

**JUDGMENT : MR JUSTICE COLMAN : Commercial Court : 28<sup>th</sup> April 2005.**

1. There are before this court proceedings in which C claim an anti-suit injunction against RHL restraining it from proceeding or continuing to proceed with or assisting or participating in or causing or allowing any person firm company or other legal entity over whom RHL has management or control including but not limited to its direct and indirect subsidiaries) to proceed or continuing to proceed with or assist or participate in pending actions before the Arbitrazhnye Court of Moscow and from commencing any further or other proceedings in the courts of any jurisdiction directed to claiming that all or any of the transactions necessary to give effect to the Share Purchase Agreement made between C and RHL on 22 July 2004 ("the SPA") were null and void on the grounds that they were fraudulent or sham transactions or were contrary to the laws of the Russian Federation or contrary to its public policy.
2. The SPA contained an International Chamber of Commerce Arbitration clause with an express choice of London as the place of the arbitration. C has commenced arbitration proceedings in which it claims damages for wrongful repudiation of the SPA by RHL.
3. The basis of C's claim for an injunction is that RHL is procuring R, an indirect subsidiary, to pursue the Russian proceedings against C and other entities involved in the transaction of which the SPA was a key part, in order to obtain against C judgments in respect of significant issues which will arise in the arbitration and by means of untrue evidence. C is concerned that if these Russian proceedings were permitted to continue and even if C took no part in them, resulting judgments might then be used by RHL prejudicially to C in the ICC arbitration on the basis that C was estopped as against RHL from challenging the conclusions of the Moscow court.
4. RHL challenges the jurisdiction of this court to make such an order as claimed by C and denies that there is substance in C's claim for such a remedy.
5. This court has reviewed evidence relating to the genesis of the SPA and evidence as to numerous other proceedings between the parties arising out of the collapse in the commercial relationship between the parties in about December 2004/January 2005.
6. This court has also seen the decision of Judge Rozhkova at a status hearing in the Moscow Arbitrazhnye Court on 26 April 2005 in one of the Russian actions already covered by the previous order of this court made by me on 14 April 2005 which expires today (28 April 2005). Those proceedings have been adjourned to 30 May 2005. Other Russian proceedings have also been adjourned to 10 May 2005.
7. This court has also been made aware that C has notified the arbitral tribunal appointed by the ICC that it now proposes to seek from the tribunal the remedy of an injunctive order similar to that now sought from this court and that the tribunal has invited the parties to participate in a telephone hearing during the period 2-5 May 2005, presumably to consider that application.
8. Having considered the background to the collapse of this transaction and the nature of the issues likely to arise both at the hearing of this application and at the hearing of substantive claims in the arbitration, as well as the various peripheral proceedings relating to the underlying transaction, including the pending proceedings in the Moscow Arbitrazhnye Court, I have no doubt that the overall interests of all parties, including RHL's associated companies and beneficial owners, would be best served if the whole group of disputes between C and RHL was referred to mediation before any further substantial costs are incurred either in pursuing or defending satellite litigation such as this application or in pursuing the claim in the arbitration both for injunctive relief and for damages. In many respects this series of disputes with its particular commercial background is the paradigm of a case which is likely to be settled by mediation. That procedure provides scope for the kind of commercial solution to these disputes which it is beyond the power of this court or of the ICC arbitrators to engender.

9. It is essential that any such mediation should be driven forward rapidly so that the process is not allowed to create undue delay either to the arbitration or to the satellite litigation. The longer this dispute is allowed to continue the greater will be the costs and the demands on executive time and the more satellite litigation there is likely to be.
10. With this object in mind the parties should be given 28 days to appoint a mediator or panel of mediators and to conclude their mediation meetings.
11. To this end an ADR order should be prepared which expressly provides for the selection of the neutral or neutrals, expressly requires the parties, including their fully authorised decision-takers to attend such meetings as the neutral(s) may appoint and to provide to the neutral(s) such evidence as may be required.
12. The target date for conclusion of the mediation should be 27 May 2005.
13. This timetable should not create undue delay to the arbitration. Nor should it unduly impinge on the Russian proceedings which currently stand adjourned.
14. The underlying concept of this order should be that the parties do their utmost to preserve the status quo and do not exacerbate their relationship until this order has been given a chance to produce results. Specifically neither party will procure the commencement of any further proceedings in any court or tribunal and both parties will take all steps necessary to ensure that nothing is done in any existing proceedings to the prejudice of either party.