

Freezing Orders - The Importance of Caution

18 May 2020 Nicola Sharp.

Nicola Sharp of Rahman Ravelli considers the impact of the dismissed appeal in the case of ArcelorMittal USA LLC v Mr Ravi Ruia and others [2020].

In ArcelorMittal USA LLC v Mr Ravi Ruia and others [2020] EWHC 740 (Comm), Rt. Hon Lord Justice Newey dismissed an appeal in support of an attempt by the Arcelormittal Group ("AMUSA") to obtain a worldwide freezing order in the sum of \$1.5 billion against the parent company of Essar Steel Ltd and members of the Essar group. In dismissing the appeal, he ruled there was no real prospect of success and that there was no other compelling reason for the appeal to be heard.

The case is a clear demonstration of the importance of adopting a cautious approach before seeking to deploy one of the court's most draconian tools.

Background

AMUSA applied on notice for a worldwide freezing injunction and ancillary disclosure orders against the first defendant Ravi Ruia, the second defendant Prashant Ruia and the eighth defendant EGFL. The worldwide freezing order application and AMUSA's underlying claim for conspiracy were the latest developments in a long-running dispute between two of the world's leading steel and mining group businesses, the AMUSA and the Essar Group.

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The freezing order was sought in support of AMUSA's claim for damages in excess of US\$1.5 billion. This was in respect of losses that were alleged to have been caused by an unlawful means conspiracy between the defendants to frustrate enforcement of liabilities under a 10-year iron ore supply contract entered into by AMUSA and three companies in the Essar group - which AMUSA terminated in May 2016 - and an ICC arbitral award in AMUSA's favour against Essar Steel Limited in respect of those liabilities.

If AMUSA was to be successful in obtaining the injunction relief sought, the onus was on it to satisfy the court that it was appropriate to grant the relief on the basis that:

1. it had a good arguable case on the merits.
2. there was a real risk that the respondents may dissipate assets before enforcement of any judgement in the underlying conspiracy claim.
3. it was just and convenient in all the circumstances to grant the relief sought.

But the judgement was highly critical of the arguments upon which the WFO application was based. In particular, Henshaw J ruled no coherent claim in conspiracy had been made out, and that the accounting restatement could not be said to have been an act of dissipation. Henshaw J also found that AMUSA had materially delayed making its application, and it would not be just and convenient to grant a worldwide freezing order against any of the respondents. This was because the order sought would be gravely detrimental to the business of the Essar group and because the freezing order was sought against persons out of the jurisdiction.

AMUSA sought to appeal this judgement. But on 20 April 2020, AMUSA's application for permission to appeal was dismissed by the Rt.Hon. Lord Justice Newey.

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Considerations for Worldwide Freezing Orders

In light of the court's findings, AMUSA is to serve amended particulars. AMUSA will need to very carefully revisit each and every aspect of the alleged conspiracy. And it remains to be seen if AMUSA will continue to pursue the proceedings in England given the extensive judicial criticism it has garnered over recent months.

In the meantime, the judgment provides helpful guidance on various topics which will be of interest to practitioners in the field of fraud, asset recovery and injunctive relief.

In particular:

- The judgment serves as a helpful reminder of the importance of acting promptly in circumstances where a freezing order may be sought in support of underlying proceedings. In circumstances where it was known by both the applicant and the respondents for many months that the conspiracy proceedings would be brought before the proceedings were in fact brought - and there is no evidence of actual dissipation - it will be very difficult to establish that there is in fact any risk that assets will ever be dissipated.
- Where related proceedings are brought in various jurisdictions, it is very important that all arguments made in each of those proceedings are made consistently, and with due regard to the overall strategy of each of the multiple strands of litigation.
- Any court will take into account the current resourcing difficulties faced in processing appeals and other applications as a consequence of the Covid-19 pandemic. It will, in appropriate cases, grant interim relief so as to avoid prejudice to the parties but also to avoid practical difficulties for courts during this period when resources are limited and the majority of court staff are working remotely.

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Nicola Sharp is a Legal Director at Rahman Ravelli whose expertise in international fraud, civil recovery and business crime has seen her highly rated in international legal guides. Her experience of leading the most involved and sizeable commercial and financial disputes has led to her being in demand from corporates and large organisations.

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