Neutral Citation Number: [2021] EWHC 1386 (Comm)

Case No: CL-2021-000092

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

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

Date: 25/05/2021

Before :

Mr Justice Butcher

- -

Between :

VTB BANK PJSC

Claimant

-and-

VALERI DZHANIBEKOVICH MEJLUMYAN

Defendant

IN AN ARBITRATION CLAIM

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Peter Stevenson (instructed by **Keystone Law**) for the **Claimant**
Vernon Flynn QC and Stephen Donnelly (instructed by **King & Spalding International LLP**) for the **Defendant**

Hearing date: 20 May 2021

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Approved Judgement

Mr Justice Butcher:

1. The matter before me is the adjourned application by the Claimant ('VTB') for an anti-suit injunction against the Defendant, Valeri Dzhanibekovich Mejlumyan ('Mr Mejlumyan'), an Armenian businessman, to prevent him from pursuing proceedings which he has brought in Armenia seeking the termination of a share pledge agreement between the parties which contains a provision for London arbitration ('the Termination Proceedings').

2. The action in this court was begun by VTB on 19 February 2021, and VTB's application for an anti-suit injunction was issued on the same day. By order of Foxton J of 22 February 2021, an *inter partes* hearing of the anti-suit injunction application was directed for the first available date in the week commencing 22 March 2021. In the event, the application was listed before Sir William Blair, sitting as a Judge of the High Court, on 23 March 2021. On that occasion, the court was presented with evidence that Mr Mejlumyan was suffering from Covid-19 related illnesses, and that that had impeded his ability to give instructions to his lawyers. Sir William Blair accordingly adjourned the hearing to the earliest reasonably possible date after 12 April 2021.

3. At the time of that hearing, it was anticipated that there would imminently be the determination of a jurisdiction challenge which VTB had brought in the Termination Proceedings. The adjournment was accordingly on terms whereby Mr Mejlumyan was directed in the meantime not to take any steps in the Termination Proceedings save insofar as they were required to either (1) to appeal against a decision of the Armenian court on its jurisdiction or (2) to procure an adjournment of the Termination Proceedings pending the determination of this application.

4. In the event, as I will revert to below, the Termination Proceedings have not progressed in the interval.

Factual Background

5. The essential factual background to this application was described accurately and succinctly by Sir William Blair in his judgment after the hearing on 23 March 2021 [2021] EWHC 718 (Comm), and I can do no better than to repeat what he said, with minor additions.

6. In 2004, an Armenian company called Armenian Copper Programme CJSC ('ACP'), which was within Mr Mejlumyan's Vallex group of companies, was granted a licence to develop and exploit a copper and molybdenum mine in the Lori region of the Republic of Armenia. The licence was subsequently assigned to ACP's wholly owned subsidiary Teghout CJSC ('Teghout').

7. In 2011, the Armenian subsidiary of VTB provided Teghout with a facility of US$283.3m to finance the construction of the mine, and, as part of the arrangements, the shares in Teghout were transferred to Teghout Investments Ltd ('TIL'), a Cypriot registered company owned 50.05% by ACP and 49.95% by VTB's nominee, Nairi Infrastructure Capital Ltd ('NIC').

8. The 2011 loan was restructured in 2016 under a facility agreement dated 30 September 2016 between Teghout as borrower and VTB as lender, which was guaranteed by four companies in the Vallex group. The facility agreement is governed by English law and provides that all disputes arising out of or in connection with the agreement should be referred to and resolved by arbitration in London under the LCIA Rules.

9. Further security was provided by way of two pledge agreements. One is a pledge granted by ACP on 12 October 2016 over its 50.05% shareholding in TIL – the TIL pledge is subject to Cyprus law and to the exclusive jurisdiction of the Cyprus courts.

10. The other is a pledge granted by Mr Mejlumyan on 30 September 2016 over his 100% shareholding in ACP – the ACP pledge is the relevant pledge for present purposes. It contains various provisions enabling VTB to foreclose by giving the necessary instructions to the Central Depository of Armenia OJSC ('CDA'), though the effect of these is in dispute.

11. Clause 10 of the ACP pledge deals with governing law and jurisdiction. It provides for Armenian law and LCIA arbitration in London:

> '10.1 This Agreement shall be construed and governed in accordance with the laws of the Republic of Armenia.
>
> 10.2 Any dispute (a "Dispute") arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or, termination of this Agreement or the consequences of its nullity) (or any non-contractual obligations arising out of or in connection with this Agreement) shall be referred to and finally resolved by arbitration under the LCIA Rules (the "Rules") of the London Court of International Arbitration ("LCIA").
>
> …
>
> 10.3.4 The seat of arbitration shall be London, England and the language of the arbitration shall be English.'

12. In June 2018, Teghout failed to pay interest which failure VTB treated as an event of default under the facility agreement. It exercised what it contends was its right under the TIL pledge to transfer ACP's 50.05% shareholding to a VTB nominee.

13. On 3 September 2018, VTB called for accelerated repayment of the principal debt and remuneration under the facility agreement totalling US$289,469,803.

14. Those sums not having been repaid, VTB took enforcement steps against the primary and secondary parties (i.e. the guarantors) to the facility agreement, and sought to enforce its rights under the shares pledges. These included the institution of arbitration proceedings under the Facility Agreement ('the Facility Agreement Arbitration'). The guarantors defended VTB's claim by arguing, amongst other things, that any debt owed by Teghout under the Facility Agreement was extinguished upon VTB's securing the transfer of ACP's 50.5% shareholding in TIL pursuant to the TIL pledge. VTB resisted that by arguing that there had been no appropriation of the shares and also that the value

to be attributed to the TIL shares was effectively nil. Those arguments were advanced at a hearing between 15 and 24 July 2020 and in September and October 2020 before a tribunal of Dame Elizabeth Gloster DBE, Gary Born and David St John Sutton. The tribunal's award was published on 18 March 2021. The tribunal found that VTB had been entitled to issue the acceleration notice demanding immediate repayment, and (by a majority) that there had been no appropriation of the TIL shares and accordingly that Teghout's (and the guarantors') obligations were not discharged by the enforcement of the TIL pledge and they remained liable to VTB for unpaid principal and interest. Issues of quantum were reserved.

The court proceedings in Armenia

15. There are two sets of proceedings that have been begun by Mr Mejlumyan in the Yerevan Court of General Jurisdiction against both VTB and the share depositary, CDA. These followed a confiscation notice sent by VTB to Mr Mejlumyan on 19 July 2019 notifying him that, following the failure of Teghout and the guarantors to make payment of the accelerated debt due under the facility agreement, it intended to exercise its rights under the pledge. It is in dispute whether Mr Mejlumyan received that notice.

16. The first set of proceedings, which is what I have termed the 'Termination Proceedings', and which are the relevant proceedings so far as the anti-suit injunction is concerned, were commenced by Mr Mejlumyan on 26 September 2019 (Claim No.31505/02/19). These seek (i) a declaration that the ACP pledge was terminated; and (ii) an injunction prohibiting VTB from enforcing its rights under the pledge as contemplated in the confiscation notice. The gravamen of Mr Mejlumyan's case in those proceedings is that VTB's enforcement of the TIL pledge discharged the ACP pledge.

17. The Yerevan Court granted the *ex parte* injunctive relief sought by Mr Mejlumyan on 7 October 2019, but according to VTB the correct procedure was not complied with.In any case, on 9 December 2019 the injunction was filed with the Enforcement Service of Armenia.

18. However, in the meantime, according to VTB, on 3 October 2019 the ACP shares were transferred by the CDA to VTB's nominee, and as a consequence, the injunctive relief granted by the Yerevan Court was ineffective.

19. On 15 October 2019, Mr Mejlumyan began further proceedings before the Yerevan Court of General Jurisdiction (Claim no.31497/02/19) seeking a declaration that the transfer of shares was unlawful and an order compelling the CDA to cancel the transfer and to register Mr Mejlumyan's title to them. According to VTB, the central ground relied on is that pursuant to the CDA's Rules, no transfer should have been authorised unless and until the CDA had been provided with evidence that the notice of enforcement had been received by Mr Mejlumyan. VTB calls these the 'Enforcement Proceedings'.

20. Though VTB does not seek anti-suit relief in respect of the Enforcement Proceedings, it has referred to the steps that it says were taken in those proceedings throughout 2020 because, as VTB argues, it was the Enforcement Proceedings which were the principal focus of the parties in Armenia in 2020.

21. This is denied by Mr Mejlumyan, whose case is that the Termination proceedings have gone forward apart from a brief period of adjournment in mid 2020, and that delay on the part of VTB in making its application to the English court bars the grant of anti-suit relief.

22. In those Enforcement Proceedings, by a judgment issued on 16 March 2020 by the Court of First Instance of General Jurisdiction of the City of Yerevan of the Republic of Armenia, VTB's application to dismiss the proceedings in favour of arbitration was refused. According to VTB, this was on the grounds that the CDA was a party to the proceedings but was not a party to the arbitration agreement, and consequently that dismissing the claim would violate Mr Mejlumyan's right to bring court proceedings against CDA under the constitution.

23. On 19 March 2020 VTB served its statement of defence in the Enforcement Proceedings.

24. On 30 April 2020, ACP was declared insolvent by the Bankruptcy Court of Armenia on the application of one of its creditors, and insolvency proceedings (no. SnD/055/04/20) ('the Insolvency Proceedings') were opened. On 11 June 2020 VTB applied to the Yerevan Court to have the Enforcement Proceedings transferred into the Insolvency Proceedings. That application was, according to VTB, successful, but on 25 June 2020 the judge of the Bankruptcy Court to whom it had been transferred referred the matter to the President of the Cassation Court of Armenia for reconsideration. On 8 July 2020, the President of the Cassation Court ruled that the proceedings should not have been transferred to the Bankruptcy Court and sent it back to the Yerevan Court for determination.

25. Proceedings recommenced before the Yerevan Court on 16 December 2020. VTB renewed its application to have the matter dismissed in favour of arbitration. That application was rejected on 29 January 2021.

26. There was then a hearing on the merits of the Enforcement Proceedings on 11 February 2021. In a judgment issued on 3 March 2021 the Yerevan Court held that, as a matter of Armenian law, parties to a pledge are entitled to agree their own procedure for notification of enforcement, and that the CDA's rules are satisfied if the agreed procedure is followed. VTB says that the claim in the Enforcement Proceedings was rejected on that basis.

The Termination Proceedings

27. Because of the nature of the objections which have been raised on behalf of Mr Mejlumyan to the grant of anti-suit relief, it is necessary to refer in some detail to what has occurred in the Termination Proceedings.
28. As I have said, these proceedings were commenced on 26 September 2019. That was apparently the day on which the claim appeared on the electronic database (e-portal) of the judicial power, having been handed over to the Yerevan Court on the previous day, 25 September 2019. In the evidence served on behalf of Mr Mejlumyan it is said that the e-portal is accessible to all members of the public, and the information thereon included the names of the parties, the name of the judge, and a short description of the nature of the claim, as follows: 'to rescind the subsequent share pledge agreement'. The evidence for Mr Mejlumyan further says that the decision of the Yerevan Court to admit the Termination Claim for hearings appeared on the e-portal on 8 October 2019.
29. VTB accepts that it first learned of the fact that the Termination Proceedings had been commenced from the Armenian Court's electronic database. What is said by Mr Dallakyan, who is the advocate who has the conduct of the Termination Proceedings on behalf of VTB is that 'VTB did not (and could not) know the nature of [Mr Mejlumyan's] claims until later when it was supplied with a copy of the statement of claim'. Mr Dallakyan says that VTB first got hold of a copy of that statement of claim on 12 November 2019. The nature of the case made in that statement of claim was, as I have already said, that the enforcement of the TIL pledge had discharged the ACP pledge.
30. It is Mr Dallakyan's evidence that VTB was only formally notified of the fact that the court had accepted the Termination Proceedings on 18 May 2020. On 30 May 2020, VTB applied to have the Termination Proceedings dismissed in favour of arbitration. On 1 June 2020, VTB filed a defence in the Termination Proceedings. I will return to the significance or otherwise of this below.

31. On 11 June 2020, the judge in the Termination Proceedings raised the question of whether the Termination Proceedings should be transferred into the Insolvency Proceedings. On 2 July 2020 the matter was adjourned pending the decision of the President of the Cassation Court in the Enforcement Proceedings as to whether those proceedings should be transferred into the Insolvency Proceedings. On 3 August the matter was adjourned to enable the court to consider the decision of the President of the Cassation Court in the Enforcement Proceedings.
32. On 8 October and 14 October the Yerevan Court ruled that the matter would not be transferred into the Insolvency Proceedings, but that the jurisdiction challenge should be served on, *inter alios*, ACP's insolvency administrator. On 2 November 2020 the proceedings were adjourned as a result of Covid-19 restrictions.
33. A hearing on VTB's jurisdiction challenge took place on 8 February 2021. Mr Dallakyan's evidence is that a judgment was initially anticipated on 22 February 2021, but that he has since been informed by the Yerevan Court staff that the judge was taken ill shortly after the hearing of 8 February; and more recently, that the judge is back at work but that there is as yet no ruling on VTB's application to dismiss the Termination Proceedings, and that the judge intends to reopen the examination of that application at a further hearing. On 12 May 2021 the parties were notified that that further hearing would take place on 25 May 2021. Mr Dallakyan's evidence is that, if the examination of VTB's application is heard on 25 May 2021, the Yerevan Court would most likely schedule another date to deliver judgment.

The legal principles

34. The basic principles governing the grant of anti-suit injunctions were set out by Sir William Blair in his 25 March 2021 judgment. As he said, they were not in dispute then, and nor were they in dispute before me. His summary was as follows:

    (1) The claimant must satisfy the court "on the material adduced at the interlocutory hearing" that there is a "high degree of probability" that thereis a binding and applicable arbitration agreement: *Emmott v Michael Wilson & Partners* [2018] 1 Lloyd's Rep. 299 (CA);
    (2) If it is satisfied that there is a binding and applicable arbitration agreement, the court should ordinarily restrain foreign proceedings

brought in breach of the agreement unless the defendant can show "strong reasons" not to do so: *Donohue v Armco Inc* [2002] 1 Lloyd's Rep. 425 (HL) per LordBingham at [24] (see also *Emmott v Michael Wilson* at [38])

(3) Anti-suit relief is a discretionary remedy and there are no absolute or inflexible rules governing its exercise: *Donohue v Armco Inc* [2002] 1 Lloyd's Rep. 425 (HL) at [24]. There are, however, well-established objections, as where the claimant has delayed in applying for relief (*Ecobank Transnational Inc v Tanoh* [2016] 1 WLR 2231, Christopher Clarke LJ at [123]–[127]), and as where the claimant has submitted to the jurisdiction of the foreign court (*SAS Institute Inc. v World Programming Ltd* [2020] EWCA Civ 599, Males LJ at [114]–[116]. A summary is found in David Joseph, *Jurisdiction and Arbitration Agreements and their Enforcement* (3rd edn, 2015), para. 12.130.

The Issues Arising on the Present Application

35. There was no issue between the parties before me that there is a binding and applicable arbitration agreement, or that the subject matter of the Termination Proceedings falls within its scope.

36. As Mr Flynn QC clearly and helpfully identified, the grounds on which Mr Mejlumyan wished to contend that there should be no anti-suit relief were within narrow compass, and were three fold, as follows:
    (1) That VTB had delayed excessively in bring the matter before the court;
    (2) That VTB had submitted to the Armenian Court; and
    (3) That VTB's conduct had been such as to give rise to discretionary considerations which militated against the grant of the relief it sought.

    All three of these matters are ones which are said to be objections which provide grounds whereby, as a matter of discretion, there should not be anti-suit relief notwithstanding that VTB is *prima facie* entitled to it given the existence of the arbitration clause and of the proceedings brought in breach of it.

37. I will deal with each of the three matters in turn though, as Mr Flynn said, while they are independent points in the sense that if Mr Mejlumyan were right about any of

them he would contend that relief should be refused, they were also relied on as supporting each other.

Delay

38. Mr Mejlumyan's case is that VTB has been guilty of delay which was both significant and unexplained. The Termination Proceedings were begun well over a year before the present proceedings were commenced or anti-suit relief sought. Furthermore, during that time, the Yerevan Court had had to devote time and consideration to the case, in particular by holding the hearing on the jurisdiction issue on 8 February 2021. VTB had not been entitled, Mr Flynn submitted, to wait and see what might happen in the Armenian proceedings before seeking anti-suit relief. What appeared to have happened, according to Mr Flynn, was that VTB had waited 'till the point when maximum prejudice would be inflicted on Mr Mejlumyan in [the Termination] Proceedings, with minimal prejudice to it'.

39. By contrast, VTB submitted that little had occurred in the Termination Proceedings. They had not been progressed substantively on the merits at all. VTB had had no obligation to take any action in those proceedings until May 2020. Thereafter until October 2020 they had been adjourned by the Yerevan Court pending the resolution of the issue of whether they should be transferred into the Insolvency Proceedings. Even since October 2020 there had been an adjournment for Covid-19 related reasons, and in any event, the only significant hearing which had taken place was that on 8 February 2021, which had not led to a judgment.

40. Each side referred to authority on when delay might be significant in relation to the exercise of the discretion to grant anti-suit relief. In particular both sides referred to Ecobank Transnational Inc v Tanoh [2016] 1 Lloyd's Rep 360, especially at paragraphs 120-137. I was also referred to Verity Shipping SA v NV Norexa (The 'Skier Star') [2008] 1 Lloyd's Rep 652, and to Raphael, *The Anti-Suit Injunction* (2nd ed.).

41. The summary provided in Raphael, op. cit., paragraph 8.21 is in my judgment accurate and helpful. What is there said is:

'The significance of delay will depend on all the circumstances of a particular case. But some principles have been identified in the case law. First, even where there is a binding exclusive jurisdiction clause, the injunction should be sought promptly, and before the foreign proceedings are too far advanced. Second, the questions of delay and comity are linked. The more closely that the foreign court has become involved with the matter due to the delay, the greater the interference with [the] foreign court that an injunction is likely to produce, and so the stronger the factors against the grant of an injunction. Third, prejudice to the injunction defendant due to delay is significant, and if delay is not prejudicial it may be given significantly less weight. But delay is not necessarily immaterial in the absence of prejudice to the injunction defendant. The need to avoid delay arises from a variety of reasons including, in addition to prejudice to the injunction defendant, waste of judicial resources, the need for finality, and comity towards the foreign court. Fourth, and perhaps most importantly, the courts will take into account the extent to which the delay was justifiable or excusable in the circumstances; and will weigh delay against the importance of enforcing the forum clause. Even delay that can be criticized will often not be sufficient to justify refusing an injunction and thus permitting a breach of contract to continue. It seems that time taken in challenging the foreign court's jurisdiction does not in itself justify delay in applying for an anti-suit injunction.'

42. Having regard to the guidance given in the authorities, I have concluded that the delay in this case does not justify the refusal of an injunction. In coming to that conclusion, the following points have appeared to me to be significant:

(1) While it is the case that the Termination Proceedings were begun in September 2019, there is force in VTB's point that it was unclear that they would be pursued, and that it did not come under any obligation to take any steps in those proceedings until it was formally served in May 2020.

(2) After June 2020 there were adjournments in which it was being considered whether the Termination Proceedings should continue in the Yerevan Court. Had the matter been transferred into the Insolvency Proceedings different considerations would have arisen as to whether an anti-suit injunction could be obtained and on what basis.

(3) The most relevant period in which VTB might be said to have delayed was between October 2020 and February 2021. There was some extenuation of this by reason of the fact that the parties were dealing with the Enforcement Proceedings as well as the Facility Agreement arbitration. Even more significant, however, is the fact that during that period there was not a great deal of progress in the Termination Proceedings. Partly this was because there was a further adjournment for pandemic-related reasons.

(4) The fact that there was a hearing on 8 February 2021 in the Yerevan Court is of course of significance. Nevertheless, it is also of significance that that was a hearing of VTB's jurisdictional challenge: the case has not got further than that. Furthermore, it was, I was told, a hearing of an hour, and it is not one which has led to the court's producing a ruling on VTB's jurisdiction challenge. That remains unresolved. This is accordingly a case in which it can be said that the Termination Proceedings remain at an early stage, and it is not a case of the English court's taking a different view from that of the foreign court as to whether the proceedings in that other court should continue.

(5) An indication of the fact that the Termination Proceedings have not required the commitment of very significant resources, which is relevant to questions of prejudice and is some indication of the limited extent of involvement of the Yerevan Court and thus of the strength of the considerations of comity which arise, can be gleaned from the estimate of the costs which VTB has incurred in the Termination Proceedings. Those costs up to 7 April 2021 were the equivalent of £3470.

(6) I do not consider that it has been shown that Mr Mejlumyan has been prejudiced by such delay as there has been. It does not appear that he has served any evidence on the merits. He has adduced no evidence that he will have incurred irrecoverable costs of any magnitude.

43. In those circumstances, I do not consider that the fact of delay, even taking account of the related considerations of comity which arise by reason of the engagement of the Yerevan Court, of themselves justifies or requires the refusal of relief.

Submission to the Yerevan Court

44. It is submitted on behalf of Mr Mejlumyan that VTB submitted to the Yerevan Court by the service of its defence and that this is a weighty consideration against the grant of the relief sought by VTB.

45. On behalf of VTB it was submitted that this was not a case in which there had been any unequivocal representation that it accepted the jurisdiction of the Yerevan Court. On the contrary, it had taken, as it was put, 'every opportunity to communicate its objection to the assumption of jurisdiction in the Termination Proceedings by the Yerevan Court…'

46. In relation to the possible relevance of submission, I was referred by Mr Stevenson to the decision in Advent Capital Plc v Ellinas Imports-Exports Ltd [2005] 2 Lloyd's Rep 607 at [78], where Colman J said:

'The relevant test is whether the party has by his conduct in the proceedings acted in such a way which is only necessary or only useful if objection to the jurisdiction of the court in question has been waived or has never been entertained at all: see *Williams & Glyn's Bank v Astro-Dinamico* [1984] 1 WLR 438 at p. 444 approving *Rein v Stein* (1892) 66 LT 469 at p. 471. The essence of the test is that – reflected in the word "only" – there has to be an unequivocal representation by word or conduct that objection is not taken to the relevant jurisdiction.'

47. Mr Stevenson further referred to Ecobank v Tanoh loc. cit. at paragraph [67] where Christopher Clarke LJ said this:

'In the present case it seems to me that there has been no submission to the jurisdiction in Togo. … Ecobank was required to plead to the merits. Pleading both to the jurisdiction and to the merits would not have been an acceptance that the Labour

Court had jurisdiction and was not something which was "only necessary or only useful if the objection to the jurisdiction had been waived". It was a response to the requirement of the foreign court that jurisdiction and merits be dealt with together. Where the foreign court has such a requirement it does not seem to me appropriate to treat a party who has made it plain that he objects to the jurisdiction as having submitted to it on the footing that he could, contrary to the requirement of the foreign court, have failed to plead to the merits….'

48. For his part, Mr Flynn referred to what was said in SAS Institute Inc v World Programming Ltd [2020] at paragraph [114] by Males LJ, as follows:

'The fact that an applicant for anti-suit relief submitted to the jurisdiction of the foreign court may also be an important and sometimes decisive factor, but again is not necessarily fatal. The position is fairly summarised in Briggs, *Civil Jurisdiction and Judgments* (6th Edition) at page 550:

> "No reported case holds, clearly and precisely, that an applicant will forfeit the right to ask for an injunction if he has already submitted to the jurisdiction of the foreign court. But if the applicant has taken a step in the foreign proceedings which goes beyond a challenge to that court's jurisdiction, it will be more difficult to persuade an English court that the respondent should now be restrained from continuing with those proceedings … But the principle of the matter seems reasonably clear: an applicant who has already submitted to the jurisdiction of a foreign court should find that this is a substantial obstacle to his obtaining an anti-suit injunction from an English court."'

49. As I have said, what Mr Mejlumyan relied upon as being VTB's submission was the service of its defence on 1 June 2020. Evidence served from Mr Vardazaryan, an Armenian advocate who has represented Mr Mejlumyan in the Enforcement and Termination Proceedings, is to the effect that VTB was not obliged to submit a defence on the merits in order to challenge jurisdiction; it had to submit a defence, at most, if it wanted to make a counterclaim and it did not make a counterclaim. There was, he said, no 'deadline' for submitting a defence. According to Mr Vardazaryan's statement, while Article 139(1) of the Civil Procedure Code of the Republic of Armenia ('ACPC') envisages that 'within a two-week period of receiving the decision

to admit the claim, the defendant presents to the court a statement of defence', the Article does not use a term such as 'must' or 'shall'. His evidence is also that VTB could without serving a defence have submitted objections during the preliminary hearings, or even during the main hearings.

50. Mr Dallakyan, in his responsive evidence served on behalf of VTB, says that there was indeed a 'deadline' for the service of the defence. He refers to Article 180 of the ACPC which, in his translation, refers to a 'deadline' for the service of the defence; as well as to the terms of Articles 139 and 119 of the ACPC. Mr Dallakyan says, in his second witness statement, that 'if VTB had not complied with the deadline for submitting its defence set by the ACPC, it would have run the risk of losing the right to submit such defence completely. It would only have been able to serve a defence out of time with the permission of the court which would have to be persuaded that there was a good reason for the failure to comply in the first place.'

51. I am satisfied that there has not been any unequivocal representation by words or conduct that VTB is not taking an objection to the jurisdiction of the Yerevan Court in respect of the Termination Proceedings, and that it has not submitted to that court in a way which counts against the grant of an anti-suit injunction.

52. In this regard:

(1) The defence was served shortly after VTB had applied to have the Termination Proceedings dismissed on jurisdictional grounds. This makes it difficult to regard it as having been an unequivocal representation that objection to the jurisdiction was not taken.

(2) I accept VTB's evidence and argument that there was a procedural deadline set for the service of a defence. As to this, I had difficulty with Mr Vardazaryan's evidence that Article 139 of ACPC did not impose such a deadline for the simple reason that, though he said it did not include any wording such as 'shall' or 'must', the only translation of the relevant part of Article 139 which has been put before the court does say that 'the respondent **shall**, within two weeks after receiving the decision on accepting the statement of claim, send the response to

the statement of claim to the court' (emphasis added). Mr Vardazaryan's own evidence appears to be that if that is the sense of Article 139 then there was a deadline. Furthermore, I consider that the further provision in Article 139, which refers to the possibility of the court's extending the term for submitting a response, is consistent with the first part of the Article imposing a deadline for such service.

(3) Applying the test which I consider to be appropriate and indicated by authority of whether the service of the defence was 'only necessary or only useful if the objection to the jurisdiction had been waived', I consider that it was not only so necessary or useful. It was necessary, or at least 'useful', in order to avoid the risk of which Mr Dallakyan gives evidence, namely that, in the event of the jurisdictional challenge failing, VTB would not be able to put forward a defence on the merits unless it was able to persuade the court that there had been a satisfactory reason for the deadline not having been complied with.

VTB's conduct

53. Mr Flynn on behalf of Mr Mejlumyan put forward a third basis on which he contended that anti-suit relief should be refused, based on what he contended was VTB's unsatisfactory conduct. The principal strands of this argument were as follows. First, that VTB had not made a fair presentation of the case in the evidence which was served in support of its application for an anti-suit injunction and which was before Sir William Blair. That point was put forward as one which arose whether or not VTB had strictly been under a duty to make full and frank disclosure in the evidence for and at the hearing in front of Sir William Blair. Secondly that VTB has acted inconsistently in that, after its agent NIC had commenced another LCIA arbitration, NIC then sought *ex parte* relief from the Yerevan Court freezing Mr Mejlumyan's assets in Armenia. That was in breach, as Mr Mejlumyan says, of Rule 25.3 of the 2014 LCIA rules.

54. The complaint that VTB had not made a fair presentation was said to be founded on the fact that VTB had not told the court: when it was that VTB had actually become aware of the commencement of the Termination Proceedings and had given the

impression that it was not before 12 November 2019; that, as Mr Mejlumyan said was a fair inference, VTB had taken steps to ensure that the ACP shares had been transferred to VTB's nominee on 3 October 2019 as a result of knowing about the Termination Proceedings; and that there was an issue as to its having submitted to the jurisdiction of the Yerevan Court by the service of its defence.

55. I am not persuaded that there was anything in the way in which VTB presented the case which can be said to have been unfair. In particular, in Mr Dallakyan's first witness statement (of 19 February 2021), the date of commencement of the Termination Proceedings is given, and it is said that 'VTB learned of the fact that the Termination Claim had been lodged from the electronic database of the Armenian court system', and gave the link. His evidence was that the nature of the claim was not known until VTB had had sight of the statement of claim, which was on 12 November 2019. I do not consider that this was an unfair presentation of the facts. In any event, even if VTB had been aware of the nature of the proceedings from the time of their commencement, I do not consider that this would have made any material difference to an assessment of the amount of delay and its significance.

56. Equally I am not satisfied that there was anything unfair in VTB's not saying that the steps to ensure the transfer of the ACP shares in early October 2019 had been prompted by the commencement of the Termination Proceedings, because it does not appear from the evidence that they had been. Mr Sellars, in evidence submitted on behalf of VTB by way of his Fourth Witness Statement, says that 'VTB's decision to enforce and arrange the transfer of the ACP Shares (which were initiated by VTB sending the Confiscation Notice in July 2019) pre-date notification of the Termination Claim. The enforcement and transfer of the ACP Shares were not done responsively to the Termination Claim at all.' I do not see how that evidence can be disregarded.

57. Nor in my view was there any unfair presentation in relation to the question of submission to the Yerevan Court. In his witness statement of 19 February 2019 Mr Dallakyan referred to the fact that VTB had filed a defence, and had explained the basis on which he said that he considered that that had to be done. I do not consider that this was materially incomplete or unfair, given his belief that there had indeed

been a deadline for the service of the defence, and the fact that the argument that there was no deadline had not, at that stage, been articulated.

58. As to the second point, namely the suggestion that VTB had acted inconsistently, I could see nothing in it. Insofar as NIC sought a freezing order against Mr Mejlumyan it was, as I understand it, sought in support of the LCIA arbitration which NIC had commenced. Even if, as Mr Mejlumyan contends, it was a breach of LCIA rules for NIC to seek such a freezing order in the circumstances which obtained, which I doubt but do not decide, this was a very different situation from commencing substantive proceedings such as the Termination Proceedings in breach of an arbitration clause, where those substantive proceedings cannot be said in any sense to support the arbitration.

Conclusion

59. Thus I am not persuaded that, individually or collectively, the points taken by Mr Mejlumyan provide a reason for refusing an anti-suit injunction. I consider that there are no good grounds why Mr Mejlumyan should not be held to his contract. I have had regard to the fact that VTB would be significantly prejudiced if he were not. This is not least because the relief which is sought in the Termination Proceedings appears designed to assist Mr Mejlumyan in seeking to nullify the effect of the arbitration award in the Facility Agreement arbitration. Looking at the matter in the round, I consider that the case is one in which anti suit relief should be granted, as sought by VTB.