Neutral Citation Number: [2014] EWHC 2926 (Comm)

Case No: 2014 Folio 553

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

AND IN THE MATTER OF THE ARBITRATION ACT 1996
AND IN THE MATTER OF AN ARBITRATION

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 9 September 2014

Before : Jonathan Hirst QC sitting as a Deputy Judge of the High Court

Between :

(1) ROCHESTER RESOURCES LIMITED
(2) VIKTOR F. VEKSELBERG
(3) LEONARD V. BLAVATNIK

Claimants

- and –

(1) LEONID L. LEBEDEV
(2) CORAL PETROLEUM LIMITED

Defendants

Richard Millett QC (instructed by **White & Case LLP**) for the **Claimants**
Lord Grabiner QC and Orlando Gledhill (instructed by **Enyo Law LLP**) for the **1st Defendant**
The **2nd Defendant** did not appear and was not represented
Hearing dates: 10-11 July 2014

JUDGMENT

I direct that, pursuant to CPR PD 39A para 6.1, no official shorthand note shall be taken of the Judgment and that copies of this version as handed down may be treated as authentic.

Jonathan Hirst QC

Jonathan Hirst QC:

1. The Claimants apply for an injunction pursuant to section 37 of the Senior Courts Act 1981 to restrain the First Defendant ("Mr Lebedev") from pursuing or taking any step in the action commenced by him against the Second Claimant ("Mr Vekselberg") and the Third Claimant ("Mr Blavatnik") in the Supreme Court of New York by Summons and Complaint dated 4 February 2014 under Index No. 650369/2014 ("the New York proceedings"). They do so on the basis that Mr Lebedev is bound by an arbitration agreement contained in an Acquisition Agreement dated 20 June 2003 ("the Acquisition Agreement"). Alternatively they apply for the similar relief pursuant to section 44(2)(e) of the Arbitration Act 1996 pending an order by an arbitral tribunal, yet to be constituted.

Introduction

2. Mr Vekselberg, Mr Blavatnik and Mr Lebedev are well known and immensely wealthy businessmen. Mr Vekselberg and Mr Lebedev are Russian citizens. Mr Blavatnik was born in Russia but he emigrated to the United States and is now a US citizen.

3. In about 1997, the Russian Government decided to sell an interest in the oil company OJSC Tyumenskaya Neftyanaya Kompania, also known as Tyumen Oil Company ("TNK"). Mr Lebedev was already the ultimate beneficiary of a minority interest in TNK and also in a subsidiary of TNK. Following discussions between Mr Vekselberg, Mr Blavatnik and Mr Lebedev, Mr Lebedev arranged for the transfer of his interests in TNK and its subsidiary to entities owned by Mr Vekselberg and Mr Blavatnik. He also arranged a transfer of $25 million to an affiliate of Mr Vekselberg and Mr Blavatnik – the parties disagree as to whether this was a loan or a capital contribution and as to whether the payment was made to AS Naftaco Industrial Partners Limited ("Naftaco") or to Blusdi Financieringmaattschappij NV ("Blusdi)". The Claimants' position is that no agreement was made as to what Mr Lebedev would receive in return, but it was expected that at some time in the future an agreement would be reached between the three of them to compensate Mr Lebedev.

4. The transfer of $25 million was effected via an Agreement dated 26 December 1997[1] (the "Razno agreement") for the Sale and Purchase of Securities made between Blusdi and Petrosol Holdings SA, a Swiss corporation controlled by Mr Lebedev. Under the agreement Blusdi agreed to sell one third of the issued shares in Raznotransservis for US$133,300,117. $25 million was payable on 31 December 1997 and the balance in early 1998. The $25 million was transmitted by payments made by four companies which included Rostock Limited, Sintez Corporation and Trade Concept[2]. In the event the balance of $108.3 million was not paid, but Blusdi did not exercise the right conferred by the Razno agreement to terminate the agreement or seek to retain the $25 million already paid.

5. It is common ground that, however the arrangement may have been formally documented, as between the three of them the $25 million transfer was treated as a transfer made by Mr Lebedev to Mr Vekselberg and Mr Blavatnik.

6. By 2001, Mr Vekselberg's and Mr Blavatnik's joint interests in TNK (which amounted to 50%) were held in a company called Oil and Gas Industrial Partners ("OGIP").

7. In 2001, some kind of agreement was reached orally between Messrs Vekselberg, Blavatnik and Lebedev that Mr Lebedev was entitled to a 15% interest in OGIP to reflect his contributions. There is a dispute as to whether this agreement was a binding contract or merely a preliminary and non-binding understanding. Mr Vekselberg and Mr Blavatnik assert that a value of $200 million was placed on this 15% interest, but that this was a preliminary and non-binding valuation.

8. An Investment Agreement ("the Investment Agreement") was drawn up in the Russian language between "Party 1", "Party 2" and "Party 3". It is undated. The Claimants contend that it was drawn up in about October 2001, whilst Mr Lebedev contends that it was drawn up and signed (partially) in March 2001. The blanks identifying the three parties were not filled in, but it was signed for Party 1 by Mr Vekselberg and for Party 3 by Mr Lebedev. Mr Blavatnik did not sign the agreement.

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1 2B/14/681
2 2B/14/687

Each page of the agreement was initialled but there was no evidence before me as to who initialled the pages.

9. The Investment Agreement (as translated) stated as follows:

> Investment Agreement
> This agreement (the "Agreement") governs the financial and other relationships between _____ ("Party 1"), _____ ("Party 2"), and the company _____, representing the interests of the Investor (the company and the Investor are referred to jointly as "Party 3"), with respect to the company Oil and Gas Industrial Partners Ltd ("OGIP") . OGIP is currently the owner of 50% of the shares in TNK Industrial Holdings Limited ("TNK IH"), which in turn owns, directly and through its subsidiaries, an oil business in Russia, Ukraine, and other countries (the "Oil Business"). Specifically, as of the date of this Agreement, TNK IH indirectly holds controlling interests in the companies Tyumen Oil Company OJSC, SIDANKO OJSC, and ONAKO OJSC.
>
> Recitals
>
> 1. The Parties acknowledge that this Agreement is based on the understandings reached by the Parties in 1997 regarding their joint acquisition of shares in TNK OJSC.
>
> 2. The Parties acknowledge that in 1997-98, Party 3 contributed capital to various companies, made payments to third parties, and provided services, the aggregate value of which is assessed by the Parties as 15% of the aggregate value of the Parties' Contributions toward the acquisition of the Oil Business. The Parties agree that, as a result of the aforementioned contributions and payments, the contribution of Party 3 toward the acquisition of a share in the Oil Business, equal to 15% of the aggregate share of the Parties, has been fully paid as of the present time.
>
> Title
>
> 3. The Parties agree that, as of October 1, 2001, Party 3 owns 15% of the aggregate share of the Parties in the Oil Business, specifically 15% of the shares in OGIP. The shares of Parties 1 and 2 are equal and constitute 42.5% each, respectively.
>
> Right to receive income
>
> 4. The Parties agree that, in connection with the above, beginning on October 1, 2001, Party 3 is entitled to receive 15% (fifteen percent) of the net income earned by OGIP.

5. The Parties also agree that, beginning on October 1, 2001, if any Party or Parties receive income from their ownership of the Oil Business in forms other than dividends from OGIP, the Parties shall cause Party 3 to receive 15% of the net income received by the Parties.

6. Parties 1 and 2 agree, within one month after the date of this Agreement, to issue and convey to Party 3 an OGIP promissory note in the form set forth in Exhibit 1 to this agreement (the "Promissory Note").

7. All payments to Party 3 under the Promissory Note shall constitute a portion of Party 3's income as provided by this Agreement.

8. The Parties agree that, for purposes of this Agreement, the calculation of the profit of OGIP to be distributed shall take into account the amounts paid to Party 3 under the Promissory Note.

9. The Parties agree that, for purposes of this section of the Agreement, payments under the Promissory Note and income of OGIP to be distributed shall be counted as payments and income due for the corresponding calendar quarter and not as payments and income paid during the calendar quarter.

10. The Parties agree that, if the amount of payments under the Promissory Note in any calendar year is less than 15% of the total amount of income of OGIP to be distributed for that year, Parties 1 and 2 shall provide additional income to Party 3 (in the form of payments under a consulting contract or in another manner) in an amount that, together with the payments under the Promissory Note, equals 15% of the total amount of OGIP profit to be distributed. If the amount of the payments under the Promissory Note exceeds 15% of such profit, Party 3 agrees to pay to Party 1 and Party 2 identical amounts that, in total, equal the difference between 15% of the OGIP profit to be distributed and the amount of the payments under the Promissory Note.

11. The Parties agree that (1) Party 3 has no claim to a portion of the income and profits of the Oil Business received by the Oil Business before October 1, 2001, and (2) as a result of the reinvestment of the profits of the Oil Business prior to the date of this Agreement, the equity share of Party 3, as defined by the section shall not be reduced or diluted.

Preservation of Party 3's equity share in the Oil Business

12. The Parties agree that, in the event of any possible reorganization of the Oil Business currently owned by TNK IH and/or OGIP, or any reorganization of those companies themselves, they shall cause Party 3 to receive the income provided by this Agreement, unless otherwise provided by a separate agreement between the Parties.

Veto right

13. The Parties agree that any decision by OGIP that causes or could cause a dilution or other reduction in Party 3's equity share in OGIP must be adopted by the Parties unanimously.

Buyout. Right to sell to third party

14. Party 1 and Party 2 jointly agree, at the request of Party 3, to purchase its equity share in the business, as provided by this agreement and Promissory Note, for an amount equal to 200 million dollars. The Parties agree that Party 3 may make this request no earlier than December 31, 2002.

15. If Party 3 makes a request for buyout of its equity share in the business in accordance with section 14 of this Agreement, Party 1 and Party 2 agree to make the payment required by section 14 of this Agreement in four equal quarterly amounts, beginning on the ninetieth day after they receive the notice from Party 3 of Party 3's desire to sell them its equity share in the Oil Business.

16. Party 3 may make an offer to Parties 1 and 2 to jointly purchase its equity share in the business for any price. If Parties 1 and 2 do not make a joint decision on whether to purchase the equity share within fifteen business days after they receive the offer from Party 3, Party 3 may make an offer to either of the Parties to purchase its equity share for the same amount and on the same terms. If neither of the Parties agrees to purchase Party 3's equity share on these terms within fifteen business days after receipt of the offer, Party 3 may, within three months, sell its equity share to any person on the same terms on which the equity share was offered to the Parties to this Agreement. Any person that purchases Party 3's share shall become a party to this Agreement by signing it.

17. The Parties agree that, for purposes of this part of the Agreement, the sale by Party 3 of its equity share in the Business includes the assignment by Party 3 of its ownership of the Promissory Note to the buyer of the equity share in the business, without additional compensation to Party 3.

Confidentiality. Miscellaneous

18. The Parties agree that this Agreement takes precedence over all other prior understandings and agreements between the Parties with respect to the matters covered by this Agreement, including the agreement on the Promissory Note.

19. The Parties agree to keep the existence of this Agreement and the understandings contained herein completely confidential, except when all three Parties jointly agree in writing to disclose such information.

20. The Parties agree to sign this Agreement in one counterpart and deliver it for storage to an agent selected jointly by them. The Parties shall instruct this agent to deliver a certified copy of this Agreement (1) to a Party that proves that this Agreement was breached by the other Parties or a Party and that, as a result of such breach, the Party incurred financial losses, and (2) to a third party that purchased Party 3's equity share in the Oil Business in accordance with this Agreement, so that the third party may review and sign it in accordance with the terms of this Agreement.

By: [Signature] By: _____ By: [Signature]

Party 1 Party 2 Party 3

The draft Promissory Note referred to in clause 6 was not in evidence and, according to the Claimants, it was never drawn up.

10. There parties are in dispute as to whether the Investment Agreement was intended to be binding. Mr Lebedev contends that it was intended to be binding and that Mr Blavatnik agreed to it, although he did not execute it because he "had been called out of town"[3]. Mr Vekselberg and Mr Blavatnik contend that it was never intended to be binding. The New York proceedings are brought by Mr Lebedev under the Investment Agreement.

11. On about 1 December 2001, OGIP, issued a promissory note dated as "of December 1, 2001" to Coral Petroleum Limited ("Coral") in the amount of US$200 million ("the 2001 Promissory Note"). The 2001 Promissory Note (which was in the English language) provided as follows:

PROMISSORY NOTE

US$200,000,000 As of December 1, 2001

1. For value received, Oil and Gas Industrial Partners Ltd., a company organized under the laws of British Virgin Islands ("Maker"), by this promissory note (the "Note") promises to pay to Coral Petroleum Ltd., a company organized

[3] New York Complaint §57

under the laws of Ireland ("Holder"), the principal amount of US$200,000,000 (two hundred million United States dollars) in immediately available funds on December 31, 2010 (the "Maturity Date") and to pay interest on the principal amounts outstanding from time to time hereunder at the interest rate of 10% per annum at such time as are provided in Paragraph 2 below.

2. Interest shall accrue on the principal amount from time to time outstanding under this Note from the date hereof, until the date of its repayment in full, and shall be payable quarterly on the 15th day of each quarter, beginning on January 15, 2002, (each such date an "Interest Payment Date") and on the Maturity Date, provided that, (i) if the Maker does not have positive net cash flow for the calendar quarter immediately preceding an Interest Payment Date (other than the Maturity Date), Maker may elect not to make the interest payments that would otherwise be due on such Interest Payment Date, and (ii) if the interest payment due on an Interest Payment Date (other than the Maturity Date) exceeds 10% of Maker's net cash flow for the calendar quarter immediately preceding such Interest Payment Date, Maker may elect to make a partial interest payment.

3. All payments received hereunder shall be first applied to interest due and the balance, if any, to principal. Whenever any payment to be made hereunder is due and payable on a day which is not a business day, it shall be due on the preceding business day.

4. Maker acknowledges and agrees that this Note is being issued to Holder in respect of the obligations owed to Holder and certain of its affiliates (Holder's Affiliates), (the "Obligations") by (i) AS Naftaco Industrial Partners Ltd. ("Naftaco"), an affiliate of Maker and (ii) other companies affiliated to Maker ([i] and (ii) together, Maker's Affiliates), in connection with certain loans and the transfer by Holder's Affiliates of certain shares in Tyumen Oil Company to Maker's Affiliates. Maker hereby further acknowledges and agrees that the Obligations equal, all together with the accrued interest thereon, US$200,000,000 (two hundred million United States dollars), as of the date hereof, and that the Obligations arose in connection with certain investments by Maker's Affiliates in Novy Petroleum Finance Limited and in other oil related businesses ("Naftaco's Investment in the Oil Business"), which Obligations have been transferred to and assumed by Maker in connection with the transfer to and assumption by Maker of Naftaco's Investment in the Oil Business.

...

9. Maker shall have the right at any time and from time to time to prepay this Note in whole or in part, without premium or penalty.

10. Holder may not assign or transfer this Note without the prior written consent of Maker.

11. This Note is binding upon the undersigned and its permitted successors and assigns and it shall inure to the benefit of Holder and its assigns.

12. This Note shall be governed by, and construed in accordance with, the laws of the British Virgin Islands not including its choice of law rules.

12. Coral is incorporated in Ireland and its registered office is in Dublin. There is much dispute as to its status and ownership. Mr Lebedev states that in late 2001 he was under criminal investigation in Italy for suspected arms smuggling. The 2001 Promissory Note was issued as security for his right to 15% of the income obtained by Mr Vekselberg and Mr Blavatnik from TNK via OGIP. He wished to appoint a company that was entirely independent from him to receive the payments due to him[4]. Coral was controlled by Martin Bartek, a trusted friend and business colleague. It was agreed that Coral "would receive the income due to me". Mr Lebedev retained possession of the 2001 Promissory Note at his (unidentified) company's offices[5].

13. Mr Vekselberg and Mr Blavatnik state through Mr Vladimir Kuznetsov, a businessman who has worked with Mr Vekselberg since 1999, that they never enquired why Coral was named as the counterparty to the 2001 Promissory Note. They say that Coral was simply an SPV nominated by Mr Lebedev. The Claimants contend that Coral is controlled and ultimately beneficially owned by Mr Lebedev.

14. The position is rather complicated by the fact that Coral appears over a number of years to have issued two sets of financial statements which bear no relation to each other. The Irish statutory accounts, audited by Roberts Corporate & Private, describe Coral's principal activity as acting as a general agent. By way of example, in the set of statements for the year ending 17 June 2004[6], it was reported that Coral had net assets of €2 and that its turnover was €2,800. By contrast in financial statements for the year ended December 2003[7], audited by Alber & Rolle of Geneva, Coral was reported as having assets of US$42.2 million and a turnover of some $247 million,

4 Lebedev 1 §37
5 Lebedev 2 §17
6 2A/13/257
7 2B/13/665

largely derived from sales of petroleum products. Counsel were unable to offer any explanation for these very different sets of accounts.

15. Irregular payments were made by OGIP. There is written evidence of a wire transfer of $8,348,852.53 made to Coral on 17 October 2002[8]. Mr Lebedev states that the total sum received was less than $15 million and that all payments were made to Coral. Mr Kuznetsov states that payments were made to other accounts/entities nominated by Mr Lebedev, but there is no documentary evidence to support this and Mr Kuznetsov states that he cannot remember the names of the payees[9].

16. The Claimants contend that these irregular payments were made under the 2001 Promissory Note. Mr Lebedev says that they were payments on account of his share of the dividends/income to which he was entitled to under clause 4 of the Investment Agreement, and not payments of coupon interest under the 2001 Promissory Note.

17. In 2002-2003, shareholders in TNK, including Mr Vekselberg and Mr Blavatnik, entered into negotiations with British Petroleum PLC ("BP") for a possible joint venture involving a pooling of BP's and TNK's Russian and Ukrainian oil and gas assets. It is common ground that there were discussions between Mr Vekselberg and Mr Lebedev about buying out the latter's indirect share in TNK. The Claimants contend that a deal was done to purchase those interests for $600 million. Mr Lebedev says no deal could be done because, based on a valuation by Sovlink, he wanted payment of $1.4 billion to relinquish his 15% share altogether. Mr Vekselberg and Mr Blavatnik said that they could not afford to pay this much. All Mr Lebedev was prepared to do in return for $600 million, he contends, was to sell his right to income under the joint venture and surrender the 2001 Promissory Note. He would retain his shareholding on terms that he did not divulge it to BP[10].

18. At all events, it is at least common ground that in June 2003 Coral and Rochester Resources Limited ("Rochester") entered into an Acquisition Agreement dated as of 20 June 2003 (the "Acquisition Agreement") pursuant to which Rochester was to buy the 2001 Promissory Note and pay an Acquisition Price of $600 million by instalments to Agragorn Holdings Ltd ("Agragorn"), a BVI company which was

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8 2A/12/307
9 Kuznetsov 1 §25
10 Lebedev 1 §§49-55

nominated by Mr Lebedev to receive the money[11]. Rochester is incorporated in the British Virgin Islands. It was incorporated as a shelf company on 17 June 2003[12], three days before signature of the Acquisition Agreement, and became a wholly owned subsidiary of OGIP Ventures Limited on the same day[13]. Mr Vekselberg and Mr Blavatnik assert that they are the ultimate beneficiaries of OGIP Ventures and thus Rochester.

19. The Acquisition Agreement is in the English language. It provides, *inter alia*, as follows:

> ACQUISITION AGREEMENT
> Is entered into as of the 20th day of June, 2003
> By and between
> **Rochester Resources Limited**, a company incorporated under the laws of British Virgin Islands (the "BVI") and having its registered office at 9 Columbus Centre, Pelican Drive, Road Town, Tortola, British Virgin Islands (the "Buyer"), on one side,
> And
> **Coral Petroleum Ltd.,** a company incorporated under the laws of Ireland and having its registered office at Nathan House, Christchurch Square, Dublin 8, Ireland (the "Seller"), on the other side;
> **[1][14] WHEREAS,** Buyer and Seller had previously entered into an Acquisition Agreement dated as of June 20, 2003[15], (the "Prior Acquisition Agreement") and Buyer and Seller desire to terminate the Prior Acquisition Agreement in its entirety such that the Prior Acquisition Agreement shall have no further force or effect and desire to enter into this Acquisition Agreement dated as of June 20, 2003;
> **[2] WHEREAS**, the Seller and its Affiliates have provided certain loans to AS Naftaco Industrial Partners Ltd ("Naftaco") and transferred certain shares in the Russian oil company Tyumen Oil Company ("TNK") to Naftaco and its subsidiaries (the "Underlying Transaction");
> **[3] WHEREAS,** Oil and Gas Industrial Partners Ltd., a company incorporated under the laws of the BVI ("OGIP"), has taken over Naftaco's certain interests in the oil business and assumed Naftaco's certain liabilities related to such business interests, including any and all business interests (the "Underlying Interests") and liabilities (the "Underlying Liabilities") emanating from the Underlying Transaction;

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11 Lebedev 1 §§60-61
12 2A/12/170
13 2A/12/171
14 The numbering of the paragraphs in the pre-amble have been added for the ease of reference.
15 Which is not in evidence.

[4] WHEREAS, as of December 1, 2001, OGIP issued a promissory note to the Seller with a face value of Two Hundred Million U.S Dollars (US$200,000,000) (the "Note"), attached hereto in copy as Exhibit 1, which the Seller at that time accepted for itself and its Affiliates in full and final settlement of the Underlying Liabilities;

[5] WHEREAS, the owners of TNK contemplate, either directly or indirectly, entering into a certain transaction with BP PLC (the "BP Transaction") defined in and contemplated by (i) the Memorandum of Understanding between BP International Limited, on one side, and Alfa Finance Holdings S.A., Al Petroleum Management LLC and Renova Inc. (together the "AAR"), on the other side, made on February 11, 2003 ("the MoU"), attached hereto in copy as Exhibit 2, and (ii) any existing and future amendments, supplements and other agreements related to the MoU, including, but not limited to, the Definitive Sale and Purchase Agreement in connection with the BP Transaction (the "Definitive Agreement");

[6] WHEREAS, it is expected that the Definitive Agreement will be executed on or about July 1, 2003 (the actual date on which such execution occurs hereinafter referred to as the "Definitive Agreement Date"), and the BP Transaction will be completed in accordance with the Definitive Agreement at a certain future date thereafter, and

[7] WHEREAS, the Buyer wishes to purchase (i) the Note and (ii) any and all rights, claims, business interests and other entitlements of the Seller and its Affiliates, emanating from the Underlying Interests, the Underlying Liabilities and/or the Underlying Transaction, from the Seller;

NOW THEREFORE, the Buyer and the Seller (each a "Party" and, together, the "Parties") agree as follows:

1. Definitions

In this Agreement the terms defined hereafter shall be interpreted and construed as follows:

1.2 "Note" means the promissory note with a face value of Two Hundred Million U.S. Dollars (US$200,000,00) and a final maturity date on December 31, 2010, issued by OGIP to the Seller and bearing an interest at the rate of 10% per annum (attached hereto in copy as Exhibit 1);

1.4 "Affiliate" or "Affiliates" mean any of the beneficial owners of a party to this Agreement or any entity in which such beneficial owner or beneficial owners directly or indirectly own or control at least 10% of the outstanding share capital or participation rights;

1.5 "OGIP" means Oil and Gas Industrial Partners Ltd., a company incorporated under the laws of the BVI and the maker of the Note;

1.9 "Promissory Notes" mean any of the Conditional Notes, the Replacement Notes or the Alternative Replacement Notes (each a "Promissory Note" and, together, the "Promissory Notes");

2. Acquisition

2.1 The Buyer hereby agrees to pay to the Seller the Acquisition Price, as stipulated hereinafter in Section 3, in consideration for (i) the Note, including any accrued interest thereon, and (ii) any and all rights, claims, business interests and other entitlements to the Seller and its Affiliates emanating from the Underlying Interests and/or the Underlying Transaction.

2.2 The Seller hereby undertakes to sell and deliver the Note to the Buyer no later than on the 3rd Business Day after the execution of this Agreement with the Seller's duly signed and sealed endorsement for its transfer by the Seller to the Buyer and with an original of the written consent and acknowledgement by OGIP to such transfer.

2.3 The Seller and its Affiliates hereby waive and release any and all of their rights, claims and other entitlements, emanating from the Underlying Interests and the Underlying Liabilities and/or related to the Underlying Transaction, in consideration for the Acquisition Price. The Parties hereby agree, represent and warrant that the Acquisition Price, as stipulated hereafter in Section 3, shall be and constitute a fair and equitable consideration for the Note and any and all rights, claims and other entitlements of the Seller and its Affiliates, whether in law or equity and whether tangible or contingent, emanating from the Underlying Interests and the Underlying Liabilities and/or related to the Underlying Transaction. The Parties further agree that this Agreement shall provide for the full and final settlement of any and all of the Parties' and their Affiliates' claims related to the Underlying Interests and the Underlying Liabilities and/or the Underlying Transaction and any and all rights and remedies of the Parties and their Affiliates, as related to the Underlying Interests, and the Underlying Liabilities and Underlying Transaction and the Note, shall be limited to the enforcement of the rights, duties and obligations of the Parties and their Affiliates under this Agreement.

3. Acquisition Price

3.1 The acquisition price payable by the Buyer to the Seller in consideration for (i) the Note including any accrued interest thereon, and (ii) any and all rights, claims, business interests and other entitlements of the Seller and its Affiliates emanating from the Underlying Interests and/or the Underlying Transaction, shall be Six Hundred Million U.S Dollars (US$600,000,000) (the "Acquisition Price");

[By sections 3.2-3.4, the $600 million was payable in instalments, the date and amount of the instalments varying on whether the BP transaction was executed and then consummated and, if so, when]

4.1 No later than on the 3rd Business Day after the execution of this Agreement the Seller shall deliver to the Buyer in writing all requisite

information regarding a special purpose company known as Agragorn Holdings Limited (the "SPC") designated by the Seller to receive all payments from the Buyer under the Acquisition Price (Section 3). The Seller shall provide that, for the entire term of this Agreement, the SPC shall (i) be incorporated under the laws of the BVI, (ii) have the Seller as its sole registered and beneficial shareholder, and (iii) have the requisite corporate power and authority to perform its obligations hereunder.

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7. Indemnity

7.1 The Seller hereby undertakes to hold harmless and indemnify the Buyer and each of its Affiliates from and against any claim, threat, suit, action or other proceedings, as well as the related costs and expenses (including, but not limited to, any legal fees), related to or emanating from the Underlying Interests, the Underlying Liabilities or the Underlying Transaction, brought by the Seller against the Buyer or any of its Affiliates, with the exception of those related to the enforcement of this Agreement. Upon the first request by the Buyer, the Seller shall provide adequate security to the Buyer for any claims, threats, suits, actions or other proceedings as well as the related costs and expenses (including, but not limited to, any legal fees), related to or emanating from the Underlying Interests, the Underlying Liabilities or the Underlying Transaction, brought or threatened by the Seller against the Buyer or any of its Affiliates, with the exception of those related to the enforcement of this Agreement.

7.2 The Buyer hereby undertakes to hold harmless and indemnify the Seller and each of the Affiliates from and against any claim, threat, suit, action or other proceedings, as well as the related costs and expenses (including, but not limited to, any legal fees), related to or emanating from the Underlying Interests, the Underlying Liabilities or the Underlying Transaction, brought by the Buyer against the Seller or any of its Affiliates, with the exception of those related to the enforcement of this Agreement. Upon the first request by the Seller the Buyer shall provide adequate security to the Seller for any claims, threats, suits, actions or other proceedings as well as the related costs and expenses (including, but not limited to any legal fees), related to or emanating from the Underlying Interests, the Underlying Liabilities or the Underlying Transaction, brought or threatened by the Buyer against the Seller or any of its Affiliates, with the exception of those related to the enforcement of this Agreement.

8. Representations and Warranties of the Buyer

The Buyer hereby represents and warrants to the Seller that:

8.4 The Buyer has access to sufficient funds or cash flow in order to perform its payment obligations under the Promissory Notes through either direct business interests or timely access to its Affiliates' fund.

8.5 No representation or warranty made by the Buyer in this Agreement contains any untrue statements of material fact or omits to state the material fact necessary to make the statement herein not misleading.

9. Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Buyer that:

9.4 The Seller is the legal and beneficial owner of all and not less than all of the Note and empowered to transfer the legal and beneficial ownership of the Note to the Buyer. In particular, the Note is not subject to any legal or contractual restriction of transferability but for the requirement of consent by OGIP, which consent the Buyer will procure.

9.5 The Note is free and clear of any claims, liens, security interests, charges, equitable interests, options, pledges, rights of first refusal or other encumbrances ("Encumbrances"), and after the consummation of the Acquisition, as stipulated in Section 2, the Buyer will be the sole owner of the Note free and clear of all Encumbrances.

10. Miscellaneous

...

10.14 **Term and Termination:** Unless earlier terminated by written agreement of the Parties, this Agreement shall remain in full force and effect until the earlier to occur of (i) payment in full of the entirety of the Promissory Notes, or (ii) such time as none of the Seller, the SPC or any of its or their Affiliates hold, directly or indirectly, any of the Promissory Notes or any rights thereto or arising therefrom.

...

11. Choice of Law and Arbitration

11.1 **Governing Law:** The Parties hereto agree that this Agreement in its entirety, all transactions executed hereunder and all relationships between the Parties arising out of or in connection therewith shall be construed under and governed in all respects by the laws of England.

11.2 **Arbitration:** The Parties agree that any dispute, controversy or claim arising between the Parties out of or in connection with this Agreement or the interpretation, breach, enforcement or termination, thereof, shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules (the "Rules") as at the date hereof in force, by a panel of three arbitrators appointed in accordance with the Rules. The seat of the arbitration panel shall be London, England. The procedural law of any reference to arbitration shall be the law of England. The language of the arbitral proceedings shall be English. The appointing authority for the purposes set forth in Article 7(2) of the Rules shall be the London Court of International Arbitration.

20. Pursuant to the Acquisition Agreement:

(1) Rochester issued 24 promissory notes in favour of Agragorn, each for $25 million, payable in four tranches ("the AA Promissory Notes").

(2) MCO Services Ltd of Malta, Rochester, Coral and Agragorn entered into an Escrow Agreement dated 21 June 2003 appointing MCO Services Ltd as escrow agent to hold the AA Promissory Notes.

(3) Coral delivered the 2001 Promissory Note to Rochester. It was endorsed on behalf of Coral with an assignment and transfer "with full right and title" to Mr Kuznetsov in his capacity as authorised representative of Rochester.

21. The Acquisition Agreement contained no requirement for the issue of personal guarantees by Mr Vekselberg and Mr Blavatnik in respect of Rochester's liabilities under the Acquisition Agreement or the AA Promissory Notes. However, on 4 and 11 July 2003 respectively, Mr Vekselberg and Mr Blavatnik each issued a personal guarantee[16] of Rochester's obligations under the AA Promissory Notes, limited to $300 million - i.e. they each accepted personal liability for 50% of the total consideration due under the Acquisition Agreement.

22. Clause 4.1(ii) of the Acquisition Agreement required that Coral be the sole registered and beneficial shareholder of Agragorn for the entire term of the Acquisition Agreement - that is until full payment was made of acquisition price of US$600 million. At the time of the Acquisition Agreement, the shares in Agragorn were actually registered in the name of Imperium Nominees Limited. By an amendment to the Acquisition Agreement dated as of 1 August 2003[17], it was recorded that Coral had been in breach of clause 4.1(ii) of the Acquisition Agreement and it was agreed that this breach would be waived if Agragorn duly registered Coral as its sole registered and beneficial shareholder. On 1 August 2003, Imperium resolved to transfer its shares to Coral and Agragorn issued a share certificate recording Coral's holding. However, Mr Lebedev has stated that, after ownership of Agragorn was transferred to Coral, he "made sure to retain control over Agragorn's bank account in Bank of Cyprus"[18], so that the payments of $600 million in all were "secure"[19].

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16 2A/12/409-10
17 2B/15/767
18 Lebedev 2 §21

23. The $600 million payable under the Acquisition Agreement and secured by the AA Promissory Notes was duly paid by instalments to Agragorn. The last payment was made on 26 September 2005[20].

24. On 21 March 2013, Rosneft acquired TNK-BP for $55 billion. Mr Vekselberg's and Mr Blavatnik's joint share of the purchase price was probably about $13.8 billion.

25. Mr Lebedev complains that he has not received any payment for his equity stake in the BP Joint Venture. On 4 February 2014, he commenced the New York proceedings against Mr Vekselberg and Mr Blavatnik. In those proceedings he claims 15% of the aggregate proceeds received by Mr Vekselberg and Mr Blavatnik as a result of the sale to Rosneft which he estimates to be in excess of $2 billion. It is not at all clear what (if any) credit he has given for the $600 million paid under the Acquisition Agreement. Lord Grabiner suggested however that he may have been was able to obtain more than the face value of the 2001 Promissory Note because, *inter alia*, he was in a position to frustrate the transaction with BP. Mr Vekselberg and Mr Blavatnik say, on the contrary, that the $600 million was paid for his entire equity stake in TNK and he is entitled to nothing more.

26. To coincide with the issue of the New York proceedings Mr Lebedev gave an interview to Vedomosti, a Russian daily business newspaper[21]. The questions were friendly. The interview included the following questions and answers[22]:

> **Interview – Leonid Lebedev, Senator from Chuvashia and owner of Sintez**
>
> In an interview with *Vedomosti*, Leonid Lebedev speaks for the first time about the beginning and the end of his relationship with Viktor Vekselberg and Leonard Blavatnik , from whom he is now demanding $2 billion.
>
> Irina Mokrousova
>
> Galina Starinskaya
>
> Vedomosti.ru
>
> 11.02.2014
>
> Leonid Lebedev is a multi-faceted individual: a senator from Chuvashia, an investor, a movie producer, and now an opponent of the oligarchs. Lebedev

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19 Lebedev 2 §20

20 Lebedev 1 §73.

21 2B/15/760

22 There is some dispute about the translation of a few passages in the interview. I have put the rival versions in square brackets. I doubt the differences are in truth of much materiality.

was hardened back in the 1990s when he was battling for oil assets. His name became known when his company Sintez applied to take part in a tender for the privatisation of a 49% stake in Tyumen Oil Company (TNK), but lost. The TNK stake was purchased at the time by a company associated with Mikhail Fridman, German Khan, Viktor Vekselberg and Len Blavatnik. Now, ten years later, Lebedev claims that back in those years he became partners with Vekselberg and Blavatnik and that they kept this partnership a secret. Lebedev became internationally known in the early 2000s along with Mark Garber and Alexander Zhukov when he was involved in a weapons smuggling case investigated by Italian law enforcement authorities. Lebedev describes this investigation as "a misfortune that has greatly influenced my entire future business career, as well as my entire life." Lebedev was found not guilty in court. According to him, however, the investigation alone prevented him from implementing a plan for the joint ownership of the TNK assets with Vekselberg and Blavatnik. After Vekselberg and Blavatnik earned billions of dollars from the sale of their shares in the oil company, Lebedev decided to remind them about him and that they needed to share with their partners, even secret notes. In an interview with *Vedomisti*, Lebedev said that he tried contacting both Vekselberg and Blavatnik before filing a lawsuit with a New York court: Vekselberg did not answer, while the latter replied as follows: "Blavatnik said that he wanted to see what I had first. I sent him a copy of the lawsuit, after which he told me that he did not want to discuss this subject."

How can you prove that you were partners with Viktor Vekselberg and Leonard Blavatnik?

My lawsuit contains crucial documents that attest to our partnership. The initial document on the establishment of the joint company where I was supposed to receive 33.3% was signed in 1997. Another highly important document that demonstrates the results of several years of negotiations and meetings was signed in New York in March 2001. This is why the lawsuit is now being heard in this city and not in Russia: since the agreement was signed in New York, it is subject to local law. It was at this time that the foundation was laid for the joint venture on the basis of the OGIP company. We met in order to determine my stake. We agreed that I would have a 15% stake in the joint company, while Viktor Vekselberg and Leonard Blavatnik would each hold 42.5%. On the basis of these documents and taking into account the actions of my partners to execute the terms of the agreements, I am confident that the lawsuit has good prospects.

...

His Voluntary withdrawal to the shadows

Why was the New York agreement of 2001 only signed by Vekselberg? What stopped Blavatnik?

On the morning of that day when he had promised to sign, I was told that Blavatnik had urgently departed and that he had some business meeting. I didn't want to wait until next week and left for Russia.

Why didn't Blavatnik sign the document later?
According to all the laws of the location where this took place, Vekselberg's signature was sufficient for the document to have legal force. In addition, all the subsequent actions by my partners confirmed the signed agreement. For example, one of the conditions of the agreement as security for dividend payments was the issuance of promissory notes for $200 million (the lawsuit states the Blavatnik consented to the terms of the agreement and ensured that the joint company OGIP issued an ordinary promissory note for this amount – *Vedomosti*). The promissory note was issued in December 2001 and received by the company Coral, which was under my control [*supervision*][23]. The company OGIP was set up to represent our common interests. The next step was to register the participation of OGIP in TNK and then physically distribute the OGIP shares between us. Upon receiving my stake, I was supposed to return the promissory note. Unfortunately, we did not manage to see this plan through to the end. OGIP became a co-owner of TNK, but we never made it to the physical distribution of the OGIP shares between us because I suffered a misfortune that has greatly influenced my entire future business career as well as my entire life.

...

Why $600 million?
This amount takes into account my share of receipts from BP for 50% stake [*share*] in TNK-BP – these payments were drawn out over three years. Prior to this, I received dividend payments totalling approximately $11 million.

...

How did your relations with Vekselberg and Blavatnik evolve following the establishment of TNK-BP?
Relations were good. I wasn't always happy with their rigid and thrifty – to put it politely – view of things. Incidentally, Blavatnik demonstrated the most harshness towards me. He meticulously calculated everything that I had done and hadn't done and reduced my involvement to a minimum. Essentially, he achieved the most desirable result at the time by valuing my contribution in our JV at 15%. He was the one who led all the decisive negotiations in 2001 and 2003. But I understood that what we had agreed to and what we had done was in the company's interests as well as my own interests. After TNK-BP was established, we met frequently at first, and then less and less.

...

27. These proceedings, seeking to restrain the New York proceedings on the grounds that Mr Lebedev is bound by the arbitration agreement in the Acquisition Agreement,

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[23] The dictionary definition relied on by Mr Lebedev, taken from the Large Explanatory Dictionary of the Russian Language, published by Russian Academy of Sciences Institute of Linguistic Research in 2000, is "observation for the purpose of inspection or supervision; inspection".

were commenced on 9 May 2014. By agreement, no steps have been taken in the New York proceedings pending determination of these applications.

The parties' contentions in summary

28. Mr Richard Millett QC's main submission on behalf of the Claimants was that Coral was controlled by Mr Lebedev and that it contracted throughout as the agent for Mr Lebedev. Rochester likewise entered into the Acquisition Agreement as agent for Mr Vekselberg and Mr Blavatnik. There is nothing in the Acquisition Agreement preventing Mr Vekselberg and Mr Blavatnik from enforcing it against Mr Lebedev. Alternatively:

    (1) If Rochester contracted as principal and only for itself, it can enforce the Acquisition Agreement, including the arbitration clause, against Mr Lebedev for the benefit of Mr Vekselberg and Mr Blavatnik;

    (2) As its ultimate beneficial owners, Mr Vekselberg and Mr Blavatnik are Affiliates of Rochester within the definition of clause 1.4 of the Acquisition Agreement and they are entitled to enforce the rights conferred on them under section 1 of the Contracts (Rights of Third Parties) Act 1999 and to invoke the arbitration clause against Mr Lebedev under either section 8(1) or (2) of that Act.

    The claims in the New York proceedings are claims or give rise to disputes that are bound to be referred to arbitration. It was a breach of the arbitration agreement to commence the New York proceedings and the Commercial Court should grant an anti-suit injunction under section 37 of the Senior Courts Act 1981. Alternatively, temporary injunctive relief should be granted under section 44(2)(e) of the Arbitration Act 1996.

29. Lord Grabiner QC on behalf of Mr Lebedev took strong issue with each of these contentions. He submitted that Coral was independent of Mr Lebedev and that it did not contract as agent for him. Nor did Rochester contract as agent for Mr Vekselberg and Mr Blavatnik. The only parties to the Acquisition Agreement were Rochester and Coral. Rochester has no right to enforce the arbitration agreement against Mr Lebedev on their behalf. Even if Mr Vekselberg and Mr Blavatnik are to be treated as "affiliates" of Rochester, they are not entitled to invoke the arbitration clause because

sections 8(1) and (2) have no application and, in any event, it was not intended that clauses 2.3 and 7.1 should be enforceable by affiliates. It follows that no injunction should be granted under section 37 of the 1981 Act. Section 44 of the 1996 Act is inapplicable.

30. I shall refer to these submissions in more detail when considering the issues.

Discussion

31. It was common ground between counsel that if the Court is to grant an anti-suit injunction the Claimants must establish that there is a high degree of probability that Lebedev is obliged to arbitrate his claims against Mr Vekselberg and Mr Blavatnik under the arbitration clause in the Acquisition Agreement: see *Transfield Shipping Inc. v. Chiping Xinfa Huayu Alumina Co Ltd* [2009] EWHC 3629 (QB) per Christopher Clarke J (as he was), especially at [51]-[52] where, after reviewing the authorities, he concluded:

> [51] The only basis upon which the court could in this case make an anti-suit injunction is on the grounds that there is, probably is, or arguably is between the parties an agreement which binds them to have their disputes decided in London arbitration. That begs the question as to whether at the interlocutory stage what has to be shown is an arguable case, a strongly arguable case, a case with a high probability of success or a case described by some other adjective or description.
>
> [52] In my judgment, the appropriate test is whether or not the applicant has shown on the material adduced at the interlocutory hearing a high degree of probability that there was such an agreement. It is one thing to enforce a clear agreement to arbitrate or one which on an interlocutory basis can be seen to be highly likely to be established. It is another to restrain a party from litigating in a foreign country where the position is less clear than that. The effect of any such order is likely to be final in the sense that if granted until after an arbitral hearing, it will preclude the enjoined party from contending that there was no such agreement otherwise than before the arbitral tribunal and, if the tribunal rules that there was such an agreement, from disputing its existence.

See also *Midgulf International Ltd v. Groupe Chimiche Tunisien* [2009] 2 Lloyd's Rep 411 at [36]-[39] (Teare J.).

32. The Claimants must therefore establish to a high degree of probability that Mr Lebedev is bound by the arbitration clause in the Acquisition Agreement and must arbitrate his claims against Vekselberg and Mr Blavatnik in London, rather than pursuing the New York proceedings.

33. There are two key issues at the outset:

(1) Is Mr Lebedev bound by the arbitration clause?

(2) Are Mr Vekselberg and Mr Blavatnik bound by the arbitration clause?

I will consider these issues first.

(1) Is Mr Lebedev bound by the Arbitration Clause?

34. This is a critical starting issue. Unless Mr Lebedev is bound by the arbitration clause in the Acquisition Agreement, there can be no question of his being bound to arbitrate disputes with Mr Vekselberg and Mr Blavatnik.

35. The Claimants assert that Coral was only ever acting as the agent of Mr Lebedev. It was simply a vehicle used by him through which to contract. Coral was owned and controlled by him and it is simply incredible for him now to deny this. Mr Millett's main points were as follows:

(1) Coral never had any rights of its own other than as legal owner of the 2001 Promissory Note. It clearly obtained the Note as Mr Lebedev's agent. This was, as Mr Lebedev accepted, issued as security for *my* right to income, *my* income rights and the purpose of the Acquisition Agreement was to sell *my* entitlement to income under the JV and retain *my* shareholding[24]. He retained physical possession of the Note and, as he stated in the interview, upon receiving his stake in OGIP, "*I* was supposed to return the promissory note". Coral's sole job was to act as his agent to receive his income. The value of the Note and the income received under it do not appear in either of the sets of accounts as an asset of Coral.

[24] Lebedev 1 §§39, 41 and 53

(2) In the interview, Mr Lebedev stated that "Coral, which is under my control". Mr Belous's evidence to the contrary is sparse and incredible. He could have said who beneficially owned and controlled Coral, but did not do so. There is no evidence from Mr Bartek or anyone else at Coral to explain the position.

(3) He also stated in the interview that on the eve of the completion of the transaction with BP "my partners and I signed an agreement. Under this document, they were required to pay the company Coral $600 million ..."

(4) The Acquisition Agreement was negotiated by him personally with Mr Kuznetsov. His assertion that Mr Bartek and Mr Sanochkin negotiated the agreement is not credible.

(5) It is impossible to see how Mr Lebedev could not be the principal behind the agency of Coral in entering into the Acquisition Agreement. The purpose of the agreement was to buy off and settle all of his claims. If there was any role for Coral at all as principal, it was as holder, and therefore seller, of the Note and in order to ensure it was bound by the terms of the Agreement and could not thereafter assert any rights as holder of the Note.

(6) Turning to the terms of the Acquisition Agreement, it would flout business commonsense to read "Seller" as limited alone to Coral as principal. "Seller" should be interpreted as meaning Coral for itself, as the legal holder of the 2001 Promissory Note, and Mr Lebedev, as beneficiary under the Note and the person legally and beneficially interested in the Underlying Transaction. Many of the provisions in the Acquisition Agreement are meaningless or make no sense otherwise. For instance:

- Recital 2, since Coral never provided any loans to Naftaco;

- Recital 4, since Coral accepted the 2001 Promissory Note for itself and Affiliates, which can only mean Mr Lebedev - not Mr Bartek who owned Coral according to Mr Lebedev.

- Affiliate is defined as any beneficial owner of a party to the Acquisition Agreement or any person who owns or controls at least 10% of the share

capital or participation rights. On Mr Lebedev's case, that excludes him. That cannot possibly be right. In fact it includes him and the entities he controls directly or indirectly - see also clauses 2.1 and 2.3. It would frustrate the entire purpose of Acquisition Agreement were Mr Lebedev to be treated as not having given up his claims in a way that could be legally enforced by any of Mr Vekselberg and Mr Blavatnik personally.

(7) Agragorn was nominated by Mr Lebedev (as he accepts) to receive the $600 million.

36. The Court should therefore conclude that Coral entered into the Acquisition Agreement as Seller for itself, because it was the legal owner of the 2001 Promissory Note, and otherwise as agent for Mr Lebedev and his entities as Affiliates. The Seller was acting as agent for all affiliates and they should all be treated as Parties and bound by the Arbitration clause. It would be uncompromisingly literal to construe "the Parties" bound by the arbitration clause so as to exclude anyone other than Coral and Rochester.

37. In response, Lord Grabiner observed that the insurmountable problem for the Claimants was that neither Mr Lebedev nor Mr Vekselberg and Mr Blavatnik are parties to the Acquisition Agreement. The Parties are defined as Coral and Rochester. As regards the use of Parties and Affiliates the drafting of the arbitration clause and numerous other clauses is deliberate and precise. If it had been intended to make other people bound by the arbitration clause, they could easily have said so. They could also easily have said in the Acquisition Agreement or in a separate document that Mr Lebedev, Mr Vekselberg and Mr Blavatnik were the true parties to the Agreement. Coral was a party in its own right because one of the main purposes of the Agreement was for Coral, as sole legal and beneficial owner, to surrender the 2001 Promissory Note which had, including interest, a total face value of $380 million - for that purpose it had to be a principal to the Agreement. The application under section 37 of the 1981 Act fails because Mr Lebedev has not agreed to arbitrate.

38. In considering these arguments, I start by observing first that it is not for me to determine whether the Investment Agreement constituted a legally binding agreement. That will be a matter for another tribunal to decide, almost certainly applying a law

other than English law. Nor is it for me to determine whether the Acquisition Agreement settled all Mr Lebedev's claims or only his right to income.

39. The decision I have to make is whether it has been established to a high degree of probability that Mr Lebedev is bound by the arbitration clause. The starting point must be that the Acquisition Agreement is on its face between Coral and Rochester. They are defined as the Seller and Buyer of the Note and jointly as "the Parties". Clause 11.2 provides that:

> The Parties agree that any dispute, controversy or claim arising *between the Parties* out of or in connection with this Agreement or the interpretation, breach, enforcement or termination, thereof, shall be finally settled by arbitration [my emphasis].

40. Ultimately I doubt it makes much difference, but I am not persuaded that it is clearly established that Coral is owned by Mr Lebedev. The Swiss accounts, which are unlikely to be invented, show a substantial oil business. There is no evidence that Mr Lebedev was running this business. Faced with Italian criminal proceedings, it seems to me perfectly possible that Mr Lebedev decided to park the 2001 Promissory Note in a company which was not his, so as to conceal it from the Italian authorities should matters go badly for him. However, it is clear that, as between him and Coral, the Note was his, that it represented his rights to income under the arrangement with Mr Vekselberg and Mr Blavatnik, and that he was entitled to receive the income under it. That would explain why the Note and the income under it do not appear to be included in either of Coral's sets of accounts[25].

41. This arrangement of course required a high degree of trust on the part of Mr Lebedev that Coral and its owners would act in accordance with his instructions and I am sure that, as he stated in the Interview, he regarded Coral as being under his control/supervision as regards dealings with the 2001 Promissory Note. As a precaution, however, he made quite sure that in practice Coral could do little without his agreement because he took possession of the Note and put it into the custody of one of his companies.

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[25] I should record that Lord Grabiner argued that the receipts were recorded in Coral's Swiss accounts under the section headed TLC Trade Concept trust account agreement. There no real evidential support for this assertion, and I was not persuaded that he was right.

42. I am also sure that the Claimants are correct that the Acquisition Agreement was negotiated with Mr Kuznetsov by Mr Lebedev and not by other representatives of Coral. Those negotiations concerned what he regarded as his Note and his rights, both of which were hugely valuable. He would not have left it to representatives of Coral to negotiate the disposal of his property as they thought best.

43. It does not follow from this, however, that Mr Lebedev was a "Party" as defined in the Acquisition Agreement. Coral had to contract as principal. It was the holder of the 2001 Promissory Note and selling it to Rochester. Moreover, by clause 9.4 it warranted that it was the legal and beneficial owner of "all and not less than all of the Note". Whatever the position may have been between Coral and Mr Lebedev, as between Coral and Rochester the Agreement made it clear that Coral was to be treated as selling the Note as principal. Further, Agragorn, the recipient of the $600 million Acquisition Price, was to be owned legally and beneficially by Coral, a term that Rochester insisted upon being performed. Again, whatever the position may have been between Agragorn and Mr Lebedev, as between Coral and Rochester the Acquisition Price was payable to a subsidiary of Coral.

44. Coral was therefore clearly a "Party" to the Acquisition Agreement in its own right. Was Mr Lebedev also a Party? Although I accept that it is certainly arguable that he was, I think it more likely that Mr Lebedev was intended to be treated as an Affiliate of Coral. Even if he did not own at least 10% of Coral directly or indirectly, I do not think it would be difficult to conclude that overall, the Parties must have intended to treat Mr Lebedev as an Affiliate - Recital 2 only makes sense against the known factual background that Mr Lebedev (and his companies) were the affiliates who made the transfers to an affiliate of Mr Vekselberg and Mr Blavatnik, which the Claimants contend were loans to an entity referred to in Recital 2 as Naftaco. Recital 4 also only makes sense on the same basis - the Underlying Liabilities and Underlying Transaction had nothing to do with Coral and everything to do with Mr Lebedev.

45. If Mr Lebedev is to be treated as an Affiliate of Coral, it is still quite possible that Coral was contracting as his agent. Clauses 2.1 and 2.3 of the Acquisition Agreeement purport to bind Coral's Affiliates. Lord Grabiner argued that there was no evidence that Mr Lebedev authorised Coral to contract in these respects on his behalf. It will be for others to decide, but in my judgment it would not be difficult to

infer that Mr Lebedev must have authorised Coral to enter into these engagements on his behalf.

46. That still leaves the critical question of whether Mr Lebedev is bound by the arbitration clause. If, as I consider, he is not "a Party", is he nevertheless bound as an Affiliate by the arbitration clause? It is well established that:

> the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction. As Longmore LJ remarked, at para 17: "if any businessman did want to exclude disputes about the validity of a contract, it would be comparatively easy to say so.

Fiona Trust v. Privalov [2007] UKHL 40; [2007] 4 All ER 951 per Lord Hoffman at [13]

47. However the issue here is not as to the scope of the arbitration clause - i.e. as to what disputes it covers - but as to who is bound by it. The parties have made it clear that the arbitration clause covers disputes "*arising between the Parties*". Had they not included these words, it might have been easier to conclude that the arbitration clause was intended to apply also to Affiliates. Mr Millett argued in reply that the inclusion of the word "enforcement" in clause 11.2 showed that it was intended to apply widely to disputes involving not just the Parties. In my view the inclusion of the word "enforcement" adds nothing to the argument - it must still be a dispute controversy or claim arising *between the Parties*.

48. Mr Millett argued that it would be absurd to conclude that Mr Lebedev is not bound by the arbitration clause. In my judgment that overstates the position. It remains open to Mr Vekselberg and Mr Blavatnik to invoke the Acquisition Agreement as a defence to Mr Lebedev's claims in any court proceedings. It would, of course, have been much neater if the arbitration clause extended to include disputes arising between Mr Lebedev, Mr Vekselberg and Mr Blavatnik, but there are limits as to what a Court can properly do to improve a carefully drafted and (at least in this respect) reasonably

clear written agreement – see for instance Lord Mustill in *Charter Reinsurance Co. Ltd v. Fagan* [1997] AC 313, 388B-C:

> There comes a point at which the court should remind itself that the task is to discover what the parties meant from what they have said, and that to force upon the words a meaning which they cannot fairly bear is to substitute for the bargain actually made one which the court believes could better have been made. This is an illegitimate role for a court. Particularly in the field of commerce, where the parties need to know what they must do and what they can insist on not doing, it is essential for them to be confident that they can rely on the court to enforce their contract according to its terms.

It would, after all, have been easy enough to add Mr Lebedev, Mr Vekselberg and Mr Blavatnik to the arbitration clause either in the Acquisition Agreement or, perhaps better, in a side agreement. It may be that Mr Kuznetsov, who did the main drafting, did not include affiliates within clause 11.2. because there were potentially so many within the wide definition in clause 1.4, but that is to speculate.

49. Ultimately I conclude that Mr Lebedev is probably not bound by the arbitration clause, and that it has certainly not been established to a high degree of probability that he is bound.

(2) Are Mr Vekselberg and Mr Blavatnik bound by the arbitration clause?

50. My decision in relation to Mr Lebedev applies with equal force to Mr Vekselberg and Mr Blavatnik. Rochester was the other Party to the Acquisition Agreement and they are better regarded as Affiliates, being the ultimate beneficial owners of Rochester. There is one further pointer that Rochester contracted as principal rather than as agent for Mr Vekselberg and Mr Blavatnik. The personal guarantees provided a few weeks after the conclusion of the Acquisition Agreement are inconsistent with Rochester having contracted as agents for both of them. They would already be liable for the whole acquisition price. In my view the guarantees presuppose that Rochester contracted as principal.

Conclusion

51. These findings - particularly the first - mean that the Claimants' application under section 37 of the 1981 Act for an anti-suit injunction must fail. There is no agreement

requiring Mr Lebedev to arbitrate his disputes with Mr Vekselberg and Mr Blavatnik. The other issues raised by Mr Millett as to whether Rochester can enforce an arbitration agreement against Mr Lebedev on behalf of Mr Vekselberg and Mr Blavatnik and whether Mr Vekselberg and Mr Blavatnik can do so under the 1999 Act do not arise. The points raised are not at all easy and I see no point in burdening this already lengthy judgment by embarking on a consideration of them. I should observe however that the decision of the Court of Appeal in *Fortress Value Recovery Fund 1 LLC v. Blue Skye Special Opportunities Fund LP* [2013] EWCA Civ 367; [2013] 1 WLR 3466 seemed to me to pose formidable difficulty for the Claimants' arguments based on the 1999 Act.

52. The application under section 44 of the Arbitration Act 1996 must fail - it is also dependent on Mr Lebedev being party to the arbitration agreement. It fails for an additional reason. In *AES Ust-Kamenogorsk Hydro Power Plant LLP v. Ust-Kamenogorsk Power Plant JSC (SC(E))* [2013] UKSC 35; [2013] 1 WLR 1889, Lord Mance JSC, giving the judgment of the Court, stated:

> [48] The better view, in my opinion, is that the reference in section 44(2)(e) to the granting of an interim injunction was not intended either to exclude the court's general power to act under section 37 of the 1981 Act in circumstances outside the scope of section 44 of the 1996 Act or to duplicate part of the general power contained in section 37 of the 1981 Act. Where an injunction is sought to restrain foreign proceedings in breach of an arbitration agreement—whether on an interim or a final basis and whether at a time when arbitral proceedings are or are not on foot or proposed—the source of the power to grant such an injunction is to be found not in section 44 of the 1996 Act, but in section 37 of the 1981 Act. Such an injunction is not "for the purposes of and in relation to arbitral proceedings", but for the purposes of and in relation to the negative promise contained in the arbitration agreement not to bring foreign proceedings, which applies and is enforceable regardless of whether or not arbitral proceedings are on foot or proposed.

53. Mr Millett was not able to offer any way round this clear statement of principle.

54. For these reasons, the Claimants' applications under section 37 of the 1981 Act and under section 44 of the 1996 Act for an anti-suit injunction are refused.
