

# Holding a Director Liable. Losses on Below-Cost Transactions: Yes or No?

---

Russian Supreme Court Ruling  
in Case No. A24-2951/2022 dated April 25, 2025

On April 25, 2025, the Supreme Court of the Russian Federation (the "Supreme Court") passed a Ruling in the action brought by Bazalt LLC against its General Director D. M. Kotov. The Supreme Court addressed the matter whether the Company suffered damages from below-cost sales and whether the Company could in fact have approved its General Director's actions.

1. Do below-cost sales mean that a company has generated a loss? Do any other circumstances need to be looked into?
2. Could a company have approved such below-cost transactions by the course of its conduct?

How did the Supreme Court address the above questions and why its findings are important to the judicial practice?

## Factual Background

Mr. Kotov held the position of the General Director of Bazalt LLC from February 23, 2019, to June 8, 2020.

In July 2020, control over the Company has changed. The review of the Company's operations revealed that during Mr. Kotov's tenure, the Company understated the costs of the products and sold a considerable amount of such products to Stroysistema LLC, a company controlled by Mr. Kotov, as well as other products taking no account of the economic interests of Bazalt LLC. Resultantly, the latter suffered damages.

Thereafter, Bazalt LLC filed a claim to the Kamchatka Krai Commercial (*Arbitrazh*) Court against Mr. Kotov for recovery of damages. The amount of the claim brought by the Company also covered the period following the discontinuance of Mr. Kotov's authorities.

Lower courts upheld the claim and pointed out that the claimant had proved the totality of the circumstances for holding the Director liable. In addition, according to the lower courts, the sale of the Company's ready-made products at a price with a margin below the industry-wide standards serves as evidence of the General Director's bad-faith actions.

The Supreme Court, [by its Ruling dated April 25, 2025](#), reversed the judgments of the lower courts and remanded the case for a new proceeding.

Having considered Mr. Kotov's cassation appeal, the Supreme Court emphasized the following points of the Defendant's case:

1. The amount of damages was calculated incorrectly, because the actual sale prices should be compared with the prices prevailing in the competitive market over the period in question, rather than with the costs of such products;
2. The General Director's performance should be assessed taking account of the Company's aggregate performance;
3. No damages can be recovered in respect of the period following the discontinuance of Mr. Kotov's authorities.

### Sales of Products Below Cost

A market price of a product can be determined in various ways, one of which is the cost of such product, i.e. the cost of production and sales of the products incurred by the Company. Such pricing, however, cannot but take account of various market factors wherefore a market price itself can either be lower or higher than the cost.

This fact directly affects a possibility of holding a director liable, because a sale of a product at a knowingly understated price may be regarded as the director's bad-faith performance (Subparagraph 2 of Paragraph 1 of Article 53.1 of the Russian Civil Code).

The Supreme Court addressed this issue in the case in question as well where the Director had sold products below cost. The lower courts unequivocally pointed out that such conduct of the Director served as a basis for holding him liable for damages, but, at the same time, failed to determine the market price of the products.

A company that has filed a claim for recovery of damages from a director must prove that if the director had performed his duties properly, the company would not have suffered adverse consequences (Paragraph 5 of Article 393 of the Russian Civil Code).

The Supreme Court pointed out that the fact of a below-cost sale of products would not be sufficient to recover damages from a director. It should be ascertained whether or not it was reasonably possible to sell such products in the market taking account of the demand for such products.

The difference between the estimated price and the sale price of a product may not *per se* serve as the fact of a loss. To hold a director liable, it is necessary to determine the market price of identical products in the region in question and a possibility of selling such products in the volume in question. Only in such a case, i.e. where a sale price is below a market price, the director may be held liable for damages.



## A Company May Approve its Director's Actions by the Course of Its Conduct

Also, the Supreme Court pointed out that a company's sole participant may approve, by the course of his conduct, the transactions entered into by the company's director.

As a general rule, an unprofitable deal is implied, if it has been made by a director without disclosing a conflict of interest to uninterested participant. Disclosure of such information, however, does not imply an infliction of damages.

The Supreme Court pointed out that the totality of factual circumstances (for example, the business conduct adopted within the company) may serve as a proof of approval, by the course of the conduct, of the transactions entered into by the director which approval means that such transactions may not be challenged (Subparagraph 2 of Paragraph 3 of Article 182 of the Russian Civil Code).

The lower courts have failed to look into the pricing policy that existed within the Company before Mr. Kotov assumed office. Therefore, if a director continues to act in accordance with the business pattern that existed before his appointment and the sole participant does not object against such actions, such situation may be indicative of the sole participant's awareness and tacit approval of such actions.

The awareness of the Company's new participant of the methods of doing business by the Company rules out a possibility of recovering damages.

The Supreme Court further emphasized that a director's legal status may not be contingent upon any subsequent changes among the company's participants, if such director's actions were *bona fide*.

In the case in question, Mr. I. V. Redkin acquired a 100-percent participation interest in the Company after the contested transactions had been entered into by Mr. Kotov. Accordingly, the courts should have ascertained whether the acquirer was aware or should have been aware of the way the Company ran its business.

If, as of the date of acquisition, the new participant was aware of such circumstances, including the transactions entered into, and the pricing policy adopted by, the Company, he may not claim a recovery of damages from the Director.

### Findings of the Supreme Court

1. In order to sustain a claim for recovery from the director of the damages stemming from below-cost sales of products, it is necessary to study the market and identify the demand for identical products. If the sale price of products is below the cost of such products, then, in order to ascertain the director's bad-faith conduct, it is necessary to verify the existence of potential buyers and the market for such products (i.e. to determine a market price). Otherwise, there exist no damages.
2. Approval of the transactions entered into by the company's director by the course of the company's conduct renders challenging such transactions and recovering damages from the director impossible. Such *de facto* approval can be proved by the lengthy conduct of business in a particular order, the existing business model, and the absence of the sole participant's objections against director's actions.
3. An acquirer of a participation interest in the company bears the risk of making himself aware of the company's pricing policy. If the new participant should have been aware of the pricing of products and the contracting procedure, he will be precluded from filing a claim for recovery of damages.



/ Kirill Ponasyuk

Partner, Attorney

[kirill.ponasyuk@verba.legal](mailto:kirill.ponasyuk@verba.legal)



/ Inna Ivanikova

Senior Associate, Attorney

[inna.ivanikova@verba.legal](mailto:inna.ivanikova@verba.legal)

- [info@verba.legal](mailto:info@verba.legal)
- +7 (495) 374-74-03
- Gogolevsky Blvd 11, Moscow, Russia, 119019



M&A на Гоголевском



VERBA LEGAL



Investment  
Arbitration Review