face of the award and judgment could be given in those terms. In this instance the award was so framed as to allow enforcement on distinct heads of the claim, which were readily ascertainable.