



Neutral Citation Number: [2025] EWHC 353 (Comm)

Case No: CL-2024-000640

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Tuesday 18 February 2025

Rolls Building
Fetter Lane
London
EC4A 1NL

Before:

MRS JUSTICE COCKERILL DBE

Between:

- 1) MANTA PENYEZ SHIPPING INC
- 2) URAZ SHIPPING INC

Claimants

- and -

ZUHOOR ALSAEED FOODSTUFF COMPANY

Defendant

Alexander Yean and Eliza Bond (instructed by
MFB Solicitors Limited) for the **Claimants**
The Defendant did not attend the hearing

Hearing date: 14 February 2025

APPROVED JUDGMENT

Mrs Justice Cockerill:

INTRODUCTION

1. By an application dated 6 February 2025 made on notice to the Defendant, the Claimants have sought before me (i) to vary the terms of an ASI granted by Stephen Houseman KC (sitting as a Deputy Judge of the High Court) on 3 December 2024 (the “Houseman Order”) under CPR r.3.1(7); and (ii) a final ASI on the terms of the varied Houseman Order under s.37 of the Senior Courts Act 1981.
2. As explained further below this hearing was conducted on notice to the Defendant. However, the Defendant did not attend. Accordingly, over the course of a half day hearing, preceded by a half day of reading on my part, the Claimants via the excellent and careful submissions of junior counsel presented the application. At the close of the hearing I indicated that I would grant the application, and produce a written judgment to explain the basis upon which I do so – in particular since it may be of interest to another court.

PROCEEDING IN ABSENCE

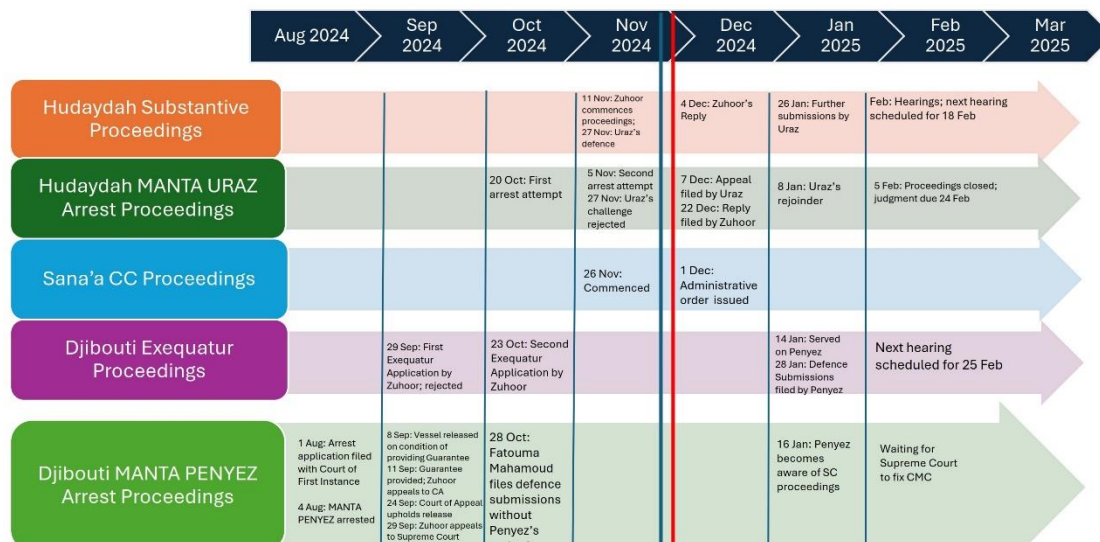
3. The first matter with which I should deal is my decision to proceed with the hearing in the absence of the Defendant. The key point here is whether I can be satisfied that the Defendant has knowingly chosen not to attend the hearing and participate and whether there would be any point in adjourning the hearing. I did not ask counsel to take me through the criteria in *Navig8 Chemicals Pools Inc. v Nu Tek (HK) PVT Ltd* [2016] EWHC 1790 (Comm) where Flaux J (as he then was) set out the principles to apply whether to proceed in the absence of the respondent, but I have had them well in mind.
4. Here the situation appears to be that alternative service was ordered on the basis of good evidence that the email addresses in question were active email addresses: up until the Dias Order was granted those email accounts appear to have been being used by the Defendant (see the close of the section headed “The Dias Order” below). As is explained in the section dealing with “Suggestions of Email Hacking” the suggestion of email hacking followed very closely on the service of the Dias Order, suggesting that it did indeed come to the attention of the Defendant.
5. The allegation of hacking only goes to one of the two email addresses. There has been no suggestion that the other is affected. None of the subsequent use of the addresses has generated a bounce back or any indication that the addresses are no longer used or monitored. There has been no apparent correspondence with the arbitrators to update contact details and explain the hacking. The mentions made of the Orders of this Court by Penyez/Uraz in other proceedings (Uraz’s Appeal statement in the Hudaydah MANTA URAZ Arrest Proceedings, Uraz’s defence in the Hudaydah Substantive Proceedings) have not provoked any response of surprise. The only response has been that Zuhoor asserts that Yemeni Courts have jurisdiction.
6. I conclude that:
 - i. The Defendant has been served with the relevant documents including notice of this hearing;

- ii. It has had sufficient notice to prepare for the hearing, or to appear and seek further time if needed;
 - iii. No reason is advanced for non-appearance;
 - iv. There appear to be good reasons to suppose that the Defendant has waived its right to appear, since its position appears to be that this court is not the court with jurisdiction;
 - v. Consequently it is not likely that an adjournment would improve matters;
 - vi. Given the looming hearings in the other jurisdictions the balance of prejudice in any delay would be very much greater for the Claimants;
 - vii. No undue prejudice would be caused to the forensic process by proceeding in absence.
7. I have therefore been content to hear the application in the absence of the Defendant.

FACTUAL BACKGROUND

8. The material facts are set out in each of the five witness statement of Baris Oztoprak, upon which this factual section draws. They are supported by underlying documents which were shown to me either via the reading list or by Mr Yean in his oral submissions.
9. Both Claimants are special purpose vehicles. Penyez, is the registered owner of the Liberia-flagged vessel “MANTA PENYEZ”. Uraz, is the registered owner of the Marshall Islands-flagged vessel “MANTA URAZ”.
10. Both of these vessels are managed and operated by Manta Denizcilik Nakliyat. As the commonality in their names suggest, all of these companies are in the same Manta Group.
11. The starting point is a voyage charterparty in respect of the MANTA PENYEZ. The Charterparty is dated 10 May 2024, and involved the charter of the MANTA PENYEZ by Penyez as owners to the Defendant Zuhoor as Charterers. The voyage is to carry 29,700 metric tons up to full cargo of wheat from Russia to Yemen.
12. At Clause 28 of the Charterparty, there is a standard LMAA arbitration clause.
13. There followed a dispute in relation to the performance of the Charterparty. In summary, the cargo was loaded onboard the Vessel on 17 May 2024, and bills of lading were issued by Penyez to Aston Agro Industrial SA (“Aston”), but neither the cargo nor the vessel ever made it to Yemen. Instead Aston, and head seller of the cargo, wrote to Penyez while the Vessel was en route to Yemen and instructed Penyez not to go to Yemen because Aston had not been paid.
14. There was an impasse throughout the whole of June 2024 when the Vessel waited at Djibouti. Eventually, Aston exercised their right to redirect the cargo, to Djibouti instead of Yemen. The original bills of lading were handed back to Penyez and cancelled, and new bills issued, and Penyez agreed to deliver the cargo at Djibouti. In exchange for this, Aston issued a letter of indemnity in favour of Penyez.

15. The complication is caused by the fact that throughout, Zuhoor’s position has been that they did pay for the cargo. Zuhoor states that their contracting counterparty for the sale of the cargo is a company called OG, and Zuhoor paid OG, but OG may not have paid Aston.
16. As a result, a dispute has arisen between Penyez and Zuhoor in relation to Penyez not carrying the cargo to Yemen. Zuhoor seeks to claim damages for misdelivery and the return of the freight which had been paid.
17. This underlying dispute has given rise to no fewer than 5 foreign proceedings, which are summarised in the chronology attached to this judgment and the diagram below.



Djibouti Arrest Proceedings

18. On 4 August 2024, Zuhoor applied to the Djibouti Court of First Instance to arrest the MANTA PENYEZ, to secure their claim in the dispute. The Djibouti Court of First Instance arrested the MANTA PENYEZ on Zuhoor’s application, as “surety and guarantee” for the sum of USD 7.6 million in respect of cargo costs, in other words the value of the cargo, and USD 1.3 million in respect of “the costs of transport of the goods”, in other words freight.
19. When the MANTA PENYEZ was arrested, Penyez called upon Aston under the Letter of indemnity to procure the release of the vessel by defending the claim and putting up security.
20. This led to the instruction, by Aston, of local Djibouti lawyers, Mr. Alain Martinet and Ms. Fatouma Mahamoud. At this stage, the defence of the Djibouti arrest proceedings was a joint effort, led by Djibouti lawyers with both HFW (for Aston) and MFB (for Penyez) assisting.
21. Thanks to these efforts, on 8 September 2024, the Djibouti Court of First Instance ordered the release of the MANTA PENYEZ subject to the provision of an international bank guarantee in favour of Zuhoor within 72 hours.
22. That Guarantee was duly issued on 11 September 2024. It was issued by Emirates NBD Bank in favour of Zuhoor in the amount of USD 8.9 million.

23. On that same date, 11 September 2024, Zuhoor appealed the Djibouti Court of First Instance order to the Djibouti Court of Appeal.
24. The matter then came before the Djibouti Court of Appeal, who upheld the release of the Vessel by an Order dated 24 September 2024. Importantly their Order, “*Declares valid the bank guarantee offered by Bank Emirates to Zuhoor in the amount of 8.9 million USD*”. On this basis, the Djibouti Court of Appeal ordered the lifting of the arrest of the MANTA PENYEZ.
25. On 30 September 2024, following this Court of Appeal order, the original of the Guarantee was delivered to Zuhoor’s Djibouti lawyer in execution of the Djibouti Court of Appeal order, to lift the arrest. Zuhoor’s lawyer accepted the Guarantee and the arrest was lifted.
26. The terms of the Guarantee are of significance:
 - i. Clause 2 contemplates payment to Zuhoor in the event of a binding LMAA award or judgment on appeal therefrom, pursuant to Clause 28 of the Charterparty;
 - ii. Clause 5(i) also contemplates that the arbitration be commenced within 3 months, and Owners’ solicitors MFB must confirm this, and that the arbitration be concluded by 2027, which is when the Guarantee expires.
27. In fact, Owners were one step ahead, and had already commenced arbitration prior to the Guarantee being issued on 11 September 2024. Arbitration was commenced on 2 September 2024. Pursuant to Clause 5(i) of the Guarantee, MFB did promptly inform Emirates NBD that the arbitration had been commenced.
28. Zuhoor seems to have appointed their own arbitrator, Mr. Jonathan Elvey, and I am told that this arbitration remains in progress to this day, though little has occurred thus far.
29. After the Djibouti Court of Appeal confirmed the validity of the Guarantee, and the Guarantee was delivered to Zuhoor who accepted it, and the MANTA PENYEZ was released, Penyez considered the matter to be at an end. But in fact on 29 September 2024, Zuhoor appealed the Court of Appeal order to the Supreme Court of Djibouti.
30. Zuhoor’s position, which it had taken all along in the Courts below, is that it wanted a Djibouti bank guarantee. There is no challenge to the validity of the Guarantee, but it is argued that the Court of Appeal should have ordered it to be given by a Djibouti bank.
31. Unfortunately Penyez were not immediately informed about Zuhoor’s appeal to the Djibouti Supreme Court. This is because those proceedings were not served on Penyez or the MANTA PENYEZ vessel. Regrettably Penyez and MFB slipped off the circulation list and none of HFW or Aston or Ms Mahamoud, the Djibouti lawyer, informed Penyez or MFB of the course which events had taken. This is confirmed by Ms Mahamoud herself at paragraphs 7 and 8 of her statement.
32. Penyez learnt about the appeal via the arrest proceedings in relation to a sister vessel of the MANTA PENYEZ, the MANTA URAZ in Yemen.
33. It is for this reason that the Djibouti Supreme Court proceedings were not reported to Mrs. Justice Dias on 22 November 2024 or Mr. Houseman KC on 3 December 2024.

Penyez says, and I accept on the evidence before me, that they simply had no knowledge of those proceedings at the time.

34. In relation to the Djibouti arrest proceedings of the MANTA URAZ, Ms Mahamoud filed submissions on Penyez's behalf on 28 October 2024, albeit this was done without Penyez's knowledge or authority.
35. As of today, the Supreme Court proceedings remain pending.

Djibouti Exequatur Proceedings

36. On 15 July 2024, before the MANTA PENYEZ had even been arrested in Djibouti, Zuhoor went to the Hudaydah Court of First Instance in Yemen to get a mandatory injunction for the MANTA PENYEZ to discharge in Yemen.
37. It is Penyez's position based on Yemeni legal advice that that injunction was time-limited and automatically became null and void due to the effluxion of time after 26 July 2024.
38. However, Zuhoor sought to have it recognised and enforced in Djibouti. It tried for the first time on 29 September 2024, but that order was rejected by the Djibouti Courts for procedural defects. Zuhoor tried again on 23 October 2024. The operative part states: "*said judgment has become final under Yemeni law and can therefore be enforced*". Penyez's case is that that is incorrect because of the time-limited nature of the original injunction and amounts to misleading the Djibouti Court.
39. This time, this application was served on Penyez, albeit by diplomatic channels to Penyez's registered address in the Marshall Islands, so it only arrived on 14 January 2025 – after the injunction was granted by this court. Again therefore Penyez were not in a position to inform Dias J or Mr Houseman KC about those proceedings.
40. Once served, Penyez instructed Ms Mahamoud to formulate a defence, which she duly did, maintaining the position that the Yemeni injunction is not final and binding.
41. The exequatur proceedings remain pending, and a hearing has been scheduled for 25 February 2025.

Yemeni Arrest Proceedings

42. The first Yemeni proceeding is the arrest of the MANTA URAZ by the Hudaydah Court of First Instance. The MANTA URAZ berthed in Yemen in October 2024. Zuhoor immediately made an application to arrest her, on or around 20 October 2024. It is understood that this arrest application has since lapsed or been set aside. However, on 5 November 2024, a further, successful, attempt was made by Zuhoor to arrest the MANTA URAZ.
43. The documents make clear that the arrest is in relation to Zuhoor's underlying claim against Penyez under the Charterparty.
44. Uraz immediately challenged the arrest by an application dated 11 November 2024, 6 days after the arrest.
45. On 13 November 2024, Zuhoor submitted its reply to Uraz's challenge to the arrest. The reply in relation to the Guarantee does not deny the existence or validity of the Guarantee, but seeks a Yemeni bank guarantee.

46. On 27 November 2024, the Hudaydah Court of First Instance rejected Uraz’s challenge, and upheld the arrest.
47. On 7 December 2024, Uraz filed an appeal to the Hudaydah Governorate Commercial Appeal Division. The grounds are (i) the extant arbitration, and (ii) the existence of the Emirates NBD Guarantee. The appeal documentation references the Houseman order.
48. The current status is that the arrest remains in place, and the MANTA URAZ has remained at Hodeidah port for almost 4 months. The Commercial Appeal Division of Hudaydah Governate is scheduled to render judgment on 24 February 2025, unless of course Zuhoor complies with the ASI before then.

Yemeni Substantive Proceedings

49. The second Yemeni proceeding is the Hudaydah Substantive Proceedings against Uraz, commenced by Zuhoor on 11 November 2024.
50. The Statement of Claim names the Defendant as MANTA URAZ. It is also clear that notwithstanding that Uraz is not party to the Charterparty, Zuhoor is suing Uraz qua contracting party to the Charterparty: “*Defendant abstained from the implementation of the contract*”.
51. On 27 November 2024, Uraz filed its defence. Essentially it pleads as to the existence of the Arbitration seat in London, as confirmed by the Dias Order, referred to as an order of the “Supreme Commercial Court in England”.
52. There followed numerous further submissions, summarised at page 2 of the chronology. In effect, Uraz has said, “*you’re suing the wrong party, Penyez is the contracting party under the Charterparty, not Uraz*”. This Zuhoor has denied including by challenging the authenticity of evidence submitted by Uraz. The Court called upon various third parties to intervene and provide evidence.
53. The next hearing in these Yemeni Substantive Proceedings is scheduled for 18 February 2025.

Yemeni Sana’a CC Proceedings

54. The position in relation to these proceedings is not very clear. But what is clear is that there are proceedings afoot in Sana’a in relation to Uraz or Penyez or both. It also appears from the nature of the administrative order that this may some sort of prophylactic or preparatory move before a substantive application is made by Zuhoor in relation to an allegation of email hacking, possibly to challenge the jurisdiction of the LMAA arbitration.

The Dias Order

55. At a hearing on 21 November 2024 an interim ASI was granted by Dias J (the “Dias Order”) ex parte, and only informal notice had been given to Zuhoor the day before the hearing.
56. That Order restrained the Defendant:

“whether by itself, its employees, servants, agents, or otherwise, ...
from commencing or prosecuting or continuing or taking any steps in

or otherwise participating in proceedings (including ship arrest proceedings) in any court or tribunal in Yemen, or in any other court or tribunal other than London-seated arbitration against the First Claimant, against the Claimants or any of them in respect of any dispute arising out of or in connection with the charterparty between the First Claimant and the Defendant dated 10 May 2024”

57. The Yemeni Arrest and Substantive Proceedings were specifically identified.
58. The order also granted permission to serve by alternative means by email info@z-alsaeed.com and alsaeedzuhoor@gmail.com. Service was duly made via these addresses.
59. The reason why the email addresses given above were used was that those addresses were being actively used in the arbitration. I have seen a reply from the info@z-alsaeed.com email address dated 4 September 2024, by which Zuhoor said that it would appoint an arbitrator, but also indicated its intention to apply to the local courts. That email also copied in alsaeedzuhoor@gmail.com. There is a further email from that Zuhoor email address referring to a decree from the Yemeni Court, likely the injunction dated 15 July 2024, and insisting that Zuhoor has the right to apply to the Yemeni Court for relief notwithstanding the arbitration. That is followed up by an email appointing Mr Jonathan Elvey as Zuhoor’s arbitrator. Given that Mr Elvey later signed a document confirming that the Tribunal had been constituted it is a fair inference both that Mr Elvey had accepted his appointment, and had been paid his appointment fee.

Suggestions of Email Hacking

60. The Dias Order was handed down on 22 November 2024. That was served on Zuhoor that same day, via email; indeed almost as soon as the Order was handed down.
61. On 22 November 2024, shortly after the Dias Order was served, the Claimants’ Yemeni Counsel, Messrs. Luqman, were contacted by a Mr Al Hathrami, who claimed to represent Zuhoor. He told Messrs Luqman that Zuhoor’s website and email domain had been hacked, and so the LMAA Arbitration had apparently been conducted not by Zuhoor but by persons unknown impersonating Zuhoor.
62. I have been invited to find that statement to be untrue. I am certainly not persuaded it is correct, in circumstances where there appears to have been no similar notification to the arbitrators, or updating of contact details. Further as already noted I am satisfied that the service of the Dias Order was good and came to the attention of the Defendant; not least since this assertion only affects one of the addresses in question.

The Application

63. The Houseman Order was made on 3 December 2024. That order was in essence a mandatory injunction compelling Zuhoor to procure the release of the MANTA URAZ from arrest, as well as interim prohibitory injunctions as to the 3 Yemeni proceedings, namely the Hudaydah Substantive Proceedings, the Hudaydah MANTA URAZ Arrest Proceedings, and the Sana’a CC Proceedings.
64. Paragraph 4 of Houseman Order provided 30 days for Zuhoor to respond to the Claim Form, served on 23 November 2024. That is in line with the period of time stipulated in CPR Part 6. Those 30 days have now passed, and Zuhoor has not filed any Acknowledgment of Service or Defence.

65. The Claimants therefore ask the Court to make the interim relief in the Houseman Order on a final basis, and to vary the terms of the Order so as to specifically include the two sets of Djibouti Proceedings in its order, which were not before the Court for the reasons outlined in the factual background section.
66. Such an application might normally expect to wait slightly longer for a hearing than this has done, in line with the Court's usual lead times. However in the light of the hearings in the various proceedings later this month I ordered that the hearing be expedited. The hearing was none the less properly to be regarded as being on notice: Zuhoor had 3 clear days' notice of this application, which was served late in the evening last Thursday, 6 February 2025.

ANTI-SUIT INJUNCTION (ASI)

General Principles

67. It is well established that as a matter of English Law the Court has power to grant an ASI in support of arbitration proceedings under s.37 of the Senior Courts Act 1981.
68. Where an ASI is sought on the contractual basis to enforce an exclusive London arbitration agreement, an ASI will readily be granted if (i) the claimant can demonstrate with a high degree of probability the existence of an arbitration clause to which the defendant is a party and which covers the dispute; and (ii) there are no exceptional circumstances which militate against the grant of relief, such as the failure to act promptly: *The Angelic Grace* [1995] 1 Lloyd's Rep 87, 96 recently elaborated by Calver J in *The SVS Cochrane* [2021] EWHC 33 (Comm), [2021] 2 Lloyd's Rep 354, [22]-[36].
69. The Angelic Grace principle applies not only in the context of exclusive forum clauses, but also in the context of "*express or implied covenants not to sue in the foreign forum*": Gee on Commercial Injunctions (7th edn), §14-020; *National Westminster Bank v Utrecht America Finance Co* [2001] EWCA Civ 658, [2001] 3 All E.R. 733, [35].
70. The essential principles for ASIs, including the standard of proof, are the same whether the Court is granting interim or final relief: *Tyson International Co Ltd v GIC Re, India, Corporate Member Limited* [2025] EWHC 77 (Comm), [60].

Final ASI – The Contractual Basis

The effect and enforceability of the Guarantee

71. The Claimants primary basis for seeking an ASI is Clause 1 of the Guarantee which provides:

“In consideration of Zuhoor (i) immediately procuring the release of the Vessel [i.e. the MANTA PENYEZ] and Zuhoor and/or assignees and/or associates and/or subrogees refraining from re-arresting or otherwise detaining the Vessel or any other vessel in the same or associated ownership, beneficial ownership, management, and (ii) immediately withdrawing or procuring the setting aside of all legal proceedings, actions, judgments, and/or orders in Yemen in relation to or against the Vessel or Owners [i.e. Penyez] or the Charterparty...”
72. It follows that to comply with this clause:

- i. Zuhoor must “refrain [] from... detaining... any other vessel in the same or associated ownership, beneficial ownership, management” as the MANTA PENYEZ;
 - ii. Zuhoor may not prosecute any “legal proceedings... in Yemen in relation to... the Charterparty”.
73. It was submitted that while Clause 1 only expressly obliges Zuhoor to withdraw such proceedings, as a matter of construction and/or implication, Clause 1 must be construed as also precluding Zuhoor from initiating fresh proceedings. I accept that submission. It would be nonsensical for Clause 1 to require Zuhoor to withdraw legal proceedings but to permit then immediately recommencing them. This is a conclusion which can be arrived at as a matter of construction of the document (bearing in mind both the words and the commercial purpose of the document) or also via a process of implying terms: it is necessary for business efficacy and/or so obvious as to go without saying that Clause 1 also precludes Zuhoor from initiating fresh proceedings.
74. There might seem to be an issue as to Penyez/Uraz’s ability to rely on the Guarantee: I have been reminded that the Guarantee names the 3 parties to it as (i) Emirates NBD, (ii) Zuhoor, and (iii) Aston and that accordingly neither Penyez nor Uraz is therefore a party to the Guarantee. However Penyez and Uraz point to s.1 of the Contracts (Rights of Third Parties Act) 1999 (the “1999 Act”), which provides:
 - “Right of third party to enforce contractual term.
 - (1) Subject to the provisions of this Act, a person who is not a party to a contract (a “third party”) may in his own right enforce a term of the contract if—
 - (a) the contract expressly provides that he may, or
 - (b) subject to subsection (2), the term purports to confer a benefit on him.
 - (2) Subsection (1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.
 - (3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
 - (4) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.
 - (5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).”
75. Penyez submits and I accept that these requirements are met:

- i. S.1(1)(b): Chitty on Contracts (35th edn) at §21-094 notes that “*it must be a purpose of the [contracting] parties*” for the third party to benefit, and the question of whether the contracting parties had any such intention is one of construction. Clause 1 of the Guarantee self-evidently has the purpose of benefitting Penyez (as well as any related party that may otherwise be sued by Zuhoor, such as Uraz) by protecting them against suit in Yemen or other jurisdiction related to the Yemeni proceedings;
 - ii. S.1(2): The Supreme Court in *Secretary of State for the Home Department v Public Commercial Services Union* [2024] UKSC 41, [2024] 3 WLR 1059, in the context of s.1(1)(b) of the 1999 Act, held that:
 - a) Where a contractual term purports to confer a benefit on a third party under s.1(1)(b), provided the requirements of s.1(3) are met, there exists a “strong presumption” that the term is enforceable by that third party. It is not necessary to show that the parties positively intended that the term should be enforceable: at [97]-[98];
 - b) Where there is no such express contractual provision to rebut the presumption, the test for implying such a term is “a *demanding one*”: at [96];
 - c) Here, there is nothing in the Guarantee to suggest that the parties to it did not intend Clause 1 to be enforceable by Penyez or Uraz.
 - iii. S.1(3): Both Penyez and Uraz are expressly identified in the Guarantee:
 - a) Penyez is expressly named in Preamble (A), in which Penyez was defined as “Owners”. Further, “Owners” is expressly referred to in Clause 1;
 - b) As for Uraz, Clause 1 refers to “*all legal proceedings... in Yemen in relation to or against the Vessel or Owners or the Charterparty*”. Uraz is a member of the class of parties “*in relation to... Owners*”, and indeed has been named by Zuhoor in the Hudaydah Substantive Proceedings as “*affiliated to*” Penyez.
 - iv. Further or in the alternative, Clause 1 also prohibits Zuhoor from arresting “*any other vessel in the same or associated ownership, beneficial ownership, management*” as the MANTA PENYEZ, which is plainly for the benefit of the owners of any such “*other vessel*”, to which class Uraz is a member.
 - v. S.1(5): It is noted that s.1(5) specifically provides that third parties enforcing a contract under the 1999 Act are entitled to “*injunctions*” as if they were contracting parties.
76. This point is a slightly unusual one, since many contracts exclude the operation of the Act. But this Guarantee does not exclude it. The point was raised before both Dias J and Stephen Houseman KC. Both accepted, as I do, that the Guarantee contains a promise by Zuhoor to “*refrain [] from... detaining... any other vessel in the same or associated ownership, beneficial ownership, management*” as the MANTA PENYEZ and not to prosecute any “*legal proceedings... in Yemen in relation to... the Charterparty*”, enforceable by Penyez and Uraz by way of seeking an ASI.
77. Accordingly the hurdle of establishing the existence of an express contractual covenant not to sue to a high degree of probability is met.

Application of the *Angelic Grace* principles

78. One is therefore in the position of considering whether the relevant proceedings breach the relevant clause. It is plain that they do:

i. Djibouti Proceedings:

- a) As to the Djibouti Exequatur Proceedings, either as a matter of construction or implication, the phrase “*immediately withdrawing or procuring the setting aside of all legal proceedings, actions, judgments, and/or orders in Yemen in relation to or against the Vessel or Owners [i.e. Penyez] or the Charterparty*” within Clause 1(ii) must extend to a situation where the Defendant tries to enforce a such judgment obtained in Yemen abroad;
- b) As to the Djibouti SC Proceedings, clause 1 of the Guarantee provides that the Guarantee is in consideration of Zuhoor “*immediately procuring the release of the Vessel and Zuhoor and/or assignees and/or associates and/or subrogees refraining from re-arresting or otherwise detaining the Vessel or any other vessel in the same or associated ownership, beneficial ownership, management*”. By seeking to overturn the Djibouti Court of Appeal Order which itself overturned the arrest of the MANTA PENYEZ vessel in Djibouti, Zuhoor appears to be seeking (at least in effect) to re-arrest the MANTA PENYEZ. This is expressly prohibited by clause 1 of the Guarantee.

ii. Yemen Proceedings: Zuhoor’s pursuit of the Hudaydah MANTA URAZ Arrest Proceedings, the Hudaydah Substantive Proceedings, and the Sana’a CC Proceedings also fall foul of Zuhoor’s covenant not to sue contained in Clause 1 of the Guarantee:

- a) As to the Hudaydah MANTA URAZ Arrest Proceedings, the MANTA URAZ is in the same “*management*” as the MANTA PENYEZ and so, cannot be detained by Zuhoor without breaching Clause 1(i) of the guarantee ;
- b) As to the Hudaydah Substantive Proceedings and the Sana’a CC Proceedings, they are “*in relation to... the Charterparty*”. So under Clause 1(ii) of the Guarantee.

79. There are no strong reasons militating against the grant of an ASI:

- i. There is no delay. The Claimants have acted promptly, given that the Hudaydah MANTA URAZ Arrest was effected on 5 November 2024 and the Hudaydah Substantive Proceedings were commenced on 11 November 2024. In relation to the Djibouti SC Proceedings and the Djibouti Exequatur Proceedings, upon receipt of the relevant information in mid-January 2025, the Claimants conducted investigations and have sought swiftly to vary the terms of the Houseman Order;
- ii. The fact that there may be issues about the enforceability of any ASI in either Yemen or Djibouti should not be given much weight: Raphael, *The Anti-Suit Injunction* (2nd edn), at §8.51 ;
- iii. There has been no voluntary submission by the Claimants to the jurisdiction of any court in either Yemen or Djibouti:

- a) As to the Hudaydah MANTA URAZ Arrest, it does not make sense to speak of any “voluntary submission” given that the Yemeni court necessarily exercises *in rem* jurisdiction. In any event, Uraz’s challenge against the arrest is on the basis, *inter alia*, that the underlying dispute had been submitted to arbitration;
- b) The same is also true of the Djibouti SC Proceedings, the intended effect of which is to challenge the validity of the arrest of the MANTA PENYEZ, Further, Ms Mahamoud’s defence submissions maintain the position that the correct forum for the resolution of the dispute is the LMAA arbitration;
- c) As to the Hudaydah Substantive Proceedings, Uraz’s defence is purely jurisdictional in nature. A purely jurisdictional defence, however vigorously pursued, does not amount to a voluntary submission to jurisdiction: see e.g. *UAU v HVB* [2021] EWHC 1548 (Comm), [17] (ASI granted notwithstanding that jurisdictional challenge pursued in the foreign forum had reached the Supreme Court);
- d) As to the Djibouti Exequatur Proceedings, Ms Mahamoud’s defence submissions state that the Djiboutian courts have no jurisdiction to hear the dispute, as the Claimants have already commenced arbitration in London.

80. It follows that I endorse the reasoning which led to the granting by two separate judges of interim ASI relief, and that there is no reason not to make that relief final.

ASI – Alternative Basis

81. Ms Bond also contended for an alternative basis for the grant of ASI relief: on the basis of the Charterparty and its arbitration clause (Clause 28), which provides for “*any dispute arising out of*” it to be referred to London-seated arbitration under the terms of the LMAA. This is both in relation to the proceedings in Yemen and the proceedings in Djibouti.
82. Ms Bond pointed out that the authorities are clear that where the respondent seeks to obtain relief under or in relation to a contract from a non-contracting party in a non-contractual forum, the respondent should be restrained from doing so by an ASI.
83. She referred me to *The Sea Premium* (11 April 2001, unreported), *The MD Gemini* [2012] EWHC 2850, [2012] 2 Lloyd’s Rep 672, *Dell Emerging Markets (EMEA) Ltd v IB Maroc SA* [2017] EWHC 2397 (Comm), [2017] 2 CLC 417.
84. As summarised in *Gee on Commercial Injunctions* (7th edn) at §14-029, these cases “*allow a non-party who is not a contracting party to [an arbitration or exclusive jurisdiction] clause and who denies that he is a contracting party, even if that is clearly the case, to enforce the clause against a plaintiff in foreign proceedings who is asserting in those proceedings a claim which is subject to that clause*”.
85. Uraz is not a party to the Charterparty or its arbitration clause. However, there is no doubt that the Hudaydah Substantive Proceedings involves the seeking of relief under or in connection with the Charterparty. The relief sought by Zuhoor in the Hudaydah Substantive Proceedings includes, *inter alia*, asking the Hudaydah CFI to “*obligate [Uraz] to compensate [Zuhoor] for the value of the shipment (30,100) tons of bulk milled Russian wheat, in the amount of (\$ 7,615,300)*” (Prayer 3) and to “*obligate [Uraz] to return to [Zuhoor] the freight charges in the amount of (\$ 1,340,261)*” (Prayer 4), which

respectively relate to the Cargo shipped under the Charterparty and the freight paid under the Charterparty.

86. It would seem to follow, on the authority of this line of cases, Zuhoor's conduct in going behind the arbitration agreement in the Charterparty by commencing the Hudaydah Substantive Proceedings against Uraz renders those Proceedings "inequitable or oppressive and vexatious": *Dell Emerging Markets (EMEA) Ltd v IB Maroc SA* [2017] EWHC 2397 (Comm), [2017] 2 CLC 417, at [34]. The inequity or vexatiousness and oppressiveness of the Hudaydah Substantive Proceedings might be said to be compounded by the fact that it amounts to a collateral attack on the Arbitration between Zuhoor and Penyez, in that it involves Zuhoor seeking further substantive relief from Uraz in relation to the same dispute that is already the subject of the Arbitration between Zuhoor and Penyez – with the possibility that if the Hudaydah Substantive Proceedings continue, Zuhoor may double-recover.
87. Similar points can be made regarding the other proceedings:
- i. The Hudaydah MANTA URAZ Arrest Proceedings appears to encapsulate an attempt for Zuhoor to be double-secured in respect of the dispute under the Charterparty and/or to have the dispute wrongfully determined in the Hudaydah Substantive Proceedings rather than via the contractually agreed LMAA arbitration proceedings. Either would qualify as vexatious and oppressive;
 - ii. Zuhoor's attempt to enforce the Hudaydah MANTA PENYEEZ Injunction through the Djibouti Exequatur Proceedings is vexatious and oppressive because:
 - a) it is an attempt to enforce what is in effect the Yemeni arrest of the MANTA PENYEEZ in Djibouti in circumstances where Zuhoor has already arrested the MANTA PENYEEZ in Djibouti itself;
 - b) It is certainly arguable that it represents an attempt to enforce a foreign judgment which is of no legal effect. In the Second Exequatur Application, Zuhoor represents to the Court that the Hudaydah MANTA PENYEEZ Injunction is a judgment capable of enforcement, whereas the Claimant's evidence suggests that it is not.
 - iii. As for the Djibouti SC Proceedings, Zuhoor's attempt to disturb the order of the Djibouti Court of Appeal is vexatious and oppressive in that it is Zuhoor seeking to have the dispute wrongfully determined in the Supreme Court of Djibouti, rather than in London by an LMAA tribunal: *The Kallang (No.1) 2006*] EWHC 2825 (Comm), [2007] 1 Lloyd's Rep 160.
88. While this alternative basis is not necessary to the application, the fact that there is plainly a feasible alternative basis provides a further level of confidence in the appropriateness of the grant of final injunctive relief.

VARIATION OF THE HOUSEMAN ORDER

89. The general provision at paragraph 1 of the Houseman Order provides that the Defendant is restrained from "*commencing or prosecuting or continuing or taking any steps in or otherwise participating in proceedings (including ship arrest proceedings) in any court or tribunal in Yemen, or in any other court or tribunal other than London-seated*

arbitration” against the Claimants “in respect of any dispute arising out of or in connection with the charterparty between the First Claimant and the Defendant dated 10 May 2024”. It does not therefore expressly cover the Djibouti proceedings.

90. While it is almost certainly right that the steps taken by Zuhoor in relation to both the Djibouti Exequatur Proceedings and the Djibouti SC Proceedings fall within the scope of this provision it has been thought preferable to seek to have the order amended to expressly reflect those proceedings. What is sought is that the Houseman Order should be varied to expressly identify and refer to the proceedings in Djibouti under both paragraphs 2 (the prohibitory ASI) and 3 (the Mandatory ASI) .
91. I concur with this approach.
92. There is no jurisdictional issue. The Court has a wide power under CPR r.3.1(7) to vary or revoke a previous order. The principles applicable to an application to vary or revoke an order are set out by the Court of Appeal *Tibbles v SIG Plc (Trading as Asphaltic Roofing Supplies)* [2012] EWCA Civ 518, [2012] 1 WLR 2591. At paragraph [39(iii)], Rix LJ said as follows:

“The cases all warn against an attempt at an exhaustive definition of the circumstances in which a principled exercise of the discretion may arise. Subject to that, however, the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated.”

93. The present case falls squarely within circumstance (b) of *Tibbles*. Through no fault of the Claimants, the facts upon which the Dias and Houseman Orders were made were innocently misstated. As the Claimants were unaware of the Defendant’s actions in Djibouti, the central focus of the hearings and consequential orders were the proceedings in Yemen. Had the Claimants known of the proceedings in Djibouti, the focus and orders sought would have been different.
94. As to the Djibouti SC Proceedings, clause 1 of the Guarantee provides that the Guarantee is in consideration of Zuhoor “*immediately procuring the release of the Vessel and Zuhoor and/or assignees and/or associates and/or subrogees refraining from re-arresting or otherwise detaining the Vessel or any other vessel in the same or associated ownership, beneficial ownership, management*”. By seeking to overturn the order of the Djibouti Court of Appeal which itself overturned the arrest of the MANTA PENYEZ vessel in Djibouti, Zuhoor appears to be seeking (at least in effect) to re-arrest the MANTA PENYEZ. This is expressly prohibited by clause 1 of the Guarantee.

COSTS

95. The Claimant has sought indemnity costs. This is “*the ‘usual practice’ where contractual ASI relief is granted by the Commercial Court*”: see e.g. *Louis Dreyfus Company Suisse SA v JSC International Bank of St. Petersburg* [2021] EWHC 1039 (Comm), [43]. Further the availability also of a final ASI on the vexatious and oppressive ground, would likely independently mean that indemnity costs are also appropriate because Zuhoor’s

flagrant breaches of the Dias Order and Houseman Order take Zuhoor's conduct out of the norm.

96. I carefully considered the costs schedule and summarily assessed the costs on the indemnity basis in the sum of £55,000.

APPENDIX: PROCEDURAL CHRONOLOGY**YEMEN PROCEEDINGS**

MANTA URAZ Arrest Proceedings**(Before the Hudaydah CFI; and now the Hudaydah Commercial Appeal Division)**

- 20 October 2024 Zuhoor's First Attempt to Arrest MANTA URAZ
(procedurally defective)
- 5 November 2024 Zuhoor's Second Attempt to Arrest MANTA URAZ (upheld)
- 11 November 2024 Uraz's challenge to the arrest
- 13 November 2024 Zuhoor's Reply to Uraz's challenge
- 27 November 2024 Hudaydah CFI Judgment rejecting Uraz's challenge

Hereafter Before Commercial Appeal Division

- 7 December 2024 Uraz's Appeal Statement filed with Hudaydah Commercial Govt
- 15 December 2024 Session was administratively adjourned due to absence of the judge.
- 22 December 2024 Zuhoor's reply to appeal statement filed (document dated 15 Dec
but submitted on 22 Dec due to absence of the judge)
- 8 January 2025 Uraz's rejoinder to Zuhoor's reply on the appeal statement filed.
- 22 January 2025 Further written submissions by Uraz
- 5 February 2025 Adjourned hearing; proceedings closed
- 24 February 2025 Commercial Appeal Division scheduled to render verdict

Hudaydah Substantive Proceedings (Before the Hudaydah CFI)

11 November 2024	Zuhoor's Statement of Claim
27 November 2024	Uraz's jurisdiction defence
4 December 2024	Zuhoor's Reply statement
15 December 2024	Soft copies of the registration certificates were submitted showing the registered Owners of the vessels are different.
22 December 2024	Zuhoor challenges Luqman's capacity to act and argued that the registration documents provided for MANTA URAZ were not originals nor attested.
30 December 2024	Court summons Saba Shipping Co (MANTA URAZ's local agent) to enquire if they were instructed by Penyez to represent Penyez.
8 January 2025	Uraz submits the original attested certificates.
15 January 2025	Saba Shipping Co submits Reply to Zuhoor's Statement of Claim.
	Zuhoor challenges the authenticity of the certificates of registration and insisted that Penyez Shipping Inc is the owner of the Manta Uraz.
26 January 2025	Uraz files further submissions
2 February 2025	Hearing - The judge summons the local authorities of Hudaydah's port (Maritime Affairs Authority & Yemen Red Sea Ports Corporation) to enquire about the MANTA URAZ.
5 February 2025	Further hearing – the Yemen Red Sea Corporation has submitted documents related to the Manta Uraz as requested by the court, these include B/Ls, particulars of the MANTA URAZ and notice to the port.
9 February 2025	Saba Shipping submits a statement showing that the Manta Uraz is owned by Uraz Shipping Inc.
18 February 2025	Date of scheduled hearing

Sana'a Commercial Court Proceedings

26 November 2024 Zuhoor commences proceedings

1 December 2024 Administrative order issued regarding Zuhoor's Commercial
Registration Certificate

APPENDIX: PROCEDURAL CHRONOLOGY**DJIBOUTI PROCEEDINGS****Djibouti Arrest Proceedings (Now Pending to be Heard in the Djibouti Supreme Court)**

1 August 2024	Zuhoor applies to Djibouti Court of First Instance for MANTA PENYEZ to be arrested
4 August 2024	MANTA PENYEZ arrested in Djibouti
8 September 2024	Djibouti Court of First Instance orders release of MANTA PENYEZ subject to provision of international bank guarantee in favour of Zuhoor within 72 hours
11 September 2024	Bank Guarantee issued in favour of Zuhoor
	Zuhoor appeals Djibouti CFI order of 8 September 2024 to the Djibouti Court of Appeal
24 September 2024	Djibouti Court of Appeal hands down Order upholding the validity of the Guarantee and releasing MANTA PENYEZ from arrest
29 September 2024	Zuhoor appeals the Court of Appeal Order to the Supreme Court of Djibouti
28 October 2024	Ms. Fatouma Mahamoud, on Aston's instruction and without Claimants' knowledge or authority, submits defence submissions and notifies Zuhoor
16 January 2025	MFB become aware of Supreme Court Proceedings
Present day	Waiting for Supreme Court to fix CMC

Exequatur Proceedings

15 July 2024	Zuhoor obtains Hudaydah MANTA PENYEEZ Injunction from Hudaydah CFI
29 September 2024	Zuhoor submits First Exequatur Application to enforce Hudaydah MANTA PENYEEZ Injunction in Djibouti Zuhoor's First Exequatur Application rejected
23 October 2024	Zuhoor submits Second Exequatur Application
31 December 2024	Exequatur Proceedings are registered
14 January 2025	Penyez notified of the Djibouti Exequatur Proceedings via diplomatic channels
28 January 2025	Ms Fatouma Mahamoud, on Penyez's instruction, submits defence
25 February 2025	Date of scheduled hearing