Case No: CL-2015-000613

Neutral Citation Number: [2018] EWHC 1539 (Comm)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (QBD)
In the matter of an Arbitration Claim

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2018

Before :

MR JUSTICE BUTCHER

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Between :

EASTERN EUROPEAN ENGINEERING LTD	**Claimant**
- and -	
VIJAY CONSTRUCTION (PROPRIETARY) LTD	**Defendant**

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Benjamin Pilling QC and Daniel Khoo (instructed by **Cooke, Young & Keidan LLP**) for the **Claimant**
David Lewis QC (instructed by **Clyde & Co LLP**) for the **Defendant**

Hearing dates: 7 June 2018

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Judgment

MR JUSTICE BUTCHER

1. This is an application by the Claimant, Eastern European Engineering Ltd ("EEEL") for a worldwide freezing order against the Defendant, Vijay Construction (Proprietary) Ltd ("Vijay").

2. The application was originally made without notice on 1 March 2018, but Bryan J considered that it was not appropriate that the matter should be decided without notice. He accordingly ordered that the application be adjourned. It is that adjourned hearing which was heard, on notice and inter partes, before me.

The parties

3. EEEL is a company incorporated and registered in Seychelles. Its business, broadly, is developing, owning, buying and selling, leasing and administering all types of immovable property. It is a subsidiary of the Holding Company Guta Group LLC ("Guta Group"), a multi-national conglomerate with headquarters in Russia. Guta Group is the ultimate owner and operator of the Savoy Resort and Spa Hotel on Mahé, Seychelles ("the Savoy Resort").

4. Vijay is also incorporated and registered in Seychelles and carries on business as a construction company. Its managing director is Mr Vishram Jadva Patel ("Mr Patel"), who apparently founded the company in or about 1979.

The dispute and the Award

5. Between April and December 2011, EEEL entered into six contracts with Vijay relating to the construction of the Savoy Resort. Each of the six contracts was governed by Seychelles law, and contained an ICC arbitration clause providing that the seat of any arbitration should be Paris.

6. Vijay commenced work on the Savoy Resort under the contracts in 2011, but before the work was completed EEEL terminated the contracts because of alleged delays and defects in the works performed by Vijay. The termination of the contracts gave rise to disputes between the parties, in particular as to the lawfulness of the termination. Each party claimed that it was entitled to be compensated by the other.

7. On 10 September 2012 EEEL commenced an ICC arbitration. Vijay submitted its Answer and Counterclaim on 11 October 2012, contending that it had not breached the construction contracts, that there were no valid grounds for their termination, and counterclaiming for cancellation charges, expenses, labour costs and lost profit.

8. Andrew de Lotbinière McDougall, a partner of White & Case in Paris, was appointed as sole arbitrator ("the Arbitrator") on 22 November 2012. The Arbitrator published a partial award on 17 June 2013 dealing with jurisdictional objections, and concluding that he had jurisdiction to determine EEEL's claims.

9. On 14 November 2014 the Arbitrator published a final award ("the Award"). By the Award the Arbitrator held, in summary, that EEEL had validly terminated each of the construction contracts and ordered Vijay to pay EEEL damages plus interest and costs in an amount in excess of €14 million. The Award ordered EEEL to make certain (smaller) payments to Vijay. EEEL's evidence before me is that, as at 26 February 2018, the net amount owed by Vijay to EEEL was €18,981,516.39 plus US$ 126,000.

10. No part of the sums awarded by the Award have been paid by Vijay to EEEL.

Proceedings in relation to the Award

11. There have been a variety of proceedings commenced either to enforce or to challenge the Award in France, Seychelles and England.

France

12. France was the seat of the arbitration, and its courts had supervisory jurisdiction over the arbitration. On 12 January 2015, on EEEL's application, the Tribunal de Grand Instance de Paris recognised the Award and declared it executory in France. On 20 January 2015 Vijay's lawyers wrote to the ICC stating that the arbitral process was flawed. The ICC responded on 4 February 2015 rejecting Vijay's allegations. On 17 February 2015, Vijay filed appeals before the Cour d'Appel de Paris seeking to have both the Arbitrator's partial award and the Award cancelled and annulled. On 28 June 2016 the Cour d'Appel dismissed the appeals against both awards. Vijay filed a further appeal against the Cour d'Appel decision in the Cour de Cassation on 29 August 2016. On 11 May 2017, the Cour de Cassation issued a "Resolution Regarding Loss of Right", which recorded that no memorandum had been filed in support of the appeal within the relevant time limit and consequently the appeal stood dismissed.

Seychelles

13. There have been four separate sets of originating proceedings in Seychelles.

(1) On 27 January 2015 Vijay commenced proceedings against EEEL seeking that the Supreme Court of Seychelles (viz. the court of first instance) should set aside the Award, declare it null and void, and declare that it is incapable of enforcement or execution in any jurisdiction. These proceedings have been termed the "Seychellois set aside proceedings". The orders were sought on the basis that (1) the Arbitrator had no jurisdiction to hear the matters in dispute; (2) Vijay was not given an opportunity to present its case fully; (3) the Award was contrary to public policy; and (4) the Arbitrator omitted to make an award on one or more points in dispute. On 11 November 2015 Robinson J

ordered that these proceedings be stayed until the Seychellois recognition proceedings (see below) were determined.

(2) On 3 March 2015, EEEL issued proceedings against Vijay alleging that Vijay's failure to pay the Award was a breach of contract and seeking an order that Vijay pay the Award. These proceedings have been termed the "Seychellois breach of contract proceedings".

(3) On 9 June 2015, EEEL filed a plaint seeking recognition and enforcement of the Award in Seychelles. These have been termed the "Seychellois recognition proceedings".

(4) On 21 September 2016, EEEL filed a plaint seeking recognition and enforcement of an award for costs which the Cour d'Appel of Paris had made in EEEL's favour.

14. While it will be necessary to return in more detail to consider the various orders which have been made as to provisional and protective measures in the Seychelles proceedings, at present it is sufficient to describe the course of the Seychellois recognition proceedings.

15. In those proceedings, as I have said, EEEL sought orders that the Award should be recognised in Seychelles, and that it should be declared and made executory and enforceable there. Vijay resisted recognition and enforcement on five grounds, namely: (1) that the Seychelles court had no power to enforce the Award under statute or common law; (2) the Arbitrator did not have jurisdiction to hear the arbitration on the merits of the dispute; (3) the Arbitrator violated due process by accepting a third report by an expert of EEEL; (4) that EEEL had bribed, blackmailed and harassed a potentially material witness, Mr Sergey Egorov; and (5) that the Arbitrator had failed to deal with an issue arising from Vijay's submissions concerning Article 1230 of the Civil Code of Seychelles Act.

16. On 18 April 2017 Robinson J issued a judgment allowing enforcement of the Award in Seychelles. She rejected each of Vijay's grounds for resisting enforcement and recognition. On 5 May 2017 Vijay appealed against Robinson J's decision to the Seychelles Court of Appeal, which is the court of ultimate appeal in Seychelles. There were seven grounds of appeal. On 13 December 2017 the Court of Appeal handed down judgment ("the Court of Appeal judgment"). It found in Vijay's favour on one ground, and did not address any of Vijay's other grounds of appeal. The ground on which the Court of Appeal found in favour of Vijay was that there was no legal basis for recognising and enforcing an award in Seychelles under the New York Convention. This result stemmed from the constitutional history of Seychelles, and the conclusion that section 4 of the Courts Act did not enable the Seychelles Supreme Court to exercise the same power as possessed by the High Court in England to recognise and enforce an award under the New York Convention.

England

17. On 14 August 2015 EEEL made a without notice application, pursuant to s. 101 Arbitration Act 1996, for leave to enforce the Award in the same manner as a judgment and for judgment to be entered in terms of the Award.

18. That order was granted by Cooke J on 18 August 2015. Judgment was thereby entered against Vijay in the same terms as the Award. Cooke J's order provided that Vijay could within 14 days after service of the order apply to set it aside, and that the Award must not be enforced until any such application had been finally disposed of. On 23 October 2015 Vijay applied to set aside Cooke J's order and in the alternative for a stay of execution of the order pending the determination by the Cour d'Appel de Paris of Vijay's then pending appeal against the decision of the Tribunal de Grand Instance de Paris. Vijay subsequently abandoned its application for a stay. On 8 June 2016 Flaux J ordered that Vijay's application to set aside Cooke J's order be adjourned pending the final determination of the French proceedings seeking to have the Award set aside, and also ordered that Vijay provide security for the Award in the amount of €7.5 million. Vijay did not provide the security ordered and EEEL applied for an order that Vijay do so. EEEL then also applied, on 3 April 2017, to have Vijay's 23 October 2015 application to set aside Cooke J's order dismissed and for leave to enforce the Award.

19. EEEL's applications were heard together by Baker J on 7 April 2017. Baker J gave judgment on 11 April 2017 dismissing EEEL's applications. He ordered, in light of the decision of the Supreme Court in IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation [2017] UKSC 16, that Flaux J's order for security be discharged. He also ordered that, in light of the imminent dismissal of Vijay's appeal in the French courts for failure to prosecute it, the adjournment of Vijay's set aside application be terminated, and there be directions for its determination. Vijay's application to set aside Cooke J's order of 18 August 2015 has now been set down for a four-day hearing to commence on 8 October 2018.

Provisional and Interim Attachment measures in Seychelles

20. As I have said it is necessary to consider the history of provisional and interim attachment measures in the Seychelles proceedings, because they are said, by both sides, to be of some relevance to the application which I have to decide.

21. The interim relief sought, and sometimes obtained, by EEEL from the Seychellois courts appear to fall into seven categories.

22. First, shortly after the commencement of the Paris arbitration, EEEL obtained from the Supreme Court of the Seychelles an interim provisional attachment against bank accounts of Vijay. This was then set aside at an inter partes hearing in March 2013, on the basis that Vijay could satisfy a judgment against it.

23. Secondly, following the Award, on 13 March 2015, EEEL applied for provisional seizure and attachment of three Seychellois bank accounts, sums due under building

contracts between Vijay and itemised third parties, 35 cars and heavy vehicles, and three barges. On 22 July 2015 Robinson J in the Supreme Court of Seychelles refused the application, stating that Vijay had been in existence in Seychelles since 1979 and that there was no evidence that assets were being disposed of or moved out of the country or put beyond the reach of the Seychelles court. EEEL appealed against this decision, and on its own evidence before me in the form of Mr Zaslonov's first Affidavit, that appeal is still pending.

24. Thirdly, on 7 October 2015 EEEL applied for an essentially identical seizure and attachment of bank accounts, but with more detail in the supporting affidavit, including reliance on a cross-examination of Mr Patel on 2 September 2015 to which I will return. EEEL did not ultimately proceed with that application because Vijay undertook to the Supreme Court of Seychelles on 12 November 2015 that "the accounts listed in the application will neither be closed nor depleted otherwise than in the ordinary course of business until further order [of the Seychelles Supreme Court]".

25. Fourthly, on 9 October 2015 EEEL applied for a prohibitory injunction against Vijay to prevent it from disposing of or transferring or compromising its movable assets. This application was not opposed and so such an order was granted by Robinson J on 12 November 2015.

26. Fifthly, on 7 January 2016 the Supreme Court of Seychelles heard an application for an injunction to prevent the Nouvobanq US dollar account – which was one of the accounts which was subject to the undertaking given on 12 November 2015 - from being used. There was cross-examination of Vijay's bank manager. The outcome is not in evidence.

27. Sixthly, on 21 October 2016, EEEL applied to have Vijay and Mr Patel held in contempt, and Mr Patel committed to prison, for alleged breach of the injunction granted on 12 November 2015, on the basis that EEEL contended that Vijay had disposed of certain vehicles and construction machinery. At the start of the hearing of that application on 7 August 2017, however, EEEL applied to withdraw the application, accepting that it had been made on the basis of unreliable information from a third party.

28. Seventhly, again on 21 October 2016, EEEL applied to have Vijay and Mr Patel held in contempt for alleged breach of the undertaking given on 12 November 2015, on the basis of a transfer from one of the listed bank accounts to India. Vijay had maintained that the transfer was for payroll. The application was the subject of witness evidence at a hearing before Robinson J on 7 August 2017. A decision on that contempt application remains pending.

29. It is also important to record, under this head, that on 27 February 2018, in the light of the Court of Appeal judgment, the Court of Appeal granted a motion which Vijay had made to lift all injunctions and orders made against it. It is common ground between the parties that this discharged both the undertaking given and the injunction granted on 12 November 2015.

The present application and the parties' positions

30. The present application was made by an Application Notice issued on 1 March 2018. As far as presently material it sought a worldwide freezing order against Vijay pursuant to CPR 25.1(1)(f) and/or s. 37 of the Senior Courts Act 1981 and/or the inherent jurisdiction of the Court to restrain Vijay from (a) removing from England and Wales any assets which are in England and Wales; and (b) disposing of or dealing with or diminishing the value of its worldwide assets up to the value of €18,981,516.39 plus US $126,000.

31. EEEL's case is as follows:

(1) This court has jurisdiction over Vijay. Vijay was served with the English enforcement proceedings. It acknowledged service, made no application under CPR Part 11 to dispute the court's jurisdiction, and has taken a number of substantive steps in relation to the enforcement proceedings such that it has submitted to the jurisdiction of the English court.

(2) The court has jurisdiction to make a worldwide freezing order in aid of the execution of an arbitration award. That jurisdiction is founded on s. 37(1) Senior Courts Act 1981 which provides:

"The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

(3) The power to grant such a freezing order is exercisable in relation to arbitral awards which are enforced or enforceable as judgments, including in a situation where the award has not yet been turned into a judgment for the purposes of enforcement.

(4) The policy underlying the grant of such injunctive relief is that judgments of the court and arbitration awards should be enforced.

(5) Here there is an arbitration award in favour of EEEL, which remains unsatisfied, and EEEL has also obtained permission to enforce the Award as a judgment. There is clearly a good arguable case on the merits.

(6) There is "solid evidence" that there is a real risk that the Award and the judgment which EEEL has obtained in terms of the Award will go unsatisfied. In this regard EEEL relies upon the following matters:

(i) The fact that substantial transfers totalling at least US $16.7 million have been made from Vijay's bank account in the Seychelles to the personal account of Mr Patel in India. Vijay's own evidence is that in 2015 nine payments, each of US $ 1 million were made; and in 2016 seven payments of US $ 1 million and one of US $ 700,000 were made. EEEL does not accept Vijay's explanation for these payments, namely that they are made to Mr Patel's own bank account so that he can in turn pay the wages of Indian workers employed by Vijay and

that these are therefore bona fide payments in the ordinary course of Vijay's business.

(ii) The fact that Mr Patel stated on a previous occasion, namely on 2 September 2015 in a hearing in front of Robinson J., that he did not care what happened to Vijay, and in answer to a question as to whether Vijay would rather not pay the Award and would allow itself to be wound up he had said "Correct".

(iii) That Vijay has transferred English assets away from its business. Specifically, on 9 March 2017 EEEL served evidence that referred to Vijay's ownership of an English company called Q Glazing Ltd. On 29 April 2017, some six weeks later, Vijay transferred its shares in Q Glazing to a Ms Varsani, who is Mr Patel's daughter-in-law. While Vijay has now asserted that it never had a beneficial interest in Q Glazing Ltd and that that company was run for the benefit of Mr Patel's late son, no documentary evidence has been provided to corroborate this assertion.

(iv) That Mr Patel has tailored his evidence to suit the needs of litigation. In particular EEEL contends that Mr Patel has given inaccurate evidence in stating on three occasions, twice in Affidavits in the Supreme Court of Seychelles and once in a witness statement in the English proceedings, that all Vijay's assets were in the Seychelles when they were not because – at least – Vijay held the shares in Q Glazing Ltd.

(v) Vijay's assets, and in particular its Seychellois bank accounts, are of a nature that they are highly susceptible to dissipation.

(7) There has been no material delay by EEEL.

(8) The court should exercise its discretion in favour of granting an injunction. In this regard it is said that the links with England and Wales are sufficiently strong. It is said that while EEEL accepts that the majority of Vijay's assets may be in the Seychelles, there is a sufficient link with England to make the order and, further, that at present the English court is the only court that is in a position to make such an order.

32. Vijay's position is this:

(1) The court has no jurisdiction to grant a worldwide freezing order. The only claim which was contained in EEEL's Arbitration Claim Form was a claim to enforce the Award, and the Claim Form was served out, without permission, under CPR 62.18(8), which is limited to orders under s. 101 Arbitration Act 1996. Jurisdiction established by the Claim Form is limited to the relief set out therein. This does not include worldwide freezing relief under s. 37 Senior

Courts Act. (Though Vijay accepts that the English court can grant domestic freezing relief, ie confined to assets in England and Wales).

(2) The fact that the English court has no jurisdiction to make a worldwide freezing order in aid of execution of an arbitral award (or rather judgment in the terms of the Award) where the seat of the arbitration was not in England and Wales is illustrated by the non-existence of any other jurisdictional gateway to such relief. Specifically, Vijay contended that, though not relied upon by EEEL, the limitations on each of (i) CPR 6PDB 3.1(2), (ii) s. 44(2)(e) Arbitration Act 1996, and (iii) s. 25 Civil Jurisdiction and Judgments Act ("CJJA") 1982 and CJJA (Interim Relief) Order 1997, are salutary, and militated strongly against the suggestion that there was a jurisdiction under s. 37 Senior Courts Act in the present circumstances.

(3) Even if the court had a discretion to grant worldwide freezing relief it should not do so. Where the role of the English court is to enforce in support of another jurisdiction, then only in an exceptional case would the court make an order which extended beyond its own territorial jurisdiction. Furthermore any discretion should be exercised consistently with the principles applicable to s. 44 Arbitration Act 1996 and s. 25 CJJA.

(4) Here, there is no basis for the exercise of the court's discretion in favour of worldwide freezing relief.

(i) The reason why EEEL was applying to the English court at this late stage – having previously, since 2013, always sought relevant injunctive relief in Seychelles – was because the undertaking given and injunction granted in Seychelles on 12 November 2015 have recently been discharged. This is however a strong reason for the English court not to interfere, because worldwide relief covering assets in Seychelles would be inconsistent with that order of the primary court in relation to such assets.

(ii) The weight of the evidence and inherent plausibility suggests that the Seychellois courts remain empowered to grant injunctive relief over assets in Seychelles, such that this court should defer to those courts as the primary court with jurisdiction over such assets.

(iii) There is a danger that such an order will give rise to disharmony or confusion and risk of conflicting inconsistent orders that would run counter to the principles of comity.

(iv) There is no relevant link with this jurisdiction or alternatively any link is tenuous and not strong enough to justify worldwide relief.

(5) No cogent evidence of a risk of unjustifiable dissipation has been adduced.

Discussion and Conclusions

33. The first issue is whether Vijay was correct that the court has no jurisdiction to grant a worldwide freezing order under s. 37 Senior Courts Act against a foreigner, where service out is under CPR 62.18(8) based on the enforcement of an arbitration award pursuant to s. 101 Arbitration Act and where the seat of the arbitration was not in England and Wales.

34. As I have said, Vijay contended that the Court had no jurisdiction to grant a worldwide freezing order because no claim for such an order had been included in EEEL's Arbitration Claim Form. That Claim Form sought only leave to enforce the Award in the same manner as a judgment or order to the same effect pursuant to s. 101(2) Arbitration Act 1996, the entry of judgment in terms of the Award pursuant to s. 101(3) Arbitration Act 1996, and costs. Service out of the jurisdiction was effected without permission under CPR 62.18(8). Vijay also contended that the Arbitration Claim Form could not have included a claim for a worldwide freezing order and if it had it could not have been served out of the jurisdiction under CPR 62.18(8), or indeed on any other basis.

35. I considered that Mr Pilling QC for EEEL was correct to submit that a claim for ancillary relief such as a freezing order did not need to be included in an Arbitration Claim Form seeking recognition and enforcement of an award pursuant to s. 101 Arbitration Act 1996 in order for the court to have jurisdiction to make such an order.

36. Indeed, there appeared to me to be an anomaly in this part of Vijay's case. Vijay accepted that this court could, in the present case, make a domestic freezing order. But it was not clear how that could be the case and yet the court have no power to make a worldwide freezing order on the basis that it had not been claimed in the Arbitration Claim Form. There is no claim for a domestic freezing order in the Arbitration Claim Form in this case any more than there is a claim for a worldwide freezing order. And if the question is whether a claim form, notionally amended to include the relevant claim could properly have been served out in the first place (see NML Capital Ltd v Republic of Argentina [2011] 2 AC 495 at [77] per Lord Phillips of Worth Matravers) it was not clear as to why the answer would be different had the claim been for a domestic as opposed to a worldwide freezing order. In this regard it is to be noted that Mr Lewis QC for Vijay was inclined to accept that on the present state of the authorities the difference could not be accounted for by the existence of the jurisdictional gateway in 6BPD 3.1(2), because that head of jurisdiction relates to injunctions which are part of the substantive relief claimed; and that in this regard the position recognised under RSC Order 11 in Mercedes Benz A.G. v Leiduck [1996] 1 AC 284 continues to apply to CPR 6BPD 3.1(2), see Cool Carriers A.B v HSBC Bank USA [2001] 2 Lloyd's Rep 22.

37. Thus I consider that the court has jurisdiction to grant a worldwide freezing order, and has a discretion as to whether or not to do so. That exercise of discretion, however, must take into account, as a highly significant matter, the circumstances in which the English court is being asked to act.

38. Guidance in this regard is provided by the decision of the Court of Appeal in Rosseel N.V. v Oriental Shipping Ltd [1990] 1 WLR 1387. That was an appeal from a refusal by the first instance judge (Hirst J) to grant worldwide Mareva relief in support of an

arbitration award which had been obtained in New York. The Court of Appeal dismissed the appeal. Lord Donaldson MR said, at 1389 G/H that it might very well be that the court had jurisdiction to grant the relief sought, but upheld the judge's exercise of discretion. In the course of his judgment after setting out Hirst J's reasoning, Lord Donaldson said this (at 1388 G/H -1389 D):

> "That was an exercise of discretion and that, of course, is an obstacle to an appeal against the judge's decision. But I am bound to say that, in my view, he was abundantly right. I say that because, as it seems to me there is all the difference in the world between proceedings in this country, whether by litigation or by arbitration, to determine rights of parties on the one hand, and proceedings in this country to enforce rights which have been determined by some other court or arbitral tribunal outside the jurisdiction.
>
> Where this court is concerned to determine rights then it will, in an appropriate case, and certainly should, enforce its own judgment by exercising what would be described as a long arm jurisdiction. But, where it is merely being asked under a convention or an Act of Parliament to enforce in support of another jurisdiction, whether in arbitration or litigation, it seems to me that, save in an exceptional case, it should stop short of making orders which extend beyond its own territorial jurisdiction.
>
> I say that because, if you take a hypothetical case of rights being determined in state A and assets being found in states B to M, you would find a very large number of subsidiary jurisdictions – in the sense that they were merely being asked to enforce the rights determined by another jurisdiction – making criss-crossing long arm jurisdictional orders with a high degree of probability that there would be confusion and, indeed, resentment by the nations concerned at interference with their jurisdictions.
>
> It seems to me that, apart from the very exceptional case, the proper attitude of the English courts – and, I may add, courts in other jurisdictions – is to confine themselves to their own territorial area, save in cases in which they are the court or tribunal which determines the rights of the parties. So long as they are merely being used as enforcement agencies they should stick to their own last."

39. In S&T Bautrading v Bertil Nordling [1998] I.L.Pr. 151, the Court of Appeal held that Rosseel established a guideline which should be adhered to save in an exceptional or special case where the justice of the case requires a departure from the guideline; and that the Court of Appeal was itself bound by Rosseel.

40. I also consider that in approaching the exercise of my discretion it is appropriate to consider the principles applicable to orders under s. 44 Arbitration Act 1996 and under s. 25 CJJA. These are analogous jurisdictions to that which it is being sought to invoke here, and it is important to ensure that the general considerations which are relevant to those provisions are taken into account in the exercise of a discretion under s. 37 Senior Courts Act when it is invoked in support of a foreign arbitration award.

41. In Mobil Cerro Negro v Petroleos de Venezuela [2008] 1 Lloyd's Rep 684, the issue was as to the grant of a worldwide freezing order in support of an intended ICC arbitration in New York. The jurisdiction invoked was that in s. 44(2)(e) Arbitration Act 1996, which, by s. 2(3) of the same Act is capable of being exercised even if the seat of the arbitration is outside England and Wales. Walker J's approach was that the court would be prepared to exercise a discretion to grant a freezing order affecting assets not located in England and Wales only if the respondent or the dispute had a sufficiently strong link to England or where there was some other factor of sufficient strength, for example international fraud, to justify proceeding in the absence of such a link (paragraphs [86], [119], [120-122], [155]). Walker J's judgment also indicates the need to examine the proposed order to see whether its grant would run counter to the principles of comity with courts in other jurisdictions (paragraphs [135], [140-141]).

42. In relation to s. 25 CJJA, it has been laid down that the court has to consider the following five matters: (i) whether the making of the order will interfere with the management of the case in the primary court, eg where the order is inconsistent with an order in the primary court or overlaps with it; (ii) whether it is the policy in the primary jurisdiction not itself to make worldwide freezing/disclosure orders; (iii) whether there is a danger that the orders made will give rise to disharmony or confusion and/or risk of conflicting inconsistent or overlapping orders in other jurisdictions, in particular the courts of the state where the person enjoined resides or where the assets affected are located; (iv) whether at the time the order is sought there is likely to be a potential conflict as to jurisdiction rendering it inappropriate and inexpedient to make a worldwide order; and (v) whether, in a case where jurisdiction is resisted and disobedience is to be expected, the court will be making an order which it cannot enforce: see Motorola Credit Corp v Uzan (No. 2) [2004] 1 WLR 113 at [115].

43. Having regard to the principles identified in the authorities, and the circumstances of the present case, I am of the clear view that this is a case in which it is not appropriate to grant a worldwide freezing order. For these purposes I assume in EEEL's favour that it can show a good arguable case, which indeed was not in dispute, and a risk of dissipation, a matter to which I will return. Nevertheless I do not consider that the present is an exceptional case of the type which would justify such an order. On the contrary I consider that the following considerations mean that a worldwide freezing order should not be granted.

(1) There is only a very limited link with this jurisdiction. Both the parties are Seychellois. Their contracts related to the construction of a hotel in Seychelles, and were governed by Seychelles law. They chose Paris as the seat of their arbitration, and the main evidentiary hearing took place in Seychelles. The extent to which there are any assets in this jurisdiction is

disputed but there is every reason to suppose that any such assets are minor by comparison with Vijay's assets in Seychelles. The Seychellois courts have already entertained numerous applications and hearings in relation to injunctive relief.

(2) The fact that the Seychellois Court of Appeal has recently discharged the undertaking given and injunction made on 12 November 2015 is a strong reason for the English court not to intervene by granting a worldwide freezing order. Such an order would be inconsistent with that order of the primary court in relation to those assets. There is no evidence and no positive reason to believe that such an order would be welcomed by the Seychellois courts.

(3) Further, though the undertaking given and injunction made on 12 November 2015 have been discharged, I considered that the weight of the evidence before me, and in particular Mr Georges' Second Affidavit, as well as inherent plausibility, suggest that the Seychellois courts remain empowered to grant injunctive relief over assets in Seychelles, if they consider it appropriate to do so. Without good reason to do otherwise, this court should defer to those courts.

(4) There is a danger that if this court granted a worldwide freezing order there would be the risk of conflicting inconsistent orders, contrary to the principles of comity. This is not simply because such an order would be disharmonious with the setting aside of the undertaking given and injunction ordered on 12 November 2015, which is the issue referred to in (2) above, but also because, if this court were to grant an injunction which restrained dealings with assets in Seychelles, and was then called on to decide whether it was a breach of such an order that sums were paid to Mr Vijay's or other bank accounts in India for the alleged purpose of paying wages, there would be a risk of a finding inconsistent with the outstanding contempt motion in Seychelles.

(5) The case is not one which involves international fraud and so does not bring into play the policy considerations applicable to that type of case.

44. On this basis, I refuse to grant a worldwide freezing order. There remains, however, the question of whether it is appropriate to grant a domestic freezing order. As I have said, it was conceded by Vijay that the English court had jurisdiction to grant a freezing order limited to assets within England and Wales. I have concluded that it is appropriate to grant such a limited order.

45. For there to be a freezing order, it must be shown by solid evidence that there is a real risk that any judgment will go unsatisfied (The Niedersachsen [1983] 2 Lloyd's Rep 600 at 606-607 per Mustill J). Factors relevant to assessing this are helpfully set out in State Bank of India v Mallya [2018] EWHC 1084 (Comm) at paragraphs [105]-[106] per Andrew Henshaw QC, sitting as a Deputy High Court Judge. I consider that this requirement is made out by reference to at least the following three matters:

(1) Mr Patel's statement during evidence given before Robinson J on 2 September 2015 that Vijay would rather not pay the award and allow itself to be wound

up, and that the decision had been taken not to pay because the Award was a "false award".

(2) The fact of the transfer of the shares in Q Glazing Ltd to Ms Varsani, following EEEL's service of evidence which referred to Vijay's ownership of the shares in that company.

(3) Any assets are movable. Vijay has stated that it does not hold any immovable assets.

46. I accept that there is uncertainty as to whether Vijay has any assets within the jurisdiction, but the evidence does not satisfy me that there are none.

47. In the circumstances, and given that it is the policy of the law that the court should do what it properly can to enforce judgments, I consider that it is appropriate that a domestic freezing order should be made.

48. The freezing order will contain exceptions for payments in the ordinary course of business and the payment of legal expenses. There will be an order for provision of information about Vijay's assets, limited to those in the jurisdiction.

49. EEEL has offered a cross-undertaking in damages. I am not persuaded that the level of loss which may be caused by the grant of the freezing order I am making is such as to require or justify a requirement that the undertaking be fortified.

I trust that the parties may be able to agree the terms of the order in the light of my judgment.