[APPROVED]

THE HIGH COURT

[2025] IEHC 64

[H MCA 2024 606]

IN THE MATTER OF THE ARBITRATION ACT 2010

IN THE MATTER OF THE NEW YORK COVENTION

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

PROJECT SOLARTECHNIK FUND FUNDZ INWESTYCYJNY ZAMKNIETY

APPLICANT

AND

SOLIS BOND COMPANY DAC

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ALTERNUS ENERGY GROUP PLC

RESPONDENTS

***Ex tempore* JUDGMENT of Mr. Justice David Barniville, President of the High Court, delivered on the 22nd January 2025**

1. Introduction

1. This is an application by the Applicant, a Polish company, for orders seeking recognition and enforcement of a Polish arbitral award, which was issued on the 25th September 2024, and for judgment on foot of that award as against two of the Respondents to the application; the first Respondent, being Solis Bond Company DAC ("Solis"), and the third Respondent, being

Alternus Energy Group PLC ("Alternus"), both of which are Irish companies. While there is a further Respondent, that is the second Respondent named in the title to the application (a Polish Company), recognition and enforcement is not sought by the Applicant as against that Respondent. The orders are, therefore, sought against the first and third Respondents only.

2. The orders are sought under Order 56 of the Rules of the Superior Courts and/or Section 23(1) of the Arbitration Act 2010 and/or Article 35 of the UNCITRAL Model Law and/or Articles III and IV of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (the "New York Convention"). The award of the Polish arbitrators is dated the 25th September 2024, and it orders the payment of certain sums as against the three Respondents. Those sums are calculated in Polish zloty, and, in respect of costs, they are calculated in both zloty and in euros. The total sums in respect of which judgment is sought is PLN 27,788,504.32 and €156,114.84 plus interest as applicable.

2. Factual Background

3. Some detail in relation to the arbitral proceedings is set out in the papers and is evident from a review of the award itself. The arbitration was heard by the Polish arbitrators on the 14th May 2024, and they issued the award on the 25th September 2024. Following the issuing of the award, the Applicant's Polish solicitors wrote to the Respondents on the 18th October 2024, seeking payment on foot of the award. Payment was not forthcoming. The Applicant's Irish solicitors then wrote to the three Respondents seeking payment, on the 15th November 2024. Payment was, once again, not forthcoming.

4. Prior to the issuing of this application, but after the original affidavit was sworn on behalf the Applicant, the solicitors acting on behalf of the third Respondent (DLA Piper), wrote to the Applicant's solicitors referring to the correspondence that had been received in relation to the award and indicating that the third Respondent had appointed DLA Piper to examine all

possible courses of action to address the position of that Respondent's creditors or classes of creditors. Further to an announcement made on the Oslo Stock Exchange on the 15th November 2024, it was stated that DLA Piper was in the process of working with its client to establish a course of action which best protected the interests of its creditors. It noted that that exercise was ongoing and that a final decision had not been made, but that one option that the third Respondent was urgently considering was a scheme of arrangement under Part 9 of the Companies Act, 2014. In those circumstances, it was suggested in that letter, that it was wholly premature for an application to be made for the recognition and enforcement of the arbitral award, and that such an application could negatively impact the creditors of the Respondent. It was indicated that if the third Respondent concluded that a scheme was in the best interests of its creditors it would promptly take all appropriate steps to implement a scheme, irrespective of whether any creditor had taken any enforcement action or issued a petition to wind up the company. It was further stated that if the third Respondent determined to propose a scheme and a petition or proceedings were issued by any creditor, a stay or an adjournment of those proceedings would be sought.

5. The application seeking recognition and enforcement of the award and judgment on foot of the award against the Respondents was issued on the 2nd December 2024. It was grounded on an affidavit of Michal Miskowiec on the 26th November 2024. When the motion was first before the court on the 18th December 2024, there was representation on behalf of two of the Respondents. In the case of the first Respondent, Solis, that representation was in the form of a letter from Arthur Cox dated the 17th December 2024. In that letter it was indicated by Arthur Cox that they had been instructed by Solis and that it was adopting a neutral position in respect of the application and did not intend to appear before the court when the matter was listed for hearing on the 18th December 2024.

6. The position in relation to Alternus, the third Respondent, was somewhat different. There had been an exchange of correspondence before the return date for the application in which a number of procedural objections were raised, on behalf of Alternus, to the evidence before the court on the return date of the application. Those issues principally concerned the manner in which, and the form by which, the grounding affidavit, in respect of the application was sworn on behalf of the Applicant (remotely from outside the jurisdiction). It also emerged at the hearing that the Applicant had not exhibited a certified copy of the arbitration agreement under which the matter was referred to arbitration. It was acknowledged that that was a significant and important proof under Article IV of the New York Convention, in so far as that provision was being relied on in the recognition and enforcement application. The application was therefore adjourned on that date to the 22nd January 2025. It was agreed that a supplemental affidavit would be sworn on behalf of the Applicant and that in the event that Alternus intended opposing the application that it would provide its affidavit by the 15th January 2025. Further affidavits were sworn on behalf of the Applicant shortly after the hearing: one on the 19th December 2024 and another earlier this month on the 10th January 2025. Essentially, the purpose of those affidavits was to address any procedural infirmity that arose or that may have arisen in respect of the swearing of the original grounding affidavit.

7. No replying affidavit was filed on behalf of Alternus. Instead, on the 16th January 2025, DLA Piper wrote to the Applicant's solicitors stating that, having further considered its position and with a view to saving unnecessary costs, Alternus did not intend to serve any affidavit in respect of the application and would consent to the application, subject to the Applicant agreeing to an 8-week stay on entry and enforcement of its judgment. DLA Piper stated that the stay was being sought in order to enable Alternus to further explore a possible scheme of arrangement and that would produce a better return for unsecured creditors than would otherwise be the case. DLA Piper also stated that in circumstances where all of Alternus's

assets are secured in favour of other creditors, no prejudice would be caused to the Applicant in consenting to the stay and that consent was, therefore, sought.

8. That consent was not forthcoming and, at the hearing this morning, Alternus was represented by DLA Piper and by Mr Declan Murphy BL. Counsel indicated that since consent to the stay was not forthcoming, his client was now not in a position to consent to the recognition and enforcement or to the judgment being sought. However, very appropriately, counsel indicated that he was not instructed to pursue any procedural or substantive objections to the application. In particular, he was not instructed to pursue any technical objections that may have existed in respect of the original grounding affidavit and was not instructed to pursue any substantive objection to the recognition, enforcement and judgment application, including the point that was averted to at the hearing on the 18th December 2024 - which was that there may be an issue about the calculation of interest which could give rise to a public policy objection to the application. It was confirmed that none of those points were being pursued, while it was also made clear that Alternus was not in a position to consent to the Applicant's application.

9. It was, however, indicated that in the event that the court were to grant the application and to grant judgment, Alternus would be seeking a stay on the basis set out in DLA Piper's letter of the 16th January 2025. It was further indicated that while the position in relation to a scheme of arrangement had not been brought forward in any formal sense in this jurisdiction, certain funds had been raised in New York in respect of another company, Alternus Clean Energy, which is a US company. It was stated that those funds (approximately $2.25 million) were raised by way of a private placement, in order to provide funding for that company, a subsidiary company (as I understand it) of Alternus. It was further stated that those funds were raised in order to provide funding in the event that a decision was taken to promote a scheme of arrangement in this jurisdiction in respect of Alternus. It was submitted that, in the event

that I were to accede to the enforcement application, in so far as Alternus was concerned, I should grant a stay on the order and any judgment handed down, on the basis set out in the letter, namely, in order to enable further steps to be taken to advance a possible scheme of arrangement in respect of Alternus.

10. I should add for completeness that no stay was sought on behalf of the first Respondent, Solis, and further, that the application was not being pursued as against the second respondent, the Polish company.

11. I heard from Mr Arran Dowling-Hussey BL, on behalf of the Applicant, who took me through the papers and indicated the basis on which it was asserted that the Applicant should be granted the reliefs sought against the first and third Respondents and also the reasons why he contended I should refuse the stay application made on behalf of Alternus. Counsel submitted, in essence, that the Applicant was now entitled to have its application determined, to have finality brought to its application where there was a significant process leading up to the arbitral award and that it should not, therefore, be prohibited in any way from seeking to have full effect given to its award.

3. Decision on Application

12. First of all, I should say that having considered the papers in advance, I am satisfied that the Applicant is clearly entitled to have the Polish arbitral award recognised and enforced in this jurisdiction as against the first and third Respondents. It seems to be that enforcement clearly arises under Article 35 of the UNCITRAL Model Law and Articles III and IV of the New York Convention. No grounds of objection have been maintained against such enforcement. I will, therefore, grant the following orders:

> **(a)** An Order pursuant to Order 56 of the Rules of the Superior Courts and/or section 23(1) of the Arbitration Act 2010 and/or Article 35 of the UNCITRAL Model Law and/or Articles III and IV of the New York Convention, enforcing the arbitration award

of the 25th September 2024 between the parties (the "Award") against the first and third named Respondents in the same manner as if the said award was a judgment or Order of this Honourable Court to identical effect.

(b) An Order pursuant to Order 56 of the Rules of the Superior Courts and/or section 23(1) of the Arbitration Act 2010 and/or Article 35 of the UNCITRAL Model Law and/or Articles III and IV of the New York Convention entering judgment in favour of the Applicant against the first and third named Respondents, as awarded to them in the aforementioned Award in the sum of PLN 27,488,229; comprising (I) PLN 24,980.589 and (ii) PLN 2,577.943.88 as capitalised statutory interest on the sum referred to in b(i) from the 7th January 2023 until the 12th November 2023, together with Polish statutory interest at the rate of 11.25% from the 13th November 2023 until the 25th September 2024, and interest from the 26th September 2024 until the date of payment at the reference rate of the National Bank of Poland and in addition 5.5% per annum, being the amount found due and owing to the Applicant by the Respondents in the Award.

(c) An order pursuant to Order 56 of the Rules of the Superior Court and/or section 23(1) of the Arbitration Act 2010 and/or Article 35 of the Model Law and/or Articles III and IV of the New York Convention entering judgment in favour of the Applicant against the first and third named Respondents, for the costs of the aforesaid arbitration Award. In the sum of PLN 300,275.32 and €156,114.84 with the Polish statutory interest from the 9th October 2024 until date of payment, being the reference rate of the National Bank of Poland, and in addition 5.5% per annum.

(d) Judgment against the first and third named Respondents in the sum of PLN 27,788.504.32 and €156,114.84 plus interest as applicable on the basis set out in the other orders.

13. I will make clear, though, that in paragraphs (a), (b), (c) and (d) that the orders are being made as against the first and third Respondents only and not against the second Respondent as the application is not being pursued against that Respondent. The orders will be as set out in paragraphs (a), (b), (c) and (d) but making express provision for the orders being as against the first and third Respondents.

4. Decision on Stay

14. No stay is sought on behalf of the first-named Respondent, Solis. The only stay is that sought by the third-named Respondent, Alternus. I have given consideration to whether or not I should grant such a stay. However, despite careful, appropriate, and focused arguments made on its behalf by counsel, I am not satisfied that the justice of this case requires that a stay should be granted. I would point out that, having referred to the correspondence dating back to the 30th November 2024, reference was made at that stage to the possibility of a scheme or arrangement being promoted in this jurisdiction in relation to Alternus. That correspondence was sent over 7 weeks ago, and I am now being asked to grant a stay of a further 8 weeks. I am told by counsel - and I have no reason to doubt this - that certain funds have been raised in New York in respect of another company, as I have mentioned, part of which could potentially be used to fund the scheme in this jurisdiction in respect of Alternus. However, I am not satisfied that there is enough evidence to persuade me that the matter is sufficiently advanced or indeed that it would give rise to any real benefit were I to grant a stay of the type sought by Alternus.

15. Therefore, I do not believe that there is a good case made out for a stay in favour of Alternus. The Applicant is entitled to have finality, in the sense of having a judgment that can be recognised, enforced, and to obtain real benefit from it in this jurisdiction. The stay is sought on the basis of evidence which has not been brought up to date since the matter was last before the court. Although there is no reason to doubt at all what counsel has told me, if Alternus was really serious about pursuing a scheme – and noting even the constraints under which it may

be subject to by virtue of its membership of the Oslo Stock Exchange – I would have expected to have received further comprehensive information in support of the application, over and above the information which was available at the time of the hearing on the 18th December 2024. I do not have that evidence, and I am not convinced that there will be any benefit to a stay of the type sought by Alternus. The Applicant is entitled to have its award enforced against the third Respondent and that there be no stay on the judgment, which I direct be entered as against Alternus in this application. Those are the orders that I am making. I am refusing to grant the stay sought by the third Respondent.

5. Costs

16. The Applicant is entitled to its costs. It obtained the arbitral award; it wrote a number of letters in October and November 2024 seeking payment on foot of the award; it did not get payment. It brought the application. It has now succeeded on the application, and I have decided that there will be no stay on the orders made. The Applicant is, therefore, entitled to its costs as against the first and third Respondents (Solis and Alternus), to be adjudicated on in default of agreement.