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Case No: BR-2020-000510

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (CHD)

IN THE MATTER OF VALERIY ERNESTOVICH DRELLE
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
Rolls Building, London, EC4A 1NL

Date: 09/03/2023

Before :

INSOLVENCY AND COMPANIES COURT JUDGE BURTON

- -

Between :

SERVIS-TERMINAL LIMITED LIABILITY COMPANY (A COMPANY INCORPORATED UNDER THE LAWS OF THE RUSSIAN FEDERATION)	**Petitioner**
- and -	
MR VALERIY ERNESTOVICH DRELLE	**Respondent**

- -

Mark Phillips KC and Clara Johnson
(instructed by **Latham & Watkins (London) LLP**) for the **Petitioner**
Simon Davenport KC and Philip Judd
(instructed by **Candey Limited**) for the **Respondent**

Hearing dates: 28 to 30 June 2022

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Approved Judgment

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

INSOLVENCY AND COMPANIES COURT JUDGE BURTON

Insolvency and Companies Court Judge Burton :

(1) Introduction

1. This is the hearing of a bankruptcy petition presented on 14 October 2020 by Servis-Terminal LLC ("ST") against Valeriy Drelle. The petition is based on an unpaid judgment debt of RUB 2 billion (at the time of this judgment, approximately £22 million) (the "Debt"). The Judgment was obtained in May 2019 by ST, acting by its Russian liquidator, Mr Lisin who successfully claimed before the Arbitrazh Court of Yaroslavl (the "Judgment", "Arbitrazh Court" and "Arbitrazh Court Proceedings") that Mr Drelle breached the duties he owed as a director of ST.

2. The Arbitrazh Court's decision was upheld on appeal by the Second Arbitrazh Court of Appeal (the "Court of Appeal", "CA Proceedings" and "CA Judgment"), the Cassational Instance Arbitrazh Court (the "Cassation Court", "Cassation Court Proceedings" and "Cassation Judgment") and the Russian Supreme Court (the "RSC" "RSC Proceedings" and "RSC Judgment" together, the "Russian Proceedings" and the judgments in those proceedings, the "Russian Judgments").

3. Mr Drelle now resides in England. He opposes this Court making a bankruptcy order against him on the basis that the Debt is subject to a genuine and substantial dispute. He asserts that Gazprom Neft ("GPN"), ST's largest creditor which is funding these proceedings and is aligned with and ultimately owned by the Russian State, was able to influence the judiciary in the Russian Proceedings such that the judges in those proceedings were partial. He claims that there were a number of substantive and procedural errors in the Russian Proceedings leading to an irresistible inference that they arose from a miscarriage of justice as a result of GPN and state interests infecting them.

(2) Experts' reports

4. The Court has been provided with experts reports in the field of (1) substantive Russian law and (2) the influence of state-aligned companies on judicial proceedings in Russia. The Petitioner's experts are:

   i) Professor Paul B. Stephan, the John C. Jeffries Jr. Distinguished Professor of Law at the University of Virginia School of Law, USA and a member of the bars of the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the United States Tax Court, the District of Columbia, and the Commonwealth of Virginia. Professor Stephan has written numerous books and articles on Soviet and Russian law and appeared as an expert on Russian law in litigation conducted in the US and English courts including in the High Court of England and Wales, in *JSC VTB Bank v. Skurikhin and Others* [2014] EWHC 271 (Comm);

   ii) Professor Andrey Egorov, a professor at the Department of the Civil Law Disciplines of the National Research University "Higher School of Economics" which I understand has its headquarters in Moscow. Professor Egorov has been the Editor in Chief of the Civil Law Journal since 2018 and led the bankruptcy working group formed under the Supreme Arbitrazh Court of the Russian Federation. He has appeared as an expert on Russian law, including once in this High Court and informs the Court that he has produced more than 40 opinions for legal proceedings in Russia.

5. Mr Drelle's experts are:

   i) John Lough who graduated from Cambridge University with a degree in Russian and German and obtained a diploma in international relations from John Hopkins University Bologna Center. He runs his own consultancy business providing due diligence, political risk and government/media relations support related to Eastern Europe, Russia and Central Asia. Since 2009 he has been an Associate Fellow with the Russia and Eurasia Programme at the Royal Institute of International Affairs (Chatham House) in which capacity he has been a regular commentator on Russian affairs for the BBC and other international media outlets. He is a fluent Russian speaker and earlier in his career worked as a political analyst with the Soviet Studies Research Centre at Sandhurst and later as a NATO official responsible for public information activities in Russia;

   ii) Maxim Kulkov, the managing partner at KK&P Trial Lawyers. Mr Kulkov formerly led the Russian Dispute Resolution practice at Freshfields Bruckhaus

Deringer LLP, Goltsblat BLP, and Pepelyaev, Goltsblat and Partners. He is a member of the Moscow Region Bar and a member of the ICC Russia Arbitration Committee. He regularly serves as an arbitrator at the Arbitration Institute of the Stockholm Chamber of Commerce, the Arbitration Court of the Russian Union of Industrialists and Entrepreneurs of Russia, Russian Arbitration Centre at Russian Institute of Modern Arbitration, International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation. Mr Kulkov is noted in the Legal 500 and Chambers directories as one of the most experienced Russian dispute resolution specialists.

(3) The relevant test

6. Both parties agree that the Court will not make a bankruptcy order if the debt on which the petition is based, is genuinely disputed on substantial grounds.

7. Whilst Mr Drelle's list of issues frames the questions for the Court to determine in terms which ask whether issues are merely "arguable" my understanding from Mr Davenport KC's submissions is that he accepts, as set out by Lawrence Collins LJ in *Ashworth v Newnote* [2007] BPIR 1012, that to conclude that a debt is genuinely disputed on substantial grounds, the court must be satisfied that, there is:

> "a realistic as opposed to a fanciful prospect of success, carrying some degree of conviction (and not merely arguable)."

8. Both parties recognise that the bankruptcy court has jurisdiction to look behind judgment debts. In *McCourt and Siequien v Baron Meats Ltd and the Official Receiver* [1997] BPIR 114 Warren J described the scope and reason for such jurisdiction:

> "(1) A court exercising the bankruptcy jurisdiction (a "bankruptcy court"), although it will treat a judgment for a sum of money as prima facie evidence that the judgment debtor is indebted to the judgment creditor for that sum may, in appropriate circumstances, go behind the judgment, that is to say, inquire into the circumstances in which the judgment was obtained and, if satisfied that those circumstances warrant such a course, treat it as not creating or evidencing any debt enforceable in bankruptcy proceedings.
>
> (2) The reason for the existence of that power of a bankruptcy court is that such a court is concerned not only with the interests of the judgment creditor and of the judgment debtor, but also with the interests of the other creditors of the judgment debtor. The point was succinctly made by James LJ in *Ex Parte Kibble, Re Onslow* (1875) LR 10 Ch App 373 at pp 376–377, in the following words:
>
> > 'It is the settled rule of the court of bankruptcy, on which we have always acted, that the court of bankruptcy can inquire into the consideration for a judgment debt. There are obviously strong reasons for this, because the object of the

> bankruptcy laws is to procure the distribution of a debtor's goods among his just creditors. If a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all; it is, therefore, necessary that the consideration of the judgment should be liable to investigation.'
>
> (3) It follows that the grounds upon which a bankruptcy court may go behind a judgment are more extensive than the grounds upon which an ordinary court of law or equity may set it aside.
>
> (4) In particular, a bankruptcy court will go behind a judgment if satisfied that the judgment creditor manifestly had no claim against the judgment debtor on which the judgment could have been founded. Thus, in *Ex Parte Kibble* the court went behind a judgment obtained by default which was founded on a bill of exchange drawn by the debtor during his infancy. In *Ex Parte Banner, Re Blythe* (1881) 17 Ch D 480 it went behind a judgment giving effect to a compromise of an action brought by one party to a fraud against the other party to it for the fruits of it. *Re Lennox, ex parte Lennox* (1885) 16 QBD 315 was a somewhat similar case. In that case the court ordered an inquiry into the facts because the debtor, who had submitted to the judgment, tendered evidence to the effect that the debt on which the judgment was founded never really existed but was based on the fraud of the creditor. Lastly, in *Re Fraser* (above) the court went behind a judgment obtained by the holders of a bill of exchange against a former partner in the firm in whose name the bill had been accepted. He was not liable on the bill, but his defence to an action on the bill had been so ineptly conducted that judgment had been obtained against him under Ord 14 and that an application made on his behalf for the judgment to be set aside had failed."

9. This passage was cited with approval by Etherton J in *Dawodu v American Express Bank* [2001] BPIR 983 where he added:

> "My only qualification to the summary by Warner J. is that the cases establish that what is required before the Court is prepared to investigate a judgment debt, in the absence of an outstanding appeal or an application to set it aside, is some fraud, collusion, or miscarriage of justice. The latter phrase is of course capable of wide application according to the particular circumstances of the case. What in my judgment is required is that the Court be shown something from which it can conclude that had there been a properly conducted judicial process it would have been found, or very likely would have been found, that nothing was in fact due to the Claimant. It is clear that in those circumstances the Court can enquire into the judgment and the judgment debt, even though the debtor himself has previously applied to have the

> judgment set aside, and even though that application has been refused and that refusal has been affirmed by the Court of Appeal — see Re Fraser [1892] 2QB 633."

10. Whilst these principles are not in dispute, the parties disagree on the approach the Court should take to determine whether the Debt, founded as it is on a foreign judgment, is disputed on bona fide and substantial grounds.

(3.1) Mr Drelle's approach to the relevant test

11. Mr Davenport KC submits that:

i) Mr Drelle only needs to raise a genuine dispute as to the safety of the Judgment. If there is a genuine doubt whether Mr Drelle should have been found liable to the Petitioner, its petition should be dismissed; and

ii) in any event, whilst the court need not go so far as to make a finding to that effect, the evidence demonstrates that the Judgment arose from a miscarriage of justice and/or partial proceedings and should not be recognised or enforced in this jurisdiction.

12. I shall consider each, in turn.

(i) A genuine dispute regarding the safety of the Judgment

13. Mr Davenport supplemented his reference to *Dawodu* and *Baron Meats* by referring to an Australian appeal court authority, *Ahern v Deputy Commissioner of Taxation* (QLD) (1987) 76 ALR 137) where the court concluded that:

> "…if any genuine dispute exists as to the liability of the debtor to the petitioning creditor it ought to be investigated before he is made bankrupt".

14. In *Compton v Ramsay Health Care Australia Pty Ltd* [2016] FCAFC 106 the Full Court of the Federal Court of Australia considered both English and Australian authorities and stated:

> "…where reason is shown for questioning whether behind the judgment there is in truth and in reality a debt due to the petitioning creditor, the court of bankruptcy can no longer accept the judgment as such satisfactory proof."

15. The Federal Court held that once such an issue has been raised, the court is not required to determine that dispute:

> "In our respectful view, if there is a preliminary investigation into whether or not to 'go behind' a judgment (as there was in this case), there is but one issue to be addressed, namely whether or not the Court should 'go behind' the judgment."

16. In *Re Menastar Finance Limited (in liquidation)* [2003] 1BCLC 338, the court was asked to determine whether a liquidator, exercising his quasi-judicial role, had

correctly admitted a proof of debt based upon summary judgment entered at a hearing not attended by the respondent company. It was argued that the liquidator ought to have rejected the proof:

> "on the basis of the well-known line of cases establishing that the court, exercising its powers to make a bankruptcy or winding-up order, and the trustee of the bankrupt and the liquidator of an insolvent company, when considering whether to admit a proof of a judgment debt, are not precluded from looking behind the judgment in appropriate circumstances to ensure that there was and is a real indebtedness."

17. In *Mensastar* the court recognised that:

> "In deciding whether to go behind the judgment debt, and, if so, in appraising the validity of the creditor's claim, neither the court nor the liquidator nor the trustee in bankruptcy is limited to the evidence that was before the court when it gave its judgment: see *re Trepka Mines Ltd* [1960] 1 WLR 1273.
>
> … In *Van Laun*, the Court of Appeal approved the way the matter had been put by Bigham J at first instance, who said ([1909] 1 KB 155, 162-163):
>
> > 'The trustee's right and duty when examining a proof for the purpose of admitting or rejecting it is to require some satisfactory evidence that the debt on which the proof is founded is a real debt. No judgment recovered against the bankrupt, no covenant given by or account stated with him, can deprive the trustee of this right. He is entitled to go behind such forms to get at the truth, and the estoppel to which the bankrupt may have subjected himself will not prevail against him…'"

18. Mr Davenport submits that these principles apply as much to foreign as domestic judgments. In *International Brands USA Inc v Mark Stephen Goldstein, Shruth Limited (in creditors' voluntary liquidation)* [2005] EWHC 1293 (Ch) at [37] Gloster J considered an appeal from an order of Registrar Jacques. The Registrar had dismissed an appeal against decisions: (i) of the chairman of the creditors' meeting and (ii) the subsequently appointed liquidator, each rejecting the appellant's proof of debt based on a US judgment. In the US proceedings, the applicants claimed that the company had unlawfully determined a distribution agreement. Shortly before trial, the company's US attorneys filed a motion to withdraw appearance. Pursuant to Connecticut law, without counsel, the company was not permitted to represent itself. The appellant's proof of debt was rejected by the liquidator on four grounds, including that the US judgment was not conclusive because the company had not defended the proceedings. Gloster J noted that although the ensuing judgment was technically a default judgment:

> "the judge gave a fully reasoned decision and it is clear that he had had the opportunity to consider various documents which

> had been provided to the Court by the Applicants including several affidavits, deposition transcripts and numerous exhibits relating to both the merits of the claim as well as the issue of damages."

She rejected the appellant's case that there had been a miscarriage of justice and held that the court was not satisfied that the appellant "manifestly" had no claim. She determined that the US District Court judgment was not merely a default judgment "rubber stamping" a statement of claim. It had provided a reasoned judgment on the basis of the ample material before it. There was a properly conducted judicial process which the company chose to abandon, and the company had not shown that if a properly conducted process had taken place, no debt would have been found to have been due.

19. Mr Davenport refers to twelve unchallenged points in Mr Drelle's evidence setting out a series of significant procedural and substantive errors of law in the Russian Proceedings and Russian Judgments. These, he submits, demonstrate that notwithstanding the conclusions reached by the Russian Courts, the Debt is subject to a substantial dispute and wholly unsuitable to found a bankruptcy petition. He reminds the Court that:

i) the bankruptcy court will not usually hear cross-examination because it is not required to determine the dispute but merely be satisfied that there is a genuine and substantial dispute;

ii) in the absence of cross-examination, an unchallenged assertion in a witness statement must be considered against all other evidence to determine whether it is of substance and if it is considered to be credible in the light of that evidence, it may not be rejected (see *CFL Finance Limited v Bass* [2019] EWHC 1839 (Ch)); and

iii) it is not entitled to construe foreign law for itself (see *Banco Santander Totta SA v Companhia De Carris De Ferro De Lisboa SA and others* [2016] 4 WLR 49 (at 237)).

(ii) A miscarriage of justice and/or partial proceedings

20. Mr Davenport relies upon the flaws in the Russian Judgments, as highlighted by the Russian law experts, as evidence which should lead this Court to conclude that they were obtained as a result of a miscarriage of justice.

21. GPN, as ST's primary creditor, took an active role in the Russian Proceedings, funding them and giving evidence against Mr Drelle. It is Mr Drelle's case that the level of GPN's interest in him was demonstrated when its CEO personally wrote to the head of the Russian criminal prosecution authority urging him to initiate criminal proceedings against Mr Drelle. There is also evidence of Ms Zheglova, ST's finance officer stating that she was informed by a well-placed third party, that the chairman of the Commercial Court had informed the third party that the case against Mr Drelle was pre-determined. Thus, it is claimed, the Russian Proceedings were partial. This is supported by Mr Lough's expert report which

states that "with GPN driving the case, Mr Drelle stood no chance of winning in court".

22. Mr Davenport submits that to avoid the dispute now before the Court, prior to presenting its petition, ST should have applied for recognition of the Judgment. That would have provided this Court with assurance that the Debt arose in proceedings which the courts of England and Wales can safely enforce, is not reducible on the facts of the case and will not unfairly prejudice Mr Drelle's other creditors.

23. There are, he says, two tracks, each with their own distinct test: recognition of a foreign judgment via Part 7 proceedings where the principles set out in Dicey fall to be considered, and bankruptcy proceedings. This is demonstrated, he submits, by the approach taken by the court in *International Brands* where there was no reference to the principles set out in *Dicey, Morris & Collins on the Conflict of Laws* regarding recognition of a foreign judgment. As there is no treaty between the United Kingdom and the Russian Federation, the Petitioner could have issued Part 7 proceedings for recognition at common law and applied for summary judgment. In such proceedings the court would have had the benefit of pleadings, disclosure and an opportunity to cross-examine the expert witnesses in Russian law.

24. If the court were to permit the petition to proceed in this case, the Petitioner would, he says, obtain "recognition by the back door" and the burden would unfairly shift to Mr Drelle to demonstrate, without pleadings and live evidence, not just that the Debt is disputed on bona fide and substantial grounds, but that the Judgment giving rise to the Debt should be impugned on the basis of fraud, collusion or miscarriage of justice. As such, he submits, notwithstanding the principles set out in *Baron Meats*, this Court's jurisdiction would be no wider than it is in any other court.

(3.2) The Petitioner's approach to the relevant test

25. Mr Phillips KC resists any suggestion (to the extent it was raised or maintained following Mr Davenport's submissions) that the Petitioner was required to apply for the Judgment to be recognised under English law before presenting the petition. In closing, he drew my attention to a short passage from *Muir Hunter:*

> "In principle, a demand or petition based on a foreign judgment debt will be recognised for bankruptcy purposes without the need for specific registration in the UK."

26. When exercising its jurisdiction in bankruptcy, the court is concerned to ensure that there is an undisputed debt for a liquidated sum that exceeds the bankruptcy level. Not all debts are judgment debts. In this case, the Debt arises from a foreign judgment. Mr Drelle claims the Judgment is impeachable. This Court must therefore decide whether there is a genuine triable issue, or in other words (which the courts have found to amount to the same test), a genuine and substantial dispute that the Russian Judgments are impeachable. That is not the same as this Court being required to determine that there is a genuine dispute that Mr Drelle should have been held liable for breaches of his duties as a director: that issue has already been decided by the Arbitrazh Court and all avenues of appeal exhausted.

27. Mr Phillips submits that the starting point is Rule 48 from Chapter 14 of *Dicey, Morris & Collins on the Conflict of Laws*:

> "Rule 48: A foreign judgment, which is final and conclusive on the merits and not impeachable under any of Rules 49 to 52 is conclusive as to any matter thereby adjudicated upon, and cannot be impeached for any error either (1) of fact or (2) of law."

28. Having obtained a judgment against Mr Drelle in Russia, ST now seeks to invoke a class remedy against him in England by obtaining a bankruptcy order. Pursuant to Rule 48, the Russian Judgments are conclusive as to all matters thereby adjudicated upon unless susceptible to impeachment under Rules 50 to 52:

> "Rule 50: A foreign judgment relied upon as such in proceedings in England, is impeachable for fraud. Such fraud may be either (1) fraud on the part of the party in whose favour the judgment is given; or (2) fraud on the part of the court pronouncing the judgment.
>
> Rule 51: A foreign judgment is impeachable on the ground that its enforcement or, as the case may be, recognition, would be contrary to public policy.
>
> Rule 52: A foreign judgment may be impeached if the proceedings in which the judgment was obtained were opposed to natural justice."

(3.3) Conclusion regarding the relevant test

29. Whilst the courts of England and Wales usually treat a judgment as inviolate or unimpeachable, as seen in *Baron Meats* and *Dawodu*, and for the reasons set out in *Baron Meats*, the bankruptcy court may go behind a judgment debt where it appears that:

i) there is no true underlying debt (for example because judgment was obtained by default or a compelling defence was not raised or competently argued); and/or

ii) where the judgment debt was obtained as a result of fraud, collusion or pursuant to a miscarriage of justice.

30. Rule 48 from *Dicey* provides for a foreign judgment to be treated as similarly inviolate, unless it can be impeached under Rules 50 to 52 on grounds of fraud, being contrary to public policy or opposed to natural justice.

31. This Court does not need to determine whether the Russian Judgments should be impeached, as would be the case in Part 7 recognition proceedings. Rather, I must determine whether there is a bona fide dispute on substantial grounds that the Russian Judgments *may* be impeached. If so, the underlying Debt cannot be treated as sufficiently certain to found a bankruptcy petition and the petition must be dismissed. That is the risk that the Petitioner chose to take when deciding not to

apply for the Judgment to be recognised before relying upon it in bankruptcy proceedings.

32. This approach does not, in my judgment, unfairly deprive Mr Drelle of an opportunity to test the expert evidence by cross-examination. If I conclude that there is a bona fide dispute on substantial grounds that the Russian Judgments *may* be impeached, then those issues which the Court considers to be genuinely arguable on substantial grounds, will need to be determined in recognition proceedings. If an application is made for summary judgment in those proceedings, it will be for the judge hearing the application to decide whether there should be cross-examination of the expert witnesses. I note, however, from a table of recent cases provided by the Petitioner, that it is rare for there to be live evidence during summary judgment applications in recognition proceedings.

(4) Legal principles

(4.1) Fraud

33. Allegations of judicial bias and improper interference with the judicial process fall within the fraud exception in Rule 50 (see *Altimo Holdings and Investment Limited v Kyrgyz Mobil Tel Limited* [2012] 1 WLR 1804 and *PJSC (Rosgosstrakh) v Starr Syndicate Limited* [2020] EWHC 1557). They also potentially offend Rules 51 and 52 as being contrary to public policy and opposed to natural justice (*Dicey* paragraph 14-144).

34. *In PJSC (Rosgosstrakh)* Moulder J noted that:

> "a foreign judgment can be impeached for fraud even though no newly discovered evidence is produced and even though the fraud might have been alleged in the foreign proceedings. The rule that foreign judgments can be impeached for fraud stands "in square opposition" to the principle of conclusiveness of judgments and also to the principle that English judgments can only be impeached for fraud if new evidence of a decisive character has since been discovered (paragraph 14-139 of Dicey)".

35. In *Maximov v. Open Joint Stock Company Novolipetsky Metallurgichesky Kombinat* [2017] 2 C.L.C. 121 the claimant applied in England to enforce an award made by the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation. The defendant applied to the Moscow Arbitrazh Court to set aside the award on the basis that two of the arbitrators had failed to disclose links to the expert witnesses whose evidence the claimant relied upon in the arbitration. The judge set aside the award, upholding the non-disclosure ground and on two further grounds, without either side having raised either of the further grounds and without the court having heard argument on them. The first instance judge's decision was upheld on appeal, and permission to appeal to the Supreme Arbitrazh Court was refused.

36. The claimant sought to persuade the English court that it should not recognise the Russian courts' decisions as they were so perverse that bias could be inferred. Sir

Michael Burton QC, sitting as a High Court judge, set out at paragraphs 2 and 15 of his judgment, the test which the parties agreed should apply:

> "(1) The fact that a foreign court decision is manifestly wrong or is perverse is not sufficient (see for example, *Dicey, Morris and Collins, The Conflict of Laws* (15th edn) at 14-163, *OJSC Bank of Moscow v Chernyakov* [2016] EWHC 2583 (Comm) and *Erste Group Bank AG (London) v JSC VMZ Red October* [2013] EWHC 2926 (Comm)). The decision must be so wrong as to be evidence of bias, or be such that no court acting in good faith could have arrived at it.
>
> (2) The evidence or grounds must be 'cogent'.
>
> (3) The decision of the foreign court must be deliberately wrong, not simply wrong by incompetence."

37. At paragraph 16 of his judgment, he clarified the extent to which each of the grounds needed to be made out:

> "16. The only issue between counsel was one which may be evanescent. Ms Hodges submits that it is enough if I were to find that one ground was biased, while Mr Brindle submits that if one or even two grounds were biased and could not be relied upon, then it would be enough that there was one ground which could not be challenged, just as in the ordinary case where two grounds fall away and one is enough. It can be seen that this must depend upon my conclusions, but if I concluded that a court was biased, it would be difficult to see how any of its decisions could be relied upon if they depended upon any balancing exercise – though different questions may arise if the answer were obvious. If a ground was felt by a biased judge to need bolstering by adding in another ground or two, which were themselves unsupportable, it would seem difficult to uphold the ground upon which the judge obviously must have felt an inadequacy."

38. Sir Michael Burton QC noted that Judge Shumilina sitting in the Moscow Arbitrazh Court had other hearings that day and that the defendant's application began at 5pm and lasted 5 hours, at the end of which, as she was obliged to do, the judge delivered an immediate, oral decision. He was heavily critical of her failure to consider whether the non-disclosure had been waived. She appeared to take the view that it was not capable of being waived, which, he held, was clearly wrong in light of the relevant provision of Russian law on the ICUC rules. He described the judge's conclusion on this issue as being, consequently, "unsupportable", her approach to one of the unargued grounds as "hopeless" and concluded that she "must have known it was borderline arguable at best". The remaining, unargued ground was, in his view, "adventurous" in the sense that there had been no, or no material prior judicial decision in favour of it. Nevertheless, at paragraph 62 of his judgment, Sir Michael Burton QC concluded:

> "62. Notwithstanding my severe criticism of, and doubt about, Grounds 1 and 2, and the fact that Grounds 2 and 3 were unfairly not canvassed at first instance and had become almost writ in stone by the time they went up on appeal, I am unpersuaded that these decisions are so extreme and perverse that they can only be ascribed to bias against the Claimant."

39. The test, as set out by Sir Michael Burton QC was applied by Moulder J in *PJSC (Rosgosstrakh)*. The underlying claim concerned reinsurance cover for a Russian state-owned aircraft that had crashed during a demonstration flight in Indonesia. Attempts to enforce the judgment in London were resisted, inter alia, on grounds of alleged bias, summarised at paragraph 104 of the judgment:

> "i) the independence and impartiality of Russian courts is often undermined by interference by the State and "powerful litigants", especially in remote regions of the Russian Federation;"
>
> ii) Kapital deliberately chose to issue proceedings in the KM Court because they believed they would be able to secure a verdict in their favour;
>
> iii) Mr Khachaturov and Kapital had the ability, connections and motive to improperly influence the KM Court as well as the subsequent appeal courts;
>
> iv) on the balance of probabilities, judging by the "wholly perverse" decisions reached in Kapital's favour, the proper inference to be drawn is that they (and others) improperly influenced those courts."

40. At paragraph 138 of her judgment, applying the test in *Maximov,* Moudler J held:

> "In my view in relation to the issue of "bias":
>
> i) the defendants will not have to establish a "conspiracy" but will have to establish on the evidence improper influence both of the KM Court and the relevant appeal courts. The defendants will have to show that the courts were deliberately wrong and not merely incompetent and that is a high threshold. However the evidence for the defendants is that the KM Court was "plainly wrong" for the reasons given by Mr Karabelnikov and referred to above. To the extent that Professor Bevzenko disagrees with the evidence as to Russian law the court will need to resolve the conflicts in the expert evidence and this will need to be done at trial (*JSC 'Aeroflot-Russian Airlines' v Berezovsky*[2014] EWCA Civ 20 at [45]);
>
> ii) in order to determine whether there is a real prospect of showing that the KM court was deliberately wrong as opposed to merely incompetent, the court has regard to the alleged "improper influence" of Mr Khachaturov; the defendants will

> have to show that the proper inference is that influence was exercised in this regard over the courts: at this stage the evidence of the current allegations against Mr Khachaturov's influence on other legal proceedings supports the defendants' case taken together with the evidence of his involvement in the conduct of the claim; the extent of his involvement and the nature of any influence will have to be tested at trial;
>
> iii) the case of the defendants rests not on showing systemic bias against all foreigners but on the facts of this case which the defendants say was high-profile by reason of the significance of the Superjet programme and the involvement of the Russian State; similarly it is not suggested by the defendants that all Russian judges are biased but that in the specific judgments influence was brought to bear;".

41. On these and other grounds, Moulder J concluded that the claimant had not established that the defence of bias had no real prospect of success.

42. In *OJSC Bank of Moscow v Chernyakov* [2016] EWHC 2583, Mr Chernyakov resisted summary judgment being entered against him in respect of three Russian judgments on the ground that there were triable issues that the judgments were obtained by the fraud of the bank, they were given in violation of the principles of natural justice and in breach of the right to a free trial in Article 6(1) of the European Convention on Human Rights, and that their enforcement would be contrary to public policy. Cranston J noted the various overlapping issues that arise when a party seeks to impeach a judgment on grounds of public policy:

> "The public policy ground is not easy to demarcate from the fraud and natural justice grounds. Its ambit is not precise and it may extend to an English court's refusal to recognise or enforce a judgment where the foreign court is corrupt or the judgment was obtained by the exercise of improper influence on the judges: see *Altimo Holdings v. Kyrgyz Mobil Tel Ltd* [2011] UKPC 7; [2012] 1 WLR 1804, at [101], [117], per Lord Collins; *Yukos Capital Sarl v. OJSC Rosneft Oil Co* [2012] EWCA Civ 855; [2014] QB 458, [90]. However, the principle of comity demands caution, and cogent evidence will be required if a foreign judgment is said to be infected in this way. It is not contrary to English public policy to refuse to recognise a judgment which is obviously wrong. However, if there is evidence of a perverse refusal by the foreign court to apply the law in a judicial manner, it may be possible to oppose recognition on the ground that the behaviour of the court infringed natural justice: Professor Adrian Briggs, *Private International Courts in English Courts*, 2014, p. 480."

(4.2) Natural Justice

43. Paragraph 16-163 of *Dicey* explains that consideration of whether there has been a breach of natural justice focusses on the regularity of the proceedings. Mr Phillips' skeleton argument succinctly summarises the court's approach:

> "Principles of natural justice include not only that a defendant is given due notice of the hearing and an opportunity to put forward a case (*Jacobson v Frachon* (1927) 138 L.T. 386) but extends to a procedural defect which constitutes a breach of the English court's view of substantial justice. This does not extend, however, to a *"*mere procedural irregularity, on the part of the foreign court and according to its own rules*"*: *Adams v Cape Industries plc"* [1990] Ch 433 at 567.
>
> Further, where a procedural defect is apparent to a defendant, he should use the local remedy of appeal before contending that the assessment of his liability was not in accordance with principles of natural justice. In *Adams v Cape Industries plc* ibid, at 570C-E it was held that:
>
> > 'Since the ultimate question is whether there has been proof of substantial injustice caused by the proceedings, it would, in our opinion, be unrealistic in fact and incorrect in principle to ignore entirely the possibility of the correction of error within the procedure of a foreign court which itself provides fair procedural rules and a fair opportunity for a remedy. The court must, in our judgment, have regard to the availability of a remedy in deciding whether in the circumstances of any particular case substantial injustice has been proved.'
>
> Further, "…where the issue or procedural error has been raised before the foreign court and rejected, it is less likely that an English court will entertain arguments concerning natural or substantial justice which are based on it": § 14-167, *Dicey & Morris*; and *OJSC Bank of Moscow v Chernyakov* at [8]."

(4.3) Contrary to Public Policy

44. *Dicey* notes that until recently, there were very few reported cases in which foreign judgments *in personam* had been denied enforcement or recognition for reasons of public policy. At paragraph 14-159 the authors note, in relation to the Human Rights Act 1988:

> "The 1998 Act gave the force of law to the European Convention on Human Rights. If the enforcement of a foreign judgment would be contrary to the European Convention, enforcement will in principle be refused. Indeed, such a case is not really an example of recognition or enforcement being refused on grounds of public policy, but is rather because primary legislation produces that result."

45. Mr Kulkov refers to the various alleged substantive and procedural errors in the Russian Judgments indicating that Mr Drelle had an unfair trial "and breaches of human rights". He does not elaborate on such alleged breaches. Mr Davenport did not press them during his oral submissions. Mr Drelle does not appear himself to have raised human rights arguments and Mr Phillips directs this Court to the fact that as Russia is a signatory to the Convention, there is a rebuttable presumption that its courts comply with Article 6 (*Maronier v Larmer* [2003] QB 620).

(5) Applying the principles to the Russian Judgments

(5.1) Background to the Russian Proceedings

46. The background is set out in counsel's skeleton argument for Mr Drelle from which I have extracted the following paragraphs. I have removed those parts where I am aware that there may be some dispute as to the facts, but it is fair to record that the Petitioner may well take issue with other parts that I have left in. Other than as expressly considered in this judgment, I make no finding in relation to the background facts. I nevertheless consider it helpful to provide the background largely from Mr Drelle's point of view, as it is he who has raised the issue of alleged judicial bias:

> "Mr Drelle was born in Kharkiv, Ukraine, and is now a Russian national. He founded ST in 2002, after which he acted as general director, and from February 2015, Chairman. ST's shares were initially held by Mr Drelle, Ms Elena Vetoshnykh, Mr Anton Melnikov and Mr Evgeniy Barakin. From 2004-14, ST shares were held by Mr Drelle, Ms Vetoshnykh and Mr Melnikov in a 30% / 35% / 35% allocation.
>
> ST carried on business in brokerage and the fulfilling of import and export requirements for clients in the Russian energy sector. As part of its operations, it was responsible for discharging its clients' customs payments. Those payments depended on fluctuating commodity prices, and ST held significant client monies forwarded in advance of these obligations arising so that it could determine when the obligation should be discharged, thus saving its clients considerable sums.
>
> These cash reserves were often substantial, and were held in pooled accounts ("the Reserve Funds").
>
> GPN and ST entered into a client agreement on 14.1.03 ("the First GPN Agreement"). As with other client agreements, there were no restrictions on how GPN's Reserve Funds were held, provided that funds were available on the relevant clearance date. GPN was a significant client of ST's: it would later come to provide 60-70% of ST's revenue.
>
> As part of its licencing requirements, ST was required to provide significant bank guarantees. The Russian authorities accepted guarantees from a limited range of banks, which dictated those

with which ST could hold accounts and deposit Reserve Funds. Following the near collapse of Globex bank, the Petitioner sought the services of Russian Credit Bank ("RCB"), with which a significant portion of the Reserve Funds were later deposited.

Mr Motylev

Mr Motylev was RCB's Chairman and, later, its owner. He controlled other large banks and pension funds, and had considerable assets. He had, until 2009, controlled Globex bank, which collapsed after the 2008 financial crisis and was bailed out by the Russian state for 2.5bn USD, after which he established AMB Bank only a year later. He was well-connected with the Russian customs authorities, and it was widely understood that he enjoyed political protection, without which he would not have been able to establish AMB Bank and, later, acquire RCB.

Mr Motylev also owned Fort Staiton LLC, a company domiciled in Russia ("FS").

The Loan

In order to leverage the Reserve Funds and there being no restrictions in ST's client agreements as to how the funds were held, ST provided multiple loans to corporate partners, including to FS and Intercom Capital LLC, which was also controlled by Mr Motylev ("Intercom"). Various loans were provided between 11.1.10 and 5.11.14, all of which were interest bearing, and all – bar the loan in issue – were repaid. The loans brought significant benefit to ST: the lending provided to FS and Intercom totalled 14.35bn RUB over 5 years, and the interest payments alone amounted to over 51m RUB.

ST's use of the Reserve Funds was also disclosed to and audited by third-party auditors, before being disclosed to the Russian tax authorities.

…In December 2011, Mr Motylev requested a further loan on behalf of FS be provided to help fund his acquisition of RCB. On 27.12.11, ST and FS concluded a loan agreement for 2bn RUB; as with other loans provided in this way, it was drawn from the Reserve Funds, which were held in cash ("the Loan"). The Loan was initially to be repaid by 25.5.12. Mr Motylev provided a personal guarantee in respect of the Loan, by which he undertook to be jointly and severally liable ("the Personal Guarantee").

After the Loan was provided, Mr Motylev began to threaten to requisition the Reserve Funds held in accounts with RCB.

…It became apparent that unless the Loan terms were renegotiated, no sums would be repaid under the Loan

agreement. In the hope of reaching a compromise, the Loan's interest and repayment terms were varied on five occasions between 1.2.12 and 30.9.13. Despite the revisions to the terms, over 11m RUB of interest was paid by FS in this time.

On 5.11.14 Intercom, also domiciled in Russia and owned or controlled by Mr Motylev, succeeded FS as the borrower under the Loan agreement.

RCB's collapse

In late July 2015, it became apparent that RCB was in financial difficulty.

… RCB became insolvent in late 2015. ST, at that point, held 7.9bn RUB of Reserve Funds on behalf of GPN with RCB in mixed accounts (made up of both Reserve Funds and profits).

Proceedings to recover the Loan sum

In August 2015 ST brought proceedings against Intercom in the Moscow Commercial Court, and obtained judgment. On 27.10.15, ST filed a further claim joining Mr Motylev under the Personal Guarantee. On 21.8.16, ST obtained judgment against Intercom and Mr Motylev in the Moscow Commercial Court. In a further decision on 23.12.16, the Khamovnichesky District Court of Moscow found Mr Motylev and Intercom jointly and severally liable for the Loan sum and interest, totalling, at that point, 2.6bn RUB. The judgment entered into force on 23.1.17 ("the Motylev Judgment").

Mr Drelle then hired asset-tracing specialists and lawyers to seek enforcement against Mr Motylev's assets outside of Russia. These agents were able to locate significant assets belonging to Mr Motylev, including properties in France, Spain and Turkey. The Spanish property alone was valued at 15m Euros, and was actively monitored. They were also able to identify a Monégasque company with which Mr Motylev was associated. These efforts were ongoing at the point of ST's insolvency.

ST's insolvency

GPN had, throughout, been kept abreast of enforcement actions being taken against Mr Motylev's assets.

… GPN and ST entered into a further agreement on 21.4.16 ("the Second GPN Agreement"). Unlike the First GPN Agreement, it provided for limits on the use and holding of GPN's Reserve Funds held. GPN continued to employ ST's services, and between 30.3.16 and 5.5.16, ST was forwarding GPN's pre-customs declarations to the Russian customs authorities.

However, on 27.5.16 GPN terminated the Second GPN Agreement unilaterally. ST challenged the termination by statement of claim on 20.1.17 (prior to ST's insolvency, whilst Mr Drelle remained as Chairman), asserting that GPN did not have the right to terminate unilaterally under a fixed term agreement, particularly after having instructed ST to begin clearing customs payments and having failed to pay ST in respect of its services. Those claims were ultimately rejected on 3.10.17, by which point ST had been declared insolvent and was under the control of ST's liquidator …

… On 26.6.16, insolvency proceedings were initiated by ST's main creditor, GPN.

… Mr Motylev was later made bankrupt in Russia, and ST registered the Motylev Judgment as proof of debt on 26.1.18 in Mr Motylev's bankruptcy. However, no enforcement action was taken between that point and Mr Lisin's appointment.

Mr Motylev, having fled to England, was later made bankrupt in this jurisdiction on 17.9.20. ST has evidently submitted a proof of debt in Mr Motylev's bankruptcy in respect of the Motylev Judgment, because it is a creditor in his bankruptcy in the amount of 2bn RUB.

The Russian Proceedings

ST's administrators then issued proceedings against Mr Drelle on 13.3.18, alleging that he was liable to account to ST for the losses attributable to the Loan. There had been no prior indication of ST and/or GPN instigating a claim against Mr Drelle, ST and Mr Drelle having signed the Second GPN Agreement and provided GPN with details of Mr Motylev's assets.

Prior to judgment, Ms Zheglova understood that, GPN being an interested party to the proceedings, the case would be supervised by the Chairman of the Yaroslavsky Commercial Court, Mr Vladimir Gushchev. She contacted a colleague, Ms Tatyana Lobanova, the general director of LLC Premier Audit in Nizhny Novgorod, who was well-known to Ms Zheglova. The two met on 26.1.19. Ms Lobanova contacted Mr Gushchev directly, who was known to her from his time working in the judiciary of the Nizhny Novgorod region, and sought details of the claim, upon which she was told that the result was pre-ordained against Mr Drelle in the sum of 2bn RUB owing to the involvement of GPN.

On 24.4.19, the Commercial Court of the Yaroslavl Region found Mr Drelle liable in the sum of 2bn RUB ("the First Instance Judgment"). The basis of the first instance judgment was, in summary:

> a.) Mr Drelle failed to verify FS' solvency upon providing the Loan, and should have considered all possible consequences for ST;
>
> b.) Mr Drelle failed to prove that he verified Mr Motylev's solvency, or that Mr Motylev had provided good security and/or held sufficient assets;
>
> c.) The Loan was a major transaction for ST and required shareholders' approval;
>
> d.) Mr Drelle failed to secure the Loan by a pledge.
>
> Claims were also brought against other members of ST in the same proceedings:
>
> The first, against ST's shareholders Ms Vetoshnykh, Mr Melnikov and Mr Barakin for having approved the Loan, the reduction in the interest rate, and the Personal Guarantee ("the Co-Defendant Claims"). ST obtained an order requiring disclosure of ST's shareholding prior to the First Instance Judgment. However, the First Instance Judgment was handed down before this order came into effect. ST opted to present no evidence in the Co-Defendant Claims rather than either seek information from the Russian tax authorities or await disclosure, and the Court dismissed the Co-Defendant Claims as there was no evidence that the parties were even shareholders (despite their having been joined in the first place).
>
> The second, against Ms Zheglova, for having recommended the Loan and given advice to shareholders to approve it, the reduction in the interest rate, and the Personal Guarantee ("the Zheglova Claim"). The Zheglova Claim was dismissed because, as financial director, she did not have a controlling role …
>
> Mr Drelle appealed, and on 6.8.19 the Second Commercial Court of Appeal upheld the first instance judgment ("the Appellate Judgment"). Mr Drelle then appealed to the Cassation Instance Arbitrazh Court which upheld the previous rulings on 6.11.19 ("the Cassation Judgment"). His final appeal to the Supreme Court of the Russian Federation was refused and the previous rulings upheld on the same bases on 17.2.20."

(5.2) The principal causes of action in the Russian Proceedings

47. The Russian law experts concur that the claim against Mr Drelle was brought under Article 53(3) of the Civil Code of the Russian Federation ("Article 53(3)") which provides:

> "a person who by virtue of the law or the constitutional documents of a legal entity acts on its behalf must act in good

> faith and reasonably in the interests of the legal entity it represents. Unless otherwise provided by the law or a contract, he/she shall, at the request of the founders (participants) of the legal entity, reimburse the losses caused by him/her to the legal entity".

48. The Russian law experts are also agreed that the key principles of a director's liability under Article 53(3) were clarified under Resolution No. 62 of the Plenum of the Supreme Arbitrazh Court of the Russian Federation dated 30 July 2013 (**"**Resolution 62") and that although Resolution 62 was not in force at the time of the Loan, as it consolidated the preceding case law, its principles nevertheless applied to the claim against Mr Drelle. Mr Drelle's expert, Mr Kulkov explains:

> "This Resolution expressly sets out situations and circumstances in which it would be presumed that a director acted in bad faith (i.e., violated his duty to act in good faith):
>
> • if a director acted despite the existence of a conflict of interest;
>
> • if a director concealed information from the shareholders, or knowingly provided to them incorrect information, on a transaction entered into by the company;
>
> • if a director entered into a transaction without having obtained a necessary approval as required by law or the company's charter;
>
> • if a director withholds, or fails to return to the company, documents relating to the circumstances that led to unfavourable consequences for the company;
>
> • if a director knew or should have known that his actions at the relevant time were not in accordance with the company's interests. For example, where it entered into a transaction knowing: (i) that it was unfavourable to the company; or (ii) a counterparty to such transaction was "knowingly unable to perform its obligations".
>
> The SCC's Plenum Resolution No. 62 also describes the situations and circumstances in which it would be presumed that a director has acted unreasonably (i.e., violated his duty to act reasonably), namely when the director:
>
> • took a decision without proper regard to the information known to him, which is of relevance in a given situation;
>
> • failed to perform adequate due diligence to obtain necessary and sufficient information that is considered to be ordinary for business practice in similar circumstances; and

> • failed to comply with the company's internal procedures (for example, approval of a legal counsel, accounting department, etc.).
>
> The SCC's Plenum Resolution No. 62 also places weight on the good faith and/or reasonableness of a director in the selection of a company's agents, the choice of counterparties to business contracts, and compliance with the company's internal documents and policies in this regard."

(6) The Russian Judgments

(6.1) The Arbitrazh Court

49. In the Arbitrazh Court Proceedings, Judge M.B. Frolovicheva summarised the provisions of Article 53(3) and Resolution 62 and noted that in order to find Mr Drelle liable, ST would need to satisfy the court that the following conditions were met:

> "an unlawful act of the causer of loss, the cause-and-effect connection between the unlawful acts and the loss sustained, existence and amount of the loss sustained. To satisfy the claim for damages, all of the above facts must be proved; if one of the necessary reasons for payment of damages is not proved, it is impossible to satisfy claims asserted in a lawsuit."

50. The judge recites that the claim against Mr Drelle was for damages equal to RUB 4,413,989,041.10 including a claim for loss of profits at the market interest rate of approximately RUB 788 million.

51. Judge Frolovicheva concluded on the evidence before her that:

i) when procuring that ST made the Loan, Mr Drelle could and should have considered FS's financial position and evaluated both the risks to ST of entering into the agreement as well the potential benefits which might inure to ST in doing so. His failure to verify FS's ability to repay the Loan amounted to "not a good faith and reasonable performance of the duties of the company's chief executive officer";

ii) acting prudently Mr Drelle should have put in place measures to secure the performance of FS's repayment obligations and that accepting a personal guarantee from Mr Motylev in December 2011, without verifying his financial position, was similarly "not a good faith and reasonable behaviour of a chief executive officer of an entity". She found that Mr Drelle could and should have required Mr Motylev to pledge assets as security. She rejected Mr Drelle's explanation that Mr Motylev was a prominent banker with a high income capable of meeting his surety obligations, finding instead that even at its peak in 2014, Mr Motylev's income was more than one hundred times lower than the value of the Loan:

> "The fact that the surety has real estate and shares does not mean that he can perform the obligation to repay the loan in the amount of RUB 2,000,000,000; the case materials do not contain any information confirming that A.L. Motylev's assets are not encumbered";

iii) repayment by the borrower of earlier loans did not excuse Mr Drelle from verifying the financial circumstances of the borrower and its surety at the time the Loan was made;

iv) the value of the Loan exceeded 25% of the value of ST's assets. As such, pursuant to Article 78 of the Federal Law on Joint Stock Companies, the Loan could not be regarded as having been entered into in the ordinary course of its business;

v) Mr Drelle's liability was not affected by the possibility of recovering amounts from other third parties, whereas if the Claimant had already recovered its loss from a third party, its claim would be dismissed; and

vi) all other objections raised by Mr Drelle were considered by the court and rejected as unsubstantiated, not supported by evidence and contradicted by the case materials.

52. Judge Frolovicheva rejected the Claimant's claim for loss of profits on the basis that ST was not a lending institution and earning such profits comprised no part of its ordinary business activities. Consequently, the liquidator's claim against Mr Drelle succeeded in part and he was found liable in damages to the tune of RUB 2 billion.

(6.2) The Court of Appeal

53. Mr Drelle appealed the decision of Judge Frolovicheva to the Court of Appeal. Professor Stephan's expert evidence explains that the Court of Appeal conducts a full review of the first instance proceedings, providing the appellant with a further opportunity to succeed on the merits.

54. On 6 August 2019, a panel of three appeal judges dismissed the appeal and upheld the order made by Judge Frolovicheva. In doing so, the Court of Appeal noted that at the time of the Loan, FS did not have any fixed assets, appeared to be heavily reliant on borrowed funds and that its working capital was equal to zero. The Court of Appeal held that Mr Drelle could and should have obtained information regarding FS's and Mr Motylev's financial circumstances but that there was no evidence in the case materials of such enquiries having been made. It rejected Mr Drelle's reliance upon previous loans having been repaid, saying that such past conduct did not mean that it would have sufficient resources to pay the latest loan of RUB 2 billion.

55. When considering evidence of the high volume of transactions taking place in Mr Motylev's bank account, the Court of Appeal held that it merely amounted to evidence of his business operations and the existence of obligations to other counterparties. It did not comprise evidence of his ability to meet his surety

obligations to ST. Press articles regarding his solvency had not been verified and could not be taken into consideration.

56. The Court of Appeal found that the Arbitrazh Court had correctly applied the law, taking into account the circumstances of the case. Further, the Court of Appeal did not find any breaches of the procedural rules to justify overturning the Arbitrazh Court's decision.

(6.3) The Cassation Court

57. Having noted that its role did not include reviewing the manner in which the lower court had evaluated the evidence before it, the Cassation Court concluded:

> "The materials of the case were examined by the courts of both instances fully, comprehensively and objectively, the evidence presented was given a proper judicial appraisal, and the conclusions set forth in the appealed judicial acts correspond to the actual circumstances of the case and the norms of law. There are no grounds to annul the judicial decisions based on the grounds set forth in the cassation appeal.
>
> District court has not determined any procedural law violations, which by virtue of part 4 of Article 288 of the Arbitration Procedural Code of the Russian Federation are unconditional grounds for annulment of judicial decisions."

(6.4) The Supreme Court

58. The Supreme Court reviewed the judgments of the Arbitrazh Court, the Court of Appeal and the Cassation Court and held that the conclusions of each court were consistent with the rules of law and that there were no reasons for them to be re-examined. It found no violation of the rules of substantive law or procedure "that would result in unconditional invalidation of the above Arbitrazh Rulings".

(7) Can the Judgment found the bankruptcy petition?

59. Mr Drelle's expert, Mr Kulkov raises a number of complaints with the Arbitrazh Judgment and the CA Judgment. He refers to Article 46 of the Russian Constitution, that every person shall be guaranteed judicial protection of his rights and freedoms and notes that any breach of a party's right to a fair trial or right to judicial protection results in the violation of a basic constitutional right of a person. He states, by reference to authority, that the court is obliged properly to examine the facts of a case on its merits "and may not merely establish formal grounds for applying the rule as otherwise the right to judicial protection would be infringed." Further, that the Constitutional Court has held that mistakes made by a first instance court "must be rectified by the court of second instance in a procedure which is as close as possible to the proceedings before the court of first instance." He concludes:

> "163.) If not rectified, gross errors in court decisions breach the right to a fair trial and principle of natural justice.

> 164.) In my opinion, the First Instance Judgment contains a number of indications of both procedural and substantive irregularities that I address below and neither of them was rectified by the higher courts in the Appellate Judgment or the Cassation Judgment.
>
> 165.) Thus, in my view, the indications of the identified irregularities in the Russian Judgments at the same time indicate unfair trial and breaches of human rights and natural justice towards Mr Drelle."

60. This Court's role is to determine whether those complaints, which are largely disputed by the Petitioner's experts, give rise to a triable issue that the Russian Judgments can be impeached. As noted by Rimer J in *Long v Farrer & Co* [2004] BPIR 1218, subject to limited exceptions, the court cannot and should not disbelieve the evidence of a witness given on paper in the absence of cross-examination of that witness.

61. However, the Court must first determine the relevance of the areas of disagreement highlighted in the experts' reports. Following *Maximov* it is not enough to find that there is a genuine triable issue that the Russian court(s) appear to have erred and/or that a properly constituted tribunal would not have found Mr Drelle to be liable. Evidence to the standard of a genuine triable issue of incompetence, if I were to find it, is not enough. I must find that there is before me, a substantial dispute as to whether the Russian Judgments are deliberately wrong or that the decision is so wrong as to be evidence of bias or to be such that no court acting in good faith could have arrived at it, and/or there must be a substantial dispute that the judgment is impeachable by fraud or that the proceedings were opposed to natural justice (the "Threshold Test").

62. For the reasons that follow, in my judgment, none of the grounds raised by Mr Drelle meet the Threshold Test.

(8) Alleged substantive errors of law in the Russian Judgments

(8.1) Requirement to verify a counterparty's solvency

63. In their joint report Mr Kulkov and Professor Egorov (the "Joint Experts") agree that "a director should conduct a verification of a counterparty to a certain extent". However, Mr Kulkov states that the Arbitrazh Court and Court of Appeal imposed extensive due diligence obligations on Mr Drelle that were not consistent with the approach set out in case law:

> "because, as I understand, there were no 'risk factors', in that FS and Intercom were not fly-by-night companies (the bad faith indicia used in the SCC's Plenum Resolution No.62) but counterparties which ST previously had successful operations with, they were properly registered, and there was no evidence that their addresses were addresses of mass registration, etc.

> What the [Arbitrazh Court] in fact did examine is whether Mr Drelle conducted pre-lending due diligence akin to those made by the credit institutions pursuant to banking law. This is manifestly wrong, not only because ST was not a credit institution … but also because ST had had previous and existing dealings with FS, i.e. it was akin to a credit history which banks rely upon in deciding whether to advance funds.
>
> The Russian Courts completely ignored this important factor, whilst referring to some unexplained points of FS's lacking "business plans and investment programs". There is no such requirement, and a company can perfectly operate without having such documents. To impose a requirement upon Mr Drelle to check business plans and investment programs as part of his directorship duties was wrong.
>
> References of the Appellate Court to the amount of FS's share capital or that among FS's shareholders there were Cypriot companies are simply superficial (thousands of companies in Russia have a minimum share capital and foreign shareholders; a share capital does not reflect the value of the company's assets). The logic does not fit into the relevant test as clarified by the SCC's Plenum Resolution No. 62."

64. His position is summarised in the Experts' Joint Statement as follows:

> "MK considers that, as a general rule, there is no requirement for a director of a lender to check and verify the solvency (financial state) of the borrower (and/or its guarantor). Case law indicates that it is generally expected from a director acting reasonably and in good faith to conduct only some basic verification of the counterparty.
>
> If, having undertaken such steps in the basic verification process, a director discovers 'risk factors', only then he would be expected to undertake further steps, including checking the financial position of the borrower (depending on circumstances)."

65. Mr Kulkov's report includes a list of those risk factors – matters which a counterparty would be expected to check from publicly available information, such as a list of court and enforcement proceedings against the borrower, whether the borrower's director is the director of many other companies (such that he is just a nominee director) and whether the borrower's address is an address of mass registrations.

66. The Petitioner's expert, Professor Egorov disagrees with Mr Kulkov:

> "In my view, it is exactly the opposite: the director is obliged in all cases to think about ability of the borrower to repay the debt.

> Further, if he makes a glaring error, he will not be protected by the business judgement rule.
>
> The test proposed in para 70 of MK-1 [*judicial note: which I understand to mean the list of risk factors*] is extremely simplistic. A large number of companies in Russia will pass this test, but this does not mean that a loyal and caring director of another company will give them a loan, much less two billion roubles loan."

67. Consequently, whilst recognising some duty to investigate a counterparty's ability to repay a loan, the Experts are at odds as to how that duty should have been interpreted by the Russian Courts in the context of ST's claim against Mr Drelle.

68. My reading of the Arbitrazh Judgment is not that Judge Frolovicheva found Mr Drelle to have breached a specific duty to investigate the solvency of a counterparty. Rather, she was considering the manner in which he should have exercised his duties to ST in relation to this transaction in the light of the losses and negligible net income earned by FS in 2011. The relevant paragraph of her judgment started:

> "*Under such circumstances*, including the borrower having no fixed assets, V.E. Drelle, exercising proper prudence as the chief executive of Servis-Terminal CJSC and acting for the benefit of the company when entering into the [Loan] … could have and should have evaluated all possible consequences and risks …" (*my emphasis*).

69. Even if I am wrong in this, the CA Judgment noted:

> "Pursuant to para 2, Paragraph 3 of Resolution No 62, Arbitrazh courts should evaluate to what extent performance of a certain action was in line or was supposed to be in line (taking into consideration ordinary business practice) with director's scope of responsibilities, with due consideration of the scale of legal entity's operations, the nature of action in question etc.
>
> When defining interests of a legal entity, it should be taken into account, among other things, that the main goal of business entity's operations is to earn profit (Paragraph 1, Article 50 of the Civil Code of the Russian Federation); …"

70. The CA Judgment also notes that FS's CEO was a nominee director and that its shareholders were Cypriot registered entities. In finding that Mr Drelle should have obtained information about FS's financial position "with a reasonable extent of prudence", it noted that the case materials contained no evidence of such verification.

71. Mr Kulkov states that it was "manifestly wrong" for the Russian Courts to have examined Mr Drelle's conduct by reference to the pre-lending due diligence steps that would be expected of a credit institution. Professor Egorov considers that the

Russian Courts correctly criticised Mr Drelle's decision when making the Loan. Ordinarily, as seen in *PJSC (Rosgosstrakh)* a conflict in expert evidence would need to be resolved at trial. However, the reference to a credit institution's due diligence obligations, is Mr Kulkov's own interpretation of the steps which the Russian Courts found should reasonably have been conducted by Mr Drelle. There is no reference in the Russian Judgments to the steps that the court would consider it appropriate for a credit institution to take, nor that the steps the Russian Courts contemplated Mr Drelle should have taken were akin to those of a credit institution.

72. Furthermore, Mr Drelle did not dispute that he was under a duty to verify FS's financial position. He asserted that he received various documents from FS and Interkom including accounting statements. He considered the information to be sufficient in the context of ST having entered into 11 loan agreements with FS totalling RUB 10.6 billion of which the Loan was the only agreement not performed in full.

73. The Court of Appeal found that FS did have a nominee director. According to Mr Kulkov's evidence, this is one of the risk factors which might prompt a director to carry out further investigation. Mr Drelle does not challenge this finding.

74. Mr Kulkov concludes that imposing a requirement on Mr Drelle to check business plans and investment programs as part of his directorship was wrong. Such an error may have entitled Mr Drelle to appeal the Judgment, and indeed he did. However Mr Kulkov's evidence on this point does not suggest that the Arbitrazh Court's alleged error was so wrong as to suggest that there is a genuine and substantial dispute that that Court's approach or conclusion was deliberately wrong and not merely incompetent.

75. In summary, whilst Mr Kulkov heavily criticises the Court for concluding that Mr Drelle should have further investigated the borrower's ability to repay the Loan, when each such criticism is dissected in the manner I have endeavoured to do, it is clear that this ground of complaint does not meet the Threshold Test.

(8.2) Duty to obtain security for the Loan

76. Mr Kulkov explains that a director does not generally have a duty to ensure that a company is secured in respect of a loan:

> "and absence of security as such may not *per se* be deemed a ground for liability. In fact, the Russian Courts considered that the surety alone was not appropriate type of security, whilst the Lower Court even concluded that only pledge was acceptable. There is no law (except with respect to regulated credit institutions such as banks) or case law that a pledge should be preferred to surety or vice versa. Nevertheless, Mr Drelle was held liable for failing to secure the Loan Agreement with pledge."

77. At paragraphs 76 and 77 of his Report, Mr Kulkov states:

> "76.) Russian law does not require a director to ensure that a company is secured in respect of a loan except for specific regulations concerning credit organisations and financial institutions. However, I am of the opinion that the court can take this factor into account in conjunction with other evidence presented to it when analysing whether, based on the totality of the evidence, the director acted in bad faith and/or unreasonably.
>
> 77.) For instance, the obligation to secure the debt may be inferred from the obligation to act in good faith and/or reasonably if the director as of the date of providing the loan was or should have been aware that the borrower might become unable to repay the loan. On the other hand, obtaining security *per se* may be an argument in favour of the fact that the director acted reasonably and in good faith."

78. Professor Egorov replies:

> "MK's position regarding the absence of an explicit statutory reference to loan security as an obligation of the lender's director seems to me to be correct. But it is not relevant to the problem under discussion.
>
> Lending institutions have no obligation to obtain security in their favour. Minor loans are granted in Russia without security.
>
> However, the higher the amount of the loan, the higher the necessity of security and the greater the requirements to the reliability of the security. This is the obvious logic behind the business behaviour of any lender, not just a bank.
>
> I find the example in para 77 of MK-1 to be incorrect. If the lender actually knows that the borrower will not be able to repay the loan, then any caring and loyal director would refrain from lending regardless of the security.
>
> Moreover, since there is no borrower that should be deemed as able to repay the loan with absolute certainty, it effectively follows from para 77 of MK-1 that the loan must be secured by a loyal and caring director in all cases.
>
> Hence, MK's position is inherently contradictory as regards para 76 of MK-1 and para 77 of MK-1."

79. As Mr Kulkov accepts that the courts of Russia may infer an obligation to take security for a debt as part of a director's duty to act in good faith and/or reasonably in circumstances where the director should have been aware that the borrower might become unable to repay the loan, I find that this line of his criticism of the Russian Judgments may potentially give rise to a ground of appeal but it does not reveal a substantial dispute that the Judgments were deliberately wrong or otherwise meet the Threshold Test.

(8.3) Duty to check the solvency of a personal guarantor

80. Mr Kulkov states:

> "80.) As there is no obligation on the director to obtain security, there is consequently no requirement to check the ability of a personal guarantor to meet his obligations under a personal guarantee.
>
> 81.) However, as outlined above, the obligation to secure the debt may be inferred from the obligation to act in good faith and/or reasonably if a director as of the date of provision of the loan was or should have been aware that the borrower is or will become unable to repay the loan. In this case it is clear that it would be a breach of statutory duty for the director to enter into such a personal guarantee agreement. Moreover, if the director in the above circumstances decided to obtain a personal guarantee from a guarantor to ensure that the loan was secured, then such guarantor would be de facto a 'subsidiary debtor', and thus, the director should also verify whether such a guarantor is reliable.
>
> 82.) In my opinion, a director may be satisfied if the personal guarantor is a well-known owner of a bank (if there was no opposite information and/or information about his critical financial position). In the context of the present case, it means that it was enough for Mr Drelle to obtain reliable information from Mr Motylev and public sources regarding the amount of Mr Motylev's assets, including in the form of shares in credit organisations and/or immovable property.
>
> 83.) Therefore, I consider ill-founded the position of the Russian Courts that Mr Motylev's solvency was not properly evidenced by an income certificate, and that Mr Motylev's ownership over real estate and shares in different companies does not indicate his possibility to fulfil the obligation to repay the Loan. On the contrary, this evidences that Mr Motylev was solvent. Russian law does not require to prove the solvency of the guarantor by an income certificate. Mr Drelle also referred to a turnover statement on Mr Motylev's accounts and the fact that the bank issued a US 5 mln loan to Mr Motylev, but the courts declined these arguments without proper reasons. The courts did not explain why, even if the banks had issued the loans in favour of Mr Motylev (where it is known that financial institutions employ rigorous approach to check a borrower's / surety's ability to service and repay the loan), Mr Drelle (as a director of a non-financial company) should have checked Mr Motylev's solvency even more carefully or should not have advanced loans against Mr Motylev's surety.

> 84.) Thus, the arguments set out in paragraph 41 of Mr Botiuk's witness statement, paragraph 116 of the Mr Drelle's second witness statement and paragraph 47.2 of his third witness statement, where it is contended that Mr Motylev had considerable assets and owned significant shares in banks and pension funds, and probably has valuable assets even now, should have been given proper consideration in the Russian civil proceedings. As I understand this from Mr Drelle's Response, the relevant evidence was before the Lower Court and was not properly considered by it (see Section 1.2.10 in this regard below), however, I am not aware of the specific evidence presented by Mr Drelle to the court."

81. At paragraph 176 of his report, he states:

> "Fourthly, even if Mr Drelle had a duty to verify the financial state of Mr Motylev, it is inexplicable why in the First Instance Judgment the court stated that the fact that Mr Motylev holds real estate or securities 'does not testify to his ability to perform an obligation'. Contrary to that finding, real estate and securities are deemed as proper assets for the purposes of determining the party's solvency. Further, as it follows from the Russian Judgments, the value of the said real estate and securities was not evaluated by the courts. Moreover, publicly available information about a person's solvency in the mass media may be taken into consideration when determining the financial state of the counterparty. As follows from the transcript of the court hearing dated 19 March 2019, similarly, the Lower Court did not take into account other evidence related to financial state of Mr Motylev, e.g., extracts from his banking accounts evidencing the scale of his financial operations (which were up to 32 bln RUB) or his tax statements evidencing his income in 2014 of 559 mln RUB. Had the court taken this evidence into account it may have reached a different conclusion regarding Mr Motylev's solvency. Similarly, the evidence presented by Mr Drelle relating to the income of Mr Motylev was disregarded in the Appellate Judgment where it is merely stated that "A.L. Motylev's income statements for 2011-2014 do not confirm his 2 billion roubles income."

82. I note first, from this part of Mr Kulkov's evidence, that his criticism does not extend beyond saying that this aspect of the Russian Judgments was "ill-founded". Secondly, as it is clear from the facts that Mr Drelle did consider it necessary or appropriate to take a personal guarantee from Mr Motylev, then, according to Mr Kulkov, he did thereby come under a duty to establish that the surety was "reliable". Thirdly, Mr Kulkov expressly states that it is his opinion that such duty may be satisfied when the surety is a well-known owner of a bank. The Judge clearly had a different opinion. It is not said that the Judge's opinion was unjustifiably or wildly wrong. Fourthly, when criticising the Arbitrazh Court's apparent failure to consider evidence of Mr Motylev's assets, Mr Kulkov merely

concludes that if the court had taken that evidence into account, it *may* have reached a different conclusion regarding Mr Motylev's solvency.

83. Both the Arbitrazh Court and the Court of Appeal rejected Mr Drelle's case that he was justified in relying on public sources of information. The Arbitrazh Decision states that:

> "The respondent's arguments that A. L. Motylev had assets as at the date of the transaction were considered and dismissed by the court *as not supported by evidence"* (my emphasis)
>
> "… The case materials contain no evidence proving that V. E. Drelle verified A. L. Motylev's financial position in order to check whether the security provided was real. The Arbitrazh Ruling dated 19.03.2019 invited the respondents to provide evidence proving the existence (absence) of information, including information about verification of the surety's financial position as at the date of the suretyship agreements.
>
> V. E. Drelle did not, in violation of Article 65 of the Arbitrazh Procedure Code of the Russian Federation, provide any such evidence.
>
> The objections given by V. E. Drelle, RTK Resurs CJSC and A. Yu. Zheglova that A. L. Motylev was a large banker and had high income were considered by the court; however, there is no evidence proving that, in 2011, he had income capable of covering the suretyship in the amount stated above."

84. The CA Judgment considers Mr Drelle's evidence of Mr Motylev's financial worth in the following way:

> "The fact that A. L. Motylev received, in 2014, a loan in the amount of USD 5,000,000 does not confirm the surety's solvency in 2011 or A. L. Motylev's ability to repay the loan to the debtor for Fort-Steiton LLC.
>
> Other arguments regarding the surety's solvency (publications in mass media, ratings) were not properly confirmed and, therefore, cannot be taken into consideration."

85. It therefore appears to me that whilst not expressly listing or describing the evidence considered by each of the Arbitrazh Court and Court of Appeal, (thus giving rise to the possibility that some evidence may have been overlooked), the Russian Judgments do nevertheless refer to their consideration of such evidence as Mr Drelle put before the courts to justify his view that Mr Motylev was good for the personal guarantee, and rejected that evidence.

86. Viewed in this context, Mr Kulkov's view that the Russian Courts' approach was ill-founded and that his analysis of the evidence would have led to a different conclusion regarding the sufficiency of public information regarding Mr Motylev's

wealth does not, in my judgment, come close to suggesting that there is scope for a substantial dispute as to whether the Russian Judgments are deliberately wrong or so wrong as to be evidence of bias, nor that the conclusions reached by the Russian Courts were such that no court acting in good faith could have arrived at them.

(8.4) Shareholders' approval for the Loan

87. Mr Kulkov opines:

> "177.) Fifthly, in finding that Mr Drelle acted in bad faith due to his failure to obtain approval of the Loan Agreement, addendums on the interest rate reduction and the Debt Assignment Agreement, the courts failed to consider the following (as I understand from Mr Drelle's / RTK's submissions):
>
> > 177.1. information regarding the conclusion of these transactions was provided to shareholders at the shareholders general meeting;
> >
> > 177.2. that no shareholder has ever challenged these transactions.
>
> 178.) These two factors in the paragraph above taken jointly may be deemed subsequent approval of transactions, considering that general shareholders meetings are the ultimate point in time when the shareholders are supposed to learn of the transactions (including the Loan) made by the company.
>
> 179.) One of the three shareholders, Mr Melnikov, is a deputy of Mr Drelle, and therefore it is logical to assume he was well aware of the Loan at the onset. It is important to note, however, that the presumption of bad faith of a director in a situation of lack of corporate approval is rebuttable.
>
> 180.) The rationale for this rule is that if an approval was to be duly sought by the director, the transaction might not have been approved and that would have prevented the causing of damages to the company as a result. In such a factual situation, if the director made a transaction that would not be approved by the shareholders, it could be said that the director acted contrary to the interests of the company where the interests of the company are determined i.a. by its shareholders. But in a situation where the shareholders were de facto aware of the transaction and thus may be deemed to have agreed with it, where neither of them even attempted to challenge it, where the shareholders followed and approved a director's business decisions as a matter of course, this presumption would not necessarily apply.
>
> 181.) The legal relevance of this point is clear: if the Loan Agreement was to be considered by the shareholders, they would

> have formalized their approval. In other words, going through the formal corporate process would not have changed ST's decision to enter into the Loan Agreement; the causation ('but for' test) is simply not met.
>
> 182.) The Russian Courts failed to give any regard to the proper application of this presumption. Additionally, the Russian Judgments did not establish the amount of ST's assets as of the date of the Debt Assignment Agreement in circumstances where ST's assets, according to the witness evidence of Ms Zheglova, amounted to more than 8 billion RUB. Hence, the Loan was less than 25% of the assets and no shareholder approval was to be required for the transfer of the Loan.

88. In the Joint Experts' report, Mr Kulkov states that the court can apply the relevant law in this area, including the concept of de facto approval, regardless of whether the argument is raised or not.

89. Mr Drelle's response to the motion to join Mr Melnikov, Ms Vetoshnykh and Mr Barakin as co-defendants states that the shareholders' meeting unanimously approved the entering into of the Loan, but (at section 2.3) recognised that there was no evidence to support this contention, submitting that such absence of evidence did not "testify to the Defendant's unfair behaviour".

90. His defence in the Arbitrazh Court submitted (in response to the liquidators' argument that the Loan lacked the statutorily required approval):

> "This argument is also confirmed by the fact that the shareholders of Service-Terminal, LLC, did not file claims to challenge the loan agreement made, despite the fact that starting from 2011, they have had an opportunity to examine the balance sheets and obtain information regarding all transactions made by the Company.
>
> Under such circumstances, the absence in the case papers of the minutes of the general meeting of shareholders regarding the approval of entering into the loan agreement does not per se testify to the defendant's unfairness according to the procedure stipulated in cl. 2 of Resolution No. 62 of the Plenum of the Supreme Arbitration Court of the Russian Federation."

91. The Arbitrazh Judgment notes that Mr Drelle's defence stated that the Loan:

> "was approved by the shareholders, there were no objections from them. Moreover [the Loan] did not require corporate approval because providing loans was part of debtor's ordinary course of business."

92. Consequently it seems to me to be at least arguable that insofar as it was Mr Drelle's case that ST's shareholders *did* approve the entering into of the Loan, there

was no need for the Russian Courts to refer to the presumption which Mr Kulkov states they should have applied.

93. It also soon becomes clear, from Judge Frolovicheva's judgment in the Arbitrazh Court that notwithstanding Mr Drelle's assertion that the Loan was unanimously approved by the shareholders, one of those shareholders, Ms EM Vetoshnykh "pointed out" that she had not approved the entering into of the Loan. After that, the focus of Mr Drelle's argument in his submissions to the Court of Appeal appears to have shifted from claiming that the shareholders had unanimously approved the Loan to saying that the shareholders had the relevant information about the Loan from the annual financial statements – it was not hidden from them – but that none of them objected to it.

94. Neither Ms Vetoshnykh' "pointing out" that she did not approve the loan, nor Mr Drelle's initial position that the Loan was unanimously approved by shareholders do not sit comfortably with the evidence given by Ms Zheglova in 2021 in support of Mr Drelle's application to set aside ST's statutory demand, when she said that the shareholders were not asked formally to approve the Loan but that if they had been asked to do so, given that no shareholder had ever objected to Mr Drelle's decisions, she was convinced that all of the shareholders would have voted in favour of the Loan.

95. Drawing these threads together: Mr Drelle's failure to put in any evidence to support his argument, including not providing the Arbitrazh Court with details of the identity of each shareholder; his change of tack and the conflicting evidence of one of the shareholders creates a confused tapestry of his position, one that, in my judgment, comes nowhere near to persuading me that there is a genuine triable issue that the Russian Courts' treatment of this issue was deliberately wrong.

96. As for the Russian Courts' failure to give proper consideration to the issue of causation, the CA Judgment recites the arguments it considered. I accept Mr Phillips' submission that Mr Kulkov's reference to the Russian Courts not considering the "but for" test of causation is not relevant for the purposes of the contest now before me: it was not raised in the Russian Proceedings and it is not open to this Court to impeach a foreign judgment on the basis of arguments that could have been put to the court, but were not and were thus not considered by the court (see *Israel Discount Bank v Hadjipateras* [1984] 1 WLR 137 (at G on page 144)).

(8.5) Failing to give reasons for concluding that the Loan was not in the ordinary course of ST's business

97. Mr Kulkov states:

> "Finally, in my opinion, the Lower Court (as well as the higher courts) failed to properly reason its conclusions that the Loan Agreement was not made in the ordinary course of ST's business. In particular, the court failed to take into account the approach established in case law in relation to determination of whether a transaction was made within the ordinary course of business and did not explain why it considered it irrelevant (see,

> in this respect, my answer in Section 1.2.7.). Further, both the Appellate and the Cassation Courts held that the "issuance of loans was neither a main nor additional type of activity of" ST and therefore the loan transaction cannot be deemed to have been made in the course of ordinary business of ST. This is at best unclear and at worst wrong. It has been established by the SCC's Plenum Resolution No. 28 that the type of activity in the registry does not determine the ordinary course of business. The Charter of ST effective at the time did not contain a list of operations/transactions that the company could have made; it contained only a list of "main types of activity". However, the important point here is that the SCC clarified that a reference in the company's charter or in the company register to certain types of activity by itself has no legal relevance."

98. The Joint Experts largely agree on the interpretation of Article 78 of the JSC Law that defines a major transaction as one which refers to the acquisition or alienation of property worth 25% or more of the company's asset value unless that transaction is made in the ordinary course of business. Whilst Professor Egorov refers to a court practice review statement from March 2001 to the effect (as I understand it) that the legal provisions regarding "major transactions" would not apply, irrespective of the value of the loan, to loan agreements entered into in the ordinary course of business, he also recognises that it was conceivable that in certain cases between 2009 and 2012, the courts would treat loan agreements as agreements entered into in the ordinary course of business.

99. Having set out the Threshold Test and reviewed each of the other grounds of complaint regarding the Russian Courts' application of the substantive law, I consider that it suffices here simply to note that as Mr Kulkov's criticism that the Court of Appeal and Cassation Court's decision on this point is "at best unclear and at worst wrong", even if his conclusion is correct, it does not give rise to grounds that meet the Threshold Test.

(9) Alleged procedural irregularities

100. Before setting out the specific complaints, I remind myself that, as set out at Paragraph 14-163 of *Dicey*, issues concerning the regularity of proceedings go primarily (but not exclusively) to the question of whether there has been a breach of natural justice and that where a procedural complaint has been raised and rejected by a foreign court, it is less likely that an English court will entertain arguments that the defect(s) give rise to a breach of natural justice.

101. The authority relied upon is *Adams v Cape Industries Plc* [1990] Ch. 433 where enforcement proceedings in respect of a judgment of the United States Federal District Court in Texas failed. The defendant was an English parent company of a group engaged in mining asbestos in South Africa. It took no part in the United States proceedings and default judgments were entered. The Claimants contended that the defendant had submitted to the Texan court's jurisdiction in earlier proceedings which had been settled. Towards the end of its judgment, the Court of Appeal considered alleged breaches of the English court's views of substantial

justice in the method by which the damages were assessed for the purposes of the default judgment. It held:

> "Since the ultimate question is whether there has been proof of substantial injustice caused by the proceedings, it would, in our opinion, be unrealistic in fact and incorrect in principle to ignore entirely the possibility of the correction of error within the procedure of a foreign court which itself provides fair procedural rules and a fair opportunity for remedy. The court must, in our judgment, have regard to the availability of a remedy in deciding whether in the circumstances of any particular case substantial injustice has been proved. However, the relevance of the existence of the remedy and the weight to be attached to it must depend upon factors which include the nature of the procedural defect itself, the point in the proceedings at which it occurred and the knowledge and means of knowledge of the defendants of the defect and the reasonableness in the circumstances of requiring or expecting that they made use of the remedy in all the particular circumstances."

102. In *OJSC Bank of Moscow v Chernyakov* [2016] EWHC 2583, Cranston J addressed claims of procedural irregularities giving rise to a breach of natural justice and said, at paragraph 8:

> "As to natural justice, first, a defendant must be given the opportunity so that they can put their case in response: *Jacobson v Frachon* (1927) 138 L.T. 386; *Adams v. Cape Industries Plc* [1990] Ch 433, 563G. A mere procedural defect in the proceedings will not be sufficient. What is required is a substantial denial of justice: *Aeroflot v Berezovsky* [2012] EWHC 3017 (Ch), [54], per Floyd J. However, a defendant must take all available defences in the foreign court and if they are at fault in not doing so, may not impeach the foreign judgment in England: *Israel Discount Bank v.Hadjipateras* [1984] 1 WLR 137, 144 C-H, per Stephenson LJ. A corollary of this is that a defendant may not impeach a foreign judgment by raising defences before the English court where the foreign court has considered and rejected them."

(9.1) Failure to give reasons

103. Mr Kulkov states:

> "…the Lower Court did not provide reasoning for some of Mr Drelle's arguments, and instead simply rejected them altogether without considering them. Such an approach goes against the principle according to which a party to the dispute shall have a right to appeal a court decision and, in particular, be aware of the reasons why its position was rejected in order to effectively appeal these reasons. As I explain above in Issue 3, according to the Constitutional Court, this is an example of an unfair trial."

104. Mr Kulkov recognises that the Arbitrazh Judgment rejected "all other arguments" but states that a summary rejection of such arguments does not qualify as proper reasoning "as the court must consider each and every argument".

105. I do not consider the Arbitrazh Court's general traverse of "all other arguments" was wholly unreasoned. Judge Frolovicheva held that they were "dismissed as unsubstantiated, not supported by evidence and contradicting to the case materials". Even if, as contended by Mr Kulkov, it gave rise to an unfair trial, the first instance decision was subject to a full review by the Court of Appeal, and to further scrutiny by the Cassation Court and Supreme Court. Consequently, even if it is the case that the reasons given as part of the Arbitrazh Court's general traverse of remaining arguments were insufficient, Mr Drelle availed himself of the remedy available in the courts of Russia. Mr Kulkov does not expressly criticise the Cassation Court Judgment nor the SC Judgment. Consequently, in my judgment, any alleged failure to give reasons for rejecting some of Mr Drelle's arguments does not give rise to a genuine, triable issue that the Russian Judgments were obtained in breach of natural justice.

(9.2) Failure to give reasons for rejecting Mr Drelle's arguments on causation

106. Mr Kulkov states:

> "in violation of the SCC's clarification on the distribution of the burden of proof the court failed to give proper reasons to Mr Drelle's arguments that the imputed damages were in fact caused to ST not because the company entered into the Loan Agreement, but because of external events (such as bad faith conduct of the counterparty which commenced after the Loan was granted, the unlawful act of a third person, or the collapse of RCB bank). In essence, these circumstances prima facie indicate that they were beyond Mr Drelle's control, i.e. the requirements on fault and causation are not met. If he could not have prevented such events, there could be no issue of his corporate liability in limine. That could be said to have been "an ordinary business (entrepreneurial) risk" which any other person faced or would have faced if dealt with the same counterparty".

107. I have noted at paragraph 49 that the Arbitrazh Court set out the civil law requirements for the claim to succeed. Judge Frolovicheva also noted that pursuant to Resolution 62, a director may provide an explanation for his actions and give reasons why losses were made:

> "such as unfavorable market situation, negligence of a selected by him/her counterparty, employee or representative of the legal entity, unlawful acts of third parties, accidents, natural disasters and other events etc) and provide appropriate evidence".

108. The Judge's conclusion refers to the Court's consideration of:

> "the cause-and-effect connection between V.E Drelle's behaviour and the loss suffered by the debtor which is confirmed by materials of this case."

109. The Arbitrazh Court found that Mr Drelle was not acting reasonably and in good faith when he procured that ST entered into the Loan without verifying the borrower's or surety's ability to repay the Loan or taking adequate security for it. In short, the Court did not agree with Mr Drelle's argument that the loss suffered by ST arose as a result of the unexpected collapse of RCB; rather, it found that the loss was suffered because he failed to take adequate steps to protect ST against such risks.

110. Having already identified what it considered to be the cause of ST's loss, the Court did not need to look further. Consequently, to the extent that the Court failed to consider Mr Drelle's contention that ST's loss arose as a result of unforeseen circumstances - the unlawful acts of Mr Motylev and/or collapse of RCB Bank – that omission does not, in my judgment, lead this Court to conclude that there is a substantial dispute that the Russian Judgments arose as a result of a breach of natural justice.

(9.3) Dismissal of claims against Mr Drelle's co-defendants

111. Mr Kulkov states:

> "199.) Such expedited proceedings are especially surprising in circumstances when the Insolvency Trustee had a chance (but did not use it) to request evidence through the court and properly prove his position regarding the ST shareholders' identity/composition as of the date of the Loan Agreement, amendments to it and the Debt Assignment Agreement (see also Section 3.4.).
>
> 200. It shall be added that the dismissal of claims against Mr Drelle's co-defendants effectively means that:
>
> 200.1.) the co-defendants are freed from liability for 2 bln RUB because the Insolvency Trustee failed to make out the case against them; and
>
> 200.2.) due to the Insolvency Trustee's failure to make out the case against the co-defendants, Mr Drelle is liable for the entire amount (rather than sharing his liability with the other co-defendants jointly and severally).
>
> 201.) Fourthly, as referred to in more detail in Section 3.4. below it is difficult to explain why the court rendered the First Instance Judgment before its earlier ruling (granting the Insolvency Trustee's motion and requesting evidence related to the identity/composition of the ST shareholders and their corporate

> approval) which was heard in the Appellate Court (thus, depriving the Insolvency Trustee of the opportunity to enforce such ruling in good faith and obtain the proper evidence concerning the status of the co-defendants). Neither the Lower Court, nor the Insolvency Trustee raised an issue whether to stay the civil proceedings pending obtaining the evidence proving whether the proposed co-defendants were proper defendants or not. Thus, the conclusion of the court that the claim against the co-defendants is dismissed because of the lack of the evidence that the co-defendants were the shareholders of the company is not properly grounded."

112. Neither of these points – haste to dismiss the claims, nor lack of reasons – were raised in Mr Drelle's appeal. In fact he opposed ST's application to join his co-defendants. It therefore strikes me as inconsistent for Mr Drelle now to seek to impugn the Russian Judgments on the basis that the Arbitrazh Court did not, of its own motion, stay the proceedings but instead dismissed the claims against his co-defendants too expeditiously.

113. Paragraph 200.1 of Mr Kulkov's Report also impliedly recognises that the Court's decision to dismiss the Petitioner's claims against Mr Drelle's co-defendants deprived ST of its chance to recover the value of the Loan from any other party. It was as much to ST's disadvantage that the claims were dismissed, as it was to Mr Drelle's.

114. Whilst Mr Kulkov states that the reasons given by the Court were insufficient, both the Court of Cassation and Supreme Court were satisfied that the procedural rules had been correctly followed. This Court is not being asked to examine or criticise the steps taken in the litigation by Mr Lisin. The Arbitrazh Court judged the case and the applications before it. On review, no procedural irregularities were found to have been made out. Moreover I note that the obligation to file information regarding the identity of the shareholders appears to have fallen on Mr Drelle rather than Mr Lisin.

(9.4) Ms Zheglova's evidence

115. On 26 February 2021 Ms Zheglova made a witness statement in support of Mr Drelle's application to set aside the statutory demand served upon him by the Petitioner on 9 October 2020. Ms Zheglova was ST's finance director. As noted in the summary of the background to this judgment, her evidence is that she and Mr Drelle were so surprised when the claim was made against him, that they were grasping to find out which party was pushing ST's liquidator to pursue it. She thought of any possible contacts she may have who might be able to get to the bottom of the claim. She contacted Ms Lobanova, the general director of one of the largest audit and consulting firms in Russia whom she knew would be acquainted with the newly-appointed Chairman of the Commercial Court of the Yaroslavl Region, Mr Guschev. It was Ms Lobanova who is said to have spoken to Mr Guschev and returned saying it was not good news for Mr Drelle: GPN was pushing the claim and as such, due to its powerful ties at the highest levels of the Russian state and consequent influence, Mr Drelle would not be able to win the case. At a time when the Arbitrazh Court had heard the case but not yet delivered

its judgment, Ms Zheglova states that Ms Lobanova informed her that judgment would be entered against Mr Drelle for RUB 2 billion.

116. Mr Kulkov's Report states that regardless that the claim had largely been heard by the time of the alleged conversation, the fact that the outcome might have been known in advance was an indicator of a breach of natural justice.

117. This Court must consider Ms Zheglova's witness statement in the context of the test that I have held this Court must apply. Her statement comprises evidence of the fact that her conversation with Ms Lobanova took place. It is not evidence of the truth of what Ms Lobanova is reported to have said and it is not evidence of the accuracy or truth of what Ms Lobanova is said to have learned from her conversation with Mr Guschev. It is "double hearsay" evidence. As such, it is not cogent evidence that there is a good arguable case that there has been a breach of natural justice. Moreover it only refers to the Arbitrazh Judgment. The case was re-examined in the Court of Appeal where Mr Guschev's alleged advance disclosure of the result has no bearing.

(9.5) Viewing the alleged breaches cumulatively

118. I have addressed each of the alleged procedural defects separately and found that none gives rise to a substantial dispute that there was a breach of natural justice. Is this, however, a case where there are so many alleged breaches that whilst none may overcome the evidential hurdle in isolation, cumulatively they come close to or meet the threshold test? The answer, in my judgment, is a firm "No". First, it is relevant once again to note that Mr Drelle did not raise these complaints in the Russian proceedings. Secondly he exhausted all avenues of appeal and neither he nor his lawyers or Expert criticise the findings of the Cassation Court or Supreme Court, both courts having reviewed procedural issues. There is, in my judgment, no cogent evidence to suggest a genuine triable issue that there were procedural defects so serious as to give rise to a breach of natural justice.

(10) State influence / partial proceedings

119. The Joint Experts agree that the fact that the Russian state owns a participation interest in GPN does not, of itself, imply that there was political interference in the Russian Proceedings.

120. Whilst Mr Drelle refers to GPN being owned by the State, it does not appear to be in dispute that it is a 95.68%-owned subsidiary of PJSC Gazprom in which the Russian state owns a 50.23% stake.

121. Mr Drelle's expert, Mr Lough, nevertheless states that GPN's involvement would have been understood by the trial judge as representing the interests of the Russian state. He notes that a striking number of GPN's board members include individuals from within what he describes as "Putin's network". He states:

> "Leaving aside GPN's status as a Gazprom subsidiary and as Russia's third largest oil producer, no government official, regulator, prosecutor or judge can ignore its position as a company controlled by trusted individuals closely who form part

> of the ruling group. This gives GPN like any other state company operated by Kremlin representatives enormous power in Russia. Like its mother company, as well as the largest oil producer, Rosneft, GPN plays an important role in Russia's energy diplomacy with operations in 14 foreign countries, including Iraq and Venezuela. For a Russian judge to rule against such a powerful player requires the backing of an even more influential player or set of interests. it is also noteworthy that the recently appointed Minister of Justice, Konstantin Chuichenko, was the head of Gazprom's legal department and a member of its Management Board from 2001 to 2008."
>
> "…I can only comment on Mr Drelle's case in terms of the legal environment in which the Russian courts have repeatedly ruled against him while judgements against Mr Motylev have not been enforced even if Mr Motylev is now the subject of an Interpol red notice. The decision of the courts to hold Mr Drelle accountable for Servis Terminal's (ST) debt after issuing a judgement against Mr Motylev for the same debt and the indictment of only Mr Drelle after GPN's criminal complaint points to the overall unreliability of the legal system and its susceptibility to political influence. I am in no doubt that a judge would take a great personal risk by ruling against GPN or any other major state company so intimately connected with the Kremlin. I do not know enough about Mr Motylev's personal relationships in Russia but as a prominent banker before the collapse of Russian Credit Bank (RCB) through the establishment of Globex Bank in the 1990s he was clearly well connected with the political and business elites. It is striking that Dyukov, Gazpromneft's CEO personally wrote to the Head of the Main Directorate for Economic Security and Anti-Corruption in the Ministry of Internal Affairs in 2016 'strongly urging' him to investigate Mr Drelle's alleged criminal behaviour related to the loss of funds deposited with Rossiyskiy Kredit Bank. The recipient of the letter and the investigators will have been in no doubt about the importance of the case for Gazpromneft and the need to demonstrate a satisfactory result in view of Dyukov's influence as Head of a company closely connected with the Kremlin."

122. Mr Lough describes a purge of older presidents and judges at district level in 2001 leading to an influx of new judges loyal to the Presidential administration. He quotes a report by the International Commission of Jurists in 2010, "The state of the judiciary in Russia":

> "Threats to judicial independence are reported to be particularly acute in cases where powerful political or economic actors have an interest in an outcome of a case, but pressure on judges permeates the judicial system as a whole. Such pressures can - although they by no means always do - affect a court's ability to

> deliver justice in a wide range of cases. The way the judiciary operates puts pressure on judges through a complex system which is not always apparent or visible. The problem is not one of external pressure only, but to a great extent has to do with internal mechanisms and bureaucracy. These internal mechanisms have become more significant as a result of the government's drive to strengthen the powers of the executive, known in Russia as "strengthening the vertical of power". Methods of inappropriate influence on judges are multifarious and range from manipulation of promotions or benefits to applying direct pressure on a judge regarding a concrete case and the chilling effect on judges of dismissing colleagues perceived to be too independent or outspoken."

123. Mr Lough provides various examples of what he describes as "the most salient cases of manipulation of the judicial/legal process since 2000 for political and other purposes":

i) the "patently unfounded" and subsequently "fantastical" claims against Mikhail Khodorkovsky, a leading businessman who had built his oil company Yukos in the 1990s and whose conflict with Prime Minister Putin during President Medvedev's term (who took office while Vladimir Putin was ineligible to serve another consecutive term) was "deeply personal";

ii) proceedings against William Browder, an American-born businessman and the biggest portfolio investor in Russia, who, following the alleged murder of his tax lawyer, Sergei Magnitsky who refused to testify against Browder, was tried in his absence and convicted of tax fraud in 2013 and sentenced to nine years in jail;

iii) the poisoned political activist Aleksey Navalny who released the well-known documentary "Putin's Palace" and following his conviction in 2013 on charges of embezzlement and fraud was thereby disqualified from running in an election; and

iv) Aleksey Ulyukayev, a former Minister of the Economy (2013-2016) who received an eight-year jail sentence in 2017 for allegedly extorting a $2.2 million bribe from the president of the state oil company, Igor Sechin, one of the most powerful figures in Vladimir Putin's inner circle. Mr Sechin and Mr Ulyukayev had been in conflict over the acquisition by Rosneft of another oil company.

124. ST's expert, Professor Stephan highlights that the proceedings against Mr Drelle involve the winding up of a failed business and not the seizure of valuable assets by the state or state officials. He provides examples of cases where "there is considerable evidence that litigants can win cases against firms in which the Russian state has an ownership interest". He states that "The Russian state reserves its powers as a controlling shareholder to implement national policy, not to settle insignificant commercial disputes where only money, and not firm viability or capacity, is at stake". In relation to these proceedings he opines that:

> "I would not characterize a judicial proceeding over the debt owed to a company in which the state has an indirect ownership interest as one where the state would have any reason to interfere. In the case of the Servis bankruptcy, the relatively modest size of the debt relative to the overhead and net worth of the creditor company, the lack of any political ramifications, and the absence of any high policy relative to the business of the debtor (freight forwarding) further confirm this conclusion."

125. Mr Lough's report makes for uncomfortable reading. However, the cases he provides by way of example concern critics of the state, state interference in nationalisation of energy resources and criminal proceedings. I have seen no evidence of Mr Drelle being perceived to be a critic of President Putin and ST's proceedings against Mr Drelle do not appear to me to carry the same level of state financial and political interest that was clearly (or could be assumed clearly to have been) at play in the examples provided by Mr Lough. Notably, Mr Lough makes no mention of ST losing five motions in its proceedings against Mr Drelle, including its claim for an amount in excess of RUB 7 million for loss of profits.

126. Mr Drelle considers that the disparate manner in which he and Mr Motylev were treated, reflects Mr Motylev's position as a state-favoured individual, the state's interest in proceedings concerning ST and that he has been made a scapegoat for the considerable losses ST suffered as a result of Mr Motylev's failed bank.

127. Whilst it is possible that Mr Motylev, at one stage benefited from a *krysha*, the protection that such a position is understood to provide appears to have evaporated by 2016 when criminal proceedings were brought against him, and even more so by 2018 when he was made bankrupt in Russia before fleeing to England (where he has also been made bankrupt).

128. GPN's CEO, Mr Dyukov, said to be a close friend of President Putin, was able successfully to initiate a criminal investigation and criminal charges against Mr Drelle. Whilst the investigation which he sought to prompt was for RUB 10 billion, in fact it proceeded in respect only of RUB 2 billion. The letter demonstrates a keen interest in the affairs of ST at the highest level of GPN. This is perhaps not surprising when so much money had been lost.

129. However, in *PJSC (Rosgosstrakh)* Moulder J referred to the need to establish on the evidence, improper influence over each of the relevant courts and the need to show that the courts were deliberately wrong and not merely incompetent. The test before this Court is therefore whether there is cogent evidence to support a finding that there is a genuine triable issue that all four of the Russian Courts were deliberately wrong. Is there sufficient cogent evidence to persuade this Court that the low threshold has been met of finding that there is a substantial dispute that the Russian Courts were biased or partial?

130. It is not sufficient for me to be satisfied that there is compelling evidence that Russia frequently encounters problems with judicial corruption and political interference. In *OJSC Co Yugraneft Oil v Abramovich* [2008] EWHC 2613, Christopher Clarke J held at paragraph 496 of his judgment:

> "I have no doubt that Russia has had, and has, corruption problems with some of its judges; and that there is widespread public perception of judicial corruption and political interference in the judicial process… I am equally clear that there are many judges who are not corrupt".

131. The most that I have seen is a keen interest by GPN's CEO to pursue Mr Drelle via criminal proceedings, anecdotal evidence that the Russian courts would be reluctant and/or highly unlikely to rule against GPN and hearsay evidence that the Arbitrazh Proceedings were pre-determined. Mr Drelle's expert's criticisms do not extend beyond the Arbitrazh Judgment and Court of Appeal Judgment. There have been four, fully reasoned judgments. Those judgments, like any, are not immune from criticism. But I have seen no cogent evidence that points to the existence of any potential interference with the judges in all four courts. A relatively small number of potential procedural breaches, a potentially harsh application, with the benefit of hindsight of the law surrounding a director's duties, hearsay, anecdotal evidence and a general recognition that some cases in Russia are infected by bias are insufficient to lead me to conclude that there is a substantial dispute that the proceedings giving rise to the Debt in this case, were tainted by political interference and/or bias.

(11) Return to the relevant test

132. Before considering Mr Drelle's case in relation to sanctions, having now set out my review of the evidence relied upon, I should like to return to the relevant test.

133. Mr Davenport highlighted the absence, in Gloster J's judgment in *International Brands* (which concerned an American judgment), of any reference to the rules, as set out in *Dicey*. This supported his contention that this Court can look behind the Judgment when, in addition to the circumstances set out in *Baron Meats* there is evidence of fraud, collusion or a miscarriage of justice. He focussed on the words of Etherton J in *Dawodu* that all that is required is for the Court to be shown "something" from which it can conclude that if the judicial process had been properly conducted, it would have been found, or very likely found, that nothing was in fact due to the Petitioner.

134. Even if I am wrong in applying the test in *Maximov*, and thus determining that there must be a genuine and substantial dispute that the Russian Judgments in this case were deliberately wrong, I would also not have been satisfied that there is a genuine triable issue that the Judgment was obtained as a result of collusion or a miscarriage of justice. There must be a realistic as opposed to fanciful prospect of success. As noted, it is open to this court to reject evidence because of its inherent plausibility or because it is contradicted by or not supported by the documents (*Ashworth v Newnote*).

135. The criminal investigation letter sent by GPN's CEO undoubtedly demonstrated an interest in Mr Drelle at the highest level of that organisation. The Joint Experts readily agreed that there are many examples of political interference in legal proceedings and judgments infected by political concerns. This Court was open to being shown evidence that the proceedings against Mr Drelle were similarly infected.

136. However, for the reasons I have set out, none of the complaints raised in Mr Kulkov's report amounted, in my judgment, to more than that: complaints. This Court cannot and must not presume to sit as a court of appeal in the Russian Proceedings. Mr Drelle availed himself, unsuccessfully of all avenues of appeal. Having read, and re-read the four Russian judgments in this matter, I have seen nothing to lead me to conclude that there is a genuine arguable case that if there had been a properly conducted judicial process, Mr Drelle would have very likely been found not to have been liable for the alleged breaches of his duties to ST.

137. Mr Davenport submitted that if I see enough to realise that is coming – i.e. that the judgment arose as a result of a miscarriage of justice, then I must stop because such concerns must be investigated in Part 7 proceedings. Using his words, I did not see enough to make me stop. I saw Mr Drelle, having successfully procured that ST received repayment for several loans, unfortunately encounter a different outcome in relation to the Loan thus exposing the risk that the Arbitrazh court found him unreasonably to have imposed upon ST in the form of lending with insufficient assurance and security that the debt could and would be repaid. I saw him appeal against the Arbitrazh Judgment, and I saw three further courts providing reasoned judgments upholding the first instance judgment, both in relation to the procedural approach to the case and the application of the substantive law.

138. Beyond:

i) the hearsay evidence of Ms Zheglova alleging that the Chairman of the court disclosed to a third party, the outcome of Judge Frolovicheva's first instance judgment before it was released;

ii) very serious but nevertheless anecdotal concerns that the importance to GPN of losing a substantial amount of money in ST's insolvency and that the state's interest in GPN would lead all and any judge to know, that life could become difficult for them, were they to hold against the GPN-funded liquidator of ST,

I have simply seen no evidence to lead me to conclude that there is a genuine arguable case that the three judges sitting in the Second Arbitrazh Court of Appeal, the Chairman and two judges sitting in the Cassation Court and the single judge sitting in the Supreme Court approached the case in a partial manner. Judge Frolovicheva ruled against ST in relation to several motions and dismissed its claim for loss of profits. Fraud and collusion are, by their nature, hidden, but even the low threshold test of requiring that the Debt is subject to a substantial dispute requires more than was before the Court in these proceedings.

(12) Sanctions

139. On 26 February 2022 the United Kingdom, the European Commission, France, Germany, Italy, Canada and the United States condemned President Putin's "war of choice and attacks on the sovereign nation and people of Ukraine". Russia is currently subject to sweeping sanctions. Mr Davenport submits that it cannot sensibly be argued that GPN's interests are not coterminous with those of the Russian state and that consequently any order in favour of ST in these proceedings would be to the exclusive benefit of that regime.

140. GPN is subject to sanctions in place since September 2014 under EU law which became part of the UK's retained EU law pursuant to the Russia (Sanctions) (EU Exit) Regulations 2019. However, GPN whilst funding the liquidator of ST, is not itself a party to these proceedings. ST is not a sanctioned entity and Mr Lisin is not a sanctioned individual. In the same way that there was no impediment during the war in Ukraine from the UK's court resources being deployed to consider a bankruptcy petition presented by a Russian trustee against a Russian individual, so too is there no apparent impediment to the court making a bankruptcy order in those proceedings.

Conclusion

141. The Debt claimed in the petition is not subject to a genuine and substantial dispute.