In the Arbitration Courts of Russia

Review of the arbitration courts decisions in the Fuel and Energy Arena

The Moscow Arbitration Court on February 26, 2002, rejected the appeal by the Joint-Stock Company (JSC) *United Energy Systems of Russia* (*UES*) on the decision of the trial judge of the same court, which had refused to satisfy the *UES*'s request to render null and void the resolution and order of the Anti-Monopoly Policy Ministry of the Russian Federation (RF) to stop violation of the anti-monopoly legislation regarding group of companies Rosenergoatom. The appellate court upheld the decision appealed by *UES*. The decision came into force since the moment the resolutive part of the appellate court's decision had been announced at the session of the court.

Earlier, on December 17, 2001, the Federal Arbitration Court of the Moscow District granted the motion by *UES* and remanded its claim against the RF Anti-Monopoly Ministry for nullification of the RF Anti-Monopoly Ministry Resolution and Order of August 24, 2001, for a new examination. Group of companies *Rosenergoatom* was drawn to the proceedings as a third party.

On August 24, 2001, a Commission of the RF Anti-Monopoly Ministry issued a decision to stop violations of the anti-monopoly legislation by *UES*. *UES* had not entered into an agreement with *Rosenergoatom* on electric power transportation to Georgia.

UES argued that the Commission, which conducted the investigation of the anti-monopoly legislation violations by *UES*, lacked the authority to issue the decision because it held its meeting in the absence of a number of its members. In addition, according to the representative of *UES*, entering into an agreement on electric power transportation with *Rosenergoatom* was not mandatory. *UES* has no technical capabilities to perform an agreement on electric power deliveries to Georgia and it cannot be obligated to enter into such an agreement.

UES had informed both the Ministry and *Rosenergoatom* of the lack of technical capabilities. In addition, *UES* argued, *Rosenergoatom* had no right to export electric power. In accordance with the RF legislation, this right is granted to *UES* only.

A spokesman for the Ministry noted during the proceedings that the Commission of the Anti-Monopoly Policy Ministry (AMM) issued the decision on the violation of the anti-monopoly legislation in accordance with the rules of procedure for the Commission of the Anti-Monopoly Ministry. *UES* by not entering into an agreement on electric power transportation to Georgia with *Rosenergoatom* did limit the latter's access to the electric power market.

A representative for the group said that the agreement would have dealt only with the transportation of electric power via the RF territory and not its exportation. Besides, the group had made attempts of the pre-trial settlement of the dispute but to no avail.

On October 8, 2001, the Moscow Arbitration Court refused to satisfy the *UES*' claim against the RF Anti-Monopoly Ministry. *UES* appealed to the Federal Arbitration Court of the Moscow District.

On December 17, 2001, the court of appeals remanded the case for a trial *de-novo* because the trial court didn't fully investigate the material facts of the case.

On February 11, 2002, the Moscow Arbitration Court denied the claim of the *UES* to nullify the resolution of the RF Anti-Monopoly Policy Ministry of August 24, 2001.

That was the second denial by the Moscow Arbitration Court of the *UES*'s claim against the RF Anti-Monopoly Policy Ministry.

On February 4, 2002, the Moscow Arbitration Court reaffirmed its decision of July 23, 2001, rendering orders of the RF Anti-Monopoly Policy Ministry to modify agreements by *Transneft* with the oil companies on oil pumping invalid.

Earlier, on July 23, 2001, the Moscow Arbitration Court upheld *Transneft's* claim and declared the orders of the RF Anti-Monopoly Policy Ministry invalid. On November 8, 2001, the Federal Arbi-

tration Court for the District of Moscow, however, revoked the decision of the trial court and remanded the case for a *de novo* proceedings in the same court stating that the trial court had failed to fully investigate the facts of vital importance to render a well-founded decision.

On April 27, 2001, the AMM Commission heard the case on the claim by the Association of Small and Medium Oil Producing Companies and revealed violations in the activity of *Transneft*, a company dominating the oil transportation market. The decision of the Anti-Monopoly Policy Ministry stated that *Transneft* violated the rules of the Competition Act as contracts between *Transneft* and the oil companies provide for prepayment for oil pumping services.

Under the order of the Anti-Monopoly Policy Ministry, *Transneft* was to change the provisions of the contract with the users of the oil piping network regarding their access to pipelines.

In the opinion of *Transneft*, the company committed no violations of the anti-monopoly legislation in the form of discrimination against a number of companies cooperating with *Transneft*. The fact of discrimination against oil companies has not been proved at the session of the AMM Commission.

In addition, the Ministry not only ordered a change to the agreements on oil pumping, but also indicated in what way the conditions were to be changed and that, in the opinion of *Transneft*, was within the jurisdiction of a court only.

The Anti-Monopoly Policy Ministry intends to appeal the decision of the Moscow Arbitration Court. In the opinion of the Ministry, the trial court did not take into account the directives of the higher court when heard the case for the second time.

On March 18, 2003, the appellate division of the Federal Arbitration Court for the North-Western District upheld the decision of the appellate division of the Arbitration Court of St. Petersburg and the Leningrad Region of January 31, 2002, thus recognizing the lawfulness of the Governor of St. Petersburg V. Yakovlev's order to create an Open Joint-Stock Company (OJSC) St. Petersburg Power Grids (*SPPG*).

That put an end to the dispute of many months regarding the legality of setting up a city power company and of compliance of the procedure of establishing *SPPG* OJSC with the current Russian legislation.

Earlier, on January 31, 2003, the appellate division of the Arbitration Court of St. Petersburg and the Leningrad Region granted the *SPPG*'s appeal of the decision of the trial court granting the complaint of the District Attorney. The latter had brought the action against the administration of St. Petersburg to nullify the governor's order to establish *SPPG*.

The trial court granted the motion. *SPPG* was set up by the order of the governor of St. Petersburg of March 16, 2001. RF Deputy Prosecutor-General V. Zubrin brought a protest against the governor's order because of its non-compliance with the Federal Act On Joint-Stock Companies. An initiative of such an action by the Office of the Prosecutor-General was put forward by M. Brodsky, chairman of the control group of the St. Petersburg Legislative Assembly.

In October 2002, Office of the Prosecutor-General for the North-Western Federal District filed a claim with the Arbitration Court of St. Petersburg and the Leningrad Region to declare the above order of the governor of St. Petersburg invalid. The trial court granted the motion to nullify the governor's order to set up *SPPG*, and *SPPG* appealed.

On April 5, 2002, the appellate division of the North-Western Federal District Arbitration Court upheld the order of the trial court to grant the claim of *Lenenergo* OJSC against the City Property Management Committee thus confirming lawfulness of the agreement under which St. Petersburg Power Grids (*SPPG*) OJSC carries out asset management of the power supply facilities belonging to the city of St. Petersburg.

Earlier, on February 7, 2002, the appellate division of the Arbitration Court of St. Petersburg and the Leningrad Region rendered the agreement on asset management of power supply facilities by *SPPG* OJSC to be in compliance with the law.

In September 2001, *Lenenergo* filed a suit with the court of arbitration against the Energy Committee and City Property Management Committee of the St. Petersburg Administration for invalidation of the above agreement.

SPPG OJSC was incorporated on July 24, 2001. The goal of its creation was to determine legal ownership of power supply facilities built with city funds or with the participation of investors' money after July 1992 (the date of establishment of *Lenenergo* OJSC).

In addition, the company had to keep records of city-owned power grids and facilities, ensure state

control of strategic development processes of the power industry and city infrastructure, etc.

On April 22, 2002, the Arbitration Court of St. Petersburg and the Leningrad Region granted a request by the St. Petersburg Administration to nullify the order of the Territorial Department of the RF Anti-Monopoly Ministry for St. Petersburg and the Leningrad Region of October 18, 2001, which demanded to recall the decree of the governor of St. Petersburg V.Yakovlev establishing *SPPG* OJSC. Thus, the legitimacy of the creation of *SPPG* was confirmed.

Earlier, in October 2001, the above Territorial Department issued an order to the St. Petersburg Administration proposing to cancel the governor's decree creating *SPPG* as violating the RF legislation. In response, the Administration filed a lawsuit asking to nullify the order of the Territorial Department and accordingly to validate the establishment of *SPPG*.

Validity of the establishment of *SPPG* was also confirmed on March 18, 2002, by the decision of the appellate division of the Federal Arbitration Court for the North-Western Federal District which upheld a judgment of the lower court dismissing the District Attorney's suit against the St. Petersburg Administration for nullification of the governor's decree on creation of *SPPG*.

SPPG is included in the register of power supplying organizations subject to state regulation. The company is allowed a discount of 48-50% from the average electricity sale price within St. Petersburg territory.

At present, the Committee on City Property Management is transferring power grids and facilities to *SPPG* for management.

On April 4, 2002, the Moscow Arbitration Court terminated the proceedings in the suit filed by *Alfa-bank* against *SIBUR* OJSC for recovery of $43.5 million under a credit agreement. The court's decision was made in connection with the introduction of the supervision procedure regarding *SIBUR*.

Alfa-bank opened a credit line to *SIBUR* lending about $40 million. On December 27, 2001, the agreement was modified and ten enterprises became its guarantors.

The guarantors to the agreement filed the motion for the stay of the proceedings and continuation of the case. They argued that cases stemming from the above dispute were in front of the regional arbitration courts. The case hasn't been tried.

On April 30, 2002, the Moscow Arbitration Court placed a ban on registration by the RF Federal Securities Commission of a report on the results of the issue of documentary bonds by *Severnaya Neft* OJSC. On April 23, 2002, the Moscow Arbitration Court accepted and heard a suit by *Komineft* OJSC for nullification of the RF Federal Securities Commission order No. 130/r of February 6, 2002, to register the issue of the documentary bonds of SP-0201 series of *Severnaya Neft*. The value of the bond issue is 850 million rubles.

On the plaintiff's motion the Moscow Arbitration Court issued a decision that bans *Severnaya Neft* to conduct civil-law transactions and sell documentary bearer bonds of SP-0201 series registered by the above order of the RF Federal Securities Commission.

The Federal Arbitration Court for the Moscow District on May 13, 2002 granted the appeal by *Macona Consultance* CJSC and *ZapSibresurs* Ltd. regarding the decision by the appellate division of the arbitration court of March 26, 2002, to terminate bankruptcy proceedings of *Rospan International* CJSC.

Later the arbitration court on the motion by *Sbyt-Alfa Ltd*., one of the company's creditors, again terminated the bankruptcy proceeding of *Rospan International* CJSC, because of a deposit into the account of the notary V. Markov of 3,604 million rubles earmarked for repayment of debts.

A *Macona Consultance* representative argued in court that the March 26 decision was unlawful as proceedings in bankruptcy may be terminated only in two instances: when an amicable settlement is reached or a debtor's solvency is restored under external management. No amicable settlement had been reached and restoration of solvency is possible only under external management and not during the proceeding in bankruptcy, he noted. Moreover, according to the representative, a sum of 3,604 million rubles placed on the notary officer's deposit is significantly lower than the actual debts of *Rospan*.

M. Rubtsov, a receiver in bankruptcy of *Rospan*, as *amicus curiae*, confirmed at the court session

that the sum placed on the notary officer's deposit was less than the actual debts of Rospan. The amount of debts was determined in accordance with the list of creditors' demands of September 6, 2001, however, such a list does not exist. As of March 26, 2002, there existed a list of creditors dated November 16, 2001. Moreover, the debts are supposed to be paid from the account of the manager of bankruptcy and not that of a notary. At the same time, according to the representatives of *Sbyt-Alfa* Ltd., the March 26, 2002 ruling was lawful and money was placed on the notary officer's account in accordance with the legislation.

The Moscow Arbitration Court on December 2, 2002, granted the motion by M. Rubtsov and V. Avalyan, receivers in bankruptcy of *Rospan International* CJSC, and approved a settlement agreement of *Rospan International* with its creditors.

M.Rubtsov testified in the course of the hearing that under the terms of the settlement no claims of creditors in bankruptcy would be met during the first two years after the arbitration court approved the agreement. The indebtedness of *Rospan International* CJSC to creditors in bankruptcy will be cleared by promissory notes of the CJSC. In two years, but not before October 1, 2005, each creditor in bankruptcy will proportionally receive 10% of the amount of his claim; 20% of the amount will be paid after October 1, 2006, and the remaining 70% after October 1, 2007. Interest on the debts of *Rospan International* to creditors and penalties for them will not be repaid but discharged. According to M. Rubtsov, 13 creditors in bankruptcy were present at the meeting on November 11, 2002, which approved the settlement. The total amount of their claims is 2 billion and 5 million rubles, or 93.7% of the total amount of claims of the creditors in bankruptcy. 97.8% of those present at the meeting voted for the approval of the settlement agreement.

Rospan International was declared bankrupt on August 9, 2000. Among the Company's main creditors there are companies affiliated with *TNK* (Tyumen Oil Company), *ITERA* and *YUKOS*. On March 23, 2002, the appellate division of the arbitration court terminated proceedings in bankruptcy of *Rospan International*. However, on May 13, 2003, the Federal Arbitration Court for the District of Moscow satisfied the appeal of *Macona Consultance* CJSC and *ZapSibresurs Ltd*. and reversed the decision of March 26, 2002, thus resuming the proceedings in bankruptcy of *Rospan International*.

On May 16, 2002, the Presnensky Intermunicipal Court of Moscow dismissed a suit filed by a group of private persons and public organizations against the RF Government and the RF Ministry of Natural Resources seeking an injunction of activities related to realization of the Sakhalin-1 and Sakhalin-2 projects.

The claimants demanded the Government and the RF Ministry of Natural Resources to prohibit conduct of seismic surveys, directed drilling and other activities endangering gray whales population in the area of Piltun Bay and Piltun Spit.

Neftegaz and *Sakhalin Energy*, companies-operators of the projects, were brought as third parties.

In 2002, the project of drilling in Sakhalin shelf near Piltun Bay and Piltun Spit underwent a state ecological examination by the experts of the RF Ministry of Natural Resources who issued a positive opinion on it. The experts concluded that the companies – mineral resource users – met all the necessary requirements regarding technological restrictions for work in the habitat of the gray whales.

On May 21, 2002, the Appellate Division of the RF Supreme Court upheld a ban on an irrevocable importation of spent nuclear fuel (SNF) from the Hungarian nuclear plant *Paks* to Russia.

The Court heard an appeal by the RF Government against the decision of the Supreme Court of February 16, 2002, invalidating the RF Government Resolution of October 15, 1998, which allowed irrevocable importation of SNF products to the country for their processing by *Mayak* Research-and-Production Association.

The suit was filed by two residents of the Chelyabinsk region and activists of the regional movement "*For Nuclear Safety"* who argued that an irrevocable importation of SNF to Russia should be permitted only on the condition that the state ecological examination had been conducted and approved it. Failure to follow that requirement would put the Government in violation of the RF Environmental Protection Act.

Under the contract with Hungary, 370 tons of SNF would have been imported to the Chelyabinsk Region of which 23 tons had already been imported. In the opinion of ecologists, an increase in importation of spent fuel in recent years resulted in a growth of the oncologic sickness rate in the region and pollution of Lake Karachai.

On May 20, 2002, the RF Supreme Court confirmed the legality of the joint resolution of the RF Ministry of Natural Resources and the Administration of the Nenets Autonomous Okrug authorizing bidding for the right to develop the Val Gamburtsev deposits (Nenets Autonomous Okrug) that was won by *Severnaya Neft* OJSC in March of 2001. The Supreme Court granted the motion by the Deputy Chairman V. Zhuikov to vacate the order of the Timashevsky district Court of April 25, 2001, to invalidate the resolution following a suit by a physical person- shareholder of *LUKoil*. The bidding and its terms and conditions were ruled valid.

The RF Ministry of Natural Resources insists, however, that the licenses held by *Severnaya Neft*" were revoked by a different decision of the Timashevsky District Court (the one of November 28, 2001). Therefore the Supreme Court's ruling will have no effect on the state of affairs.

The appellate division of the Moscow Arbitration Court on August 12 rejected the complaint of *Riland Ltd*., a minority shareholder of *Gazprom* OJSC affiliated with *Hermitage Capital Management*, and upheld the decision of the trial court of June 20, 2002.

Then the trial court declined to hear *Riland Ltd.*'s claim against *PricewaterhouseCoopers Audit* CJSC to declare its year 2000 audit of *Gazprom* OJSC as intentionally misrepresentative. The court's decision was based on the fact that the court had already ruled on a similar claim.

In the claimant's opinion, the audit report of *PricewaterhouseCoopers Audit* contains inadequate information on the agreements of *Gazprom* with *Gazexport*, *Kostromatrubinvest* and *Transgaz*, as well as on export gas deliveries, services and payments in foreign currency on the RF territory.

The defendants argued that only the audited, namely *Gazprom*, had a standing to file such a claim. Moreover, information cited by the claimant could be learned only from the analytical part of the auditor's conclusion, which was classified and not provided to shareholders.

Riland Ltd. filed five lawsuits against *PricewaterhouseCoopers Audit* CJSC. The Arbitration Court rejected requests to declare the auditor's year 2000 report on *Gazprom* to be deliberately false, to invalidate the auditor's assessment of the *Gazprom* accounting report for 2000, and to declare the auditor's report on the audit of *Gazprom's* relations with *ITERA* to be deliberately false. The Arbitration Court also declined to hear the claim to declare the auditor's assessment on the audit of relations between Gazprom and *ITERA* to be intentionally misrepresentative.

On August 7, 2002, Federal District Court in Houston, Texas, ruled that it did not have jurisdiction over issues of debt recovery from the Russian oil company, *YUKOS*.

A federal judge remanded a part of the case concerning the seizure of $17 million to the Texas state court in Houston for further consideration. Nevertheless, a part of receipts from the recent delivery of the first large consignment of Russian crude oil by *YUKOS* to the USA still remains under arrest.

The U.S. District Court suggested that the state court should decide the destiny of the $17 million.

YUKOS expressed its satisfaction with the decision of the court. *YUKOS* has good reason to expect that it will win this part of the case in the state court. "The main reason is the fact of the dismissal of the major claim against *YUKOS*", the company states in its declaration.

Crude oil shipment that arrived in the port of Houston on July 3, 2002 was the first of a series of crude oil deliveries to the USA planned by *YUKOS* for the next few months. The company's program of crude oil deliveries to the USA is supported by an agreement on energy cooperation between Russia and the USA signed by the presidents of the countries at the summit in Moscow.

The total cost of crude oil delivered to Exxon Mobil by YUKOS is estimated at about $50 million. The Russian party through its lawyers seeks to release the proceeds. It argues that it has no business presence in the territory of the federal judicial district of southern Texas, consequently, the local court has no jurisdiction over it. Moreover, the debatable debentures arose under the contract of the affiliated *Yuganskneftegaz* and not *YUKOS* itself.

On July 22, 2002, the U. S. District Court in Houston, Texas, on the request of the American company *Dardana Ltd*. froze a part of the $17 million of receipts from the sale of the first large consignment of Russian crude oil in the USA by *YUKOS*.

According to publications in the American press, in 1995 *Yuganskneftegaz* entered into a contract with *PetroAlliance J/V* on servicing oil fields in Siberia. Later, when the disputes arose between the parties, they applied to Swedish arbitration, which awarded compensation to *PetroAlliance* in the amount of $6 million. After restructuring of *PetroAlliance*, *Dardana* acquired the right to demand the payment of the debts under the contract with *Yuganskneftegaz*. The new owners attempted to recover the Russian debt that with the interest has grown to $17 million, but failed so far.

YUKOS from the outset did not agree with the arbitration award and disputed it in the Swedish court. The company argued it was not responsible for obligations of *Yuganskneftegaz* and demanded a new arbitration. So far no decision on this matter has been issued, consequently a legal action brought by *Dardana* against *YUKOS* in Britain cannot proceed. Upon learning of the plans of the Russian company to deliver crude oil to Texas, its opponents filed the motion to seize the cargo or arrest the payment issued by Exxon Mobil.

The statement of the *PetroAlliance* press service distributed in the mass media in connection with references to the participation of *PetroAlliance* (which allegedly had been acquired by *Dardana*) in this suit, insists that the Russian service company *PetroAlliance* was "independent" and had no affiliation with the American company *Dardana Ltd*. that initiated the lawsuit against *YUKOS*. According to *the PetroAlliance* press-service, the company since 1995 carried out contractual service work for *Yuganskneftegaz*, an affiliate of YUKOS producing association. The Stockholm arbitration court disposed of disputes that had once arisen in connection with payments for the contract in 1998. The court granted the *PetroAlliance* claim and obliged *YUKOS* to pay off the arrears.

In 1999, *PetroAlliance,* during its restructuring caused by the change of shareholders, transferred its right to collect the debt to *Dardana Ltd*. Since that time, *PetroAlliance* has not made any claims against *YUKOS*, the company emphasized in its statement. On more than one occasion during arbitration it made efforts to settle the differences between the parties amicably.

On July 24, 2002, *YUKOS* announced that it had fulfilled all the statutory requirements to submit information and documents to the American court proving the baselessness of the demands to enforce judgments concerning the claims of *Dardana Ltd*. against *YUKOS* on the territory of the USA. The company stated its hopes for the prompt and impartial disposal of the legal proceeding and its readiness to fulfill any court order on the matter in accordance with the procedures established by law.

According to B. Gage, lawyer for *Dardana Ltd., YUKOS* through its lawyers initially gave its written consent to a temporary arrest of $17 million - evidently in order not to darken a festive atmosphere of a solemn ceremony of welcoming Russian crude oil. The day after the ceremony, however, the Russian party reversed its decision and secured the transfer of the case to the Federal Court of the Southern District and again declared that it had no affiliation with the debts of *Yuganskneftegaz*.

Nevertheless, on July 11, 2002, federal judge D. Rainy issued an order to Exxon Mobil to temporarily withhold $17 million from its payments to *YUKOS*.

YUKOS argues that the order is discriminating against all Russian business. *YUKOS* considers it to be in a conflict with the law and existing international practice and currently disputes its lawfulness in a corresponding state court of Sweden.

YUKOS considers the claim of *Dardana Ltd*., legal successor of *PetroAlliance*, for the recovery of $17 million from *YUKOS* to be unfair. Though the company has judgments against *Yuganskneftegaz* of about $6.5 million it has never applied for the execution of the judgment of the Stockholm arbitration at the place of incorporation of *Yuganskneftegaz*. The practice of application of the exchange legislation and strict exchange controls in Russia precluded *Yuganskneftegaz* as a *bona fide* Russian company from executing the judgment without effecting additional Russian procedures in the territory of Russia. Thus, the Russian company was intentionally put in such a position in which it failed, for reasons beyond its control, to comply with the international arbitration judgment that in turn led to an increase of its aggregate debt to $17 million.

YUKOS thought and continues to think that both *Yuganskneftegaz* and itself have to execute judgments of international courts in accordance with the procedure provided for by the legislation and corresponding international agreements. *YUKOS*, however, expresses its disagreement with setting a dangerous precedent of applying legal standards towards Russian companies which differ from those applied by international courts to the companies of other countries.

On September 25, 2002, the Gagarinsky Intermunicipal Court of Moscow sentenced former executives of the oil company *SIBUR* Yakov Goldovsky and Eugeny Koshchits to seven months of imprisonment on a charge of abuse of power. Practically, this means the court cleared them of most other charges brought against them. Former president of *SIBUR* Y. Goldovsky and his deputy in charge of legal matters, E. Koshchits were arrested on January 8, 2002, and accused of illegal withdrawal of *SIBUR's* assets of 2.6 billion rubles belonging to Gazprom. Goldovsky was charged with embezzlement of large sums of entrusted funds, money laundering, falsification of documents and abuse of power. Koshchits was charged with complicity in the abuse of power.

According to the investigation material, through their affiliated companies they illegally purchased for *SIBUR* overcharged shares of the Tobolsky refinery. They also sold 5% of *SIBUR* shares without authorization and attempted to carry out an extra issue of the company's shares. As a result, a share of *Gazprom* in *SIBUR* would have been reduced to 31.00% from 50.56%.

In the course of court hearings that started on July 31, 2002, representatives of both *SIBUR* and *Gazprom* withdrew their claims for money damages as the damages caused to the companies had been compensated. In mid-August, Judge L. Zvyagina agreed to release E. Koshchits and Y. Goldovsky on bail set at 2 and 20 million rubles, respectively. Since they had already spent over seven months in custody, they in fact served the term imposed by the court.

On October 15, 2002, the District Court for the city and county of Denver, Colorado, dismissed a lawsuit for fraud filed by the Canadian company *Archangel Diamond Corporation* against *LUKoil* OJSC and A*rkhangelskgeoldobycha* (*AGD*) OJSC. *LUKoil* owns a 75% stake in AGD.

In 2001, *Archangel Diamond Corp*., which has intentions to develop in the Arkhangelsk Region the Europe's largest diamond deposit, Verkhotinskoye, accused *AGD* and LUKoil of fraudulent activities with the rights to exploit the deposit by *Almazny Bereg J/V*. *Archangel Diamond Corp*. estimated its damages at $4.8 billion. Lawyers *for Archangel Diamond Corp.* headed by B. Marx did not rule out an imposition of arrest over LUKoil's American assets. In the opinion of experts in the American law, the State of Colorado was selected as a place of filing the suit due to the fact that under the ruling of the Colorado Supreme Court local courts are practically obligated to accept such suits when a claimant is a resident of the state. *Archangel Diamond Corp*. is incorporated in Denver. Nevertheless, after consideration of the circumstances of filing the suit the court dismissed all the claims.

In recent years, similar campaigns of filing multibillion lawsuits with the courts of the USA were initiated, in particular, against *TNK* (the amount of claims $1.5 billion) and *Siberian Aluminum* (initially claimed amount of $2.7 billion grew to $3.0 billion). Not one of the claims was granted.

On November 21, 2002, the appellate division of the Moscow Arbitration Court granted the appeals of *Severnaya Neft* OJSC and Federal Securities Commission and reversed in part the trial court decision of October 15, 2002, in which the court deemed invalid the Resolution of the North-Western Regional Department of the Federal Securities Commission of December 20, 1999, to register the second issue of *Severnaya Neft*'s common nominal shares.

Earlier, on October 15, 2002, the Moscow Arbitration Court partially granted a motion by *Komineft* OJSC (a shareholder of *Severnaya Neft* OJSC) against *Severnaya Neft* OJSC and Federal Securities Commission and invalidated the resolution of the North-Western Regional Department of the Federal Securities Commission of December 20, 1999.

At the same time, the court dismissed the claimant's demands to invalidate the Resolution of the North-Western Regional Department of the Federal Securities Commission of January 12, 2000, on registration of the report on the issue of *Severnaya Neft's* shares. The court also refused *Komineft's motion* to nullify the report on the results of the issue of shares and invalidate and nullify the third and fourth issues of Severnaya Neft's shares.

In 1999, the North-Western Regional Department of the Federal Securities Commission registered 450,000 shares of *Severnaya Neft* with par value of 1,716 rubles per share.

The claimant argued that the decision to issue extra shares of *Severnaya Neft* was carried out by the meeting of its shareholders on November 19, 1999, exceeding the limits of its authority. In addition, at the date of the decision 35% of the company's shares were held by state organizations (25% and 10% shares were held by *Ukhtanefte-*

gazgeologiya and Zarubezhneft State Unitary Enterprises respectively). In such circumstances an agency of the state financial control would get involved to determine the market value of the shares. In the claimant's opinion, that hadn't been done.

The plaintiff argued that shares were sold below their market value. *Komineft's* representative also noted that if prior to the issue of shares his company had a 25% stake in *Severnaya Neft*, then after the issue *Komineft* became the owner of only a 2.5% stake.

Representatives for the Federal Securities Commission and *Severnaya Neft* argued that the suit was filed beyond the limitation (the period of limitation for nullifying the issue of shares is one year since the beginning of placement of securities), which expired on December 21, 2000.

A *Severnaya Neft's* representative also argued that in accordance with the legislation and OJSC charter the right to decide on the issue of shares belongs to the shareholders' meeting. Various bodies have checked the price of shares more than once and no violations have been revealed.

On December 4, 2002, the Siauliai District Court affirmed as lawful decisions of the shareholders' meeting of the Lithuanian oil group *Mazeikiu Nafta* taken in April 2002 and reversed the decision of the Mazeikiu Rayon Court of September 19, 2002, which deemed otherwise.

On September 19, 2002, the Mazeikiu Rayon Court declared invalid 11 of 12 decisions taken by the shareholders of *Mazeikiu Nafta* on April 30, 2002. On behalf of minority shareholders of *Mazeikiu Nafta* holding 6% of shares an initiative group filed the suit. The decision to increase the authorized capital of *Mazeikiu Nafta* through two issues of shares and granting the right to purchase all new shares to *Yukos Finance*, an affiliate of *YUKOS*, was also nullified.

On September 19, 2002, YUKOS finalized an $85 million purchase of a 26.85% stake in Lithuanian *Mazeikiu Nafta* from *Williams International Company*. As a result, a share of YUKOS in the authorized capital of *Mazeikiu Nafta*, including shareholdings purchased in June of 2000 reached 53.7%. The deal was realized by a subsidiary of *YUKOS* that assumed the rights and liabilities of *Williams International Company*. The subsidiary of *YUKOS* also assumed all the rights and a number of liabilities of *Williams International Company* within the framework of the agreement with the Lithuanian government, including the management of the complex. □