Circumstantial Evidence, Adverse Influences, and Findings of Corruption: Metal-Tech Ltd. v. The Republic of Uzbekistan

ICSID Case No. ARB/10/3, Award, 4 October 2013 (Gabrielle Kaufmann-Kohler, John M. Townsend, Claus von Wobeser)

Cecily Rose
Grotius Centre for International Legal Studies Leiden University, Leiden, The Netherlands
c.e.rose@law.leidenuniv.nl

Keywords


In an October 2013 award, the ICSID tribunal in Metal-Tech v. Uzbekistan determined that it lacked jurisdiction over the dispute between the parties on account of Metal-Tech's violations of Uzbek anti-bribery laws. The Tribunal held that the existence of bribery in connection with the establishment of Metal-Tech's investment in Uzbekistan in the late 1990s deprived it of jurisdiction under the applicable bilateral investment treaty (BIT), which requires investments to be implemented in accordance with the laws of the host State. This case represents a rare example of an ICSID tribunal declining to hear a dispute on account of findings of corruption. While allegations of corruption have arisen in many other ICSID cases, the World Duty Free v. Republic of Kenya case represents the only other instance in which findings of corruption by an ICSID tribunal have resulted in the Tribunal’s dismissal of the claims.1 The Tribunal’s decision in Metal-Tech v. Uzbekistan is also notable for its especially thorough examination of circumstantial evidence, on which it relied heavily in concluding that bribery had taken place.

***

1 World Duty Free v. Republic of Kenya, ICSID Case No. ARB/007, Award, 4 October 2006.
The Facts

Metal-Tech Ltd. is a public company, organized under Israeli laws, that manufactures molybdenum products which have industrial applications, as molybdenum is a metallic element that enhances steel, cast iron, and superalloys (para. 1, footnote 2). The Uzbek molybdenum industry thrived in the 1980s, but experienced a downturn following the collapse of the Soviet Union, and after Uzbekistan’s declaration of independence in 1991, the Uzbek government sought to revive the industry by attracting foreign investment (para. 6).

The facts giving rise to this dispute involve two State-owned companies: Almalik Mining Metallurgy Combine (AGMK) and Uzbek Refractory and Resistant Metals Integrated Plant (UzKTJM) (paras. 7–10). AVMK, which is the only molybdenum mining company in Uzbekistan, produces molybdenum concentrate and then sells it to producers of molybdenum products. AVMK’s only local customer was UzKTJM, the primary Uzbek producer and exporter of molybdenum products. By the late 1990s, AVMK and UzKTJM were using outdated technology and equipment, and were unable to produce molybdenum products that met international standards and could be sold on the world market.

The Uzbek government thus pursued the formation of a joint venture with Metal-Tech for the purpose of modernizing Uzbekistan’s molybdenum industry. From December 1998 through 1999, Metal-Tech and the Uzbek government negotiated the formation of a joint venture between Metal-Tech and AVMK and UzKTJM to build and operate modern plants for the production of molybdenum products that could be sold on the international market. While Metal-Tech was to contribute technology, knowledge, access to international markets, and part of the financing, AVMK and UzKTJM were to make in-kind contributions, including buildings, machines, equipment, and the raw material, molybdenum.

On 18 January 2000, the Uzbek Cabinet of Ministers authorized the joint venture, Uzmetal Technology (Uzmetal), through the issuance of Resolution Nos. 15 and 29-F (paras. 11–17). Under Resolution No. 15, Metal-Tech was to make a US$ 500,000 capital contribution, while AVMK and UzKTJM were to make in-kind contributions. In addition, Uzmetal’s US$ 1 million share capital was allocated between Metal-Tech (50%), UzKTJM (30%), and AVMK (20%). The joint venture was financed through a loan of US$ 2,624 million from Metal-Tech to Uzmetal, and another loan of US$ 14,866 million from an Israeli bank to the National Bank of Uzbekistan. Resolution 29-F valued the project at US$ 19,398 million.

According to a November 2000 export contract between Metal-Tech and the joint venture, Uzmetal had agreed to sell all its molybdenum products to