



Neutral Citation Number: [2023] EWHC 1721 (Ch)

Case No: CR-2018-003783

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

IN THE MATTER OF PREFERRED MANAGEMENT LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

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

7 July 2023

Before :

INSOLVENCY AND COMPANIES COURT JUDGE BURTON

Between :

Cossac Holdings Limited

Petitioner
/Applicant

- and -

- (1) PREFERRED MANAGEMENT LIMITED**
- (2) KEYFORCE TRUSTEES LIMITED**
- (3) ANDREY ZERNOV**

Respondents

Geoffrey Zelin (instructed by **Duthie & Co**) for the **Petitioner**
Fraser Campbell (instructed by **Forsters**) for the Second and Third **Respondents**

Hearing dates: 6 December 2022

Approved Judgment

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

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INSOLVENCY AND COMPANIES COURT JUDGE BURTON

ICC Judge Burton :

1. This is the hearing of the Petitioner's application dated 30 November 2022 to re-amend its petition which before this application, most recently sought relief only under section 994 of the Companies Act 2006 (the "Act") in its capacity as a one-third shareholder in Preferred Management Limited ("PML").
2. PML is joined as a respondent, but the remedy is sought only against the Second Respondent and its ultimate beneficial owner, the Third Respondent.
3. PML was the vehicle through which Messrs Diyakov, Zernov and Matveyev (together the "Founding Shareholders") held a 40.35% shareholding in a Russian insurance company, Public JSC Energogarant ("JSCE"). Each Founding Shareholder was issued with 1000 of the 3000 total shares in PML.
4. In or around 2005, Mr Matveyev resigned as Chief Finance Officer of JSCE and his one-third shareholding in PML was transferred to Mr Zernov. This left Mr Zernov as the beneficial holder of two thirds of the shares in PML and Mr Diyakov beneficially holding the remaining one third share. Mr Diyakov died in 2015. His family beneficially owns the Petitioner.
5. The petition was initially issued in May 2018. At that time, the Petitioner sought an order for PML to be wound up on just and equitable grounds, or alternatively that it surrender its shares in PML in exchange for receiving one third of PML's shares in JSCE. The petition came before ICC Judge Jones on 15 October 2019 as part of an application for it to be amended. In his approved judgment of that date, ICC Judge Jones noted that although the parties had, until then, been treating the petition as if it had been brought under section 994 of the Act as an unfair prejudice petition and seeking in the alternative, winding up, in fact the petition did not seek any relief under section 996.
6. The proposed amendment, at that time, was to seek a decision of the court as to whether the Second Respondent held a specified percentage of shares in PML on trust for the petitioner. ICC Judge Jones determined that to obtain a declaration and rectification order regarding the shares, the Petitioner should plead its cause as a specific claim. He directed that there be additional points of claim which would stand on their own and that a decision should then be reached as to whether they should be determined first or at the same time as the petition. They were filed and referred to as the "Additional Points of Claim" or "APOC".
7. The re-amended petition was served on the Second Respondent and PML in October 2018. The APOC were served on the Respondents in February 2019. The APOC introduced, for the first time, a claim that pursuant to a "Fundamental Understanding" between the Founding Shareholders, when Mr Matveyev withdrew from the quasi-partnership, he transferred his one-third shareholding in PML (the "Matveyev Shares") to Mr Zernov on the basis that Mr Zernov would then transfer half of the Matveyev Shares to Mr Diyakov.
8. Following a four-day trial towards the end of 2021 (the "APOC Trial") I dismissed the APOC (at [2021] EWHC 2953 (Ch)) and directed that by 1 February 2022, the

Petitioner should serve either notice of discontinuance of the Petition or a draft re-re-amended petition.

9. A draft re-re-amended petition (the “RRP”) was sent to the Respondents on 31 January 2022. The Respondents indicated that they would not agree to the proposed amendments.
10. The litigation was then put to one side for settlement discussions during which period the Petitioner also changed solicitors. Having done so, the Petitioner now applies for permission to make the proposed amendments set out in the draft RRP.
11. Save to the extent that they delete previous allegations, the Respondents oppose the proposed amendments. They group their objections into three categories. Mr Zelin emphasises the importance of reading each proposed amendment in context. He submits that it is only by doing so that I shall understand the various critical connections and in particular, why it is claimed that the affairs of JSCE are also the affairs of PML.
12. Whilst I appreciate the importance of reading all of the amendments in context and in the order in which they are set out, for the purposes of this judgment, I consider it is also convenient to address them by reference to the categories formulated by the Respondents.
13. When I dismissed the APOC, I rejected the Petitioner’s case that the management of PML was subject to the alleged “Fundamental Understanding”. The precise terms of my judgment and what I did and/or did not decide, has been the subject of debate before me in this application. It may therefore be helpful to set out, in full, those parts of my judgment in respect of the first four issues that were before me which I consider to be relevant for this application.
14. Starting at paragraph 93:

“(i) Was PML founded and continued by Messrs Zernov, Matveyev and Diyakov on the basis of a quasi-partnership oral agreement or understanding as to its purpose, future management, ownership or control?”

93) The sole purpose of PML was to be an English-registered holding company of shares in JSCE. I find that it was to be owned equally, with each of the Founding Shareholders holding a third of its shares. Those shares formed part of their wider shareholding in JSCE of which each was a director. The Founding Shareholders agreed that they would run JSCE as if equal partners, reaching decisions consensually and cooperatively. I find that nothing further was agreed regarding the future management, ownership or control of PML.

“(ii) If so, was any such understanding intended to apply to their interests in PML howsoever they were held and would apply to their successors?”

94) I find that the Founding Shareholders neither discussed, nor reached any understanding of what would happen in the event of one or more of them ceasing to be involved in JSCE's business. There was no understanding about how that would affect the interests of a Founding Shareholder's successors or how it would affect the manner in which PML "continued", nor how JSCE would be run if and when a party succeeded to a Founding Shareholder's shares.

(iii) In particular, was PML formed by the Founding Shareholders on the basis that, upon any of them ceasing to be involved in JSCE,

a) his shares in PML would be divided equally between the two remaining individuals;

95) No. I find that such circumstances were not contemplated by, nor discussed between them. The Petitioner failed to explain how such an agreement could or would operate: whether (a) the remaining Founding Shareholders would receive the shares for no consideration. If that was the alleged understanding it would make no commercial sense: there would be no incentive to continue working for a business in respect of which the shareholder could so readily lose their ownership rights; or (b) the remaining shareholders would be obliged to buy a proportionate share of the departing shareholder's shares. If that was the alleged understanding, it fails to explain how a fair price would be agreed and what would happen if they did not want, or could not afford, to buy the shares. Such an understanding would make no commercial sense. The only "evidence" before the court of such an understanding was from Mr Matveyev. The court has explained why it carries almost no weight. Even Mr Nikiforov recognised that Mr Diyakov had never said anything to him about how the alleged Fundamental Understanding would operate if and when any of the Founding Shareholders wished to retire, or was forced to leave as a result of illness or criminal charges, nor what would need to be paid for the shares of such a departing Founding Shareholder.

b) in other respects the quasi-partnership between the remaining partners would continue on the basis of such understanding?

96) No. I find that to the extent that the Founding Shareholders agreed or had an understanding that they would run JSCE as equal partners, it referred only to the period when they were working together. No evidence of any weight was put before the court of the Founding Shareholders holding their interests in PML subject to any greater understanding than that. I find it implausible that any such understanding would have been

intended to have applied, regardless of fundamental changes to JSCE's ownership and board control in the future.”

Relevant Legal Principles

15. The legal principles to be applied by the Court when deciding whether to allow amendments were not in dispute. At paragraph 18 of its judgment in *Kawasaki Kisen Kaisha Ltd v James Kamball Ltd* [2021] EWCA Civ 33, the Court of Appeal summarised that, on an application to amend a statement of case:

“(1) It is not enough that the claim is merely arguable; it must carry some degree of conviction: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472 at paragraph 8; *Global Asset Capital Inc v Aabar Block Sarl* [2017] EWCA Civ 37; [2017] 4 WLR 163 at paragraph 27(1).

(2) The pleading must be coherent and properly particularised: *Elite Property Holdings Ltd v Barclays Bank plc* [2019] EWCA Civ 204 at paragraph 42.

(3) The pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which if true would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct: *Elite Property* at paragraph 41.”

16. Mr Campbell also submitted, uncontroversially, that an amendment must not be abusive, including by reference to the principle of *res judicata*. He submits that in its strongest form, that principle prevents parties from re-litigating matters that have already been decided, and further, that the principle applies where a party seeks to advance a case that it could and should have brought earlier. The latter type of abuse is based on the court's decision as set out at paragraph 115 in *Henderson v Henderson* (1843) 3 Hare 100 Ct of Chancery:

“The court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points on which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

The proposed amendments

The Sole Purpose and Incentive Amendments

17. Paragraph 11 of the RRP includes the following wording from the re-amended petition:

“During Mr Diyakov’s lifetime, there existed a quasi-partnership between the UBOs of the Company (initially between all the Founding Shareholders and, until Mr Diyakov’s death, between Mr Diyakov and Mr Zernov). The object of the Company was to act as a holding company for 40.35% of the issued share capital of JSCE”
18. It then continues the same sentence, with the following new, proposed wording:

“...while the Founding Shareholders worked together in the business of JSCE. This was agreed by the Founding Shareholders as part of a wider agreement between them that, while they continued to work together in JSCE, they would make decisions regarding the management and operation of JSCE as if equal partners, reaching decisions consensually and cooperatively. The Founding Shareholders intended that by holding part of their interests in JSCE through the Company, it would encourage them to work together in PML and thereby reinforce their agreement concerning the management of JSCE”.
19. The Petitioner now contends that:
 - i) as the sole purpose for which PML was established - to hold shares in JSCE while the Founding Shareholders were working together - has come to an end, it should now be wound up (the “Sole Purpose Amendment”); and
 - ii) by agreeing that PML would hold part of their interests in JSCE, it would encourage the Founding Shareholders to work together in PML (the “Incentive Amendment”).
20. Mr Zelin described the question before the court at the APOC Trial to have been whether there was an agreement that, come what may, the shares in PML would be held equally. I found, he says, that the agreement for the Founding Shareholders to hold the shares equally between them, applied only to the period when all three Founding Shareholders were working together. This left open, he says, the question of what would happen if one of the Founding Shareholders were to leave the business. He submits that the proposed Sole Purpose Amendment simply picks up where the issues before the court at the APOC Trial left off.
21. The Respondents say that these amendments are unsustainable as (a) they are contrary to the findings set out in my judgment and as such *res judicata*; or, (b) if I should find, contrary to this first submission, that my judgment provides scope for the Petitioner to

plead an understanding of the type now being advanced, it amounts to an abuse of the principles set out in *Henderson v Henderson*.

22. In my judgment, the Petitioner's approach seeks to restrict too narrowly the issues before the court at the APOC Trial and misinterprets my judgment. The re-amended Petition, the terms of which were incorporated by reference into the Additional POC, plead that the Company was founded and continued on the basis of a personal relationship of mutual trust, confidence and good faith. The Petitioner claimed that there was a Fundamental Understanding and that the Founding Shareholders agreed and understood that the Fundamental Understanding would apply to their interests in the Company howsoever they were held (including if they transferred their interest to a trust or family member) and would apply to their successors.
23. The list of issues, agreed by both parties to fall within the scope of the APOC Trial started with the question set out at paragraph 14 above, whether PML was founded *and continued* by the Founding Shareholders on the basis of a quasi-partnership, oral agreement or understanding as to its *purpose, future management* or control (my emphasis).
24. The Petitioner's case, as now advanced, is that the agreement reached between the Founding Shareholders was that they would hold their shares in JSCE via PML *only for as long as* they all worked together. An agreement which includes such a temporal restriction directly contradicts paragraph 94 of the judgment, where I found that the Founding Shareholders did not reach any understanding of what would happen in the event that one or more of them ceased to be involved in JSCE's business. There was no understanding about how that would affect the interests of a Founding Shareholder's successors or how it would affect the manner in which PML continued, nor how JSCE would be run if and when a party succeeded to a Founding Shareholder's shares. This was reflected again in paragraph 96 of my judgment where I said:

“No evidence of any weight was put before the court of the Founding Shareholders holding their interests in PML subject to any greater understanding than that.”
25. The nature and extent of the Founding Shareholders' interest in PML was before the Court at the APOC trial. As such, the proposed Sole Purpose Amendment is *res judicata*. I refuse to grant permission for it to be made.
26. There was also no evidence before me at the APOC Trial of the Founding Shareholders intending that by holding part of their interest in JSCE through PML, it would encourage them to work together in PML and “reinforce their agreement concerning the management of JSCE”. The question of motive was fully explored at the APOC Trial where the evidence before me was that until Mr Matvyev decided to leave, the Founding Shareholders worked harmoniously together in JSCE. Paragraph 96 of my judgment records that I found no greater understanding than their desire to hold some of their shares in JSCE via PML. Nothing was said about a desired or required incentive to work well together. I recall that it was said that they favoured a company registered in England and Wales because of England's reputation for insurance business.

27. The proposed Incentive Amendment is *res judicata* and I refuse permission for it to be made.

The affairs of the Company

28. Paragraph 6(1) of the re-amended petition, claimed that the Second Respondent used its control of two thirds of the issued shares of PML in order to cause PML to exercise its rights in JSCE in the interests of the Second Respondents' beneficial owners and in a manner that unfairly prejudiced the Petitioner as a member of the PML. The re-amended petition claimed that this was in breach of the Fundamental Understanding. Following the APOC Trial, the reference to the Fundamental Understanding has been replaced by a new paragraph 6(1A) of the RRP which claims that:

“This (combined with other wrongful acts of Mr Zernov by which he has acquired control of shares in JSCE previously controlled by Mr Matveyev and Mr Diyakov) has allowed Mr Zernov to manage the affairs of JSCE in a way that is unfairly prejudicial to its members, including the Company. The 2nd and 3rd Respondents are thereby managing the affairs of the Company in a way that is unfairly prejudicial to its members, including the Petitioner. Specifically, this has included the misappropriation of funds from JSCE through sham reinsurance transactions; the sale of JSCE's valuable shares in a subsidiary at an undervalue, contrary to the interests of the members of JSCE (and contrary to the interests of the members of the Company); and reducing the payment of dividends from JSCE to a trickle (despite JSCE continuing to make very substantial profits in each relevant year).”

29. New paragraph 6(1B) claims:

“Attempts by the Petitioner and the Cossac UBOs (as defined in paragraph 9 below) to obtain information about this wrongdoing have consistently been blocked or refused by the directors of JSCE. They justify this refusal on the basis that the Cossac UBOs (through another company, LLC2, as defined in paragraph 20(2) below) control less than 25% of the voting shares in JSCE. This would not be the case if they had the support of the Company or even if they had the support of 1/3 of the shares held by the Company in JSCE (representing the Petitioner's shareholding). In this way, Mr Zernov and the Second Respondent are able to use their control of PML as a blocking stake to prevent the Petitioner and its associates from obtaining information about wrongdoing in JSCE.”

30. Each of these claims is expanded upon in new paragraphs 33A followed by 35A to 35H of the RRP. The paragraphs describe a criminal investigation following a report of the Russian Central Bank which led to a special audit report by the Inter-district Inspectorate of the Russian Federal Tax Service (#9) for Larger Taxpayers (both of these reports were included in the original petition). The RRP claims that in June

2019, the Petitioner wrote to PML and the Second Respondent instructing them not to use PML's votes to approve JSCE's annual accounts but:

“the advice was ignored and the Company proceeded to vote to approve the accounts at the 2019 AGM of JSCE (discussed further below). It is to be inferred that this was procured and/or approved by Mr Zernov and the Second Defendant.”

31. The RRP further claims that in June 2020, following further investigations and conclusions of the Inspectorate of the Russian Federal Tax Service, the Petitioner again urged the Board of JSCE including the directors appointed by PML not to approve its annual accounts, but its view was ignored by that Board, including the directors appointed by PML, who voted to approve the accounts. The RRP again alleges that it is to be inferred that this was procured and/or approved by Mr Zernov and the Second Defendant.
32. Whilst the Petitioner recognises that the main thrust of these complaints relates to JSCE, it reminds the court that PML's sole business is the holding and management of its shareholding in JSCE. The Petitioner acknowledges that PML does not hold a majority of the shares in JSCE. However paragraphs 17 to 25 of its RRP describe steps which it alleges Mr Zernov has taken directly, and via his family and parties aligned with him, to obtain effective control of 78% of JSCE's shares. The Petitioner claims that Mr Zernov has used his control over PML and his control over the board of JSCE to manage JSCE's business in a manner that benefits himself and prejudices the interests of PML and in particular, the Petitioner as a minority shareholder in PML.
33. The Petitioner thus claims that this close association, and Mr Zernov's *de facto* control of both companies, renders the conduct of JSCE's affairs part of the affairs of PML. Mr Zelin submits that whilst each authority that considers the scope for one company's affairs to fall within the affairs of another, has focussed on a relationship between a parent company and its subsidiary, there is nothing in those authorities which expressly limits such a consideration to circumstances where one company controls the other.
34. The Petitioner relies on the Court of Appeal's decision in *Re Citybranch Group Ltd, Gross & Ors v Racking & Ors* [2004] 4 All ER 735 (CA) where the Court noted that:

“the affairs of the company' is one of the widest import which can include the affairs of a subsidiary.”
35. It further relies on *Nicholas v Soundcraft Electronics Ltd and another* [1993] BCLC 360 where the Court of Appeal considered, in the context of unfair prejudice proceedings under section 459 of the Companies Act 1985, whether the failure of a parent company to pay debts to its subsidiary related to conduct of the subsidiary's affairs. Ralph Gibson LJ emphasised the need to consider the business realities of a situation and for the court not to be confined to a narrow legalistic view of what amounts to the conduct of the business of the company. At page 368 of the report, he noted:

“The court in the *Scottish Co-operative Society* case was considering s 210 of the Companies Act 1948. With reference to s 75 of the 1980 Act, Slade J in *Re Bovey Hotel Ventures Ltd* (31 July 1981, unreported) said:

'Without prejudice to the generality of the wording of the section, which may cover many other situations, a member of a company will be able to bring himself within the section if he can show that the value of his shareholding in the company has been seriously diminished or at least seriously jeopardised by reason of a course on the part of those persons who have had *de facto* control of the company which has been unfair to the member concerned.'

That statement was cited with approval by Nourse J in *Re R A Noble & Sons Clothing Ltd* [1983] BCLC 273. It is in accordance with the view expressed by Lord President Cooper that the section warrants the court in looking at the business realities of a situation, and does not confine them to a narrow, legalistic view.”

36. Mr Zelin referred the Court to a decision of Powell J sitting in the Supreme Court of New South Wales, Equity Division where he noted that the conduct of a holding company towards a subsidiary may constitute conduct in the affairs of that subsidiary and vice versa. Thus, he submits, the relevant factor cannot be actual control, for a subsidiary can never control its parent company in that way. Rather, it is, or at least can be, as noted in *Soundcraft Electronics*, a question of *de facto* control.
37. He submits that if the court looks at the factual matrix and the “business realities” of this case, it is clear to see that Mr Zernov exercises *de facto* control over both companies and he can only do so by exercising the rights attached to PML’s shares. Whilst only a minority shareholder, PML “holds the key to control” of JSCE. PML’s business was holding shares in JSCE and Mr Zernov made sure, using those shares together with his influence over those on the board, to ensure that JSCE is operated in his desired manner. Consequently, whilst the *de jure* directors of JSCE and PML are not the same, they share a common shadow director, Mr Zernov, which gives rise to common *de facto* control of both companies.
38. The Respondents do not deny that the votes cast by PML at meetings of JSCE comprise part of the conduct of the affairs of PML. However they object to each of the amendments that concern allegations of wrongdoing on the part of JSCE in Russia. Mr Campbell submits that the Petitioner appears to be claiming that because PML was party to the appointment of directors of JSCE, that makes the actions of JSCE’s directors fall within the affairs of PML. This he said, is a startling proposition. He too recognises from the authorities that whilst the control between parent and subsidiary can be in both directions, one must still have control of the other. Where one company holds more than 50% of the voting power in another, there is scope for them to be regarded as a single economic unit. But that is not the case here. He referred the Court to the judgment of Sir Donald Rattee in *Re Grandactual Ltd; Hough v Hardcastle* [2006] BCC 73 where at paragraph 29 he said:

“The essence of the decisions of the Court of Appeal in the two cases I have cited [*Soundcraft Electronics* and *Rackind*] was in my view that it may in certain cases be possible to say that conduct of the affairs of one company also constitute conduct of the affairs of another when the first company either is controlled by or has control of the other. That, if I may say so, is perfectly understandable. However, that principle is of no avail to the petitioners in the present case, in which IL had no power to control the company and was subject to no power of control by the company. Mr Green sought to argue that the first to third respondents as directors of the company had control over IL. This they clearly did not. They had control over IL but as shareholders of that company. In my judgment, the fact that they also had control over the company cannot be said to make the affairs of one company the affairs of the other, and I so decide. In my judgment, it is a point that can and should be decided now on this application at this stage and not allowed to go to a trial”.

39. Mr Campbell also submits that if I were to accept the *de facto* control contended for by the Petitioner as giving rise to JSCE’s affairs amounting to conduct of PML, I would walk the court into comity issues: the courts of England and Wales would need to adjudicate on the truth or otherwise of each of the pleaded, alleged wrongdoings of JSCE in Russia.
40. Each of the authorities relied upon, other than *Grandactual*, concerns a relationship of parent and subsidiary. In *Grandactual* the parties had intended that the capital structure of company A and company B should mirror each other. The Court did not accept that the Petitioner’s complaint, that the capital structure of company B failed to mirror the structure of company A, concerned the affairs of company A. Whilst the respondents had control over company B as shareholders of it, the fact that they also had control over company A could not be said to make the affairs of company B the affairs of company A.
41. *Soundcraft Electronics* concerned a parent company holding 75% of the shares in the company (“Magnetics”). Electronics was intended to support Magnetics until it was financially viable. However, it withheld payment of invoices due to Magnetics. It transpired that this was because Electronics was struggling financially. The *de facto* control exercised in that case was Electronics’ ability to withhold payment in circumstances where Magnetics could do nothing about it. The judgment notes that one of the directors gave evidence that he operated a policy of cooperating with Electronics, complying with what Electronics wanted because he thought that would be best for Magentics, bearing in mind that if they did not agree, a meeting would be called to use Electronics’ voting power.
42. I have been taken to no authority where *de facto* control exercised by a third party - not the member or the company in which the member holds shares (the “Target”) - can give rise to a scenario where the court can consider the affairs of the Target to comprise the affairs of its member. This, in my judgment is not surprising. In the case before me, how can it be said, for the purposes of section 994 of the Act that the control that Mr Zernov is said to be able to exercise over the directors and members of

JSCE - other than through PML which has only a minority shareholding - comprises the affairs of PML? What is it that PML is said to have done or omitted to have done that has had such an impact on JSCE, in which it holds a minority interest, that JSCE's affairs have thereby become its own? When viewed in this light, it is clear to see that the Petitioner is complaining, not about the affairs of PML (as required to fall within the scope of section 994) but about the affairs of Mr Zernov.

43. In my judgment, the proposed amendments in the RRP which rely on the alleged "business realities" and Mr Zernov's alleged control over JSCE, do not carry a sufficient degree of conviction for the court to permit them to proceed to be argued at trial.
44. This conclusion compels the Court to refuse to grant permission for almost all of the proposed amendments set out in the RRP:
 - i) Paragraphs 35A, 35C and 35E to H concern criminal investigations and alleged wrongdoing in JSCE. They are not relevant to the Petitioner's claim regarding the affairs of PML;
 - ii) Paragraphs 35I and 35J concern the payment by JSCE of very low dividends. The declaration and payment of dividends by JSCE does not fall within the scope of the conduct of the affairs of PML;
 - iii) Paragraphs 35K to 35N concern a claim that in November 2020, the Central Bank issued an order restricting PML's voting rights in respect of its shareholding in JSCE to 10%. It is claimed that this was a result of Mr Zernov's failure to comply with criteria imposed by the Central Bank on shareholders of a Russian insurance company. As noted by Popplewell LJ at paragraph 18 of his judgment in *Kawasaki Kisen Kaisha Ltd*, a party proposing to amend its pleaded case must persuade the court that the amended claim is arguable, carries a degree of conviction, is coherent, properly particularised and supported by evidence that establishes a factual basis for the allegation. Whilst it is clear from proposed paragraphs 35K to 35N of the RRP that they concern some complaint that Mr Zernov's alleged failures have resulted in some prejudice in the form of restrictions being imposed on PML's voting rights in JSCE, the paragraphs fail to set out any conduct or omission on the part of PML which would fall within the scope of section 994. The Petitioner has not persuaded me that these proposed paragraphs are sufficiently coherent and particularised to give rise to an arguable claim that carries a degree of conviction.
 - iv) Proposed paragraphs 35O to 35W concern an alleged sale at an undervalue of a subsidiary of JSCE. None of the Petitioner's complaints in these paragraphs concern the affairs of PML.
 - v) Proposed paragraphs 35X to 35AE appear under the side-heading "Further actions of Zernov and associates to frustrate the attempts of the Petitioner and the Cossac UBOs to obtain information about and remedy the misconduct within JSCE". In line with and for the reasons set out above, where I have declined to consider Mr Zernov's alleged control over both PML and JSCE to give rise to JSCE's affairs being considered to be the affairs of PML, in my

judgment, none of the allegations set out in these proposed paragraphs comprise the affairs of PML which can properly form the basis of the Petitioner's claim under section 994.

- vi) The proposed amendments to paragraph 36 of the re-amended petition provide the Petitioner's conclusions regarding the matters complained of at sections (A) to (F) of the RRP. The Petitioner complains that without the support of PML, the Petitioner and its ultimate beneficial owners are unable to obtain information from JSCE about each aspect of the alleged wrongdoing within JSCE. It continues:

“In light of the above facts, it is to be inferred that Mr Zernov has personally approved and that he and/or his son Mikhail have benefited from the misappropriation of funds from JSCE, at the expense of JSCE and [PML]”.

This starkly highlights that the Petitioner's concern is with Mr Zernov and the control which it considers he is able to exercise over JSCE, rather than with the affairs of JSCE's minority shareholder, PML. I refuse permission to make the proposed amendments to paragraph 36.

45. Paragraphs 35B and 35D each concern PML failing to exercise its vote in accordance with the Petitioner's directions. The Petitioner claims that the court should infer that this failure was procured and/or approved by Mr Zernov and the Second Defendant. In my judgment, the exercise of PML's rights as a shareholder in JSCE does fall within the scope of the affairs of PML for the purposes of section 994. I shall grant permission for the complaints raised in paragraphs 35B and 35D of the RRP to be included for argument at trial by amendment to the petition.
46. Paragraphs 20 to 25A of the RRP appear under the heading “Mr Zernov takes control of further shareholding in JSCE”. They describe shares held in JSCE by a series of special purpose vehicles each said to be owned by Mr Zernov, his family members or parties closely associated with him. Much of what appears in the RRP came from earlier versions of the petition. The proposed amendments now before the Court are said by Mr Zelin to be simply updating and supplementing the information that was already there. For example, in relation to one company known as LLC1, the Petitioner wishes to amend the petition to include information concerning a criminal investigation commenced in February 2017 in relation to the alleged theft by Mr Zernov and others of the shares formerly held by Mr Diyakov in LLC1. It is said that this led to Mr Zernov and others being charged with embezzlement by deception, breach of trust and use of forged documents in relation to the right to the shares in LLC1.
47. These are clearly very serious allegations. However, in the light of the conclusions I have reached regarding the scope of the affairs of the company, I fail to see that they are in any way relevant to the causes of action which the Petitioner may properly advance in respect of PML pursuant to section 994 of the Act. There is no need for the court to receive information that supplements or updates matters that it considers not to be relevant to permissible causes of action.

Conclusion

48. I reject the Petitioner's interpretation of my judgment in the APOC trial that the Founding Shareholders reached an agreement as to PML's purpose which can no longer be achieved. The proposed amendments which relate to that interpretation are not permitted.
49. I decline to grant permission for each of the Petitioner's proposed amendments which hinge upon Mr Zernov's alleged *de facto* control of PML and JSCE which are claimed to result in JSCE's affairs becoming PML's affairs for the purposes of the petition.
50. I grant permission for the Petitioner to include its claim, as set out at proposed paragraphs 35B and 35D of the RRP, concerning the exercise of PML's vote in JSCE.
51. Having rejected the Petitioner's proposed amendment to the RRP which hinges upon an alleged temporal limitation to the purpose of PML, no other grounds were advanced before me to justify the Court permitting the Petitioner to reinstate its original claim for a winding-up order on just and equitable grounds. A winding-up order is a draconian remedy. Having once recognised, by its earlier amendment to the petition, that a more appropriate remedy lies in section 996, in my judgment, the effect of my decision today, re-emphasises that to the extent that the Court finds the Petitioner's remaining claims of unfair prejudice to be made out, the Court's wide discretion under section 996 can provide an alternative, more appropriate remedy.
52. I invite the parties to agree an order consequential on this judgment with directions for the future conduct of the petition.