IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 2 OF 2019 (IKJ)

IN THE MATTER OF AN APPLICATION FOR A DISCLOSURE ORDER

CAUSE NO FSD 74 OF 2019 (IKJ)

IN THE MATTER OF THE FOREIGN ARBITRAL AWARDS ENFORCEMENT LAW (1997 REVISION)

AND IN THE MATTER OF THE ENFORCEMENT OF THE ARBITRAL AWARD OF THE ICC INTERNATIONAL COURT OF ARBITRATION CAUSE NO. 22187/RD/MK

BETWEEN

ARCELORMITTAL USA LLC

Applicant/Judgment Creditor

AND

(1) ESSAR STEEL LIMITED
(A company incorporated under the laws of Mauritius)(in Administration)

1st Respondent/Judgment Debtor

(2) ESSAR GLOBAL FUND LIMITED
(A company incorporated under the laws of the Cayman Islands)

2nd Respondent/Garnishee

(3) VTB BANK (PJSC)
(A company incorporated under the laws of Russia)

Interested Party

IN CHAMBERS

Appearances:

Mr Tom Weisselberg QC of counsel, Mr Paul Smith, Ms Jessica Williams, Mr Conal Keane and Ms Anya Park, of Harneys, on behalf of the Applicant/Judgment Creditor ("AMUSA")

Mr Paul Stanley QC of counsel, Mr Ulrich Payne, Mr William Jones, and Ms Kayla Lewis of Ogier, on behalf of the 2nd Respondent/Garnishee ("EGFL")

Mr Adrian Beltrami QC of counsel, Mr Brett Basdeo of Walkers, on behalf of VTB Bank (PJSC) ("VTB")

The 1st Respondent ("ESL") did not appear

Before: **The Hon. Justice Kawaley**

Heard: **29-30 May, 2019**

Draft Ruling Circulated: **19 June 2019**

Ruling delivered: **2 July 2019**

HEADNOTE

Enforcement of foreign arbitration award – Foreign Arbitral Awards Enforcement Law - application for garnishee order - joinder application by secured lender - requirements for garnishee order - GCR Order 49 - whether qualifying debt exists - effect of subordination agreement - whether directions should be given for trial of issue concerning capacity of judgment debtor to validly enter into subordination agreement - whether garnishee summons should be summarily dismissed - application for freezing injunction against garnishee - modified application for 'notification order' - whether good arguable case for injunction made out - whether injunction just and convenient - whether scope of proposed order proportionate - Norwich Pharmacal Order - whether final or interlocutory decision -Court of Appeal Law section 6(f)(ii) - Court of Appeal Rules rule 12(3), 12(5)(a)

RULING ON GARNISHEE AND FREEZING INJUNCTION SUMMONSES

Background

1. On December 19, 2017, AMUSA obtained a final arbitration award from an ICC Arbitration Tribunal sitting in Minnesota against ESL, a subsidiary of EGFL, requiring ESL to pay AMUSA US$1,380,991,356.04 plus interest at the rate of 8.60% until payment or entry of judgment on the award (the "Award"). AMUSA has taken various steps towards enforcing the Award, initially in Minnesota and thereafter in England and Wales, the Cayman Islands and Mauritius. It complains that no offers to settle its debt of approximately $1.5 billion have been made and not one cent has been paid since the Award was obtained nearly 1 ½ years ago.

2. On January 15, 2019 in FSD No. 2 of 2019 (IKJ), I granted AMUSA a *Norwich Pharmacal* Order, which was modified in certain minor respects both on January 16, 2019 and (following an *inter partes* application to set it aside) through the Order drawn up to give effect to my judgment of March 29, 2019 (the "NPO"/the "NPO Proceedings"). AMUSA was the Plaintiff in those proceedings and EGFL was the 1st Defendant. EGFL is the parent company of the Essar Group. The formal Order to be drawn up pursuant to my judgment delivered on March 29, 2019 in the NPO Proceedings was not agreed. Accordingly, by Summons dated May 28, 2019, AMUSA requested the Court to settle the terms of the Order. The dispute was whether the information required to be produced should be produced by June 10, 2019 as AMUSA sought or July 31, 2019, as the Defendants sought.

3. For reasons which are, for convenience, set out briefly below, I resolved that dispute (and the ancillary question as to whether the Order was final or interlocutory for appeal purposes) in favour of the Defendants in the NPO Proceedings. My decision, which ought to have been rendered at the end of the hearing, was communicated to the parties by email on May 31, 2019, the day after the hearing.

4. By an Ex Parte Originating Summons dated April 26, 2019, commencing the present proceedings, AMUSA sought an Order that:

"*1. AMUSA has leave pursuant to section 5 of the Foreign Arbitral Award Enforcement Law (1997 Revision), to enforce against the Respondent in this Court the final arbitral award rendered in the ICC International Court of Arbitration Cause No. 22187/RD/MK on 19 December 2017.*

2. Pursuant to Order 73, rule 31 (2) of the Grand Court Rules, this application may be served on the Respondent at Essar House, 10 Frère Félix de Valois, Port Louis, Mauritius.

3. Within 14 days, or such other period as the Court may fix pursuant to Order 73, rule 31(8), the Respondent may apply to set aside this Order, and the Award shall not be enforced until after the expiration of that period, or, if the Respondent applies within the 14 days ..."

5. ESL did not appear in opposition of this application which I granted at the beginning of the hearing on May 29, 2019 for reasons which are set out briefly below.

6. By an interlocutory Summons also dated April 26, 2019, AMUSA sought:

"*1. A Garnishee Order, in the form annexed to this summons pursuant to Order 49, rule 1 of the Grand Court Rules...*"

7. The form of order sought was a Garnishee Order Absolute. By an interlocutory Summons of the same date, AMUSA sought a Freezing Injunction and Asset Disclosure Order against both ESL and EGFL in terms of an attached draft Order in what might be described as "full-blown" form. On or about May 23, 2019, AMUSA advised that it proposed to seek a far less intrusive form of injunction essentially requiring EGFL, as the proposed Garnishee, to provide information about significant transactions relating to the Essar Group. This was because rather than seeking a substantive Garnishee Order, it now merely sought directions for a contested hearing of the question of whether or not it was entitled to relief under GCR Order 49, and a less intrusive injunction was considered appropriate as an interim measure.

8. VTB applied to be joined as an Interested Party to the present proceedings by Summons dated May 24, 2019. AMUSA did not object, subject to discovery. Mr Beltrami QC complained that it was unsatisfactory for his client's position to be left unresolved, and I signified that for the purposes of the present hearing VTB was joined. Its commercial

interests lay in ensuring that AMUSA did not take steps by way of execution which it contended were debarred by a Subordination Deed entered into on October 21, 2016 between, *inter alia*, EGFL, ESL and VTB (the "Subordination Deed").

The NP Order

The form of the Order

9. The delay in finalising the NP Order after the delivery of the March 29, 2019 Judgment in the NP Proceedings cannot be laid at the door of the Defendants. On April 24, 2019, Ogier requested a draft Order which was not supplied by Harneys until April 25, 2019. A response was requested by April 29, 2019. The proposed deadline for information production was May 10, 2019. Ogier responded on May 3, 2019 (just over a week after receiving the draft Order) indicating that their client needed until July 31, 2019 in light of the scope of the task. This position was maintained, despite AMUSA's counsel agreeing to push back the deadline to June 10, 2019. Assuming the NPO was not being challenged, there was no excuse for a failure to begin the production process after March 29, 2019.

10. However, on April 24, 2019, Ogier had written to Harneys stating, *inter alia*:

> "*We confirm that we have instructions to appeal the Order once it has been made. It is our view that our clients are entitled to appeal as of right...*
>
> *We would therefore be grateful if you could please confirm that you agree...that our clients do not require leave to appeal the Order once made and filed in accordance with the Rules.*"

11. On April 29, 2019, Harneys declined to agree that the Order would be final once drawn up and indicated it was a matter for the Court to decide. This meant that the Defendants would not be able to appeal until after the hearing fixed for May 29, 2019. Against this background, it seemed to me to be both unrealistic and unfair to the Defendants to ignore the intended appeal and fix a deadline which would require the Defendants to seek an urgent stay pending appeal. In litigation as substantial and contentious as this, the Plaintiff's strict rights to production within a timetable that the Defendants, using their best

endeavours, can comply with must be tempered with regard being had to the practical ramifications of an intended appeal and a stay application. For these reasons, which I foreshadowed in the course of the hearing, I decided to fix the production deadline at July 31, 2019.

Was the NPO final or interlocutory?

12. Section 6 of the *Court of Appeal Law* (2011 Revision) provides that no appeal shall lie "*from an interlocutory judgment without leave of the Grand Court, or of the Court*", subject to five exceptions, none of which at first blush applied to the NPO. Mr Stanley QC submitted that although the analysis was not entirely straightforward, it was ultimately clear that a *Norwich Pharmacal* order was a final order. It was, viewed simply, the substantive relief granted upon the final determination of a freestanding action commenced by originating summons. It mattered not that ancillary applications might subsequently arise by way of implementation of the order. Rule 12 of the *Court of Appeal Rules* (2014 Revision) provided firstly and most broadly:

> "*(3) A judgment or order shall be treated as final if the entire cause or matter would (subject only to any possible appeal) have been finally determined whichever way the court below had decided the issues before it.*"

13. The NPO also qualified as a final order because it was "*an order for discovery of documents made in an action for discovery only*": Rule 12(5) (a). However, if neither of these applied to the NPO, it might be viewed as a form of injunction. One of the exceptions to interlocutory orders which may only be appealed with leave under section 6(f) of the Law is "*(ii) where an injunction or the appointment of a receiver is granted or refused*".

14. Mr Weisselberg QC did not ultimately challenge these submissions, seemingly being content (consistent with the position adopted in correspondence) to let the Court decide.

15. In my judgment in the NPO Proceedings (at paragraphs 99-101), I expressed the tentative view that the NPO might perhaps be viewed as a form of interim relief in aid of contemplated foreign proceedings for the purposes of section 11A of the *Grand Court Law*. This is not necessarily at odds with viewing the NPO, from a purely domestic perspective,

as falling within the ambit of rule 12(3) and qualifying as a final order. However, it is more straightforward to regard the *Norwich Pharmacal* jurisdiction as an "*action for* [equitable] *discovery only*" falling within the ambit of Rule 12(5) (a). This is also more consistent with the way in which this jurisdiction has long been viewed under Cayman Islands law. For instance, in ***Braga-v-Equity Trust Company (Cayman) Limited*** [2011(1) CILR 402], Smellie CJ (at 419-420) opined as follows:

> "*42. The equitable principle by which the courts make orders for discovery against persons who are not themselves to be sued as parties to the action, and who are not mere witnesses to events which give rise to an action, has been settled ever since Norwich Pharmacal Co. v. Customs and Excise Commrs. was decided by the House of Lords some 37 years ago. Indeed, the equitable principle itself has existed for at least 150 years...*"

16. Moreover, in *Discover Investment Company-v-Vietnam Holding Asset Management and Saigon Asset Management Corporation*, FSD 76 of 2018 (IKJ), Judgment dated November 5, 2018 (unreported), it was essentially common ground that "*[t]his Court's jurisdiction to administer and grant relief derived from common law and/or equity legal principles is derived from section 11 of the* ***Grand Court Law***" (paragraph 7).

17. Accordingly, I was satisfied that the NPO was a final order in relation to which leave to appeal was not required, pursuant to either rule 12(3) and/or rule 12(5) of the *Court of Appeal Rules* (2014 Revision).

The Foreign Arbitral Awards Enforcement Law Summons

<u>The statutory regime</u>

18. Section 5 of the *Foreign Arbitration Award Enforcement Law* ("*FAAEL*") provides as follows:

> "*5. A Convention award shall, subject to this Law, be enforceable in the Grand Court in the same manner as an award under section 22 of the Arbitration Law (1996 Revision) and shall be treated as binding for all purposes on the persons between whom it was made and may*

accordingly be relied upon by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Islands and any reference in this Law to enforcing a Convention award shall be construed as including references to relying upon such award."

19. This section essentially provides that foreign awards may be enforceable in this Court in the same manner as domestic awards under the successor provision to section 22 of the *Arbitration Law* (1996 Revision), section 72 of the *Arbitration Law* 2012. Section 6 of the *FAAEL* ("Evidence") provides as follows:

> "*6. The party seeking to enforce a Convention award shall produce-*
>
> *(a) the duly authenticated original award or a duly certified copy of it;*
> *(b) the original arbitration agreement or a duly certified copy of it; and*
> (c) *where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.*"

20. Section 72 of the *Arbitration Law* provides as follows:

> "*(1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.*
>
> *(2) Where leave is given, judgment may be entered in terms of the award.*
>
> *(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the arbitral tribunal lacked jurisdiction to make the award.*
>
> *(4) Nothing in this section affects the recognition or enforcement of an award under any other written law or rule of law and in particular the provisions of the Foreign Arbitral Awards Enforcement Law, 1997 relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.*"

21. Section 72 provides that the Court may grant leave for judgment to be entered in terms of an award, without prejudice to the *FAAEL*. Section 72(4) is presumably designed to make

it clear that the pro-enforcement policy underpinning the New York Convention and domesticated into local law through the *FAAEL* is applied to applications under section 72 of the *Arbitration Law* to which the *FAAEL* also applies. Section 7 of the *FAAEL* pertinently provides as follows:

> "*Refusal of enforcement*
>
> *(1) Enforcement of a Convention award shall not be refused except in the cases mentioned in subsections (2) and (3).*
>
> *(2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves-*
>
> *(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;*
>
> *(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;*
>
> *(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; subject to subsection (4), that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;*
>
> *(d) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or*
>
> *(e) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.*
>
> *(3) Enforcement of a Convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award...*"

22. As AMUSA submitted, it appears that *GCR* Order 73 rule 31 creates a self-contained procedural code for applications under section 5 of the *FAAEL*. The relevant provisions were the following:

> "*(1) An application for leave under Section 52 or 72 of the 2012 Law or under Section 5 of the 1975 Law to enforce an arbitral award, shall be made by ex-parte originating summons.*
>
> *(2) The Court hearing an application under paragraph (1) may direct that the application is to be served on such parties to the arbitration as it may specify and service of the application out of the jurisdiction is permissible with the leave of the Court irrespective of where the award is, or is treated as, made.*
>
> *(3) Where a direction is given under paragraph (2), rules 11 and 13 to 17 shall apply with the necessary modifications as they apply to applications under Part I of this Order.*
>
> *(4) Where the applicant applies to enforce an agreed award within the meaning of section 62 of the 2012 Law, the application must state that the award is an agreed award and any order made by the Court shall also contain such a statement.*
>
> *(5) An application for leave must be supported by an affidavit –*
> *(a) Exhibiting*
>
> *(i) where the application is under Section 52 or 72 of the Law, the arbitration agreement and the original award or, in either case, a copy thereof;*
> *(ii) where the application is made under Section 5 of the 1975 Law, exhibiting the documents specified in Section 6 of the 1975 Law.*
>
> *(b) stating the name and usual or last known place of residence or business of the applicant and of the person against whom it is sought to enforce the award respectively;*
>
> *(c) stating as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.*
>
> *(6) An order giving leave must be drawn up by or on behalf of the applicant and must be served on the respondent by delivering a copy*

to him personally or by sending a copy to him at his usual or last known place of residence or business or in such other manner as the Court may direct, including electronically.

(7) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5 to 8, shall apply in relation to such an order as they apply in relation to a writ.

(8) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the respondent may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the respondent applies within that period to set aside the order, until after the application is finally disposed of.

(9) The copy of the order served on the respondent shall state the effect of paragraph (8).

(10) In relation to a body corporate this rule shall have effect as if for any reference to the place of residence or business of the applicant or the respondent there were substituted a reference to the registered or principal address of the body corporate,

Nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate."

The merits of the application

23. AMUSA's Ex Parte Originating Summons seeking leave to enforce the Award was initially supported by the First Affidavit of Kasra Nouroozi Shambayati, sworn on April 26, 2019 ("Nouroozi 1"). Mr Nouroozi is a London-based partner of Mishcon de Reya, which represents AMUSA in the English Proceedings. The application was supplemented by Mr Nouroozi's Third Affidavit, sworn on May 10, 2019 ("Nouroozi 3") which exhibited a certified copy of the Award.

24. It was deposed in Nouroozi 1 that no part of the Award had been paid and that the sums due including interest as at April 24, 2019 was $1,543,432,359.49. The circumstances in which ESL entered administration in Mauritius on March 26, 2019 are then set out. For present purposes, it suffices to note that on April 10, 2019 AMUSA applied to the Bankruptcy Division of the Mauritius Supreme Court for, *inter alia*, leave to enforce the

Award and apply for a Garnishee Order and interim Freezing Order from this Court. This application was granted by Judge G Angoh on April 19, 2019 (the "Permission Order"). Mr Nouroozi asserted that although ESL might object to enforcement of the Award on public policy grounds, the Permission Order was a sufficient answer to that potential objection.

25. Nouroozi 3, in addition to exhibiting the certified copy of the Award, also exhibited sworn copies of the Affidavits filed in support of the Permission Order.

26. An Affidavit of Service was sworn by Zainool Aberdeen Eddoo, a Registered Usher authorised by the Mauritian Supreme Court to serve process, on May 16, 2019. The deponent averred that on May 16, 2019 he served copies of the following documents which are relevant to the present application on ESL's Administrators and on ESL at its registered office:

(a) a copy of Nouroozi 3; and

(b) electronic copies of an index to the Hearing Bundle prepared for the present hearing and Volume 5 of the Bundle and the exhibits to Nouroozi 3.

27. An Affidavit of Service was also sworn on May 20, 2019 by Shanawaz Ajam Jawaheer, also a Court Usher, who deposed that on May 6, 2019 he served various documents on ESL's Administrators and on ESL at its registered office. These documents included:

(a) a copy of the Ex Parte Originating Summons dated April 26, 2019 seeking leave to enforce the Award; and

(b) a copy of Nouroozi 1 and an electronic copy of the Exhibits to the Affidavit.

28. The substantive requirements for granting leave to enforce the Award were clearly made out in circumstances where the application was not opposed by ESL and ESL and its Administrators had been given notice on May 6, 2019 of both:

(a) the Mauritian Permission Order; and

(b) the application to this Court for leave to enforce the Award scheduled for May 29, 2019.

29. AMUSA's counsel rightly distinguished the present statutory context from an application for leave to enforce a foreign judgment where a "tangible benefit" from enforcement has to be shown to justifying granting leave to serve out under GCR Order 11: *Masri-v-Consolidated Contractors* [2011(1) CILR 79] (Jones, J, at paragraphs 13, 27]. Their Skeleton acknowledged that in *Globeop Financial Services-v-Titan* [2014 (1) CILR 412], Smellie CJ could be viewed as applying the "*tangible benefit*" requirement to an application to enforce a foreign arbitral award, albeit applying Order 11. That would not be a fair reading of the actual legal findings made in that case, which were as follows:

> "*26. As Mr. Dunne submits, and I accept, the change in the law following the passing of the Arbitration Law is such that the criteria to be applied by the court in determining whether to exercise its jurisdiction under GCR, O.11, r.1(1)(m) will vary depending on whether the enforcement action in question relates to a judgment or an arbitral award and that, in the latter case, the default position is that leave should be granted unless there is some reason to think that the award is impeachable under the provisions of the FAAE Law.*" [Emphasis added]

30. That was, like the present application, an ex parte one. It is unclear why it was seemingly submitted by counsel in *Globeop* that Order 11 rule 1(1) (m) applies to a foreign arbitration award at all. The more straightforward view of the scheme of the Rules is that Order 73 is a self-contained code for the enforcement of foreign awards and that Order 1 rule 1(1) (m) applies exclusively to domestic awards, the primary domain of the Arbitration Law 2012. Section 3(1) of the Law states:

> "*(1) The provisions of this Law apply where the seat of the arbitration is in the Islands.*"

31. However the position under the Rules is not the point; as regards Convention Awards, the governing primary legislative principles are to be found in sections 6 and 7 the *FAAEL*,

which provisions are given primacy by section 72 (5) of the 2012 Law. The only grounds for refusing enforcement are those set out in section 7(2) of *FAAEL*, and it is not possible to interpose into that New York Convention-implementing statutory code an additional "*tangible benefit*" requirement developed in cases dealing with leave to serve judgment enforcement proceedings abroad.

32. The only potential procedural wrinkle related to the fact that the form of Order sought by AMUSA included what was in reality retrospective rather than prospective permission to serve ESL with the application. The Order sought included the following proposed direction:

> "*3. Pursuant to Order 73, rule 31 of the Grand Court Rules, this application may be served through an usher upon the Respondent at Essar House, 10 Frère Félix de Valois Street, Port Louis, Mauritius, and through an usher upon the administrators of the Respondent* …"

33. I had no difficulty accepting the submission that the requirement to obtain 'mandatory' leave to serve out under Order 11 and the need to meet the jurisdictional conditions were not engaged. In a 'rush for judgment', however, AMUSA appeared to have ignored the fact that Order 73, while permissive in its terms, envisaged that the Court would address the question of service, if at all, before service was effected. Order 73 rule 21 provides:

> "*(2) The Court hearing an application under paragraph (1) may direct that the application is to be served on such parties to the arbitration as it may specify and service of the application out of the jurisdiction is permissible with the leave of the Court irrespective of where the award is, or is treated as, made.*" [Emphasis added]

34. I considered it obvious that that the Court's power to extend or abridge the time for doing anything under the Rules (GCR Order 3) could be used to extend the time for seeking permission if necessary. Alternatively, if the service which had been carried out without prior permission was defective, I would have declined to require prior service in any event. The structure of Order 73 is such as to permit an applicant to obtain leave to enforce an award without prior notice. This is the reason why an application may be commenced by

an ex parte originating summons (Order 73 rule 21(1)). Rule 21(3) in fact envisages that the question of service will be addressed by the Court "*hearing an application under paragraph (1)*". What is mandatory is service of the order: Order 73 rule 21(6). And permission to serve the order abroad is not required (rule 21 (7)).

35. This procedural scheme is clearly designed to create a smooth pathway for applicants to access enforcement in relation to qualifying foreign awards under the *FAAEL*; a paved route which avoids the risks of a potentially muddy and slippery path involving convoluted service requirements in unfamiliar legal terrain abroad. However, Order 73 nonetheless doffs a cap to ancient notions of territorial sovereignty by requiring permission for service of the originating process abroad. In my judgment, the correct procedure ordinarily should be that an application under Order 73 rule 21(1) should not be served without prior permission of this Court.

36. In the peculiar factual circumstances of the present case, however, the principle requiring prior permission for serving originating process abroad was not fully adhered to (if at all engaged). This was because the Mauritian Court in granting the Permission Order itself gave (a) express prior permission for AMUSA to ask this Court to entertain the present application in relation to a Mauritian company, and (b) implied permission to serve the application abroad. The Affirmation of Omar Bahemia dated April 10, 2019 filed in support of the application for the Permission Order sought relief in the following terms:

> "*33.3 (if ever permission is required) leave to apply for the following orders from the Grand Court of the Cayman Islands:*
>
> (i) *An ex parte application for leave to enforce in the Cayman Islands the ICC arbitral award obtained by the Applicant against Essar Steel, and for leave to serve Essar Steel out of the jurisdiction…*"

37. The Motion Paper itself (paragraph (C)) sought relief in precisely the same terms. The Permission Order was formulated in the following material terms:

> "*I hereby grant the applicant permission to commence the legal proceedings specified in paragraph…(C) of the aforesaid Motion Paper…*"

38. AMUSA sought leave to serve the application abroad as it represented to the Mauritian Court that it would do, but pursued the present application with express approval from the foreign court. It could hardly be said to be an improper incursion into the jurisdiction of that Court to serve the application before it was made. In these circumstances any irregularity which occurred was wholly technical and would not in any event constitute grounds for refusing to grant the Order sought.

Summary: *FAAEL* application

39. For these reasons, on May 29, 2019 I granted AMUSA's application under section 5 of the *FAAEL*.

Garnishee Summons

Introductory

40. It is clear from a straightforward reading of the application to the Mauritian Court, that AMUSA contemplated seeking directions at the first hearing of its Garnishee Summons and did not anticipate seeking from this Court an Order Absolute at the outset and an interim Freezing Order in support of a 'final' Order. Accordingly, the real issue which was joined on the first hearing of the Garnishee Summons was not whether it was defective in form. Rather, the most serious question was whether the merits of the application were sufficiently cogent to justify granting the directions and interim injunctive relief sought. VTB, supported by EFGL, argued most significantly that VTB's Subordination Deed as a matter of law deprived ESL from the right to recover the debt AMUSA wished to garnish so there was no debt which could arguably be attached. If this objection was valid, AMUSA's alternative position was that directions should be given to enable it to challenge the legality of the Subordination Deed.

The Applicant's evidence

41. The Garnishee Summons was primarily supported by the Second Affidavit of Mr. Nouroozi sworn on April 26, 2019, which also supported the application for a Freezing Order ("Nouroozi 2"). The deponent explained the essential basis of these related applications as follows:

> "*8. At the same time as issuing this application for garnishee and freezing relief and as a logical precursor to it, AMUSA is seeking leave to enforce the Arbitral Award in the Cayman Islands against Essar Steel. Once it has obtained such leave (and subject to the timing provisions contained within Order 73, Rule 31(8)), AMUSA wishes to obtain a garnishee order against an amount of US$1,511,388,333 owed by EFGL to Essar Steel. AMUSA also seeks a freezing injunction against both EFGL and Essar Steel. It does so in light of documentation obtained pursuant to orders in the English Proceedings. In particular, the restated accounts for Essar Steel obtained pursuant to the orders made in the English Proceedings., indicate that an asset of US$1,511,388,333 disappeared from Essar Steel's accounts at the time of the arbitration and was transferred to EFGL with no valuable consideration, or consideration that failed. Accordingly, AMUSA seeks a freezing injunction against EGFL insofar as that amount is owed to Essar Steel by EFGL and has not paid in full to Essar Steel or the value represents the amount that has not been paid to Essar Steel, and a freezing injunction against Essar Steel in relation to the amount of the Arbitral Award owing as at 24 April 2019, being US$1,543,432,359.49.*"

42. It is then deposed that the English Court on March 29, 2019 granted permission for AMUSA to use the information obtained in the English Proceedings to, *inter alia*, enforce the Award. The debt it is sought to attach is then described in detail (paragraphs 48-60). It arises from a restatement of ESL's accounts for 2015 in 2016 so as to remove more than $1.5 billion previously shown as owing from EFGL to ESL. The original accounting position was described as a mistake by the Defendants in the English Proceedings[1]. In his March 25, 2019 judgment in those proceedings[2] (at paragraph 59), Jacobs J observed:

[1] Claim Nos CL-2019-00030/31.
[2] [2019] EWHC 74 (Comm).

> "*...I consider that it is strongly arguable, to put it at its lowest, that the restatement of the accounts, and the removal or attempted removal of the US$1.5 billion asset was connected with the substantial claim that AMUSA was in a position to make, and had indeed made, against Essar Steel. The termination of the contract, which gave rise to the claim against Essar Steel, was in May 2016, and arbitration proceedings were commenced (after pre-arbitration correspondence) in August 2016. As at that time, the existence of the US$1.5 billion asset was of course shown in Essar Steel's accounts, both in the 2014 and 2015 accounts. It is now said that this was a mistake on the part of the directors (Mr Baid) who drew up and signed the accounts, and the auditors who audited them. But as AMUSA rightly submitted, it does seem to be an extraordinary mistake to make, not least given the size of the asset and its importance in the context of Essar Steel's balance sheet...*"

43. Not only is the existence of the debt disputed by EFGL. It is pointed out in Nouroozi 2 that in evidence filed in the English Proceedings in April 2019, the Defendants further contended that even if the debt does exist, it was governed by a subordination deed which AMUSA had not yet been able to consider.

The 2nd Respondent/EGFL's evidence

44. EGFL's principal evidence was the Affirmation of director Rajiv Gujjalu. Mr Gujjalu addressed:

(a) the business and operations of the Essar Group;

(b) the transactions in 2012 and 2013 which resulted in the accounting entries which form the basis of the alleged debt to ESL;

(c) the commercial rivalry between AMUSA and EGFL;

(d) inferences relating to the dissipation of assets;

(e) AMUSA's undertaking in damages; and

(f) The current status of the proceedings in Mauritius.

45. Summarising EGFL's position at the outset, he deposed:

> "*8. Imposing a freezing order on EGFL in circumstances which do not justify it could have the far-reaching collateral effect of paralysing a global business that otherwise prides itself on its ability to service its customers and look after approximately 7,000 employees and over 10,000 contractors globally. It would play into the hands of one of the Essar Group's fiercest competitors, potentially fatally to its business. It is for these reasons that EGFL considers AMUSA's application should be dismissed.*"

46. The complaints about the adverse impact of the Freezing Order which was initially sought need not be detailed here because AMUSA, in light of this evidence, prudently 'throttled back' and at the hearing sought far narrower injunctive relief against EGFL (a Notification Order). This was essentially disclosure, which EGFL objected to as still overly burdensome and not necessary. Additionally it was asserted that there was no clear case made out of a risk of dissipation and no serious question to be tried on the merits of AMUSA's case for a Garnishee Order. It was also asserted that it was inappropriate for AMUSA to be seeking to achieve a priority over other creditors of ESL. The deponent in summary averred most significantly as follows:

(a) there was no solid foundation to AMUSA's case that a debt was owed by EGFL to ESL and the assertion that the accounting changes amounted to evidence of dissipation was based on a "*misunderstanding*" of the underlying transactions;

(b) Jacobs J in the English Proceedings was wrong to draw adverse inferences from the Ontario Court's criticism of the Essar Group in the Algoma proceedings;

(c) an explanation was given as to how the $200 million consideration for the 2015 sale of ESL's interest in in Essar Steel UAE Limited was applied; and

(d) the delay in seeking injunctive relief was inconsistent with AMUSA's alleged concerns about dissipation.

VTB's evidence

47. The First Affidavit of Adam Silver, a partner in the firm of Dechert LLP, sets out the evidential case of VTB. He deposes that VTB first became aware of the enforcement actions of AMUSA following handing down of the judgment of Jacobs J on March 25, 2019[3]. VTB's intervention in these proceedings is prompted by concerns that its rights as a secured creditor of EGFL are threatened, it having lent substantial sums to the Essar Group since 2014. It is the Group's largest creditor.

48. There are two main security packages. Firstly, the Raceview Facilities, the lenders' rights in relation to which were assigned to VTB as security for the VTB Facilities. The VTB facilities are also supported by a separate tranche of guarantees and security documents, "*such that VTB has a security interest directly or indirectly over substantially all of the assets of the Essar Group either through the security supporting the Raceview Facilities and/or the VTB Facility*" (paragraph 12). There was a 2016 Debt Restructuring linked to the provision of new facilities under the 2016 Energy Facility.

49. VTB opposed the applications for a Garnishee Order in part for reasons which complemented those advanced by EGFL:

(a) the existence of the debt relied upon by AMUSA was doubtful;

(b) it was inappropriate for AMUSA to seek to obviate the *pari passu* rule of distribution under Mauritian insolvency law; and

(c) the operations of EGFL's subsidiaries would be adversely affected by a worldwide freezing order against EGFL.

[3] [2019] EWHC 74 (Comm).

50. None of these points require in-depth consideration at this stage. It is essentially common ground that the existence of the debt is sufficiently controversial to make it impossible for AMUSA to seek more than directions on its Garnishee Summons. The suggestion that AMUSA was seeking to obtain a preference was simply rebutted by reference to the facts that AMUSA (a) had sought permission from the Mauritian Court to make the present application on notice to the Administrators, and (b) informally (through counsel in Court) but unreservedly undertook not to retain any recoveries it made for its sole benefit. Finally, AMUSA by the date of the hearing accepted that a 'full-blown' Freezing Order was not appropriate and only sought a 'Notification Order'.

51. However, the objection which received the benefit of full argument and which appeared to me in the course of the hearing to be a potentially pivotal ground of objection was the following:

> "*13.2 But even if the Alleged Liability exists, part of the package of rights of which VTB benefits from is the Subordination Deed (as defined below). This expressly prevents any intra-Essar Group liabilities, such as the Alleged Liability, from being paid or enforced whilst liability to VTB under the Energy Facility...remains outstanding. Currently, over €1.25 billion is outstanding under that facility...and AMUSA cannot be in a better position in seeking to enforce the Alleged Liability than ESL would have been.*"

52. The Subordination Deed was dated October 21, 2016 and entered into between the entities set out in Parts A and B Schedule 1 ("Original Junior Debtors" and "Original Debtors") and VTB Capital LLC as "Agent" and "Security Agent" for the "Finance Parties" and the "Secured Parties" respectively. EGFL and ESL are listed as an Original Junior Debtor and an Original Debtor. It is governed by English law. The first key provision referred to in the course of argument was clause 2.1 (a) ("Senior Debt"):

> "*Each of the parties agrees that, subject to the terms of this Deed, all Senior Debt shall rank:*
>
> *(i) First in priority of payment, ahead of the Junior Debt; and*
> (ii) *Pari passu and without any preference between the Senior Creditors.*"

53. Clause 2.2 (a) ("Junior Debt") provided as follows:

> "*Each of the Parties agrees that the Junior Debt is postponed and subordinated to the Senior Debt.*"

54. Clause 3.1 ("Undertakings of the Debtors") provides as follows:

> "*(a) Prior to the Senior Debt Discharge Date, except as provided below, no Debtor may, and the Debtors shall procure that no member of the Group will:*
>
> (i) *Pay or repay, make or receive any distribution in respect of, any Junior Debt, whether in cash or kind from any source…*"

55. Clause 7 ("*ENFORCEMENT BY JUNIOR CREDITOR*") provides in salient part as follows:

> "*During the Subordination Period no Junior Creditor shall and the Junior Creditors shall procure that no member of the Group will:*
>
> *(a) demand payment of any Junior Debt;*
>
> *(b) ....*
>
> (c) *Enforce any of the Junior Debt by attachment, set-off, execution or otherwise…*"

56. The status of VTB as the holder of Senior Debt and Essar Group members as Junior Creditors was not disputed. Accordingly, the Subordination Deed by its terms expressly prohibits ESL from enforcing any inter-company debt as against EGFL or otherwise.

Findings: the effect of the Subordination Deed

57. The meat of the submissions advanced by Mr Beltrami QC on behalf of VTB consisted of a compelling analysis of the legal effects of the Subordination Deed which Mr Weisselberg

QC did not ultimately seek to contradict. A distillation of these submissions can be extracted from two paragraphs in the Intervening Party's Skeleton Argument. Firstly:

> "*40 ....Notwithstanding the unexplained reservations in Mr Nouroozi's evidence already referred to, there is nothing to place in doubt the validity and efficacy of the Subordination Deed. It is entirely lawful as a matter of English law (the law of the Subordination Deed) for a creditor (assuming for these purposes that ESL is a creditor) to subordinate its claims to those of another creditor. And it is equally lawful for creditors to agree inter se the respective priorities of their own debts: Re Maxwell Communications Corp [1993] 1 WLR 1402..., Re SSSL Realisations (2002) Ltd [2004] EWHC 1760 .... Equally, it is perfectly lawful for a creditor to preclude its right to immediate payment. See eg the three principles set out by Lord Mance (dissenting on the result) in Taurus Petroleum v State Oil Marketing Co [2018] AC 690 at paras 88, 90 and 91 ...:*
>
> > '*The concept of a debt for the purposes of a third party debt order, or its predecessor the garnishee order, is particularly well settled by authority. First, the test of 'debt due' is whether it is one for which the creditor could immediately and effectually sue...*
> >
> > *Secondly... a judgment creditor cannot stand in a better position than the judgment debtor did in relation to the third party against whom the third party debt order is sought...*
> >
> > *Thirdly, where a judgment debtor has precluded himself contractually from having any immediate right to recover what would otherwise be a third party debt, a third party debt order cannot be obtained'.* "

58. Secondly, the following conclusory submission was made:

> "*41. So far as AMUSA is concerned, its only interested capacity is as a creditor of ESL, its judgment debtor. For the purpose of its claim for a garnishee order, it can stand in no better position than ESL. Its claim, if any, is therefore subject to the Subordination Deed. The consequence of the Subordination Deed is that:*
>
> > *a. There can be no debt owed by EGFL to ESL which is presently due or accruing due and so amenable to a garnishee order. See by way of example Fraser v Yorkshire Bank plc [2004] EWHC 1582...*

b. There would in any event be no purpose in such an order because any payment would have to be paid directly to the Agent for repayment to VTB."

59. Mr Stanley QC for EGFL enthusiastically endorsed these submissions. AMUSA's strategically practical position was to seek an opportunity to challenge the validity of the Subordination Deed as an element of the existing Garnishee Summons (as regards the debt allegedly owed to ESL by EGFL).

60. Under the Subordination Deed, inter-company debt is defined as Junior Debt, and ESL has expressly agreed that:

(a) Senior Debt ranks in priority to Junior Debt (clauses 2.1 and 2.2); and

(b) it will not enforce any Junior Debt "*by attachment...execution, or otherwise*" (clause 7 (c)).

61. The subordination agreement considered by Lloyd J (as he then was) in *Re SSSL Realisations (2002) Ltd* [2004] EWHC 1760 was at first blush somewhat more complicated. However, in part at least, its legal effect (which was being considered in an insolvency scenario) was essentially the same. The following relevant finding was recorded (at paragraph 39):

"i) On Issue 1, I hold that, as a matter of construction of clause 8.2 of the Deed, the clause prohibits Group from proving for its inter-company debt due from Stations and from receiving a dividend in respect of such debt in the liquidation of Stations at a time when the debt to AIG remains unpaid."

62. It is self-evident from the terms of Order 49 and the Garnishee Summons, that AMUSA is seeking to attach by way of execution a subordinated debt allegedly owed by EGFL to ESL. In *Société Eram Shipping Co Ltd-v-Cie Internationale de Navigation* [2004] 1 AC 260, Lord Millett described the garnishee jurisdiction as follows:

> "86 ... *It is a process of execution which enables a judgment creditor to obtain satisfaction of his judgment debt out of money owed to the judgment debtor. The court does not order the third party to pay the judgment creditor out of its own money, but to discharge the debt which it owes to the judgment debtor by payment of that debt to the judgment creditor. The subject-matter of execution is a chose in action, which like land cannot be seized; but the procedure is modelled on the process of obtaining execution against land with such modifications as are necessary to reflect the difference in the nature of the asset. As in the case of land execution is effected in two stages. The first stage takes the form of an order nisi (or interim order) which creates a charge on the asset to be executed against and gives the judgment creditor priority over other claimants to the asset; and the second stage takes the form of an order absolute (or final order) which brings about the realisation of the asset and the payment of the proceeds to the judgment creditor.*"

63. I accordingly find that, assuming for present purposes the Subordination Deed to be valid, its legal effect is that (1) ESL cannot sue to recover any inter-company debt owed to it by EGFL, (2) AMUSA cannot stand in a better position than ESL, and (3) as a result a Garnishee Order is not legally available: *Taurus Petroleum v State Oil Marketing Co* [2018] AC 690 at paras 88, 90 and 91. As Lord Mance put it (at paragraph 91): "*where a judgment debtor has precluded itself contractually from having any immediate right to recover what would otherwise be a third party debt, a third party debt order cannot be obtained.*"

Does EGFL owe ESL US$1.5 billion?

64. In my judgment it is neither necessary nor appropriate to determine the vexed question of whether or not the debt which 'disappeared' when the Essar Group accounts were restated in 2016 is due from EGFL to ESL. It is not necessary at this juncture to embark upon a full inquiry of whether or not the debt exists because I have already found that the effect of the Subordination Deed is that no attachable debt exists.

65. AMUSA, despite seeking relief in final form, foreshadowed initially seeking directions on the return date of the Garnishee Summons before it was filed. This is most clearly

demonstrated by the basis upon which leave to file the Garnishee Summons was sought from the Mauritian Court. Mr Stanley QC sought to persuade the Court otherwise and he invited me to decide summarily that AMUSA's case on the existence of the debt was not viable. Such an approach would in my judgment be both unfair and inconsistent with the general duty of the Court to adopt a pro-enforcement approach to adopting judgments and awards. In the particular circumstances of the present case, nothing turns on the fact that the Garnishee Summons on its face seeks an Order Absolute rather than an Order Nisi. If the Summons is substantively heard, the appropriate form of relief (if any) can be considered at that stage.

66. While clearly unmeritorious enforcement applications must of course be summarily refused, this jurisdiction must be exercised reluctantly, not losing sight of the overarching legal policy in favour of upholding the integrity of judgments and foreign arbitral awards by promoting their enforcement. In these circumstances while it seems clear that AMUSA's case is far from straightforward, it is not possible to fairly resolve the existence of the debt issue against AMUSA at this stage. To make good this point, the respective arguments can be broadly sketched out as follows.

67. EGFL contends that certain inter-Group transactions took place in 2012 and 2013 which involved a legitimate reduction of ESL's capital and the assignment to EGFL by ESL of a promissory note from a related party in favour of ESL. This was in consideration of a future capital reduction. The way the accounts were initially stated "*risked creating the incorrect impression that the relevant promissory notes had been issued to ESL by EGFL*": Skeleton Argument, paragraph 19(a). Because the capital reduction was never completed, it was conceded that it was arguable that that EGFL was left with a liability to ESL (i.e. for the return of the purportedly assigned promissory note), which is why EGFL had referred this matter for determination to the Mauritian Court. As Mauritian law clearly governed the effectiveness of the assignment, and a full trial was required, it was argued that Mauritius was clearly the most appropriate forum. This was the first main ground upon which it was contended that the Garnishee Summons should be dismissed at this stage.

68. The second ground upon which it was contended that there was no debt was that as supported by Mr Lam Shang Leen's opinion, the potential recovery claim would arise under section 66 (1) of the Mauritian Companies Act 2000. This was a claim to recover an unlawful distribution, and was not a debt claim at all. Mr Stanley QC also demonstrated that the common law distinguishes between debts (which can be attached) and other claims (which cannot) by reference to cases such as *AIG Capital Partners Inc-v-Kazakhstan* [2006] 1 WLR 1420 (Aikens J at paragraphs 30-31) and *Israelson-v-Dawson* [1932] 1 K.B. 301 at 304 (Scrutton LJ) and 305 (Greer LJ).

69. In my judgment it is obvious that what appears to be predominantly a foreign law point cannot be determined summarily without (a) properly determining that the issue should be determined by this Court (as opposed to the Mauritian Court), and (b) allowing both parties to adduce independent expert evidence. AMUSA's Mauritian attorneys, without purporting to advance an independent opinion, concede that the questions raised are complicated but suggest that ESL would have a restitutionary claim as the intended transaction can no longer be completed. They also suggest that if ESL was insolvent as long ago as 2013, it is doubtful that it could validly have subscribed to the Subordination Deed.

70. I decline to summarily conclude at this stage that it is so clear that the issue of the existence of the debt should be determined in Mauritius that the Garnishee Summons should be dismissed without affording AMUSA an opportunity to fully address the issue, should the need arise.

Findings: application for interim injunctive relief

71. Mr Weisselberg QC persuaded me that the Court does possess the jurisdiction to grant a 'Notification Order' where the grounds for a Freezing Order are made out but the need for such intrusive relief has not been established. In *Holyoake-v-Candy* [2018] Ch. 297 (at 347, 351), Gloster LJ opined as follows:

> "*34 ... It was also common ground that the ultimate question the court must ask, in determining whether to grant a conventional freezing order, was whether it is just and convenient to do so. Nor was it in*

dispute that an applicant for a conventional freezing order or a notification injunction must show a good arguable case on the underlying merits. There was some debate as to what was the correct test to establish that there was a risk of dissipation such as to make it just and convenient to grant a conventional freezing injunction. However, the threshold in relation to conventional freezing orders is well established. There must be a real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets. But it is not every risk of a judgment being unsatisfied which can justify freezing order relief. Solid evidence will be required to support a conclusion that relief is justified, although precisely what this entails in any given case will necessarily vary according to the individual circumstances: see e.g Gee on Commercial Injunctions (6th edition) in particular at 12–032 – 34 and 12–042 and the cases there cited.

35. In my judgment, and contrary to the view apparently taken by the judge, the position is no different in respect of notification injunctions of the type under consideration in the present case…

45. The conclusion that all variants of freezing order must satisfy the same threshold in relation to risk of dissipation should not be taken to suggest that parties need only contemplate the most onerous form of a freezing order, under what would be a misapprehension that the intrusiveness of relief is immaterial. On the contrary, the intrusiveness of relief will be a highly relevant factor when considering the overall justice and convenience of granting the proposed injunction. Hence, even if there is solid evidence of a real risk of unjustifiable dissipation, an applicant should consider what form of relief a court is likely to accept as just and convenient in all the circumstances, including the scope of exceptions to the prohibition on dispositions."

72. AMUSA sought an Order against EGFL in terms which it was contended were even less intrusive than the 'notification injunction' sought in the *Holyoake* case:

"*5. Until further order of the Court, the Second Respondent must give the Applicant 21 days' notice in writing before disposing, dealing with or diminishing (i) any shares in any Essar Group company (including the Second Respondent) irrespective of their value; or (ii) any other asset owned by any such company worth more than US$100 million.*"

73. Mr Stanley QC complained that even this limited form of relief was intrusive in light of the scale of the Essar Group's operations across various industry sectors, a submission which I was unable to dismiss out of hand. He sought to persuade me that there was really no reliable evidence at all to support a sufficiently cogent risk of dissipation. Without deciding the point, it seems to me that the bar required for demonstrating a risk of asset dissipation ought to be lower for a judgment creditor than a plaintiff. And where a judgment debtor such as ESL, whose affairs are directed by EGFL, displays a steadfast unwillingness to meet its obligations under a binding arbitral award, the Court should be slow to withhold relief essential by way of enforcement on technical evidential grounds.

74. A more fundamental objection was whether or not there was a serious issue or question to be tried on the merits of the Garnishee Summons sufficient to engage the Court's discretion to grant injunctive relief in any form in support of this application. In my judgment VTB's attack on the Garnishee Summons, as reflected in my findings on the effect of the Subordination Deed on AMUSA's right to collect any debt payable to ESL, has effectively left the Garnishee Summons on life support. I am bound to accept the submissions of Mr Stanley QC on behalf of EGFL that the application for the 'Notification Order' in support of the Garnishee Summons should be refused at this stage because:

(a) there is presently no serious question to be tried on the merits of the application for a Garnishee Order; and

(b) it is not just and convenient to grant the injunctive relief sought.

75. These findings in relation to the case against EFGL are, of course, subject to being revisited in the event that AMUSA is able to demonstrate an arguable case for impugning the validity of ESL's agreement to be bound by the Subordination Deed through an application made in this Court, whether made under the Garnishee Summons or otherwise. The application for injunctive relief against ESL should in my judgment be refused at this stage, even though (1) it was not opposed by ESL and (2) the case for a freezing order against ESL is not parasitic upon the merits of the Garnishee Summons. Bearing in mind that ESL is in

administration in Mauritius, I am not presently satisfied that the risk of dissipation of assets is sufficiently cogent to justify either a full-blown freezing order or a Notification Order AMUSA is granted leave to apply to renew this application if so advised.

Summary: disposition of Garnishee Summons and related application for injunctive relief

76. AMUSA's application for directions for the hearing of its Garnishee Summons is adjourned generally with liberty to apply. I have found that the legal effect of the Subordination Deed is to prevent AMUSA, standing in the shoes of ESL, from attaching any debt which would otherwise be currently owing from EGFL to ESL, until VTB is paid in full. The Garnishee Summons has been filed by way of enforcement of the Award which AMUSA has been granted leave to enforce pursuant to the *Foreign Arbitration Award Enforcement Law* (*FAAEL*). AMUSA has sought an opportunity to consider making an ancillary application to seek this Court's adjudication of the validity of the Subordination Deed and/or (if necessary) the question of whether the alleged debt is owed by EGFL to ESL. In my judgment the Applicant should, in all the circumstances, be afforded that opportunity. In these circumstances the only appropriate case management decision which I consider appropriate to make is to:

(a) adjourn the Garnishee Summons with liberty to apply; and

(b) adjourn the application for a modified Freezing Order (or Notification Order) with liberty to apply.

77. I will hear counsel if required on the terms of the Order. Unless any party applies within 21 days of the date of delivery of this Judgment to be heard as to costs, the costs of the present applications shall be reserved.

THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT