SPC Guiding Case No. 118: Northeast Electric Development Co., Ltd. v. China Development Bank Co., Ltd. and Shenyang High-Voltage Switch Co., Ltd. et al. (Enforcement Reconsideration)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Keywords

Enforcement; enforcement reconsideration; right of revocation; compulsory enforcement.

Holding

1. Where an effective judgment in a creditor's revocation action revokes the property transfer contract between the debtor and the transferee and orders the transferee to return the property to the debtor, and the transferee fails to perform the return obligation, the creditor may apply for compulsory enforcement with the debtor and the transferee as persons subject to enforcement.

2. Where the transferee, without notifying the creditor, returns the property to the debtor on its own, and the debtor immediately transfers the returned property, thereby causing the creditor to lose the opportunity to apply to the court for sealing or freezing measures and making the purpose of the revocation action impossible to achieve, it cannot be determined that the effective judgment has been effectively performed. Where the creditor applies to enforce the transferee's property return obligation determined in the effective judgment, the people's court shall support it.

Basic Facts

In a loan contract and revocation dispute between China Development Bank Co., Ltd. (hereinafter "CDB") and Shenyang High-Voltage Switch Co., Ltd. (hereinafter "Shenyang High-Voltage"), Northeast Electric Development Co., Ltd. (hereinafter "Northeast Electric"), Shenyang Transformer Co., Ltd., Northeast Construction and Installation Engineering Corporation, New Northeast Electric (Shenyang) High-Voltage Switch Co., Ltd. (now renamed Shenyang Zhaoli High-Voltage Electric Equipment Co., Ltd., hereinafter "New Northeast High-Voltage"), New Northeast Electric (Shenyang) High-Voltage Disconnect Switch Co., Ltd. (formerly Shenyang Xintai High-Voltage Electric Co., Ltd., hereinafter "New Northeast Disconnect"), Shenyang Beifu Machinery Manufacturing Co., Ltd. (formerly Shenyang Chengtai Energy Power Co., Ltd., hereinafter "Beifu Machinery"), and Shenyang Dongli Logistics Co., Ltd. (formerly Shenyang Xintai Warehousing Logistics Co., Ltd., hereinafter "Dongli Logistics"), the case went through first instance before the Beijing Municipal High People's Court (hereinafter the "Beijing High Court") and second instance before the Supreme People's Court. On September 5, 2008, the Supreme People's Court rendered Civil Judgment (2008) Min Er Zhong No. 23, with the final judgment result: 1. Shenyang High-Voltage shall repay CDB the loan principal of RMB 150 million plus interest and penalty interest, etc.; Shenyang Transformer Co., Ltd. shall bear joint and several guaranty liability for RMB 140 million of the debt plus interest and penalty interest; Northeast Construction and Installation Engineering Corporation shall bear joint and several guaranty liability for RMB 10 million of the debt plus interest and penalty interest. 2. The contract under which Northeast Electric exchanged its external claim of RMB 76.66 million and interest for the 95% equity in Beifu Machinery and the 95% equity in Dongli Logistics held by Shenyang High-Voltage is revoked; Northeast Electric and Shenyang High-Voltage shall return the equity and claims to each other; if they cannot return them to each other, Northeast Electric shall compensate Shenyang High-Voltage for its losses within the scope of RMB 247.1165 million, and Shenyang High-Voltage shall compensate Northeast Electric for its losses within the scope of RMB 76.66 million. 3. The contract under which Shenyang High-Voltage

exchanged its 74.4% equity in New Northeast Disconnect for the 98.5% equity in Shenyang Tiansheng Communication Equipment Co., Ltd. (hereinafter "Shenyang Tiansheng") held by Northeast Electric is revoked. The two parties shall return the equity to each other; if they cannot return it, Northeast Electric shall compensate Shenyang High-Voltage for its losses within the scope of RMB 130 million minus RMB 27.8788 million. Based on the above judgment, Northeast Electric needed to return the following three equity interests to Shenyang High-Voltage: the 95% equity in Beifu Machinery, the 95% equity in Dongli Logistics, and the 74.4% equity in New Northeast Disconnect; if it could not return them, after deducting the claims and equity that Shenyang High-Voltage should return to Northeast Electric, the total amount Northeast Electric needed to pay Shenyang High-Voltage was more than RMB 270 million. After the judgment took effect, based on CDB's application, the Beijing High Court accepted and enforced the case, and on March 24, 2009, served an enforcement notice on Northeast Electric, ordering it to perform the obligations determined in the legal instrument.

On April 16, 2009, the person subject to enforcement Northeast Electric submitted to the Beijing High Court a "Statement of Circumstances on the Performance of the Supreme People's Court Civil Judgment (2008) Min Er Zhong No. 23" (hereinafter "Statement 1"), indicating that the company had fully performed the obligations determined in the effective judgment by paying the equity consideration. After investigation, the Beijing High Court determined that, according to the relevant instrument records of the Tiexi Sub-branch of CITIC Bank Shenyang Branch, on December 20, 2007, the RMB 170.46 million paid by Northeast Electric was divided into RMB 58 million, RMB 57.46 million, and RMB 55 million, and transferred to Shenyang High-Voltage; on the same day, Shenyang High-Voltage transferred RMB 58 million, RMB 57.46 million, and RMB 55 million to Liaoning Xintai Electric Equipment Distribution Co., Ltd. (the actual holder of the 98.5% equity in Shenyang Tiansheng, hereinafter "Liaoning Xintai"), Liaoning Xintai to New Northeast High-Voltage, New Northeast High-Voltage to New Northeast Disconnect, and New Northeast Disconnect to Northeast Electric. Therefore, the Beijing High Court did not accept Northeast Electric's claim that it had completed payment. Thereafter, the Beijing High Court ruled to terminate the enforcement procedure for this time.

On July 1, 2013, CDB applied to the Beijing High Court to enforce Northeast Electric's compensation obligation under the judgment due to its inability to return the equity, requesting control of Northeast Electric's relevant property and providing a guaranty for this purpose. On July 12, 2013, the Beijing High Court issued a notice of assistance in enforcement to the industrial and commercial administration authority, freezing Northeast Electric's 67.887% equity in Shenyang Gaodongjia Drying Equipment Co., Ltd. and its 10% (RMB 100,000) equity in Shenyang Kaiyi Electric Co., Ltd.

In response, on July 18, 2013, Northeast Electric raised an enforcement objection to the Beijing High Court on the grounds that: 1. the Beijing High Court did not make a ruling before sealing the property; 2. the subjects performing the judgment obligations were Shenyang High-Voltage and Northeast Electric, and CDB had no standing to apply for compulsory enforcement; 3. Northeast Electric had already fully performed its obligation to return the equity to Shenyang High-Voltage under the effective judgment in this case, and should no longer pay CDB RMB 170 million. On September 2 of the same year, Northeast Electric issued to the Beijing High Court a "Statement on the Performance of the Supreme People's Court Judgment (2008) Min Er Zhong No. 23" (hereinafter "Statement 2"), specifically explaining the performance after the final judgment in this case took effect: 1. On the operative items of returning the 95% equity in Beifu Machinery and the 95% equity in Dongli Logistics. On September 18, 2008, Northeast Electric, Shenyang High-Voltage, New Northeast High-Voltage (the actual holder of the 95% equity in Beifu Machinery at the time), and Shenyang Hengyu Machinery Equipment Co., Ltd. (the actual holder of the 95% equity in Dongli Logistics at the time, hereinafter "Hengyu Machinery") signed a four-party agreement, agreeing that New Northeast High-Voltage and Hengyu Machinery would return the 95% equity in Beifu Machinery and the 95% equity in Dongli Logistics to Shenyang High-Voltage on behalf of Northeast Electric respectively; 2. On the operative item of returning the 74.4% equity in New Northeast Disconnect. Northeast Electric and Shenyang

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High-Voltage, Fuxin Enclosed Busbar Co., Ltd. (the actual holder of the 74.4% equity in New Northeast Disconnect at the time, hereinafter "Fuxin Busbar"), and Liaoning Xintai signed a four-party agreement on September 18, 2008, agreeing that Fuxin Busbar would return the 74.4% equity in New Northeast Disconnect to Shenyang High-Voltage on behalf of Northeast Electric. On September 22, 2008, the parties delivered the equity in accordance with the above agreements and completed the industrial and commercial registration of the equity changes. The relevant agreements provided that, after the equity was returned on behalf of Northeast Electric, Northeast Electric would bear the corresponding obligations to the three companies that returned the equity on its behalf.

On September 23, 2008, Shenyang High-Voltage transferred the equity in New Northeast Disconnect, the equity in Beifu Machinery, and the equity in Dongli Logistics to Shenyang Dejia Economic and Trade Co., Ltd., and completed the change registration procedures with the industrial and commercial administration authority.

Judgment

After review, on December 30, 2016, the Beijing Municipal High People's Court rendered Enforcement Ruling (2015) Gao Zhi Yi Zi No. 52, dismissing the objection of Northeast Electric Development Co., Ltd. Northeast Electric Development Co., Ltd. refused to accept it and applied to the Supreme People's Court for reconsideration. On August 31, 2017, the Supreme People's Court rendered Enforcement Ruling (2017) Zui Gao Fa Zhi Fu No. 27, dismissing the reconsideration request of Northeast Electric Development Co., Ltd. and upholding Enforcement Ruling (2015) Gao Zhi Yi Zi No. 52 of the Beijing Municipal High People's Court.

Reasoning

The Supreme People's Court held:

I. On whether CDB had the standing of an applicant for enforcement.

As found, the Beijing High Court's talk record of December 20, 2016 showed that Lei Aimin, the authorized agent of Northeast Electric, expressly indicated abandonment of the two objection requests of illegal enforcement procedure and CDB's lack of standing. From the scope of Lei Aimin's authorized agency authority, his authority was: to apply for enforcement objection on behalf of the principal, respond to litigation and defend, acknowledge, abandon, and change enforcement objection requests on behalf of the principal, and receive legal instruments on behalf of the principal. Therefore, the expression of intent made by Lei Aimin in the objection review procedure was legally borne by the principal Northeast Electric. Thus, Northeast Electric abandoned in the objection review its claim that CDB lacked the standing of an applicant for enforcement, and re-raising that claim in the reconsideration review procedure could lawfully be left unreviewed by this court. Even if Northeast Electric had not abandoned that claim, CDB's standing to apply for enforcement was beyond doubt. The causes of action in this case were loan contract and revocation disputes. After trial, the court rendered a judgment supporting CDB's requests, ordering Northeast Electric to repay the loan, and revoking the equity swap between Northeast Electric and Shenyang High-Voltage, ordering Northeast Electric and Shenyang High-Voltage to return the equity to each other, and providing that if Northeast Electric could not return the equity, it would bear corresponding compensation liability. The judgment result of mutual return was not based on the dispute between Northeast Electric and Shenyang High-Voltage, but on CDB's litigation requests. Northeast Electric's return of the equity to Shenyang High-Voltage was not only an obligation to Shenyang High-Voltage but in substance mainly an obligation to the prevailing creditor CDB. Therefore, CDB fully had the right to apply to the people's court to enforce the relevant obligor's performance of the obligations determined in the judgment.

II. On whether Northeast Electric performed the obligations determined in the judgment.

(A) The propriety of the return conduct in this case could not be recognized.

The purpose of the creditor's revocation right system established by law is to correct the debtor's improper disposal of property that harms the creditor's claim, and to restore the debtor's liability property so as to repay the creditor's debt. The purpose of Northeast Electric's return of the equity and restoration of Shenyang High-Voltage's debt-paying capacity was to repay CDB's debt. Only where the property return was completed in circumstances where the prevailing creditor was notified so as to give it the opportunity to apply to the court for freezing measures, thereby enabling the returned property to realize the claim, was it a performance conforming to the purpose of the litigation. Any so-called return conduct that frustrated CDB's litigation purpose was conduct that seriously deviated from the substantive requirements of the judgment. Therefore, whether the performance claimed by Northeast Electric constituted performance conforming to the requirements of the judgment should be determined with the purpose of the judgment as the basic guide. Although during the litigation and after the judgment took effect, Northeast Electric and Shenyang High-Voltage did engage in conduct to operate the equity return, they did not give any notice to the people's court or the creditor in advance, and the equity, after being registered under Shenyang High-Voltage's name, was transferred to other companies the very next day. Under such circumstances, that conduct should in substance be determined as conduct evading the judgment obligations.

(B) The authenticity of Northeast Electric's coordination of the parties to perform the gratuitous return obligation could not be determined.

Northeast Electric claimed that, because the equity involved had actually been respectively held by the three companies New Northeast High-Voltage, Hengyu Machinery, and Fuxin Busbar, it could not return it to Shenyang High-Voltage directly from its own name, so Northeast Electric coordinated New Northeast High-Voltage, Hengyu Machinery, and Fuxin Busbar to return the equity involved to Shenyang High-Voltage gratuitously. If that claimed fact were established, it could be regarded as Northeast Electric having performed the return obligation determined in the judgment. However, based on the evidence in this case, that fact could not be determined.

1. Northeast Electric's evidence was contradictory and could not be reasonably explained. During the enforcement of this case, Northeast Electric submitted two statements to the Beijing High Court, namely Statement 1 submitted on April 16, 2009 and Statement 2 submitted on September 2, 2013. Statement 1 showed that Northeast Electric and Shenyang High-Voltage signed an agreement on December 18, 2007, agreeing that, given that the two parties could not return the equity and claims to each other as required by the judgment, Northeast Electric would pay the equity transfer consideration to Shenyang High-Voltage, and that Northeast Electric had paid RMB 170.46 million to Shenyang High-Voltage on December 20, 2007 (during the second instance), using the Agreement signed between Northeast Electric and Shenyang High-Voltage on December 18, 2007, and the three bank deposit slips of the Tiexi Sub-branch of CITIC Bank Shenyang Branch on December 20, 2007 as evidence. Statement 2 stated that on September 18, 2008, Northeast Electric and Shenyang High-Voltage, New Northeast High-Voltage, and Hengyu Machinery signed a four-party agreement, agreeing that New Northeast High-Voltage and Hengyu Machinery would return the 95% equity in Beifu Machinery and the 95% equity in Dongli Logistics to Shenyang High-Voltage on behalf of Northeast Electric; on the same day, Northeast Electric and Shenyang High-Voltage, Fuxin Busbar, and Liaoning Xintai also signed a four-party agreement, agreeing that Fuxin Busbar would return the 74.4% equity in New Northeast Disconnect to Shenyang High-Voltage on behalf of Northeast Electric; on September 22, 2008, the parties delivered the equity in accordance with the above agreements and completed the industrial and commercial registration of the equity changes.

As to whether the performance it claimed was the return of the above equity or cash compensation, Northeast Electric's two statements were self-contradictory. First, Statement 1 indicated that Northeast Electric had performed the obligation to pay the equity consideration during the second instance, but with respect to that payment, upon investigation by the Beijing High Court, the funds circulated in a closed loop and returned to Northeast Electric, constituting false payment. Second, in the enforcement procedure, when

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Northeast Electric submitted Statement 1 on April 16, 2009, the delivery of the equity involved had already been completed, but Northeast Electric did not mention the four-party agreement signed on September 18, 2008 between Northeast Electric and Shenyang High-Voltage, New Northeast High-Voltage, and Hengyu Machinery. Third, since Northeast Electric and Shenyang High-Voltage had already delivered the equity consideration on December 20, 2007, it was clearly contrary to common sense that the equity involved was then returned to Shenyang High-Voltage through a four-party agreement on September 22, 2008. Fourth, Northeast Electric's "Major Litigation Announcement" was published on September 26, 2008, in which it mentioned accepting the judgment result of this court, but did not mention that it had performed the judgment on September 22, and stated that the date it received the judgment of this case forwarded by its litigation attorney was September 24, yet now insisted that it performed the judgment on September 22, which was difficult to reconcile. From this, it could only be judged that its so-called performance of the Supreme People's Court judgment during the enforcement process might be its own interpretation of some equity transfer conduct related to the equity involved that had already occurred at different times in the past as performance of the judgment in this case. Therefore, the authenticity of the four-party agreements and the credibility of Northeast Electric's explanations at different stages were highly doubtful.

2. The fact that the equity involved was returned gratuitously through Northeast Electric's coordination could not be determined. The registration and filing materials of the industrial and commercial administration authority recorded that on September 22, 2008, the equity in Dongli Logistics held by Hengyu Machinery, the equity in Beifu Machinery held by New Northeast High-Voltage, and the equity in New Northeast Disconnect held by Fuxin Busbar were transferred to the name of Shenyang High-Voltage. However, the registration materials showed that the "Equity Transfer Agreements" signed between Shenyang High-Voltage and New Northeast High-Voltage, between Shenyang High-Voltage and Hengyu Machinery, and between Shenyang High-Voltage and Fuxin Busbar provided that Shenyang High-Voltage should pay corresponding equity transfer consideration to the three companies respectively. Northeast Electric claimed that the "Equity Transfer Agreements" were prepared at the request of the industrial and commercial administration department, and that no equity transfer consideration was actually paid and none needed to be paid. On this, Northeast Electric could not provide sufficient evidence to prove it, and the Beijing High Court's investigation with the relevant industrial and commercial administration departments of Shenyang also did not find evidence sufficient to prove that the "Equity Transfer Agreements" were submitted indeed to satisfy the industrial and commercial filing registration requirements. Moreover, upon inquiry into the industrial and commercial registration archives of the equity change registration involved, the Beijing High Court found that, in addition to the "Equity Transfer Agreements," there were also the competent department's approval of the equity transfer, and the shareholders' meeting resolutions and board resolutions of the relevant companies agreeing to the transfer, acceptance, or receipt of the equity, none of which mentioned the effective judgment serving as the enforcement basis in this case or the two four-party agreements. In circumstances where the four-party agreements themselves were subject to major doubt, the people's court should determine the relevant facts based on the materials filed with the industrial and commercial authorities, and determine that the equity transfer and change registration involved were based on the relevant agreements filed, that is, that the equity involved was registered under Shenyang High-Voltage's name on September 22, 2008, and that it was obtained by Shenyang High-Voltage for consideration under the transfer agreements, unrelated to the four-party agreements. Whether Shenyang High-Voltage had in fact not paid the consideration since obtaining the equity involved to date, and the fact raised by Northeast Electric during the objection and reconsideration that Hengyu Machinery had been deregistered, and the undertakings of New Northeast High-Voltage and Fuxin Busbar to waive their claims against Shenyang High-Voltage for the equity consideration, were not ultimately decisive, because they could not exclude the creditors of New Northeast High-Voltage, Hengyu Machinery, and Fuxin Busbar from asserting rights against Shenyang High-Voltage based on the for-consideration "Equity Transfer Agreements" filed with the industrial and commercial registration. Therefore, they could not change the for-consideration nature of the "Equity Transfer Agreements." Accordingly, based on the existing evidence, it could not be determined that the

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equity involved had been registered under Shenyang High-Voltage's name as a result of Northeast Electric's coordination to perform the four-party agreements, and it could not be determined that Northeast Electric had performed the equity return obligation determined in the effective judgment.

(The judges of the effective judgment: Huang Jinlong, Yang Chun, and Liu Lifang.)

Relevant Legal Provisions

Article 225 of the Civil Procedure Law of the People's Republic of China.

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