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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

No. CL-2023-000120

[2023] EWHC 3554 (Comm)

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 21 July 2023

Before:

THE HON. MR JUSTICE BRYAN

Between:

EUROPEAN BANK FOR
RECONSTRUCTION AND DEVELOPMENT — Claimant

- and -

(1) TATIANA VYSOKOVA
(2) VASILY VYSOKOV
(3) PUBLIC JOINT-STOCK COMPANY
COMMERCIAL BANK — Defendants

MS M. SCHMELZER (instructed by Baker Botts (UK) LLP) appeared on behalf of the Claimant.

THE DEFENDANTS did not appear and were not represented.

A P P R O V E D   J U D G M E N T

MR JUSTICE BRYAN:

A. Introduction

1 This is EBRD's application for a default judgment pursuant to CPR 12.4(3)(a) ("the application") in respect of its claim in these proceedings, which have arisen as a result of breaches by the defendants of a shareholder agreement, dated 17 October 2005, between, amongst others, EBRD and the defendants ("the SHA") on the basis that the defendants have not filed an acknowledgment of service and the time for doing so has expired. There is before me a draft order and I am invited to enter judgment in default, there not having been any filed acknowledgment of service and the time for doing so having expired.

2 I should say that this application, which is an oral application remotely by MS Teams, is on notice to the three defendants, which are Mrs Tatiana Vysokova and Mr Vasily Vysokov (husband and wife) and the company, Public Joint-Stock Company Commercial Bank 'Center-Invest'.

3 This hearing has been fixed through the Commercial Court with the defendants being on notice of that hearing. In addition, they have been notified as well that this hearing is taking place today remotely and have been provided with access to the Teams link so that they can attend if they wish. At the start of the hearing, I asked whether or not any of them were present and none of them were present, albeit that one of them had accepted the Teams link. In those circumstances, where I am satisfied that they have had full and proper notice of this hearing, I indicated at the start of the hearing that the hearing would proceed without their presence.

B. Relevant Background

The Parties

4 EBRD is a multi-lateral development bank, headquarters in London. It is an international institution and has the legal capacities of a body corporate. The company, that is the third defendant, is a Russian commercial bank with its registered address in Rostov-on-Don, a city in southern Russia. EBRD currently hold 16,640,715 shares, which is 19.74 per cent of the voting shares in the company. The first defendant, Mrs Vysokova, and the second defendant, Mr Vysokov (together "the Vysokovs") are, as I have already identified, husband and wife. They are among the founding shareholders of the Company and its largest shareholders. Together they hold 24.43 per cent of the voting shares in the Company.

5 The other major shareholder in the company is DEG-Deutsche Investitions- und Entwicklungsgesellschaft mbH ("DEG"), a general financial institution. DEG currently hold 16.14 per cent of the voting shares in the company. The remaining circa 40 per cent of voting shares are held by an assortment of shareholders with smaller holdings.

The SHA

6 On 17 October 2005, EBRD, DEG, the Vysokovs and the Company entered into the SHA aimed at regulating their rights and obligations in relation to the company and each other. The other shareholders in the company are not parties to the SHA. The SHA established a number of important investment protections for EBRD and DEG, including a number of

negative covenants stipulating that certain actions must not be taken without EBRD's consent.

7 For present purposes, the key provisions are the following, to which I have been taken during the course of oral argument by Ms Schmelzer, who appears on behalf of the claimant. Those sections are as follows:

(1) Section 3.02(a) provides that as long as either EBRD or DEG is a shareholder in the Company, no resolution with respect to any "Reserved Matters" may be proposed to the Board or the shareholders or become effective without the affirmative vote or consent of EBRD and DEG. The reserved matters include "any resolution to change the size of the share capital".

(2) Section 3.02(c) provides that the Vysokovs shall, in respect of any vote on any Reserved Matter by the General meeting of Shareholders, vote on the Reserved Matter in the same manner as EBRD and DEG.

(3) Section 3.11(g) provides that the Company shall not, and the Vysokovs shall procure that the Company will not, make changes or permit changes to be made to the Company's share capital, or otherwise take any action that may result in dilution of the equity interest of either EBRD or DEG in the Company without each of EBRD's and DEG's prior written consent.

(4) Section 4.01(d) provides that the Vysokovs shall not permit the Company to change its share capital unless otherwise agreed by EBRD and DEG.

(5) Section 6.01 provides that the SHA shall continue in effect with respect to EBRD until such time as EBRD ceases to own any shares in the Company and each and every obligation of the Vysokovs and the Company in favour of EBRD in connection therewith has been performed in full.

(6) Section 6.14 is an English governing law clause and Section 6.15(b) provided that each of the Vysokovs and the Company irrevocably appoints Law Debenture as its authorised agent to receive service of process in England and submits to the non-exclusive jurisdiction of the English courts.

The Charter

8 The Company's corporate charter ("the Charter") contains the following provisions, which I consider to be relevant to this dispute:

(1) Article 14.2.12.6 provides that the general meeting of the Company's shareholders is competent to resolve on increase from the Company's share capital by placing additional shares.

(2) Article 14.2.10 provides that resolutions concerning an increase in the Company's share capital may be adopted by the general meeting of the Company's shareholders only if proposed by the Board and must be adopted by a 75 per cent majority of the voting shares participating at the meeting.

Relationship between the Parties

9 The evidence before me is that EBRD, DEG and the Vysokovs cooperated for many years following EBRD's and DEG's investments in the company and, that until 2022, EBRD was represented on the Company's Board through one (and later two) nominee directors. However, there has been no EBRD representation on the Company Board since 2022.

10 The evidence before me, which I accept, is that beginning in late 2019 and continuing to date the Vysokovs have repeatedly breached EBRD's rights under the SHA and failed to ensure that the Company did not breach its own obligations under the SHA. It is said with some force that the apparent intention and effect of this conduct was (and remains) to maintain the Vysokovs' tight control over the company and to disenfranchise EBRD and DEG in violation of the protections afforded to them under the SHA and the Charter.

11 There is before me a number of witness statements from Dr Johannes Koepp. In his first statement at [29] - [69] he sets out the history of those breaches and the deterioration of the relationship between EBRD and the Vysokovs.

The Proposed Resolution

12 On 3 February 2023, the Company posted a notice on a Russian corporate disclosure website, called the Interfax corporate disclosure website, which announced that the Board had resolved to convene an EGM of the Company's shareholders for 9 March 2023 to vote on a resolution (by an absentee ballot) to increase the Company's authorised share capital by placing additional shares ("the Resolution").

13 As will be appreciated from the quotations from the SHA, a resolution increasing the share capital of the Company is a reserved matter under s.3.02(a) of the SHA, which requires EBRD's consent. The evidence before me is that EBRD's consent was neither sought nor granted prior to the Board's vote on 3 February 2023 and that also it has not been sought since. The evidence before me is that EBRD was not aware of the Board's decision until the publication of the Interfax notice and was unable to obtain any further details regarding the proposed Resolution until 23 February 2023, when it obtained a copy of a proposed decision for the EGM from a third party (the "EGM Agenda").

14 The EGM Agenda shows that the Resolution aims to increase the Company's share capital by 81 million ordinary shares, which would roughly double the amount of the Company's existing shares and also, of course, at the same time dilute the shareholding of EBRD. No further information was provided and the evidence before me is that EBRD still does not know what the purported purpose behind the proposed share capital increase is.

15 On 17 February 2023, EBRD sent a letter to the Vysokovs and the Company stating that the Board's proposal of the Resolution for voting at the EGM was in breach of EBRD's rights under s.3.02(a) of the SHA and requiring the Vysokovs and the company to take immediately all necessary steps to withdraw the Resolution from the EGM. EBRD has received no response to this letter.

16 In the context of the facts, and acting on an assumption that its request that the Resolution be withdrawn was likely to be ignored, the evidence before me, and that is from Dr Koepp's 5th witness statement at [26] – [30], is that EBRD also made a number of unsuccessful attempts to obtain voting ballots for the 9 March EGM.

Breach of the SHA

17 I am satisfied that the Board's proposal of the Resolution to the EGM scheduled for 9 March 2023 without EBRD's consent is a breach of s.3.02(a) of the SHA. By the same token, so are, as will become apparent, the Board's proposals of the Resolution to reconvene EGMs scheduled for 3 April, 15 May and 6 October 2023.

18 I am also satisfied that if the Resolution, or a substantially similar resolution, is passed, that would also constitute a further breach of s.3.02(a) and a breach of the negative covenant in s.3.11(g) (by both the Vysokovs and the Company) and of s.4.01(d) (by the Vysokovs).

19 In addition, s.3.11(g) and 4.01(d) of the SHA would further be breached if, once the Resolution or a substantially similar resolution has been passed, or purported to have been passed, the Company takes any steps to implement that resolution or otherwise makes changes or permits changes to be made to its share capital.

20 If the proposed Resolution (or a substantially similar resolution) is passed, i.e. to create 81 million new shares, the Company's share capital will effectively be doubled with the consequence that EBRD's share of the Company's voting shares will be reduced from 19.74 per cent to approximately 10 per cent. Ms Schmelzer says with some force that that would be a very serious consequence and is precisely the mischief that the SHA provisions were designed to prevent.

The present proceedings and postponement/cancellation of the EGM

21 In order to protect its position, on 28 February 2023 EBRD filed an *ex parte* application with the Commercial Court seeking an interim injunction to restrain the defendant from proceeding with the Resolution (or any substantially similar resolution). Then, on 1 March 2023, the claim form in the action was issued.

22 On 6 March, following an *ex parte* hearing before His Honour Judge Pelling KC, the court granted EBRD's application and issued an interim injunction on the terms sought ("the 6 March Order"). The next day, 7 March 2023, Baker Botts served the claim form, a response pack, the 6 March Order and further documents regarding the 6 March hearing ("the Service Documents") on the defendants by hand delivering them to Law Debenture, the defendants' agent for service of process in England.

23 Law Debenture responded on the same day, noting that it would not be forwarding the Service Documents, as its appointments by Mrs Vysokova and the company, according to it, had lapsed in 2006 and that it had never been engaged by Mr Vysokov. I am satisfied, however, that the fact that Law Debenture may have no actual authority to receive service of the documents is material. In this regard, the Service Documents have, I am satisfied, been validly served in accordance with the SHA (see *Barclays Bank Plc v Al-Saud* [2021] EWHC 701 (Comm) at [3]-[4]). Accordingly, pursuant to CPR 6.14 and 7.5(1) the date of deemed service of the claim form was 9 March 2023.

24 Baker Botts also sent copies of the Service Documents to Mr Vysokov and Mrs Vysokova and Ms Lydia Simonova (the CEO of the Company) by email on 7 March 2023 at their usual email addresses and also EBRD's Russian legal advisors attempted to effect personal service on the defendants in Russia, as explained by Dr Koepp in his 5th statement at [36.5]-[35.6].

25 Even though EBRD did not receive a response from any of the defendants to any of these communications at the time, the evidence before me, as is now clear, is that at least Mr Vysokov received the documents and studied them in some detail, because, as will become apparent, he wrote a letter on 14 March which it appears was sent to the Commercial Court. That fact was only appreciated at a later stage, as shall become apparent.

26 On 10 March 2023, the company posted two notices on the Interfax website, stating that the EGM scheduled for 9 March had not taken place due to a "*lack of quorum*" and that the Board had resolved to reschedule the EGM for 3 April 2023.

27 In the meantime, on 24 March 2023 at the return hearing, Mr Justice Bright granted EBRD's application for a continuation of the 6 March Order and issued a further interim order in the same terms ("the 24 March Order"). The evidence before me is that the defendants did not attend that hearing.

28 On 27 March 2023, Baker Botts served three copies of the 24 March Order on the defendants via Law Debenture in London and sent a copy to each of the defendants at their usual email addresses. EBRD did not receive a response from any of the defendants to the service of the 24 March Order.

29 However, on 31 March 2023, the Company posted an e-disclosure notice on Interfax indicating that the Board had voted to postpone the reconvened EGM, this time until 15 May 2023. No reason was given for that postponement.

30 Then, on 11 May 2023, the Company posted an e-disclosure notice on Interfax indicating that the Board had voted to further postpone the reconvened EGM until 6 October 2023. Again, no reason was given in that e-disclosure notice.

31 That then forms the backdrop to the current application. In the absence of any engagement from the defendants and in the light of the continuing failure of the defendants to file an acknowledgment of service, on 28 June 2023 EBRD filed the application, which is before me, with the court.

32 On 29 June 2023, Baker Botts served three copies of the application notice, the draft order and the supporting evidence on the defendants via Law Debenture in London and also sent a copy to each of the defendants at their usual email addresses.

33 There was a development on 5 July 2023 because, in response to an invitation for a listing appointment from the Commercial Court, Mr Vysokov sent an email noting that it was a "technical impossibility" for the defendants to participate in these proceedings and asked a Mr Max Ziff to explain the reasons to the court ("the 5 July email").

34 On 7 July 2023, Mr Ziff then emailed the listing office (copied to Baker Botts) (the "7 July Email"). That email attached a letter from Mr Vysokov, dated 14 March 2023 (the "14 March Letter") to which I have already referred. That letter was addressed to Dr Koepp at Baker Botts and copied to HHJ Pelling KC, which had allegedly been sent at that date, albeit that Dr Koepp confirms he did not receive it at the time.

35 The 14 March letter (i) asserted that due to the current geopolitical situation the defendants were unable to retain English legal counsel; (ii) contested the effectiveness of service of the

6 March Order; (iii) argued that both EBRD and the defendants were prohibited from engaging in the present proceedings in the English courts by orders of the Rostov court; and (iv) alleged, although without providing any details or evidence, that compliance with the 6 March order would allegedly require the defendants to act in breach of Russian law and the Rostov court order. The 14 March letter, to which I have been taken in detail, did not address the proposed Resolution.

36 The 7 July Email reiterated the points made in the 14 March Letter, pointed to difficulties arising from the Russia/Ukraine war and asserted that the SHA was invalid under Russian law. This argument had been anticipated by Dr Koepp in his first statement and dealt with at [59]-[61] and [92], in compliance with EBRD's duty of full and frank disclosure when they applied for the 6 March Order.

37 I am satisfied, having carefully considered Dr Koepp sixth witness statement in particular, at [35]-[72], that the points arising from the 4 March Letter, the 5 July Email and the 7 July Email do not have any bearing on EBRD's application before me today.

38 In due course, Baker Botts responded to that correspondence by a letter on 12 July 2023 in which they noted, amongst other matters, that the defendants were in continuing breach of the 24 March Order for as long as the EGM remained scheduled for 6 October 2023. The evidence before me is that, to date, Baker Botts has not received a response from Mr Vysokov or the other defendants to this letter.

39 There was then a development on 13 July 2023 when Ms Simonova sent an email to EBRD stating the Board had taken the decision that day to cancel the EGM scheduled for 6 October 2023. This was confirmed in a notice published by the Company on Interfax the same day. No reasons were given for the Board's decision, either publicly or in Ms Simonova's email.

40 As identified at the hearing before me today, EBRD does not know why the EGM and, thereby, the vote on the proposed Resolution had been cancelled now, over five months after that Resolution was initially proposed. It says, in parenthesis, that in fact it still does not know why the Resolution was ever proposed in the first place either. Whilst EBRD does not know why the EGM and the vote have been cancelled, it suggests that it may be that in cancelling the EGM the defendants have recognised that passing the Resolution would be, as it would be, a violation of an English court order, which would have potentially serious consequences. I will return to that in due course.

41 Equally, it is submitted that the timing of the cancellation may have been influenced by the upcoming hearing of this application before me today. It is possible, suggests EBRD, that the defendants cancelled the EGM in an attempt to persuade this court that the immediate threat to EBRD's rights under the SHA had passed and, in that regard, leading to the suggestion that that would make a final injunction in the terms sought unnecessary.

42 I am satisfied, however, for the reasons identified by EBRD both in their Skeleton Argument and in the oral submissions that I have heard today, that any such argument would be misconceived. The very fact that the defendants acted in first postponing and then cancelling the EGM demonstrates, in my view, that an English court injunction will be an effective measure in protecting EBRD's rights and for the reasons identified by Dr Koepp in his sixth witness statement, in particular at [78].

43 In any event, for the purposes of today's hearing and despite the recent communications that I have referred to, the defendants have still not filed an acknowledgement of service. Instead, by the 5 July Email they have effectively confirmed that their intention is not to participate in these proceedings. That is notwithstanding the fact that they have been given notice of today's hearing and have been given every opportunity to attend if they wish.

44 It is against that background that I am invited to enter judgment in default in the terms of the draft order by which EBRD seeks a final injunction that in essence restrains the defendants from proceeding with and passing any resolution to increase the Company's share capital without EBRD's consent.

45 I should note that in its claim form EBRD had also included a claim for declaratory relief, acknowledging the court's general reluctance to grant declaratory relief following a judgment in default and given the fact that in this case a declaration would, for practical purposes, add little to the injunction sought by EBRD. EBRD is, in the application before me today, pursuing its request for injunctive relief only. It is because of the fact that they are seeking not a monetary judgment, but injunctive relief, that it has been considered, rightly, necessary and appropriate to have an oral hearing before this court.

C. The Law

46 CPR 12.4(3) provides that if a claimant wishes to obtain a default judgment on a claim which consists of or includes a claim for a remedy other than a sum of money, or delivery of goods, they must make an application in accordance with Part 23.

47 CPR 12.12(6) stipulates that:

> "[B]oth on a request and on an application for default judgment the court must be satisfied that—
>
> (a) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence);
>
> (b) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired;
>
> (c) the defendant has not satisfied the claim; and
>
> (d) the defendant has not returned an admission to the claimant under rule 14.4 or filed an admission with the court under rule 14.6."

48 Pursuant to CPR 58.8(1):

> "[I]f, in a Part 7 claim in the commercial list, a defendant fails to file an acknowledgment of service, the claimant need not serve particulars of claim before he may obtain or apply for default judgment in accordance with Part 12."

49 In the proceedings in the Commercial Court, the period for filing an acknowledgement of service is 14 days after service of the claim form (see CPR 58.6(2)) and according to CPR 12.12(1):

> "Where the claimant makes an application for a default judgment, the court shall give such judgment as the claimant is entitled to on the statement of case."

50 The applicable principles are well established and they were considered by Mr Justice Briggs (as he then was) in the case of *Football Dataco Limited v Smoot Enterprises Ltd* [2011] 1 WLR 1978 at [16]-[19] (as was subsequently endorsed by the Privy Council in 2023 in *Lux Locations Ltd v Zhang* [2023] UKPC 3 at [45]):

> "Default judgment is not, in any circumstances, a judgment on the merits …
>
> The provisions in [CPR 12] which require a Part 23 application are triggered not by reference to anything connected with the legal foundation for the cause of action, but rather by aspects either of the relief sought (such as an injunction) … It must be supposed that those aspects of the relief sought, …, call for some supervision by a judge of the process for obtaining default judgment. In the case for a claim for injunction that may be assumed to derive from the need to tailor the extent of the injunction to the cause of action asserted. …
>
> I do not consider that rule 12.11(1) [now CPR 12.12(1)] requires the court to second-guess an assertion in the particulars of claim that, as a matter of law, the facts alleged provide the claimant with a cause of action …"

51 As is well known, the court has jurisdiction to grant final injunctive relief under s.37(1) of the Senior Courts Act 1981 where "it appears to the court to be just and convenient to do so." When a court is called upon to grant a final injunction to enforce a negative covenant, an injunction, whether in mandatory or prohibitory form, will usually be granted, but may be refused where it would be unjust or unconscionable.

52 In that context, arguments over whether the injunction should be classified as prohibitive or mandatory are likely to be irrelevant. What matters is what the practical consequences of the actual injunction are likely to be (see *SDI Retail Services Ltd v The Rangers Football Club Ltd* [2018] EWHC 2772 (Comm) at [50]-[51] per Teare J applying *National Commercial Bank Jamaica Limited v Olint Corpn Ltd* [2009] 1 W.L.R. 1405).

53 As identified in *Gee on Commercial Injunctions*, it is well established that the court has jurisdiction to grant a final injunction:

> "… where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong. … the jurisdiction involves proof that unless the

court intervenes by injunction there is a real risk that an actionable wrong will be committed. There is no fixed or "absolute" standard for measuring the degree of apprehension of a wrong which must be shown in order to justify quia timet relief. The graver the likely consequences and the risk of wrongdoing, the more the court will be reluctant to consider the application as "premature". But there must be at least some real risk of an actionable wrong. If the court decides to grant a final injunction the width of that injunction is a matter for the court's discretion and can be tailored to the circumstances."

(see at [2-045]. See also *Business Mortgage Finance 4 Plc v Hussain* [2021] EWHC 171 (Ch) at [168]-[169] per Miles J).

D. EBRD's application for judgment in default

54 The evidence before me is that the date of deemed service of the Claim Form was 9 March 2023. A certificate of service was in fact only filed on 2 June 2023. The evidence before me in Dr Koepp's fifth witness statement at [36.8] is that the certificate of service was filed late due to an internal oversight. That does not impact upon this application, because provided a certificate of service has been filed by the time the claimant applies for a default judgment, a default judgment may be entered thereafter (see *The White Book*, Vol. 1, page 442 at [13.2.1.1]). In accordance with CPR 58.6(2) the time for the defendants to file an acknowledgment of service expired on 24 March 2023. The evidence before me is that no acknowledgement of service or defence has been filed by any of the defendants. Equally, the defendants have also not satisfied the claim, or returned or filed an admission. I am satisfied, therefore, that in those circumstances the formal requirements set out in CPR 12.16(6) are met.

55 I turn then to consider the appropriateness of the relief sought. In this regard, I have considered the terms of the Claim Form carefully, which can be taken as read. It sets out that:

(1) The claimant and defendants are parties to the SHA;

(2) the defendants acted in breach of s.3.02(a) of the SHA by proposing a resolution to the Company's shareholders to increase the Company's share capital without the claimant's consent;

(3) it would be a breach of s.3.02(a), 3.11(g) and 4.02(d) of the SHA to (i) propose or pass a resolution of the Company's shareholders to increase, change or adjust the Company's share capital and/or (ii) take any steps to increase, change or adjust the Company's share capital or otherwise make changes or permit changes to be made to the Company's share capital without the claimant's consent.

56 It is arguable that the defendants' actual breach of s.3.02(a) was cured when the defendants cancelled the 6 October EGM. However, I am satisfied that there remains a real risk of further breaches of the negative covenants in the SHA. The defendants, by the proposed Resolution and the EGMs previously scheduled for 6 March, 3 April, 15 May and 6 October 2023, have continuously and repeatedly threatened to take steps to increase the Company's share capital without EBRD's consents, without making any attempt to explain or excuse

what I am satisfied amounts to nothing less than a flagrant disregard of EBRD's rights and they have not done so either as part of these proceedings or in correspondence. As I have already noted, the defendants have not explained to date why the increase in the share capital was even proposed in the first place. Equally, the sudden recent cancellation of the 6 October EGM was also unaccompanied by any explanation or any comment or reassurance that the defendants would not again attempt to make changes to the Company's share capital without EBRD's consent in the future.

57 In such circumstances, EBRD is understandably concerned that the defendants could simply table a further resolution to increase the share capital of the Company and call another EGM without EBRD's consent, potentially at short notice, the moment the 24 March Order is discharged.

58 In those circumstances, I am satisfied that unless the court grants a final injunction in the terms sought, there is indeed a real risk that there would be further breaches of the relevant provisions in the SHA and that EBRD's shareholding in the Company, in consequence, would be irredeemably diluted. I am satisfied that what EBRD is doing by the relief it seeks is to enforce the negative covenants and protect its contractual rights. As I have already identified, when a court is called upon to grant a final injunction to enforce a negative covenant, an injunction should only be refused where it would be unjust or unconscionable to grant the injunction.

59 I am satisfied that in this case there is no evidence or pleading before me which suggests that granting the injunction would somehow be oppressive or unjust to the defendants, such that it would be unconscionable to grant the injunction. In this regard, I have been taken during the course of oral submissions to the contents of the 14 March Letter. Amongst other things that are there set out is an assertion that compliance with the injunction, as set out in the 6 March Order, which is in substantially the same terms as the draft order that I am invited to make today, would require the defendants to act in breach of Russian law and violate an order of the Rostov court. Had that assertion been corroborated by evidence then it is possible that an argument could have arisen that it would be disproportionately oppressive to the defendant to grant the relief that has been sought, but there is in fact no pleading and no evidence before me to support that.

60 I have also had the benefit of considering Dr Koepp's sixth witness statement where he addresses such matters at [55]-[57] and I am satisfied that, in those circumstances, the assertion is one that is without merit.

61 I would only add that even if Mr Vysokov's assertions had been correct, it is in any event well established that an English court can order a party to do something which is or may be contrary to foreign law (see *Masri v Consolidated Contractors International Co. Sal & Ors* [2008] EWCA Civ 1367 per Lawrence Collins J at [31]).

62 I have given careful consideration to the draft order with the relief that is sought. Whilst some elements of the relief sought are mandatory "in form", in substance I am satisfied that EBRD is simply asking the court to hold the defendants to their contractual obligations by granting the injunction that restrains them from proceeding with a resolution to increase the share capital of the Company in breach of EBRD's rights under the SHA.

63 The injunctive relief sought is in substantially the same form as the injunction set out in the 6 March Order and the 24 March Order, i.e. in a form which has previously already been granted by two other judges sitting in this court. The relief sought is as follows:

(1) an order retraining the Vysokovs from proposing to the Board a resolution to increase, change or adjust the Company's share capital and from convening an EGM for this purpose;

(2) an order restraining the Company from proposing to the Company's shareholders a resolution to increase, change or adjust the Company's share capital and from convening an EGM for this purpose;

(3) an order mandating the Vysokovs and the Company to take all necessary steps to withdraw or annul any such resolution to increase, change or adjust the Company's share capital if already proposed and/or cancel EGM convened for this purpose. Whilst I recognise that this provision is technically mandatory in nature, I consider it simply to be an order to require the defendants to do something to undo an earlier breach. I am also satisfied that although it appears that following the cancellation of the 6 October EGM there is currently no scheduled EGM to which this part of the order would apply, the position is that EBRD is not currently represented on the board and has no insight into its activities. In such circumstances, I am satisfied that this provision is also necessary.

(4) An order mandating the Vysokovs to vote against any such resolution to increase, change or adjust the Company's share capital. In this regard, the SHA itself provides that the Vysokovs must cast their vote in respect of the reserved matters (such as a share capital increase) as directed by EBRD (see s.2.02(c) of the SHA, which I have summarised above). I am satisfied that the court, therefore, would only be holding the Vysokovs to an obligation that they had voluntarily undertaken in the contract in any event. I note in this context that EBRD's request for mandatory relief in this regard is, at least in part, due to what I consider to be understandable concerns on EBRD's part that the defendants would not permit EBRD to participate in any EGM convened for this purpose. If EBRD could be sure that it would be able to exercise its right to participate in the EGM it could, by its own votes, block a resolution to increase the Company's share capital as long as the Vysokovs do not vote in its favour.

(5) An order mandating the Vysokovs to take all necessary steps to withdraw any vote in favour of such resolution which they may have already submitted in the ballot and to submit a new vote against any such resolution; and/or to amend any such vote in favour of any such resolution so as to vote against it. Again, I am satisfied that whilst this provision is technically mandatory in nature, its effect is simply to order the defendants to undo an earlier breach.

(6) An order restraining the Company from taking any steps to implement any resolution to increase, change or adjust the Company's share capital or otherwise making changes or permitting changes to be made to its share capital in the event that such a resolution has been passed or purported to have been passed at an EGM. The order contemplates that the injunction will be granted for such time as EBRD continues to hold shares in the Company (which of course tracks s.6.01 of the SHA).

64 I am satisfied in the circumstances identified above that the injunction that is sought constitutes appropriate relief in the light of what I am satisfied are real risks of further breaches of EBRD's rights under the SHA.

65 In circumstances where the EGM to vote on the proposed resolution scheduled for 6 October 2023 has now been cancelled, it would appear that an injunction from the English court has indeed had at least some effect and is, at least to some extent, effective in protecting EBRD's rights. Whilst the defendants have not given any reasons for the EGM's cancellation, I do consider that it is likely that the board's decisions to repeatedly postpone and then cancel the EGM were influenced by the court's orders of 6 March 2023 and 24 March 2023. Were that not the case it would be a remarkable coincidence.

66 I also consider, having considered the evidence of Dr Koepp in his fifth witness statement at [46], that there are indeed good reasons to believe that the defendants would decide to comply with an order from the English court with the result that an injunction would serve a useful purpose:

(1) Firstly, the evidence before me is that, as of mid-2022, both of the Vysokovs' adult children were resident in the UK and, thus, it is said that the Vysokovs would have a good reason, if they wished to preserve their ability to visit their children in the UK, assuming of course that they remain resident here, to avoid acting in breach of an English court order and risk a committal order being made against them in due course. In this regard, the evidence before me is that EBRD's understanding is that the Vysokovs are not subject to any UK sanctions that would otherwise prevent them from travelling to the UK.

(2) Secondly, the Company's Directors (aside from the Vysokovs) who would presumably also need to take action to implement a share capital increase might themselves be unwilling to breach the terms of an English court order prohibiting the Company from doing so and risk a committal order being made against them personally, which could be of relevance to them, depending of course on their own personal circumstances.

(3) Thirdly, according to information previously listed on the Company's website, the Company holds, or has held, correspondent accounts with Citibank NA in London and New York. In circumstances where it is not known to be subject to any UK or EU sanctions, I consider it likely that the Company will have maintained these accounts (or other correspondence accounts). These would be assets against which the English court could exercise its coercive powers, which again would be likely to encourage compliance with the order that I propose to make.

67 In those circumstances, I am satisfied that an injunction would serve a useful purpose. Further, I am also satisfied that unless this court grants the injunction sought, there is a real risk that there will be further breaches of the relevant provisions in the SHA and EBRD's shareholding in the Company will be irredeemably diluted.

E. Conclusion

68 Accordingly, for the reasons set out in this judgment, I am satisfied that it is appropriate to grant the relief sought and I so order. I am also satisfied that in such circumstances the claimant, EBRD, is entitled to its costs, which I will now proceed to summarily assess.

F. Costs (*Later*)

69 The final matter that is before me today is the summary assessment of costs. I remind myself that this is an assessment on the standard basis in relation to costs reasonably incurred and reasonably proportionate. There is before me a statement of costs for summary assessment, complying with CPR Practice Direction 44, [9.5], accompanied by a schedule of work done on documents.

70 The court has repeatedly indicated that the summary assessment of costs is a rough and ready assessment. Having given careful consideration to the statement of costs, I summarily assess the costs on the standard basis at a figure of £68,550.