Neutral Citation Number: [2025] EWCA Civ 62

Case No: CA-2024-000676

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**INSOLVENCY AND COMPANIES LIST (ChD)**
**Mr Justice Richards**
**[2024] EWHC 521 (Ch)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2025

**Before:**

**LORD JUSTICE NEWEY**
**LORD JUSTICE POPPLEWELL**
and
**LORD JUSTICE SNOWDEN**

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**Between:**

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| **SERVIS-TERMINAL LLC** | **Petitioner/ Respondent to the appeal** |
| **- and -** | |
| **VALERIY ERNESTOVICH DRELLE** | **Respondent to the petition/ Appellant** |

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**Charles Samek KC and James Bickford Smith** (instructed by **Sterling Lawyers Ltd**) for the **Appellant**
**Mark Phillips KC and Clara Johnson** (instructed by **Latham & Watkins LLP**) for the **Respondent to the appeal**

Hearing dates: 11 & 12 December 2024

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 31 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## Lord Justice Newey:

1. This appeal raises a question of wider significance: can a bankruptcy petition be presented on the basis that a payment ordered by a foreign Court has not been made in circumstances where the foreign judgment has not been the subject of recognition proceedings in this jurisdiction?

## Basic facts

2. The appellant, Mr Valeriy Drelle, was formerly the chief executive officer of the respondent to the appeal, Servis-Terminal LLC ("the Company"), which is incorporated in Russia. The Company having been declared bankrupt, its trustee in bankruptcy brought proceedings against Mr Drelle in relation to a loan of RUB 2 billion which the Company had made in December 2011 to another Russian company, Fort Steiton LLC ("Fort Steiton"), with the benefit of a personal guarantee from Fort Steiton's owner, Mr Motylev. Another company controlled by Mr Motylev, Intercom Capital LLC ("Intercom"), succeeded to the obligations of Fort Steiton in respect of the loan on 5 November 2014. Intercom having failed to repay the loan, the Company obtained judgments against both Intercom and Mr Motylev. However, it did not succeed in recovering all that it was owed.

3. The proceedings against Mr Drelle were founded on article 53(3) of the Civil Code of the Russian Federation. It was alleged by the Company that Mr Drelle had failed to act in good faith or reasonably when, as a director of the Company, he had procured it to make the loan to Fort Steiton. The Company claimed that Mr Drelle was in consequence liable to compensate it for the losses it had suffered on the loan.

4. The Arbitrazh Court of Yaroslavl Oblast gave judgment on the claim on 24 May 2019. It concluded in its judgment ("the Judgment") that Mr Drelle had not acted in good faith or reasonably in that he had failed to verify the financial position of either Fort Steiton or Mr Motylev. The Court therefore ruled that there should be recovered from Mr Drelle damages in the amount of RUB 2 billion. It further directed that a writ of execution should be issued.

5. Mr Drelle appealed, but without success. The Second Arbitrazh Court of Appeal upheld the Judgment on 6 August 2019. Mr Drelle then brought a cassation appeal to the Arbitrazh Court of Volgo-Vyatsky District, but he was again unsuccessful and, on 17 February 2020, he was refused permission to appeal to the Russian Supreme Court.

6. On 9 October 2020, the Company served on Mr Drelle, who was by now resident in London, a statutory demand under section 268(1)(a) of the Insolvency Act 1986 ("the 1986 Act") in which it claimed to be owed RUB 2 billion on the strength of the Judgment and the dismissal of the appeals against it. On 14 October 2020, the Company presented a bankruptcy petition against Mr Drelle on the footing that he was indebted to it in the sum of RUB 2 billion (equivalent to £19,845,309.40 on 7 October 2020) "based on an unpaid judgment debt in favour of [the Company] based on the order of Arbitrazh Court of Yaroslavl Region, granted on 25 May 2019 … which fell due for payment on 6 August 2019".

7. The petition came before ICC Judge Burton in June 2022. In a judgment dated 9 March 2023, ICC Judge Burton held that the debt claimed in the petition was not

subject to a genuine and substantial dispute. Accordingly, on 31 March 2023, ICC Judge Burton made a bankruptcy order against Mr Drelle.

8. Mr Drelle appealed, but the appeal was dismissed by Richards J on 11 March 2024. Richards J held that the fact that the Judgment had not been the subject of recognition proceedings in this jurisdiction did not prevent it from being the basis of a bankruptcy petition. He further declined to interfere with ICC Judge Burton's conclusion that the alleged debt was not otherwise subject to a substantial dispute.

9. Mr Drelle now challenges Richards J's decision in this Court. Four grounds of appeal have been advanced. The first is to the effect that, not having been recognised in this jurisdiction, the Judgment could not found a bankruptcy petition. The remainder relate to whether the conclusion that the alleged debt was not the subject of substantial dispute can be impugned for other reasons.

10. I shall first consider whether the Judgment was capable of providing the basis for a bankruptcy petition unless and until it was recognised.

## Was the Judgment capable of providing the basis for a bankruptcy petition?

*The position of foreign judgments in this jurisdiction*

11. *Dicey, Morris & Collins on the Conflict of Laws*, 16th ed., states as follows in rule 45:

> "A judgment of a court of a foreign country … has no direct operation in England but may
>
> (1) be enforceable by claim or counterclaim at common law or under statute, or
>
> (2) be recognised as a defence to a claim or as conclusive of an issue in a claim."

12. Briggs, *The Conflict of Laws*, 5th ed., explains at 112:

> "The first rule of foreign judgments is that judgments of foreign courts have, as such, no legal effect in England, for foreign judges have no authority in England. Except where Parliament has provided otherwise, foreign judgments cannot be enforced in England by execution, and no person is in contempt of court, or otherwise in peril in England, if she fails to do what she has been ordered to do by a foreign judge. As judicial adjudication is an exercise of state sovereignty, this is obvious: state sovereignty ends at the border of the state, and while international comity may certainly require that respect be given to exercises of that power within the sovereign's own territory, that is where the conventional obligations of comity end."

13. As, however, *Dicey, Morris & Collins*' rule 45(1) indicates, the common law allows for claims to be brought to enforce foreign judgments. Assuming that the foreign Court is considered to have had jurisdiction, a final and conclusive foreign judgment which provides for the payment of a definite sum of money can in general be the

subject of a claim: see *Dicey, Morris & Collins*, at rule 46. That will not be so, however, if the foreign judgment is "impeachable" for fraud, on public policy grounds or because the proceedings in which the judgment was obtained did not accord with principles of natural justice: see *Dicey, Morris & Collins*, at rules 46, 53, 54 and 55. Further, "English courts have no jurisdiction to entertain an action … for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign State": see *Dicey, Morris & Collins*, at rule 20.

14. Parker LJ, giving the judgment of the Court of Appeal, said this in *Owens Bank Ltd v Bracco* [1992] 2 AC 443 (affirmed by the House of Lords), at 457, about enforcement of a foreign judgment at common law:

> "The first method of enforcement here of a foreign judgment was by an action upon the judgment. The foreign judgment, in the absence of statute, could have no direct operation in England and Wales because of the principle of the territoriality of a court's jurisdiction. At first, the basis for enforcing the foreign judgment by action in this country was thought to be the doctrine of comity but that was later replaced by the doctrine of obligation, namely, that the judgment of a court having competent jurisdiction over the defendant imposed on him an obligation to pay the sum for which judgment had been given: see *Russell v. Smyth* (1842) 9 M. & W. 810, 819; *Schibsby v. Westenholz* (1870) L.R. 6 Q.B. 155 and the cases cited in *Dicey & Morris, The Conflict of Laws*, 11th ed. (1987), vol. 1, p. 420. It followed that anything which may properly be held to negative that obligation was a defence to the action upon the judgment. It is pointed out by the editors of *Dicey & Morris, The Conflict of Laws*, at p. 421, that the right, which the plaintiff seeks to enforce in such proceedings, is a right created and defined by English law and not by foreign law. Thus, in order for the foreign judgment to be enforced in this country, it is essential that the foreign court should have had jurisdiction over the defendant, not in the sense of the foreign law but according to the rules of our law: see *Adams v. Cape Industries Plc.* [1990] Ch. 433, 513H; and the defences which may be pleaded by the defendant in an action upon a foreign judgment, such as that the judgment was obtained by fraud, are themselves creatures exclusively of English law."

15. Somewhat more recently, Lord Collins explained in *Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236, at paragraph 9, that the "theoretical basis for the enforcement of foreign judgments at common law is that they are enforced on the basis of a principle that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained". Lord Collins added, however, that "this is a purely theoretical and historical basis for the enforcement of foreign judgments at common law", that it "does not apply to enforcement under statute" and that it made no practical difference to the analysis of the appeals with which he was concerned.

16. There are also statutes providing for the enforcement of foreign judgments. In the present context, two are noteworthy. In the first place, judgments given in many Commonwealth countries and overseas territories which satisfy certain conditions may be registered under the Administration of Justice Act 1920. Section 9(3) of that Act states that, where a judgment is so registered, it "shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court". Secondly, where Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 ("the 1933 Act") has been extended to a foreign country, it may be possible to register a money judgment from a Court in that country under that Act.

17. A case which was much discussed before us, *Re a Judgment Debtor* [1939] Ch 601 ("*Judgment Debtor*"), concerned the 1933 Act and, in particular, sections 2 and 6 of that Act. Section 2 of the 1933 Act provides so far as material:

> "(1) A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:
>
> Provided that a judgment shall not be registered if at the date of the application—
>
> (a) it has been wholly satisfied; or
>
> (b) it could not be enforced by execution in the country of the original court.
>
> (2) Subject to the provisions of this Act with respect to the setting aside of registration—
>
> (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and
>
> (b) proceedings may be taken on a registered judgment; and
>
> (c) the sum for which a judgment is registered shall carry interest; and
>
> (d) the registering court shall have the same control over the execution of a registered judgment;

> as if the judgment had been a judgment originally given in the registering court and entered on the date of registration …."

Section 6 of the 1933 Act is in these terms:

> "No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom."

18. Consistently with *Dicey, Morris & Collins*' rule 45(2), a foreign judgment may be recognised as a defence or as conclusive of an issue in a claim even where no claim has been brought to enforce it. "A foreign judgment may be relied on in English proceedings otherwise than for the purpose of its enforcement" and so "a foreign judgment which is final and conclusive on the merits in favour of the defendant is at common law a good defence to a claim in England for the same matter": see *Dicey, Morris & Collins*, at paragraphs 14-034 and 14-035. A foreign judgment may also give rise to an issue estoppel preventing a party from denying a matter of fact or law decided by the foreign Court. In that connection, *Dicey, Morris & Collins*' rule 51, which forms part of a section of the book headed "Conclusiveness of foreign judgments: defences", states:

> "A foreign judgment which is final and conclusive on the merits and not impeachable under any of Rules 52 to 55 is conclusive as to any matter thereby adjudicated upon, and cannot be impeached for any error either
>
> (1) of fact; or
>
> (2) of law."

19. That an issue estoppel can arise from a foreign judgment was established by *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)* [1967] 1 AC 853. As Lord Brandon explained in *The Sennar (No 2)* [1985] 1 WLR 490, at 499, it was not in dispute before the House of Lords in that case that:

> "in order to create an estoppel of that kind, three requirements have to be satisfied. The first requirement is that the judgment in the earlier action relied on as creating an estoppel must be (a) of a court of competent jurisdiction, (b) final and conclusive and (c) on the merits. The second requirement is that the parties (or privies) in the earlier action relied on as creating an estoppel, and those in the later action in which that estoppel is raised as a bar, must be the same. The third requirement is that the issue in the later action, in which the estoppel is raised as a bar, must be the same issue as that decided by the judgment in the earlier action."

20. A distinction between enforcement and recognition falls to be drawn in relation to foreign revenue laws, too. In *Skatteforvaltningen v Solo Capital Partners LLP* [2023] UKSC 40, [2024] AC 539 ("*Solo Partners*"), Lord Lloyd-Jones noted in paragraph 22 that in *Government of India v Taylor* [1955] AC 491 Lord Keith of Avonholm had at 511 suggested that "[o]ne explanation of the [rule that Courts will not enforce revenue laws of another country] may be thought to be that enforcement of a claim for taxes is but an extension of the sovereign power which imposed the taxes, and that an assertion of sovereign authority by one state within the territory of another, as distinct from a patrimonial claim by a foreign sovereign, is (treaty or convention apart) contrary to all concepts of independent sovereignties". Endorsing this analysis in *Solo Partners* at paragraphs 22 and 36, Lord Lloyd-Jones observed that, "[i]f there is no claim, directly or indirectly, to recover tax which is due, there is no attempt to assert the sovereign authority of the state which imposed the taxes within the territory of another". Consistently with that, Lord Lloyd-Jones said in paragraph 36, it is "well established" that "the revenue rule does not prohibit courts in this jurisdiction from recognising, as opposed to enforcing, a foreign tax law, provided that such recognition does not otherwise conflict with the public policy of this jurisdiction".

21. Professor Adrian Briggs has stressed that adjudication by a judge also involves an exercise of sovereign power: see "Recognition of Foreign Judgments: a Matter of Obligation" (2013) 129 LQR 87. At 88, Professor Briggs said:

> "Now if a foreign adjudication and judgment is understood as being an act of state sovereignty, the common law draws two conclusions: it is regarded as completely effective within the territory of the sovereign, and as completely unenforceable outside it. The fundamental rule of the English common law has always been that an English court has no jurisdiction to enforce a foreign penal, revenue, or what is sometimes described as an 'other public' law. There is now general agreement that Dicey's Rule 3 [now rule 20] is a particular manifestation of a more fundamental rule, that an assertion or exercise of the sovereign right of a foreign state will not be enforced by an English court. It follows that in the absence of legislation, a foreign judgment cannot be enforced in England."

22. Professor Briggs continued at 88-89:

> "The theory is illustrated by the practice. A successful litigant with a foreign judgment in his favour cannot enforce that judgment in England. No measures of execution may be taken on the strength of it. The claimant must instead bring original proceedings before the English court, in order to obtain, speedily or eventually, an original English judgment, which alone is the judgment which can be enforced. The nature of these English proceedings will depend on the nature of the anterior foreign judgment. If the foreign judgment took the form of a final order to pay a sum of money, the claimant may sue to recover that sum as a debt due and owing: the issue of a claim form followed by an application for summary judgment will in many cases produce an enforceable English judgment in

> short order. If the foreign judgment is otherwise, no debt action will lie, with the result that the claimant must fall back and sue on the underlying cause of action. However, if the foreign judgment was entitled to recognition, the usual course of proceedings from issue of process to English judgment will be to use the foreign judgment as a short-cut, allowing and requiring the issue of substance to be treated as res judicata; after which the English court will be able to give judgment. Its order may not be in precisely the same terms as that made by the foreign court, but in most cases, the English order will be close to the one the foreign court made. Either course results in a judgment of the English court and it is this which is enforceable in England.
>
> As Dicey said in his first edition: 'A foreign judgment has no direct operation in England', and nothing material has changed."

23. Professor Briggs added in a footnote at the end of the third sentence of this passage:

> "Though they can use it for the purpose of a statutory demand leading to a bankruptcy application, if the liability is contested by the defendant, the entitlement of the judgment creditor to enforce the judgment will need to be established in English proceedings. What is then enforced is the English decision to admit the claim to prove in the bankruptcy."

A footnote in comparable terms is to be found in *Dicey, Morris & Collins*. That states in paragraph 14-012 that a "judgment creditor seeking to enforce a foreign judgment in England at common law cannot do so by direct execution of the judgment" but "must bring an action on the foreign judgment". This, however, is added by way of footnote:

> "The judgment creditor may serve a statutory demand in terms of the foreign judgment, just as with any other unpaid debt. But if the validity of the debt is contested, the issue will have to be resolved as in an ordinary action to establish the enforceability of the judgment and hence the existence, as a matter of English law, of the debt."

The significance to be attached to each of these footnotes was the subject of argument before us.

24. Finally, section 34 of the Civil Jurisdiction and Judgments Act 1982 is noteworthy. That states:

> "No proceedings may be brought by a person in England and Wales or Northern Ireland on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in another part of the United Kingdom or in a court of an overseas

> country, unless that judgment is not enforceable or entitled to recognition in England and Wales or, as the case may be, in Northern Ireland."

*The 1986 Act*

25. Section 267 of the 1986 Act, headed "Grounds of creditor's petition", provides so far as relevant as follows:

> "(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.
>
> (2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—
>
> (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
>
> (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
>
> (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
>
> (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts."

26. Section 268(1) of the 1986 Act, which forms part of a section headed "Definition of 'inability to pay', etc.; the statutory demand", provides:

> "For the purposes of section 267(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
>
> (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as 'the statutory demand') in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand

> has been neither complied with nor set aside in accordance with the rules, or
>
> (b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part."

27. Section 382(1) of the 1986 Act explains that "Bankruptcy debt", in relation to a bankrupt, means (subject to subsection (2)):

> "any of the following—
>
> (a) any debt or liability to which he is subject at the commencement of the bankruptcy,
>
> (b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy …."

Section 382(3) states:

> "For the purposes of references in this Group of Parts [which comprises sections 251A to 385] to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in this Group of Parts to owing a debt are to be read accordingly."

28. By section 322 of the 1986 Act, "the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules [i.e. rules made pursuant to section 412 of the 1986 Act]". Rule 14.2(1) of the Insolvency (England and Wales) Rules 2016 ("the 1986 Rules"), made pursuant to section 412 of the 1986 Act, states that "[a]ll claims by creditors except as provided in this rule, are provable as debts against the company or bankrupt, whether they are present or future, certain or contingent, ascertained or sounding only in damages".

*The Bankruptcy Act 1914*

29. The Bankruptcy Act 1914 ("the 1914 Act") also featured in argument before us. Under that Act, which applied before the 1986 Act was enacted, section 1(1) provided that a debtor committed an "act of bankruptcy" in each of the following cases:

> "(a) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;

(b) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;

(c) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt;

(d) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;

(e) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;

(f) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself:

(g) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in England or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim set off or cross, demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained: For the purposes of this paragraph and of sections two of this Act, any

> person who is for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order.
>
> (h) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts."

30. Section 4 of the 1914 Act stipulated that a creditor was not to be entitled to present a bankruptcy petition against a debtor unless (among other things):

> "(a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds, and
>
> (b) the debt is a liquidated sum, payable either immediately or at some certain future time, and
>
> (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition …."

*The decisions below*

31. Mr Drelle (who was then represented by different solicitors and counsel) did not dispute before ICC Judge Burton that a bankruptcy petition can be presented on the strength of a foreign judgment even where that judgment has not been either recognised or registered in this jurisdiction. At that stage, Mr Drelle's case was solely that there was a bona fide dispute on substantial grounds as to the safety of the Judgment. He contended that there was evidence indicating that the Judgment had been obtained by fraud or collusion or pursuant to a miscarriage of justice.

32. By the time the matter was before Richards J, it was also part of Mr Drelle's case that, the Judgment not having been the subject of recognition proceedings, the Company was not entitled to present a bankruptcy petition on the strength of it. Richards J did not, though, accept the submission. He explained that, relying on *Dicey, Morris & Collins*' rule 45, Mr Drelle had contended that the Company could not enforce the Judgment without first taking proceedings to have it recognised and that "enforcement" in this context extended to using the Judgment as the basis of a bankruptcy petition: see paragraph 30 of Richards J's judgment. As, however, he explained in paragraph 35 of his judgment, Richards J considered that the question before him was "what 'debt' means, and not what Rule 45, or the common law that it distils, mean", since:

> "In s267 of the Insolvency Act, Parliament has legislated to determine which claims can found the presentation of a bankruptcy petition. It has not left this question to the common

> law. Parliament's answer is that only 'debts' that satisfy the requirements of s267 can found a bankruptcy petition."

33. Turning to whether the absence of recognition prevented the Judgment from giving rise to a "debt" for the purposes of section 267 of the 1986 Act, Richards J thought *Dicey, Morris & Collins*' rule 51 significant. On the assumption that the Judgment is not impeachable under any of rules 52 to 55, Richards J said in paragraph 43 of his judgment:

> "the effect of Rule 51 is that, when considering whether the Judgment gives rise to a 'debt' for the purposes of s267, it is to be taken as conclusive of any matter that it adjudicates. Accordingly, for the purposes of s267, it is to be assumed conclusively that Mr Drelle presently owes [the Company] RUB 2 billion, as determined by the Judgment. That is a strong indicator indeed that Mr Drelle owes a 'debt' of RUB 2 billion to [the Company]. I do not accept Mr Drelle's argument that Rule 51 is applicable only in cases where a claimant is relying on a foreign judgment 'defensively' rather than 'as a sword'. The text of Rule 51 itself makes no distinction and, moreover, Mr Drelle's submissions to this effect echo the Enforcement Point that I have already rejected."

34. Richards J went on in paragraph 46 of his judgment:

> "The 'obstacle' on which Mr Drelle relies, namely that [the Company] has only an unrecognised foreign judgment, does not prevent the Judgment constituting a 'debt'. It does not alter the conclusion that the Judgment, which is to be taken as final and conclusive for the purposes of Ground 1, requires payment of a liquidated sum that is not subject to any contingency. Rather, the 'obstacle' relied upon presents a barrier to enforcement of the Judgment in the particular jurisdiction of England and Wales that is no different in nature to the barrier to enforcement that faces a creditor who has an English trade debt, but no judgment."

35. Richards J concluded in paragraph 54 of his judgment that, "in principle, it was open to [the Company] to bring a bankruptcy petition by reference to the Judgment even though that Judgment was unrecognised".

*The parties' cases in outline*

36. Taking issue with Richards J's analysis, Mr Charles Samek KC, who appeared for Mr Drelle with Mr James Bickford Smith, emphasised *Dicey, Morris & Collins*' rule 45. The effect of the common law principle reflected in rule 45 is, Mr Samek argued, two-fold, in effect both sides of the same coin. In the first place, the principle prevents an unrecognised foreign judgment from being used as a "sword", including as the basis for a bankruptcy petition. Secondly, the principle has the consequence that an unrecognised foreign judgment does not give rise to a "debt" within the meaning of section 267(2)(b) of the 1986 Act since there is nothing capable of legal enforcement

unless and until the foreign judgment is recognised. It may be, Mr Samek said, that an amount payable under an unrecognised foreign judgment would be provable in a bankruptcy. That, however, would be because, having regard to section 382(3) of the 1986 Act and rule 14.2(1) of the 1986 Rules, claims are provable as debts "whether they are present or future, certain or contingent, ascertained or sounding only in damages" whereas by virtue of section 267(2)(b) a debt in respect of which a petition is presented must be "for a liquidated sum payable to the petitioning creditor … either immediately or at some certain, future time". Mr Samek further argued that Richards J's conclusions were inconsistent with views expressed by this Court in *Judgment Debtor*. It is apparent from that decision, Mr Samek said, that a foreign judgment within the scope of the registration scheme for which the 1933 Act provides but which has not been registered cannot found either a bankruptcy petition or a winding-up petition and so that, in the context of registrable foreign judgments, "debt" in section 267(2)(b) of the 1986 Act can only refer to a "debt" arising under a *registered* judgment. Likewise, Mr Samek argued, a judgment which is as yet *unrecognised* is not to be seen as creating a "debt" within the meaning of section 267(2)(b). The 1986 Act, Mr Samek maintained, does not purport to explain comprehensively every concept that it uses and, more specifically, in enacting section 267 Parliament left it to the general law to determine when a foreign judgment should be regarded as giving rise to a "debt".

37. In contrast, Mr Mark Phillips KC, who appeared for the Company with Ms Clara Johnson, supported Richards J's decision. Section 267(2) of the 1986 Act explains when a debt can provide the foundation for a bankruptcy petition and, so Mr Phillips pointed out, the subsection does not state that a "debt" must have been the subject of a judgment or even that it should be enforceable at common law. That, under the 1986 Act, there is no requirement for either a judgment or enforceability by action is confirmed, Mr Phillips argued, by *In re McGreavy* [1950] 1 Ch 269 ("*McGreavy*") and *Bishopsgate Investment Management Ltd v Maxwell* (The Times, 11 February 1993) ("*Bishopsgate*"). Applying *Dicey, Morris & Collins*' rule 51, Mr Phillips said, it can be seen that, in the absence of a genuine dispute as to impeachability, the Judgment is conclusive as to Mr Drelle's liability to the Company. *Dicey, Morris & Collins*' rule 45, Mr Phillips submitted, is not in point because presentation of a bankruptcy petition does not amount to enforcement by execution of the debt in question. In that respect, Mr Phillips cited, among other authorities, *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] EWCA Civ 92, [2005] 1 WLR 2871 ("*Ridgeway Motors*"), in which Mummery LJ explained in paragraph 29 that a winding-up petition "is neither (a) an action upon a judgment in the special sense of being designed to re-establish by legal proceedings the liability of the company to pay a judgment debt and obtain another judgment for it, nor (b) a process of execution of the judgment on which the petition is based" but is rather "sui generis, being in the nature of a wider legal proceeding available for the collective enforcement of the admitted or proved debts of the company for the benefit of the general body of creditors on a pari passu basis: see, for example, *In re Lines Bros Ltd* [1983] Ch 1, 20". With regard to *Judgment Debtor*, Mr Phillips contended that the Court of Appeal did not there decide that section 6 of the 1933 Act prohibits the holder of an unregistered foreign judgment from presenting a bankruptcy petition or, if it did, that was both obiter and wrong and, anyway, holders of registrable and non-registrable judgments are in different positions and there is nothing "bizarre" about different regimes producing different results.

*Analysis*

38. Section 267 of the 1986 Act provides for a bankruptcy petition to be presented in respect of a "debt" which "is for a liquidated sum payable to the petitioning creditor … either immediately or at some certain, future time, and is unsecured". In the present case, the Judgment provided for RUB 2 billion to be recovered from Mr Drelle and, as a matter of Russian law, payment had fallen due by the time the petition against Mr Drelle was presented. While, moreover, the Judgment has not been the subject of recognition proceedings in this jurisdiction, section 267 does not state that a foreign judgment cannot be considered to give rise to a "debt" unless recognised or registered. In fact, as the Judge noted in paragraph 45 of his judgment, section 267 "requires that there be a 'debt' without expressly considering how, or in which courts, any such debt could be enforced". Further, as is recognised in rules 45 and 51 of *Dicey, Morris & Collins*, a foreign judgment which is not open to impeachment can be conclusive as to matters decided in it.

39. As, however, *Dicey, Morris & Collins*' rule 45 shows, there is a general principle that a foreign judgment "has no direct operation in England". That has, among others, the consequence that "[a] judgment creditor seeking to enforce a foreign judgment in England at common law cannot do so by direct execution of the judgment" but "must bring an action on the foreign judgment": see paragraph 14-012 of *Dicey, Morris & Collins*. Mr Phillips pointed out that insolvency proceedings are not a form of "direct execution". However, such proceedings involve "collective enforcement of the admitted or proved debts" of the relevant individual or company (to echo words of Mummery LJ in *Ridgeway Motors*). While, therefore, a creditor who presents a bankruptcy or winding-up petition in respect of a judgment debt may not be engaged in "direct execution", it is still seeking enforcement. In each case, the judgment is not being used merely defensively but as a "sword".

40. Plainly, a foreign judgment can be determinative on a point even in the absence of recognition or registration. *Dicey, Morris & Collins*' rule 51 confirms that. However, the heading to the relevant section of *Dicey, Morris & Collins* indicates that rule 51 is concerned with "defences", and I do not read *Dicey, Morris & Collins* as lending support to any use of an unrecognised and unregistered foreign judgment as a "sword". The fact that a foreign judgment can be deemed conclusive on points decided in it may be important where an application is made for recognition. It does not follow, however, that an unrecognised foreign judgment can provide the basis for other proceedings.

41. The principle that a foreign judgment "has no direct operation in England" reflects the common law's aversion to enforcing a foreign exercise of sovereign power. As Professor Briggs has explained, "if a foreign adjudication and judgment is understood as being an act of state sovereignty, … it is regarded as completely effective within the territory of the sovereign, and as completely unenforceable outside it": see paragraph 21 above. That logic suggests that any use of an unrecognised and unregistered judgment as a "sword", including presentation of a bankruptcy petition founded on it, is objectionable.

42. The "revenue rule" has a similar root. Professor Briggs referred to it as "a particular manifestation of a more fundamental rule, that an assertion or exercise of the sovereign right of a foreign state will not be enforced by an English court": see

paragraph 21 above. In *Solo Partners*, Lord Lloyd-Jones thought that the "revenue rule" was to be explained on the basis that "enforcement of a claim for taxes is but an extension of the sovereign power which imposed the taxes, and … an assertion of sovereign authority by one state within the territory of another, as distinct from a patrimonial claim by a foreign sovereign, is (treaty or convention apart) contrary to all concepts of independent sovereignties": see paragraph 20 above.

43. The significance of this for present purposes lies in the fact that there can, I think, be no doubt but that the "revenue rule" precludes presentation of a bankruptcy petition in respect of a foreign tax liability. Nor did I understand Mr Phillips to dispute that. The "revenue rule" must therefore serve to prevent a foreign tax from being regarded as a "debt" in respect of which a petition could be presented notwithstanding the fact that nothing to that effect is expressed in section 267(2)(b) of the 1986 Act. More specifically, the fact that imposition of a tax involves an exercise of sovereign power must result in a foreign tax not being regarded as a "debt" on which a bankruptcy petition can be presented. That tends to support the contention that an unrecognised foreign judgment, which has no "direct operation" because it arises from an exercise of sovereign power, is likewise not to be seen as giving rise to a "debt" capable of founding bankruptcy proceedings.

44. Nor is it surprising that the 1986 Act should draw on principles from the wider law. The 1986 Act does not exist in a vacuum and does not purport to provide comprehensive explanations of all the concepts which feature in it. The point can be illustrated by reference to section 267 itself. Section 267 makes clear that a bankruptcy petition can be presented in respect of a "debt" only if the "debt" "is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured". There is no attempt, however, to explain the conditions under which a "debt" can arise or when a "liquidated sum" will be "payable". Such matters are left to the general law.

45. On the whole, academic commentary also provides support for Mr Drelle's case. I have already quoted passages from *Dicey, Morris & Collins* and Professor Briggs. It is worth mentioning, too, Fletcher, *The Law of Insolvency*, 5th ed., which says this at paragraph 6-027:

> "**Creditors who are ineligible to petition**
>
> In certain circumstances, an otherwise eligible creditor is precluded by law from presenting a bankruptcy petition against his debtor, although he still may be able to prove his debt and receive dividend in a bankruptcy brought about through the petition of some other creditor who is qualified to initiate proceedings. One example which could formerly occur was the case, already instanced, of a husband who had been awarded damages against a co-respondent in divorce proceedings, when the destination of the damages was yet to be determined by the court. Although this particular situation cannot now arise, on account of the abolition of the particular remedy in question, the essential principle which underlay the husband's disqualification as petitioning creditor is still operative in other cases, and it may be said that, as a general rule, wherever some

> obstacle would preclude the creditor from taking direct action at law to enforce his claim against the debtor, he will equally be precluded from resorting to the bankruptcy court as an alternative means of enforcement. For although he may be loosely termed a 'creditor', such a claimant in reality is not yet personally owed any proper, legally enforceable 'debt' which can become the basis of the petition. This form of ineligibility to petition for bankruptcy is therefore attributable to that fundamental interdependence of the legal concepts of 'debtor', 'creditor' and 'debt' which was referred to earlier …."

46. In paragraph 41 of his judgment, Richards J said of this passage from Professor Fletcher's work:

> "even though it speaks in general terms about the 'enforcement' of a claim, reading the passage as a whole, it is quite possible to read it as an articulation of the different circumstances of a contingent creditor (who can prove in a bankruptcy, but not present a bankruptcy petition) and a 'non-contingent' creditor who is entitled to petition for bankruptcy."

Perhaps so. However, a more obvious reading of what Professor Fletcher was saying is, I think, that wherever "an otherwise eligible creditor" would be precluded from taking direct action at law to enforce his claim against the debtor, "he will equally be precluded from resorting to the bankruptcy court as an alternative means of enforcement". That would suggest that the fact that a person in whose favour a foreign Court had given judgment could not resort to direct execution in the absence of recognition or registration would equally prevent him from "resorting to the bankruptcy court as an alternative means of enforcement".

47. The footnotes to "Recognition of Foreign Judgments: a Matter of Obligation" and *Dicey, Morris & Collins* which I have set out in paragraph 23 above strike me as more equivocal. The proposition in Professor Briggs' footnote that, if liability is contested, "the entitlement of the judgment creditor to enforce the judgment will need to be established in English proceedings" and "[w]hat is then enforced is the English decision to admit the claim to prove in the bankruptcy" might be said to be consistent with Mr Drelle's case. So, similarly, might *Dicey, Morris & Collins*' statement that "if the validity of the debt is contested, the issue will have to be resolved as in an ordinary action to establish the enforceability of the judgment and hence the existence, as a matter of English law, of the debt". On the other hand, I find it hard to see how the service of a statutory demand in respect of an unrecognised foreign judgment could be appropriate if, as Mr Drelle contends, such a judgment cannot give rise to a debt capable of founding a bankruptcy petition. If the fact that the foreign judgment has not been recognised means that, in the eyes of English law, there is no debt which can be pursued, that surely means that there is no debt in respect of which a statutory demand can properly be served.

48. Turning to *Judgment Debtor*, the issue there was whether a bankruptcy notice could be served in respect of a French judgment which had been registered under the 1933 Act. Relying on decisions on predecessor legislation, the debtor argued that "the only relief which the holder of a foreign judgment registered under the Act can obtain is

relief by way of execution, whether execution strictly so-called or execution in a looser sense such as equitable execution by way of receivership or garnishee proceedings": see 603. Greene MR, with whom Finlay and Luxmoore LJJ agreed, rejected the contention. Greene MR said that it seemed to him that section 6 of the 1933 Act "shows that Parliament was intending by this Act to provide that the only method of enforcing foreign judgments should be by registration" (608), that "the holder of a registered judgment can do whatever s. 2 tells him that he can do" (608), that section 2 contains "clear language … which, according to its ordinary meaning, would cover a bankruptcy notice" (608) and thus that the effect of the 1933 Act, as so construed, "is to place the foreign judgment, when registered for the purposes of the bankruptcy notice, in the same position as if it was a final judgment of an English Court" (609). In arriving at those conclusions, Greene MR said this at 608:

> "But, if the argument for the [debtor] were correct, it would produce this startling result, that it would not be open for the holder of a foreign judgment registrable under the Act ever to enforce that judgment in bankruptcy, and for this reason, that he cannot sue on it - s. 6 prevents him doing so - and the only thing he could do would be to register it; and then s. 2, sub-s. 2, according to the [debtor's] argument, prohibits him from taking or does not enable him to take bankruptcy proceedings on the basis of the registered judgment. The result, therefore, would be that this Act would have placed the holders of foreign judgments, for the purpose of enforcing those judgments in bankruptcy, in a much worse position than they were in before."

49. Mr Samek submitted that it is apparent from this decision that, under the 1914 Act, bankruptcy proceedings could not be brought in respect of a foreign judgment to which the 1933 Act applied unless and until the judgment was registered; that the 1986 Act did not change the law in this respect; that it would be odd if an unrecognised foreign judgment could provide the basis for a bankruptcy petition when an unregistered one cannot; and that in any event the position in relation to the 1933 Act illustrates that "'debt' within s267(2)(b) is not an open-ended concept" but "must yield to the prior statutory position as laid down in s6 of the 1933 Act". For his part, Mr Phillips argued that *Judgment Debtor* was concerned with whether a bankruptcy notice could be served under section 1(1)(g) of the 1914 Act and that, now that the 1986 Act has dispensed with "acts of bankruptcy" (including in particular that under section 1(1)(g) of the 1914 Act), an unregistered judgment can found a bankruptcy petition; that being so, Mr Phillips said, there can be no anomaly. As already mentioned, Mr Phillips further contended, at any rate in writing, that, if Greene MR were to be understood as expressing the view that the 1933 Act prevents the holder of a registrable, but unregistered, foreign judgment from presenting a bankruptcy petition on the strength of it, (a) that was obiter, (b) that was wrong and (c) it would neither matter nor be surprising if registrable and non-registrable foreign judgments were treated differently in the context of section 267(2)(b) of the 1986 Act.

50. As I see it, however, Greene MR plainly considered that section 6's bar on "proceedings for the recovery of a sum payable under a foreign judgment … other than proceedings by way of registration" encompassed bankruptcy proceedings. On

that footing, *Judgment Debtor*'s significance extends beyond section 1(1)(g) of the 1914 Act and does not depend on the existence of "acts of bankruptcy": it provides authority for the proposition that a bankruptcy petition simply cannot be presented in respect of a foreign judgment in advance of registration. I am myself inclined to think that this point was integral to Greene MR's reasoning and so is binding on us, but Greene MR's analysis would in any event be persuasive, and it seems to me to have a sound basis in the terms of the 1933 Act. That being so, it would appear that a bankruptcy petition cannot be presented on the strength of an unregistered foreign judgment and so that Mr Samek was right that a holder of an unrecognised judgment would be in a better position than a holder of an unregistered judgment were it the case that a petition can be founded on the former.

51. As for *McGreavy* and *Bishopsgate*, I do not think that either case assists the Company. In *McGreavy*, it was argued that a local authority could not present a bankruptcy petition in respect of unpaid rates because they were not recoverable by action: "[t]he Rating Acts", it was said, "impose a liability to pay rates which is enforceable by distress and not otherwise": see 271. The Court of Appeal, however, found "no grounds in the [1914] Act for construing the word 'debt' in s. 4 as referring only to debts in the pleading or procedural sense", i.e. "as meaning a sum for which an action can be brought": see 275. "Although in certain contexts", the Court said, "the word 'debt' means a liquidated sum which can be sued for, to treat the word as prima facie so restricted is … to confuse … the debt with the remedy": see 276.

52. Plainly, *McGreavy* was not concerned with whether a bankruptcy petition could be brought in respect of an unrecognised foreign judgment. While, moreover, it was not possible for a local authority to bring an action for unpaid rates, there was statutory provision in section 2 of the Rating and Valuation Act 1925 for rates to "be made, levied and collected, and … be recoverable, in the same manner in which at the commencement of this Act the poor rate may be made, levied, collected and recovered", with the result, as can be seen from *Liverpool Corporation v Hope* [1938] 1 KB 751, at 753, that a local authority "entitled to rates" had available to it "the remedy of distress". There was thus no question of the individual against whom the bankruptcy petition had been brought in *McGreavy* not being *liable* for the rates in the eyes of English law, nor of the local authority not being entitled to enforce the liability.

53. In *Bishopsgate*, the defendant had been ordered to make an interim payment pending quantification of his liability to the plaintiff in an inquiry. The defendant argued that such an order could not found a bankruptcy petition because it lacked finality. Chadwick J decided otherwise. He accepted that, under the 1914 Act, a bankruptcy notice could not have been served under section 1(1)(g) in respect of an interim payment order. That did not matter, however. Chadwick J explained:

> "The requirement that a bankruptcy notice could only be served after final judgment or order had been obtained has not survived the changes made in 1985. There is no longer a need for an act of bankruptcy in the old sense. The requirement under Section 267 of the Insolvency Act 1986 is that the debt is a debt which the debtor appears to be unable to pay. (See Section 267(2)(c)). Section 268 defines the circumstances in which that condition will be satisfied. They include failure to

> comply with a statutory demand. There is no requirement that the debt in respect of which a statutory demand is served should be a judgment debt. A fortiori, no requirement that it should be a debt resulting from a final order or judgment. I can see no justification for re-introducing the old requirements governing the service of a bankruptcy notice into the scheme which is now based on the service of a statutory demand. It is clear that the legislature did intend to change the law in this respect."

54. *Bishopsgate* confirms what is anyway apparent from the terms of the 1986 Act: that bankruptcy proceedings need not be based on a judgment debt. However, the petition against Mr Drelle is not founded on anything other than a judgment, albeit a foreign one: not only has the Company not attempted to argue that the claims which gave rise to the Judgment provide an independent justification for its petition but section 34 of the Civil Jurisdiction and Judgments Act 1982 bars proceedings on a cause of action in respect of which a foreign Court has given judgment in the claimant's favour unless (which is not suggested by the Company here) "that judgment is not enforceable or entitled to recognition in England and Wales". The question in the present case is not whether a bankruptcy petition can be presented on the strength of a debt other than a judgment debt but whether a foreign judgment which has not been recognised or registered is to be regarded as creating a "debt". Chadwick J was not concerned with such an issue, and his judgment sheds no light on it.

55. Drawing some threads together, it seems to me that, where there is no statutory provision to contrary effect, a bankruptcy petition cannot be presented in respect of a foreign judgment which has not been the subject of recognition proceedings. While an unrecognised judgment may be determinative for certain purposes, it will have "no direct operation" in this jurisdiction and so cannot be used as a "sword", whether as regards "direct execution" or as the basis of a bankruptcy petition. An obligation to make a payment imposed by an unrecognised foreign judgment is not enforceable as such in this jurisdiction and, in the eyes of the law of England and Wales, does not constitute a "debt" for the purposes of section 267(1) or section 267(2)(b) of the 1986 Act. A foreign tax will not give rise to such a "debt". No more will an unrecognised foreign judgment, which similarly involves an exercise of sovereign power. That conclusion is, moreover, consistent with the position under the 1933 Act, as explained in *Judgment Debtor*. It is also reinforced by section 267(1)(b)'s requirement that the "debt" in respect of which a bankruptcy petition is presented should be "payable … , either immediately or at some certain, future time". A sum for the payment of which a foreign judgment provides is not, as it appears to me, to be regarded as so "payable" if the judgment is unenforceable unless and until recognised by a Court in this jurisdiction. (Compare in this respect *King Crude Carriers SA v Ridgebury November LLC* [2024] EWCA Civ 719, at paragraph 27, per Popplewell LJ.)

56. In short, my own view is that, not having been the subject of recognition proceedings, the Judgment was not capable of providing the basis for a bankruptcy petition and, accordingly, that the bankruptcy order which ICC Judge Burton made should be set aside and the petition dismissed.

## The other grounds of appeal

57. What I have said thus far is sufficient to dispose of this appeal and, on balance, it seems to me best that I should not address the other grounds of appeal which Mr Drelle advanced. It may well be that the Company will now bring proceedings to have the Judgment recognised. A Judge hearing such a claim would not be bound either by what has been said in these proceedings by ICC Judge Burton and Richards J or by any comments which I might make, which would necessarily be obiter. Further, the evidence adduced in any such proceedings could potentially differ significantly from that which has been before the Courts in these proceedings, and the submissions could diverge as well. In all the circumstances, I do not think it would be helpful for me to comment on the arguments which the parties have presented as to whether there is a genuine and substantial dispute in respect of the debt alleged to arise from the Judgment. The Judge hearing any recognition claim will need to consider matters afresh, and obiter observations from me on the basis of different evidence and contentions would be more likely to hinder than to assist.

## Conclusion

58. I would allow the appeal, set aside the bankruptcy order and dismiss the bankruptcy petition.

**Lord Justice Popplewell:**

59. I agree with both judgments.

**Lord Justice Snowden:**

60. For the reasons given by Newey LJ, together with those that follow, I agree that the appeal should be allowed and the bankruptcy petition dismissed.

61. The Company asserts that it was entitled to petition the English court for a bankruptcy order against Mr Drelle on the basis of an unsatisfied judgment of the Arbitrazh Court of Yaroslavl Oblast ordering Mr Drelle to pay damages of RUB 2 billion for breach of his duties as a director of the Company. Quite apart from the issues that arise in relation to foreign judgments, a claim for unliquidated damages for breach of duty will not found a bankruptcy petition: see section 267(2)(b) of the 1986 Act. Accordingly, it is clear that Mr Drelle's only obligation to pay a liquidated sum upon which the Company can rely arises from the fact that he has been ordered to do so by the Arbitrazh Court.

62. However, that judgment and order is the result of the exercise of sovereign power by the judicial organs of the Russian state, and as Newey LJ has explained, the fundamental principles of state sovereignty mean that a judgment or order resulting from such exercise of foreign sovereign power has no direct effect in England and cannot be enforced for the individual benefit of the successful litigant using any of the processes of the English court. Instead the successful litigant must either bring proceedings in England under the common law to obtain an English judgment, or seek registration of the foreign judgment or rely upon some other statute or treaty permitting the enforcement of the foreign judgment in England.

63. Bankruptcy under the 1986 Act is a process of collective enforcement of rights against the property of a debtor which is administered by a trustee in bankruptcy. The trustee is an officer of the court who takes office by virtue of the making of a bankruptcy order and carries out his functions in accordance with the 1986 Act and under the control of the court. The essential nature and purposes of bankruptcy and corporate insolvency proceedings were described by Lord Hoffmann in Cambridge Gas Transportation v Official Committee of Unsecured Creditors of Navigator Holdings [2007] 1 AC 508 ("Cambridge Gas") at [14]-[15] ,

> "4. The purpose of bankruptcy proceedings … is not to determine or establish the existence of rights, but to provide a mechanism of collective execution against the property of the debtor by creditors whose rights are admitted or established. That mechanism may vary in its details. For example, in personal bankruptcy in England, the assets of the bankrupt are vested in a trustee for realisation and distribution to creditors. So the mechanism operates by divesting the bankrupt of his property. In corporate insolvency, on the other hand, the insolvent company continues to be owner of its property but holds it in trust for the creditors in accordance with the provisions of the Insolvency Act 1986: see Ayerst v C&K (Construction) Ltd [1976] AC 167. In the case of personal bankruptcy, the bankrupt may afterwards be discharged from liability for his pre-bankruptcy debts. In the case of corporate insolvency, there is no provision for discharge. The company remains liable but when all its assets have been distributed, there is nothing more against which the liability can be enforced: see Wight v Eckhardt Marine GmbH [2004] 1 AC 147, 155–156. At that point, the company is usually dissolved.
>
> 15. But these are matters of detail. The important point is that bankruptcy, whether personal or corporate, is a collective proceeding to enforce rights and not to establish them. Of course, as Brightman LJ pointed out in In re Lines Bros Ltd [1983] Ch 1, 20, it may incidentally be necessary in the course of bankruptcy proceedings to establish rights which are challenged: proofs of debt may be rejected; or there may be a dispute over whether or not a particular item of property belonged to the debtor and is available for distribution. There are procedures by which these questions may be tried summarily within the bankruptcy proceedings or directed to be determined by ordinary action. But these again are incidental procedural matters and not central to the purpose of the proceedings."

64. Against this background, I consider that in the same way as a person who relies upon a foreign judgment cannot invoke the individual enforcement mechanisms of the English court for his own benefit unless and until he obtains an English judgment, or registers the foreign judgment or has some other basis under a statute or treaty that permits its enforcement, so also such a person should not be able to invoke the

collective enforcement mechanisms of bankruptcy or winding up proceedings in the English court unless and until he obtains an English judgment, or registers the judgment or has some other basis under a statute or treaty permitting such enforcement of the foreign judgment.

65. That conclusion is entirely consistent with the common law approach to the treatment of foreign revenue debts in English insolvency. In Government of India v Taylor [1955] AC 491, the House of Lords addressed two questions: (a) whether there was a rule of law which precludes a foreign state from suing in England for taxes due under the law of that foreign state, and (b) whether (assuming the first question was answered in the affirmative) a claim for foreign taxes was nevertheless a "liability" within the meaning of section 302 of the Companies Act 1948 which the liquidators of an English company were bound to admit to proof and pay in the winding up. The House of Lords answered the first question "yes" and the second question "no".

66. In Skatteforvaltningen v Solo Capital Partners LLP [2023] UKSC 40, [2024] AC 539 at [22] and [36], Lord Lloyd-Jones considered Government of India v Taylor and explained that the first rule of law is best understood as being based upon the principle that the enforcement by court process of a claim for taxes is an extension of the sovereign power that imposed the taxes, and that one state should not be permitted to assert its sovereign authority by such means in the territory of another.

67. In Government of India v Taylor, having reaffirmed the rule prohibiting the enforcement by the English courts of a foreign revenue law, Viscount Simmonds (with whom Lord Morton and Lord Reid agreed) explained why the same rule applied in insolvency proceedings. He said, at pages 508-509,

> "We proceed upon the assumption that there is a rule of the common law that our courts will not regard the revenue laws of other countries: it is sometimes, not happily perhaps, called a rule of private international law: it is at least a rule which is enforced with the knowledge that in foreign countries the same rule is observed, and since it is a rule which operates equally in regard to natural and artificial persons, the company, with which we are here concerned, could not on the day before its resolution to wind up became effective have been sued by the Indian Government for the recovery of tax in the courts of this country.
>
> But it is said that from the moment that the company went into liquidation the situation changed, the old rule of law was abrogated, and our courts became the means of collecting the taxes of a foreign power. This may seem the more surprising when it is remembered that the winding up of a company, whether voluntarily or by the court, is only the machinery by which an entity, which can no longer, or at least no longer usefully, carry on its business, is brought to its statutory end. It is difficult to see why such a process should create new rights in foreign powers hitherto unknown in this or any other country.

> But it is said that under section 302 of the Companies Act 1948, the "liabilities" which the liquidator in a voluntary winding up is bound to discharge include an obligation to pay tax due to a foreign State. All turns on the meaning of the word "liabilities" in this section. On the one hand it is said by the respondents that it means only those obligations which are enforceable in an English court, and on the other hand that its meaning is extended - I do not know how far - but at least so far as to cover liabilities for foreign tax in respect of which the company might have been sued in the courts of the country imposing it.
>
> My Lords, I have no hesitation in adopting the former of these meanings. I conceive that it is the duty of the liquidator to discharge out of the assets in his hands those claims which are legally enforceable, and to hand over any surplus to the contributories. I find no words which vest in him a discretion to meet claims which are not legally enforceable. It will be remembered that, so far as is relevant for this purpose, the law is the same whether the winding up is voluntary or by the court, whether the company is solvent or insolvent, and that an additional purpose of a winding up is to secure that creditors who have enforceable claims shall be treated equally, subject only to the priorities for which the statute provides. It would be a strange result if it were found that the statute introduced a new category of creditors to compete with those who alone, apart from it, could enforce their claims."

At page 515, Lord Somervell took a similar view on the interpretation of section 302, holding that even if the word "liabilities" could include liabilities incurred abroad,

> "…I would not have regarded this as sufficient to overrule the special principle that foreign states cannot directly or indirectly enforce their tax claims here."

68. As I see it, Government of India v Taylor and Cambridge Gas answer Mr. Phillips KC's main contention that because the word "debt" in section 267 of the 1986 Act was not qualified in any way, it was apt to include the payment obligation created by a foreign court judgment, and that this reflected the special nature of bankruptcy and corporate insolvency proceedings. As Lord Hoffmann explained in Cambridge Gas, winding up and bankruptcy do not create new rights but are simply collective enforcement proceedings of the court; and in the same way as the word "liabilities" in section 302 of the Companies Act 1948 was given a qualified meaning in Government of India so as to accord with the principles of independent territorial sovereignty of states, so must the word "debt" in section 267 of the 1986 Act be given a similarly qualified meaning.

69. Indeed, in argument, Mr. Phillips KC did not dispute that as a matter of general principle, a foreign tax liability could not be regarded as a debt upon which a bankruptcy petition could be based. By parity of reasoning, I consider that the same must apply to an unregistered judgment of a foreign court.

70. For completeness I should add that the specific treatment of foreign revenue claims which was in issue in Government of India v Taylor has been reversed by statute. Article 13(3) of Schedule 1 to the Cross-Border Insolvency Regulations 2006 (SI 2006/1030) now provides that in English insolvency proceedings, a claim may not be challenged solely on the grounds that that it is a claim by a foreign tax or social security authority. But that provision does not affect the general approach to foreign judgments that I have outlined above.

71. Mr. Phillips KC also supported his argument by reference to the footnotes in Professor Briggs' article and *Dicey and Morris* to which Newey LJ has referred at [23] above. The footnotes in Professor Briggs' article and *Dicey and Morris* are not supported by any authority, and I consider them to be inaccurate for the reasons that I have given.

72. Mr. Phillips KC further relied on a passage in *Muir Hunter on Personal Insolvency* at 3-316 which states,

> "In principle, a demand or petition based on a foreign judgment debt will be recognised for bankruptcy purposes without the need for specific registration in the UK. A bankruptcy petition does not constitute enforcement of the foreign judgment; the bankruptcy jurisdiction under the Insolvency Act 1986 is a separate jurisdiction involving a class remedy (per DJ Musgrave in Sun Legend Investments v Ho [2013] BPIR 533 CC (Birmingham); see further Pace Europe v Durham [2012] EWHC 852 (Ch); [2012] BPIR 836 (HH Judge Purle QC sitting as a Deputy High Court Judge))."

73. However, neither case cited in *Muir Hunter* provides any satisfactory analysis or support for the proposition advanced. In Sun Legend Investments v Ho at [27]-[28], District Judge Musgrave essentially gave two reasons for rejecting the argument that the holder of a foreign judgment had to obtain an English judgment or register the foreign judgment before serving a statutory demand in bankruptcy on two bases. The first was that there was no express requirement for this in section 267 of the 1986 Act, and the second was that a bankruptcy petition does not constitute enforcement of a foreign judgment because "The bankruptcy jurisdiction since 1986 is a separate jurisdiction involving a class remedy". The first reason is inconsistent with the approach in Government of India v Taylor. The second reason is not a valid distinction at all. The expression "class remedy" is simply an alternative expression used in some cases to describe the process for collective enforcement of debts in an insolvency: see Re Maud [2016] EWHC 2175 (Ch) at [77].

74. Although the decision in Pace Europe was that an unregistered judgment from North Carolina could form the basis of a statutory demand in bankruptcy, the challenges by the recipients of the statutory demand were that the judgment was based upon an award of multiple damages, and that it had been given at a hearing in the US that they could not attend. The point that a foreign unregistered judgment could not be enforced by bankruptcy proceedings was neither taken in argument nor discussed in the judgment.