

Controversy between Nakhodka Commercial Port and Daltekhservice transformed from “raiding” to arbitration

Lawyers deems that NCSP’s real estate have been privatized by using the “schemes” widespread in the 90s

Vladivostok, March 02, PrimaMedia. Settling a property dispute between EVRAZ Nakhodka Commercial Sea Port, OJSC (EVRAZ NCSP) and Daltekhservice Nakhodka, LLC (DTS) located in the port territory shifted from the regional media scene to the area of arbitration proceedings. The claimant – EVRAZ NCSP – has litigated the legitimacy of DTS’s obtaining real estate as a warehouse in the Arbitration Court in Primorsky region. The court has already taken interim measures in respect of the real estate in dispute; now DTS has no right its alienation in any way, as reported by RIA PrimaMedia with reference to the data of arbitration case files.

We would remind you that at the end of 2015 and early in 2016 some Primorsky region mass media published many materials, where the representatives of “small business” DTS Nakhodka, LLC, reported on a conflict between DTS and EVRAZ Nakhodka Commercial Sea Port, OJSC.

According to the publications’ sources, the port “oppresses” the small business, which “accidentally” shares the same territory with the port, the port blocks operation of DTS Nakhodka, LLC and even tries in some way to involve law-enforcement authorities “into the conflict to its side”.

In DTS Nakhodka representatives’ opinion given in some publications, the port “appropriated” in some way the land that was supposed to belong to DTS as the owner of the warehouse, which resulted in “all the troubles of the small business”.

To clarify the real situation, the agency’s editorial board asked a commentary from Kirill Vozisov, a partner of Inmar Legal Co. who represents interests of EVRAZ NCSP in courts. RIA PrimaMedia publishes the official position of our interviewee in full, with no abridgements and alterations (the records representing the lawyers’ position are at the disposal of the editorial board).

“Currently there are several legal processes between the parties.

When we duly analyzed all the records, including archival ones, plenty of interesting circumstances of the case came into light.

Early in the 90s some of the port’s assets (including the warehouse as the main real estate object that could be a base for the right to a plot of land in question) were transferred to DTS. It is worth noting that the one that founded DTS on behalf of the port and signed the documents for the transfer of the disputed warehouse was the former CEO of the port, and presently the only owner of DTS is his son. Many people remember that such a scheme of taking assets from privatized businesses was much in vogue early in the 90s.

As it was found out later, DTS Nakhodka, LLC, was actually founded on the grounds of a sole decision of the port’s executive body, which, in our opinion, doesn’t comply with the procedures

established by law. Within the founding framework of the deal which was carried out as early as 1993 as payment to the authorized capital, there is neither resolution of the NCSP stockholders' meeting nor concretization of the property transferred. Moreover, neither proprietary right nor right to lease were transferred under the documents, while "the right to full management" was specified as a contribution to the authorized capital.

In defense of its rights EVRAZ NCSP took legal action for recognition of its proprietary right to the warehouse, which DTS has been using free since 1993 (more than 20 years). Likewise for 20 years and free of charge, paying neither a rent nor a land tax, DTS has been using the land where the warehouse building in question stands.

It is the right to the above warehouse building gives cause to DTS to demand recognition of its rights to the plot of land from the port. Accordingly, if the port wins the proprietary right to the warehouse building, all claims of DTS will be unfounded.

As the port maintains its territory, DTS receives additional benefits "as a bonus" – security, lighting, etc. When the port offered to conclude a land lease agreement, as well as servitude for passing to the building, DTS refused and initiated the litigation.

In mass media the representatives of DTS refer to some "collusion" of NCSP and law-enforcement agencies which, in the opponents' opinion, is why the port manages to "avoid responsibility" every time. We regard these suppositions more than strange, as none of the complaints was justified. I would like to note that any unfounded "complaint spam" is inadmissible, as it blocks the regularity of business," Kirill Vozisov commented on the situation.

It should be noted that according to the disclosed information Daltekhservice Nakhodka, LLC, is the legal successor of a 100% subsidiary of NCSP – Daltekhservice, CJSC (founded in 1993). In 2002 by some obscure way the CJSC was transformed into Deltekhservice Nakhodka, LLC, the only founder of which became a citizen whose name suggests blood relations with the former director of NCSP, OJSC.

It is worth adding that consideration of the claim of EVRAZ NCSP, OJSC, to DTS Nakhodka, LLC, is set for trial in the Arbitration Court in Primorsky region on March 28. On February 03 this year the court ruling took interim measures in respect of the disputed warehouse in the port's territory, they prohibit DTS Nakhodka, LLC to make deals aimed at alienation of the real estate in question.

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