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Case No: CR-2018-003783

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

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

Royal Courts of Justice  
The Rolls Building  
London, EC2A 4NL

Date: 04/11/2021

Before :

**INSOLVENCY AND COMPANIES COURT JUDGE BURTON**

Between :

**COSSAC HOLDINGS LIMITED**

**Petitioner**

- and -

**(1) PREFERRED MANAGEMENT LIMITED**

**(2) KEYFORCE TRUSTEES LIMITED**

**(3) ANDREY ZERNOV**

**Respondents**

**Edward Crossley and Josh O'Neill** (instructed by **Stephenson Harwood LLP**) for the  
**Petitioner**

**Fraser Campbell** (instructed by **Forsters LLP**) for the **Second and Third Respondents**

Hearing dates: 19 to 22 October 2021

**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and other websites. The date and time for hand-down is deemed to be 3.30pm on 4 November 2021

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INSOLVENCY AND COMPANIES COURT JUDGE BURTON

## **Insolvency and Companies Court Judge Burton:**

1. The matter before the court concerns a dispute over the ownership of shares in the First Respondent, Preferred Management Limited (“PML”) which has arisen in the context of unfair prejudice proceedings. This is the trial of the issues within the Petitioner’s Additional Points of Claim.
2. By the Additional Points of Claim, the Petitioner seeks:
  - i) a declaration that certain of PML’s shares currently registered in the name of the Second Respondent are held by the Second Respondent on trust for the Petitioner (or its ultimate beneficiaries); and
  - ii) an order, whether pursuant to section 996 or section 125 of the Companies Act 2006, that PML’s register of members be rectified to register those shares in the name of the Petitioner.

## **Background**

3. PML was incorporated in England and Wales on 30 January 2003. It was the vehicle through which three Russian businessmen, Mr Diyakov, Mr Zernov (the Third Respondent) and Mr Matveyev (together the “Founding Shareholders”) held 40.35% of the issued share capital of a Russian insurance company, Public JSC Energogarant (“JSCE”). Each of the Founding Shareholders was issued with 1000 shares in PML, resulting in them each holding a third of its issued share capital. Mr Diyakov was the Chairman of the board of directors of JSCE, Mr Zernov was its Chief Executive Officer and Mr Matveyev joined JSCE as Mr Zernov’s deputy and became its Chief Finance Officer.
4. It is the Petitioner’s case that PML was set up as part of a management incentive scheme operated by JSCE to which 40.35% of JSCE’s shares were transferred in 2004. PML was founded and continued on the basis of a personal relationship of mutual trust, confidence and good faith between the Founding Shareholders. The Petitioner claims that during Mr Diyakov’s lifetime, there existed a quasi-partnership oral agreement or understanding (the “Fundamental Understanding”) between the ultimate beneficial owners of PML. The Fundamental Understanding is described in the Re-Amended Petition as comprising six elements. These can broadly be summarised as an understanding that PML’s ultimate beneficial owners would have equal status and an equal say regarding the manner in which PML’s shareholders’ rights in JSCE would be exercised, with no single Founding Shareholder being able to exercise sole control over PML or its shares in JSCE.
5. Those elements were supplemented by two further, alleged features of the Fundamental Understanding set out in the Additional Points of Claim: (a) that in the event that one of the Founding Shareholders were to withdraw from the quasi-partnership, his shares would be divided equally between the remaining partners; and (b) the quasi-partnership between the remaining partners would continue on the basis of the Fundamental Understanding.
6. In or around 2005, Mr Matveyev wanted to withdraw from JSCE. It appears to have taken some time for his intention to be put into effect, but in or around 2006 he resigned

as Chief Finance Officer of JSCE and his one-third shareholding in PML was transferred to Mr Zernov. This left Mr Zernov as the beneficial holder of two thirds of the shares in PML and Mr Diyakov beneficially holding the remaining one third share.

7. Mr Diyakov died in 2015. The Petitioner is beneficially owned by Mr Diyakov's family. It claims that pursuant to the Fundamental Understanding, when Mr Matveyev withdrew from the quasi-partnership, he agreed with Mr Zernov that he would transfer his one-third shareholding in PML (the "Matveyev Shares") to Mr Zernov who would then transfer half of it to Mr Diyakov. As a result, and to Mr Diyakov's knowledge, the Matveyev Shares were transferred to Mr Zernov's indirect ownership. Both Mr Diyakov and Mr Matveyev trusted Mr Zernov to divide the Matveyev Shares between him and Mr Diyakov and believed until about 2011 that he had done so. In fact, Mr Zernov had not done so.
8. The Petitioner claims that at a meeting which took place in or around 2011 between Mr Diyakov and Mr Zernov, also attended by Mr Diyakov's two sons-in-law, Mr Nikiforov and Mr Krasnikov (the "2011 Meeting") Mr Zernov confirmed (a) his intention to transfer half of the Matveyev Shares to Mr Diyakov; and (b) that as far as he was concerned, PML would continue to be run on the basis of the Fundamental Understanding. It is alleged that during the 2011 Meeting, when challenged regarding his failure to transfer the shares to Mr Diyakov, Mr Zernov appeared embarrassed and sought to excuse the delay on technicalities.
9. The Second Respondent and Mr Zernov deny that the Fundamental Understanding, as formulated, existed. PML's sole purpose was to act as a holding company for shares in JSCE and to be the vehicle through which the Founding Shareholders would hold an indirect interest in JSCE. They deny that there was any obligation on a departing Founding Shareholder to transfer their shares in PML equally between the remaining Founding Shareholders and deny that Mr Zernov was apologetic or contrite at the 2011 Meeting or gave the alleged assurance regarding PML continuing to be run on the basis of the Fundamental Understanding.
10. It is their case that for as long as the Founding Shareholders each held one third of the shares in PML, it was not surprising that they participated equally, as equal shareholders, in its affairs. When Mr Matveyev left, the situation changed and to the knowledge of, and without objection from Mr Diyakov (who had declined himself to buy the shares), Mr Zernov came beneficially to hold the majority of PML's shares.
11. They claim that when Mr Matveyev withdrew from JSCE, his shares were transferred to Mr Zernov as part of a broader restructuring of their joint business interests, such that Mr Matveyev acquired Mr Zernov's interest in various construction projects and Mr Zernov received the Matveyev Shares together with other shares held by Mr Matveyev in JSCE via a company called Elektrovolt LLC ("Elektrovolt") with provision being made for an additional balancing payment and interest, the latter to be calculated according to a formula depending on when the final payment was made.
12. The Second Respondent and Mr Zernov's case is that the overall bargain was recorded inter alia by: (i) a sale and purchase agreement dated 1 December 2006 in respect of Mr Matveyev's stake in Elektrovolt (the "Elektrovolt SPA"); and (ii) a letter of wishes, dated 27 January 2006, signed by Mr Matveyev and Mr Zernov, addressed to the Trustee of the Seasons Trust, which at that date held Mr Matveyev's and Mr Zernov's

respective shares in PML on trust for Mr Matveyev and Mr Zernov equally (the “Letter of Wishes”). Consequently, the Second Respondent and Mr Zernov say, there is no question of Mr Zernov holding half of the Matveyev Shares on trust for the Petitioner or its beneficial owners nor that the Petitioner is entitled to a declaration to that effect and a corresponding alteration of PML’s register of members.

### **Procedural history**

13. The petition was initially issued against the First and Second Respondents in May 2018. At that stage, and in its capacity as a one-third shareholder in PML, the Petitioner sought an order for PML to be wound up on just and equitable grounds or alternatively that it surrender its shares in PML in exchange for receiving one third of all of the shares held by PML in JSCE. Before service, the Petitioner obtained the permission of the court to amend the petition by removing the prayer for a winding-up order and so that it became instead, an unfair prejudice petition. The amended petition was served on PML and the Second Respondent in October 2018.
14. Four months later, in February 2019, the Petitioner served further proposed amendments to the amended petition which introduced for the first time its claims regarding the Matveyev Shares. Following the first CCMC in October 2019 and a subsequent application to join Mr Zernov as a respondent, the petition proceeded as a re-amended petition with separate points of claim, described as the Additional Points of Claim, to which the Second Respondent and Mr Zernov served their points of defence in January 2020.
15. On 28 October 2020 Deputy ICC Judge Agnello made an order for the Petitioner to provide security for the Second Respondent’s and Mr Zernov’s costs and directed that the claims in the Petitioner’s Additional Points of Claim be tried first and separately from the other heads of claim in the unfair prejudice petition. This is that trial.
16. On the first day of the trial, I heard an application by the Petitioner to adjourn the trial. It expressed serious concerns regarding the Second and Third Respondents’ alleged failure to comply with an order for Extended Disclosure. The adjournment was sought on the basis that the Petitioner believes that as a result of recent developments, including in criminal proceedings instigated in Russia by one of the Petitioner’s beneficial owners against Mr Zernov, it would soon be able to access documents hitherto not disclosed in these proceedings. For the reasons set out in an ex tempore judgment, I declined to adjourn and the trial proceeded.

### **The agreed list of issues for determination at the trial of the Additional Points of Claim**

17. In order to assist the court, but expressly on the basis that it was not intended to signal any departure from each party’s pleaded case, the parties agreed the following list of issues for determination by the court at the trial:
  - i) Was PML founded and continued by the Founding Shareholders on the basis of a quasi-partnership oral agreement or understanding as to its purpose, future management, ownership or control?
  - ii) If so, was any such understanding intended to apply to their interests in PML howsoever they were held and would it apply to their successors?

- iii) In particular, was PML formed by the Founding Shareholders on the basis that, upon any of them ceasing to be involved in JSCE: i) their shares in PML would be divided equally between the two remaining individuals; ii) in other respects the quasi-partnership between the remaining partners would continue on the basis of such understanding?
- iv) On what terms were the shares in PML formerly beneficially owned by Mr Matveyev, transferred to the beneficial ownership of Mr Zernov in or around 2006? In particular:
  - a) What consideration was payable to and/or received by Mr Matveyev for such transfer, including its form [and provenance]<sup>1</sup>?
  - b) Was there an agreement that Mr Zernov would divide such shares equally between himself and Mr Diyakov?
- v) Was there a meeting in or around 2011 between Mr Zernov, Mr Diyakov, Mr Krasnikov and Mr Nikiforov at which Mr Zernov confirmed:
  - a) his intention to transfer half of the shares, formerly beneficially owned by Mr Matveyev, to Mr Diyakov;
  - b) that PML would continue to be run on the basis of the understanding referred to in sub-paragraph (i) above?
- vi) In light of the answers to the issues above:
  - a) Are half of the shares in PML, previously beneficially owned by Mr Matveyev, now held on trust by the Second Respondent for the Petitioner?
  - b) Should PML's register be rectified and, if so, how?

## **Witnesses**

18. The Petitioner relied on the evidence of:
- i) Mr Nikiforov, a Doctor of Medical Sciences who is married to one of Mr Diyakov's daughters and was appointed to the board of directors of JSCE two years after Mr Diyakov's death in 2017; and proposed to call
  - ii) Mr Matveyev to give evidence.
19. The Second and Third Respondents' witnesses comprised:
- i) Mr Zernov;
  - ii) Ms Nina Yakovleva, deputy to the General Director of JSCE;

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<sup>1</sup> The words in square brackets were proposed by the Petitioner but were not agreed by the Second Respondent and Mr Zernov.

- iii) Mr Stavros Stavrou, at PKF in Cyprus, the partner in charge of PML's audit and until a few years ago, audit partner for Mr Matveyev's and Mr Diyakov's Cyprus registered companies; and
- iv) Mr Sergey Vasilyev, who has been employed in various capacities by JSCE since 1999, including as CEO and deputy CEO and who is currently an adviser to the CEO.

**Mr Nikiforov**

- 20. Mr Nikiforov was cross-examined on his evidence through a Russian interpreter. At the end of the first day of the trial, Ms Usorova, a solicitor at the Petitioner's solicitors, Stephenson Harwood LLP, who speaks both Russian and English fluently, expressed serious concerns regarding the quality and accuracy of the interpreter's translation. Ms Usorova prepared a witness statement highlighting, inter alia, that the interpreter had frequently, incorrectly used the Russian word for "assets" when he should have used the word for "shares". When the inaccuracy was highlighted to him during the course of the hearing, he apologised and said that he was not a specialist in financial matters. She provided further specific examples of company names, sentences and phrases which, in her opinion, were incorrectly translated.
- 21. By agreement between the parties, the interpreter was replaced after the first day of the hearing. The specific questions to which Ms Usorova referred in her witness statement were revisited via the new interpreter, Ms Kerod, during the second day of the trial when Mr Nikiforov was still under oath. The parties agreed that a full audit, which would enable the parties exhaustively to ascertain the accuracy of the first day's translation, was not necessary. Having identified and re-addressed in cross-examination the particular issues highlighted by Ms Usorova, it was agreed that it would not be open to the Petitioner to seek to rely on any other inaccuracies in the translation of Mr Nikiforov's evidence from the first day of the trial.
- 22. Much of Mr Nikiforov's evidence is hearsay. He was not involved in PML and did not know Mr Diyakov at the time PML was set up nor at the time that the alleged Fundamental Understanding originated. He was not involved in any of the discussions that took place when Mr Matveyev withdrew from the business in 2005.
- 23. Mr Nikiforov recalls meeting Mr Diyakov for the first time around the end of 2009 through Mr Diyakov's daughter, whom Mr Nikiforov married in April 2010. Following the marriage, Mr Diyakov spoke to him often about family and personal matters and over time, began to discuss various of his business affairs including JCSE and PML. The main reason Mr Nikiforov started to get involved in Mr Diyakov's business matters was to be able to help his wife resolve financial differences with her ex-husband following their divorce. She apparently held several of Mr Diyakov's business interests as his nominee and he was concerned to ensure that they were not lost as a result of the divorce.
- 24. Mr Nikiforov states that in 2011, Mr Diyakov asked him to familiarise himself with JSCE's business and corporate structure. Mr Nikiforov considered the structure to be unhelpfully complicated and unsupported by documentary records. He started to recommend ways in which the corporate structure could be improved and documented.

25. In 2011, Mr Diyakov invited him to attend a meeting with Mr Matveyev (the "Preliminary 2011 Meeting"). He recalls Mr Diyakov saying that the meeting had been suggested by Mr Matveyev but that before attending it, Mr Nikiforov did not know its purpose; he assumed it might be related to the corporate structure as that was the extent of his involvement in the business. Mr Nikiforov formed the view that Mr Matveyev had asked for the meeting in order to re-establish his relationship with Mr Diyakov with a view to being able, at some stage in the future, to ask for a favour or to invite Mr Diyakov to participate in one of Mr Matveyev's business ventures.
26. Mr Nikiforov says that during the Preliminary 2011 Meeting, Mr Matveyev asked Mr Diyakov whether Mr Zernov had transferred half of the Matveyev Shares to him:

"It was clear that Mr Diyakov did not exactly understand what Mr Matveyev was talking about, because in response to Mr Matveyev's question, he asked me to investigate the state of affairs in relation to his interest in PML and Elektrovolt. I was not surprised by Mr Diyakov's lack of knowledge regarding this issue, because as I explained above, first, Mr Diyakov perceived JSCE to be his business, irrespective of what legal documents said; secondly, Mr Diyakov was "a big picture" strategic man, who did not tend to get involved in the minutiae of legal or corporate affairs of his businesses.

64. Mr Matveyev then said that after his withdrawal he had asked Mr Zernov numerous times whether half of the Matveyev Shares had been transferred to Mr Diyakov. Mr Zernov kept telling him that the process was underway, but it was taking time. Mr Matveyev said that he even offered to Mr Zernov to have a joint meeting with Mr Diyakov to resolve the matter. Mr Matveyev said that Mr Zernov had said that it would not be necessary.

65. During the meeting, Mr Matveyev described the basic principles of the Fundamental Understanding (which confirmed my understanding of them) as follows:

65.1 The sole purpose of PML was to hold 40% stake in JSCE on behalf of Mr Diyakov, Mr Matveyev and Mr Zernov.

65.2 The Founding Shareholders owned equal number of shares with equal voting rights on the issue of how PML should exercise its shareholder rights in JSCE.

65.3 All decisions are to be taken by the three shareholders unanimously. If they could not agree on something, no decision would be made until the agreement can be reached.

65.4 Upon the exit of a shareholder, his shares would be equally distributed between the remaining two shareholders.

66. Towards the end of the meeting Mr Matveyev said that if it was necessary to arrange another meeting, involving Mr Zernov, he would be happy to make himself available.”

27. Mr Nikiforov describes the steps he took to try to obtain information about the corporate structure that he recorded in a diagram and referred to as the “Octopus Diagram”. He states:

“70. Using the Octopus Diagram, I was able to illustrate the following issues:

70.1 The lack of documentation evidencing the chain of transactions resulting in the acquisition of the shares in JSCE by PML and what consideration was given by PML in return;

70.2 Certain of the companies that transferred the shares in JSCE to PML on 24 October 2004 were liquidated and their accounts that could shed light on the circumstances of the share transfers to PML were unavailable;

70.3 PML's accounts recorded a shareholder debt in the total sum of approximately GBP 7 million, which was unsupported by any documentary evidence;

70.4 Following Mr Matveyev's withdrawal from PML, all of the Matveyev's shares were still registered in the name of a company owned and controlled by Mr Zernov; and

70.5 It was unclear what assets, formerly owned by JSCE and its subsidiaries, were transferred to Mr Zernov and Mr Matveyev, when and for what consideration.

71. I was concerned by the various gaps in the documentary records concerning the ownership structure of JSCE and I discussed these matters with Mr Diyakov and Mr Krasnikov. I was aware that JSCE was a regulated entity and that the financial regulator would pay close attention to JSCE's structure.

72. I recall telling Mr Diyakov that I had uncovered serious irregularities within the ownership structure of JSCE, which required his attention. Mr Diyakov said that he would arrange a meeting for us to discuss it. As it happened, the first time I was able to present my findings was at the meeting with Mr Zernov in 2011/2012, which I deal with below.”

28. The meeting he refers to is the 2011 Meeting attended by Mr Diyakov, Mr Zernov, Mr Nikiforov and Mr Krasnikov. He describes presenting the Octopus Diagram, drawing attention in particular to the continued ownership by Mr Zernov of all of the Matveyev Shares and all of Mr Matveyev's former shareholding in Elektrovolt. He states that Mr Diyakov asked Mr Zernov:



“to explain the reason for the irregularities that I had identified and in particular why he had not transferred half of the Matveyev Shares to Mr Diyakov”.

29. Mr Nikiforov states that Mr Zernov was very apologetic, that he agreed with Mr Nikiforov’s findings and that he tried to justify his failure to transfer the shares on the need to pay professional service providers for their work and the legal complexity of resolving matters, some of which dated back to the 2000s. He recalls Mr Zernov assuring Mr Diyakov that he would transfer half of the Matveyev Shares to Mr Diyakov. He states that at no time did Mr Zernov claim that he owned 100% of the Matveyev Shares or the shares formerly owned by Mr Matveyev in Elektrovolt. Mr Nikiforov said that he thought Mr Zernov’s excuses were not convincing but he trusted him and has no doubt that Mr Diyakov did so too.

30. Mr Nikiforov also describes in his evidence accompanying Mr Diyakov to a meeting with Mr Stavrou in Cyprus from 24 to 26 January 2012:

“When we arrived in Cyprus, we found out that Mr Stavrou had abruptly left to travel to Greece and we met with his brother instead. It was my impression that Mr Stavrou was deliberately avoiding us, although, at the time, I did not know why that might be. I discussed this with Mr Diyakov at the time and Mr Diyakov was similarly disappointed with the situation.

Mr Stavrou's absence resulted in Mr Diyakov's decision to transfer the management of Foleran to a different corporate service provider, Bybloserve Management Ltd ("Bybloserve"). I recommended Bybloserve because it provided corporate service to certain of my own companies. I recall that Mr Stavrou was unhappy about Mr Diyakov's decision to move Foleran's management away from his firm. The transfer process therefore took significantly longer than we expected.”

31. Finally, of relevance, Mr Nikiforov describes changes to the Board of JSCE after Mr Diyakov left, including Mr Zernov apparently seeking Mr Krasnikov’s support for his appointment as Chairman of the Board of Directors and that:

“Mr Krasnikov told me that Mr Zernov assured Mr Krasnikov that the same principles of managing JSCE, i.e. based on the Fundamental Understanding, which had existed during Mr Diyakov's lifetime, would continue to apply.

91. Mr Krasnikov discussed this matter with Mr Diyakov's widow (Tamara Diyakova), his two daughters and me and collectively we decided to support Mr Zernov's candidacy on the following condition. We wanted Mr Zernov to agree that he and his representatives on the Board would vote in favour of the creation of a number of committees, e.g. internal audit committee, remuneration committee, to ensure better supervision of the affairs of JSCE by the Board. Mr Zernov

agreed to that condition and on 25 November 2015 was unanimously elected as the Chairman of the Board.

92. Shortly after his election, Mr Zernov reneged on the promise given to Mr Krasnikov and refused to support the initiative to establish the committees within the Board of Directors.”

32. Mr Nikiforov was cross-examined regarding the assurances which he said Mr Krasnikov informed him Mr Zernov had given after Mr Diyakov’s death regarding the continued application of the Fundamental Understanding. He confirmed that Mr Krasnikov had used the words “fundamental understanding” and that he understood from Mr Krasnikov’s use of that term, that if Mr Zernov were to leave JSCE he would need to transfer his shares to Mr Diyakov’s heirs for nothing. However, when asked if it was his evidence that all relevant parties understood in 2015 that Mr Zernov either had to work for JSCE until he died, or give Mr Diyakov’s family his shares for nothing, his reply failed directly to address the question:

“This is a very subjective meaning. Fundamental understanding is much broader concept, where people understand how they can act jointly, and what is going to happen in the event of somebody’s demise, and so on. But what I mean is, Mr Krasnikov already worked in Energogarant, and Mr Diyakov proposed me to work in Energogarant together with them. Do you understand? In case if he died, we would have continued to work in this company in the same way.

MR CAMPBELL: I am not asking about who was working in JSCE. I am asking, is it your evidence that everybody agreed and understood in 2015 that Mr Zernov either had to work until he died, or give his shares to you/your family for nothing?

MR NIKIFOROV: He was working in the JSCE as a general director, and then he proposed to ourselves that he wants to change his role from the general director to the CEO, and this is what he articulated to us. He sent out his own function in the company. He believed that he would be best posed to carry out this function in Energogarant.

MR CAMPBELL: Nobody in 2015 thought for a moment that there was any obligation on a departing partner to give his shares to the other for nothing, did they?

MR NIKIFOROV: The question of whether it’s for nothing or not for nothing should have been discussed separate. This is a specific matter.”

33. I did not find Mr Nikiforov to be a reliable witness. He failed to explain or give satisfactory evidence as to the Fundamental Understanding. When Mr Campbell asked him to explain what events he understood would trigger the obligation for a Founding Shareholder to transfer his shares to the others, it took some time for him to answer the

question. He ultimately replied that he had never discussed with Mr Diyakov what would happen if one of the Founding Shareholders were to retire.

34. He claimed to be a thorough and details-orientated man but confirmed in cross-examination that other than preparing the Octopus diagram, he made no notes of the matters discussed at either the Preliminary 2011 Meeting or the 2011 Meeting.
35. Mr Nikiforov's evidence that Mr Diyakov set up PML as part of a management incentive scheme was swiftly undermined. He confirmed that Mr Diyakov had never used the term "management incentive scheme" in conversations with him.
36. I find Mr Nikiforov's explanation for the amendments which were made to the petition to be incredible. He has failed to provide any explanation why, against the background facts as he describes them, he waited almost a year after authorising the petition to be issued with a statement of truth claiming only a third of the shares, for it to become clear, as he said, that Mr Zernov had not fulfilled such an important and valuable promise to transfer half the Matveyev Shares. This is not only unsatisfactory but in my judgment leads me to conclude that it is inherently implausible, that following Mr Diyakov's death, and seeing Mr Zernov exercising his rights in JSCE not as an equal, but as a majority beneficial shareholder, he would not immediately have questioned how Mr Zernov came to hold such a majority.

### **Mr Matveyev**

37. Mr Matveyev has not provided a sworn witness statement. It was intended that he would give his evidence in chief during the trial by reference to the matters set out in a document described as a witness summary dated 22 February 2019 (the "Witness Summary"). However, he failed to attend the hearing. Mr Crossley informed the Court that the Petitioner had last been in contact with Mr Matveyev a few days earlier, on 13 October 2021.
38. The Witness Summary is signed, but without a statement of truth. It recites that it is given "in support of the Petitioner's amended petition seeking winding-up of the Company". It appears therefore to have been given before the Petitioner's further proposed amendments to the amended petition which were served in draft form around the same time in February 2019 and which introduced its claims regarding the Matveyev Shares. In the body of the document it states:

"All information provided by me hereby is true and accurate.

My mother tongue is Russian. This statement was drafted in Russian, then translate into English, whereupon I signed both Russian and English versions of the statement." (sic)

39. The Witness Summary does not state who drafted it or who provided the translation. It was not, as Mr Campbell put it, "teased out" by examination in chief and it was not tested by cross-examination.
40. In the Witness Summary Mr Matveyev refers to a "conceptual agreement" between the Founding Shareholders that if any of them were to withdraw from the business, their shares would be distributed among the remaining shareholders in halves and that as

they trusted each other, there was no need for them to record the agreement in writing. He also said that when differences emerged between himself on the one hand and Messrs Diyakov and Zernov on the other, he invited them to purchase his shares. When they both refused, he announced his intention to withdraw from the business. He stated that Mr Zernov undertook, after receiving Mr Matveyev's one third share in PML, to distribute half of it to Mr Diyakov.

41. On behalf of the Petitioner, Mr Crossley also drew the court's attention to translations of written notes of interviews in the Russian criminal investigation where Mr Matveyev, having had explained to him his rights as a witness by part 4 of article 56 of the Criminal Procedure Code of the Russian Federation, is recorded as having informed the investigator of his recollection of what was agreed regarding his shares when he decided to withdraw from the business. In the first interview note dated 29 March 2018, he stated that upon his withdrawal, and after first offering to buy Mr Diyakov and Mr Zernov's shares, which they both declined, that the Founding Shareholders agreed that he was to let the remaining Founding Shareholders have his shares:

“to be distributed on a parity basis.

According to the existing arrangement, which Diyakov was well aware of, I sold to Zernov all my shares in the insurance company. For his part, Zernov undertook to formalize the further distribution of the shares purchaser from me in equal proportion between Diyakov and him”.

42. The next interview note is dated 15 May 2018. Mr Matveyev is again recorded as saying that in relation to PML, after his withdrawal all the shares he held in PML were to be registered to Mr Zernov:

“subject to further re-registration in equal proportion with A.F. Diyakov.”

43. The third interview note is dated 20 September 2018 and in relation to Elektrovolt, Mr Matveyev again said that he would sell his 30% share in that LLC:

“so that in future he was independently with A.F. Diyakov to split it in halves with A. F. Diyakov. That discussion took place between A. A. Zernov and me, without A.F. Diyakov being present at the conversation. However A.F. Diyakov was well aware of the fact that I was willing to withdraw from the shareholders of Elektrovolt LLC and that the share sale and purchaser agreement was going to be executed between A. A. Zernov and me. I do not know, in which way they were to distribute my participation share in Elektrovolt LLC. A. A. Zernov told me that they were to decide upon it with A.F. Diyakov alone and that I did not need to go into that matter.”

44. None of the statements made or said to have been made by Mr Matveyev provide a CPR-compliant statement of truth. They were not set out before the court in any format that could even loosely be described as evidence in chief and due to his failure to attend court, were not subject to cross-examination. Whilst the court notes what Mr Matveyev

has apparently said he expected to happen after his departure from JSCE, having not been examined or tested before the court, almost no weight can be attached to those statements.

### **Mr Zernov**

45. Mr Zernov's written evidence explained how he, Mr Diyakov and Mr Matveyev progressively bought an increasing stake in JSCE through various companies to the point where, in 2003, they owned approximately 97% of its shares. Mr Matveyev proposed that they should split their shareholding into three equal parts and Mr Diyakov agreed that they should have equal shares in JSCE's holding companies. He said:

“We came to this decision because it was difficult to say who did more in what way for our business. The decision was based on our working relationship at the time: we did not discuss or, as far as I am aware, even think about what might happen in the future if one or more of us stopped being involved in the business of JSCE. We never reached any agreement or understanding about what would happen if one of more of us transferred our shares to another person, whether a family member or third party purchaser. Certainly, it was never agreed or understood that if one of us walked away from the business of JSCE, his shares would be transferred to the others for free. If that suggestion had been made, it would have made no sense.”

46. He described how Mr Matveyev first asked Mr Diyakov if he would buy his shares from him, but Mr Diyakov refused and then, a month or so later, he invited Mr Zernov to buy them.

“I told him that I did not have the funds to do so. I was also involved in various construction businesses, as Mr Matveyev had encouraged me to become involved, and I thought that if I withdrew from these, I would lose some money. However, I thought that it was better to split the business to avoid rocking the boat.

15. Eventually, Mr Matveyev and I agreed that he would transfer his shares in JSCE, including his shares in the First Respondent, to my ownership. He did this by resigning as beneficiary of a trust that held some of our interests in JSCE, and also selling me his shares in a Russian company (LLC Electrovolt) that held other interests in JSCE. In return, I would transfer to him my interest in various construction businesses, which were held through a company called Hardman Investment Ltd. Because the value of what I was transferring was more than the value that he was transferring, he would also cause a payment to be made to me by reference to a formula. In the event, that payment would have been \$28,550,000 by 31.12.2007. This was reflected in a letter of wishes dated 27 January 2006, and a subsequent letter records that the balancing payment was \$23,438,484 on 28.10.2006.

16. I understand that the Petitioner says that I agreed with Mr Matveyev that I would transfer some of the shares to Mr Diyakov. I did not make any arrangement of that sort, either with Mr Matveyev or with Mr Diyakov. I had bought the shares, and I had paid for them by giving up my interests in the construction business. Mr Diyakov was not involved in the construction business and the issues of business separation did not affect his interests.”

47. In relation to the criminal investigation, Mr Zernov stated:

“I believe that Mr Nikiforov began to communicate with Mr Matveyev, and began to try and seize control of JSCE and move me out. I believe Mr Matveyev sought to cause trouble by telling Mr Diyakov that I had not paid anything for his shares in JSCE, which was false. I believe this is what led to the Russian criminal investigation, which started in 2017 (Mr Diyakov having died in 2015), which is still ongoing and which means I cannot currently go back to Russia.”

48. Of the 2011 Meeting, Mr Zernov stated:

“At some point in 2011, I called Mr Diyakov and said that we needed to meet. I went to his office. I wanted to discuss with him the possibilities of moving more shares to the First Respondent in order to be more tax efficient in connection in preparation for a proposed transaction with a potential investor. Mr Diyakov invited Mr Nikiforov and Mr Krasnikov, another son in law of Mr Diyakov into the office and said they would explain themselves. The two men said that Mr Diyakov was the main partner in JSCE, and that it was not right that he did not have the controlling stake. I disagreed. Mr Diyakov said that this was not his way of thinking either, but that his family had another opinion. I said that I was Mr Diyakov's partner and that I did not wish to speak with people who were not my partners.

20. Later Mr Diyakov sent me an unsigned agreement that suggested that the ownership was structured 41 per cent to Mr Diyakov and 57 per cent to me. He proposed that the ownership should be split 50/50. However, that proposal was never accepted by me because there were no grounds to revise the existing structure.”

49. Mr Zernov gave evidence in English. He took steps to ensure that he always fully understood the question being put to him and to give an accurate reply. He asked counsel to repeat the question when asked, using the colloquial term, whether he was “more of a details man”. He sought to calculate, as accurately as he could, the number of years he had known Mr Matveyev before introducing him to Mr Diyakov and he explained clearly the type of business and occasions for which Mr Diyakov would look to him to translate English into Russian, and those documents and meetings for which professional translators were engaged.

50. Mr Zernov's evidence regarding the basis upon which the business of PML was set up and operated by the Founding Shareholders was unambiguous and unwavering: they would each own a third of the shares, they would work as equal partners but nothing was discussed or agreed regarding what would happen if one of the Founding Shareholders wished to leave. He refuted the Petitioner's suggestion that the Founding Shareholders agreed, as some form of incentive to work hard and to stay in the business, that they would have shares in PML but that if one of them were to leave, their shares would be transferred to the others, potentially for no consideration. He said that he found the suggestion that they would ever agree to such an arrangement as being "incredible". In his 25 years in business he had never seen such a management incentive arrangement: employees might be given incentives of up to five or perhaps ten percent of the business, but the arrangement between the Founding Shareholders was one of partnership and they were equal partners.
51. Mr Crossley sought to challenge Mr Zernov on the lack of documentary evidence surrounding the transfer of the Matveyev Shares and Mr Zernov's transfer of his share of the construction businesses in which they were involved, to Mr Matveyev. He questioned why there are apparently no documentary records showing how the consideration was calculated and no emails or letters setting out the matters being negotiated. Mr Zernov replied that they worked on the same floor and whilst Mr Matveyev was not there all the time, when he came to the office they discussed and negotiated matters in person. Mr Matveyev had valued the five projects of which Mr Zernov was to transfer his third share, to be worth approximately US\$150m, of which a third was US\$50m. He explained that these figures were calculated by reference to the market value of the square metreage of each project. On the other side of the negotiation, Mr Zernov was responsible for proposing a figure which he considered represented the value of the shares which Mr Matveyev held in PML. That figure was the subject of oral negotiation between the two men and finally they settled on a figure which gave rise to the balancing payment of US\$28,550,000 to be paid by 31 December 2017, as set out in the Letter of Wishes and Elektrovolt SPA.
52. I found Mr Zernov's evidence regarding the terms upon which he received the Matveyev Shares to be credible, supported by the Letter of Wishes and Elektrovolt SPA. It was not contradicted by the witnesses subsequently called to give evidence.

### **Ms Yakovleva**

53. Ms Yakovleva has worked in various roles at JSCE since February 1994. In her witness statement she explained how, in 1994, following the death of the JSCE's former President, Mr Diyakov invited Mr Zernov and Mr Matveyev to join the board. She said:

"At that time, Mr Zernov, Mr Matveyev and Mr Diyakov were not, however, shareholders. Later on, they became shareholders with Mr Zernov eventually having approximately 30 per cent of [JSCE], Mr Matveyev having approximately 30 per cent of [JSCE] and Mr Diyakov having approximately 40 per cent of [JSCE], although I understood from Mr Diyakov that there was an agreement that they should each have one third. That agreement was not, however, to my knowledge, documented."

54. Ms Yakovleva recalled that the Founding Shareholders got on well with each other and that the company ran smoothly under their joint management. She recalled also Mr Matveyev wanting to create his own construction company and that she:

“heard from Mr Diyakov and Mr Zernov that Mr Matveyev offered his shares in [JSCE] first to Mr Diyakov (who refused to buy them) and then to Mr Zernov, who did buy them.”

55. Ms Yakovleva was an open and honest witness, plainly intent upon assisting the court. She highlighted in her responses how seriously she took and understood her obligation, when giving evidence in writing and during cross examination to tell the truth. When Mr Crossley suggested that she might, with the passage of time, have forgotten being told of an arrangement between the Founding Shareholders as to what should happen to their shares if and when they left JSCE, I found her reply credible: whilst she forgets some things, she would remember being told about such a “substantial agreement” and that Mr Diyakov was the type of man who, if something had been resolved upon, would implement it immediately.

56. She provided a credible reason for saying that she would have remembered if she had ever heard Mr Matveyev or Mr Diyakov complaining that the Matveyev Shares had not been transferred to Mr Diyakov:

“I run the registers of the shareholders, and I always make sure that everything is up to date and correct in those registers, so the answer is no and the counsel can remain at his opinion, I remain at my opinion because what I am saying here is the truth because I am under the oath.”

57. When Mr Crossley suggested in cross-examination that Ms Yakovleva had provided her statement in support of the Second Respondent and Mr Zernov’s case because she still works for JSCE, is loyal to Mr Zernov and made it because Mr Zernov asked her to do so, I found her reply convincing:

“I volunteered myself, in fact I volunteered to come to London if necessary to give my evidence in person because I am appalled by the behaviour of Mr Nikiforov because he mainly inverted everything.”

“Q. You agreed to do that out of your respect and loyalty to Mr Zernov, did you not?”

A. Actually, out of the respect to the company primarily because I cannot see the company’s good name being crushed and the true facts being distorted.”

58. She confirmed that she is aware of some of the criminal investigations but refused to agree with Mr Crossley that, having identified potential issues of tax evasion and wrong-doing in relation to share transfers, Mr Nikiforov was acting “quite properly” in referring the matters to the authorities.



59. When asked whether in compliance with the order made on the Specific Disclosure Application, Mr Zernov had asked her to search her emails, Ms Yakovleva did not appear to understand the question. When the question was reformulated, she replied:

“He did ask me, indeed. He did ask me simply to look through my mailbox, but he knows very well that we do not keep anything from the period from 2001 to 2006.”

**Mr Stavrou**

60. Mr Stavrou gave evidence in English from PKF’s offices in Cyprus.
61. He was asked about an undated letter which appears to have been sent to him by Mr Zernov describing, in broad terms, the proposed deal with Mr Matveyev and concluding with six questions (the “Undated Letter”). The Petitioner sought to make much from Mr Stavrou’s apparent failure to provide the “original communication” or the “Zernov communication” in disclosure when he now said that he had located the Undated Letter among his records and provided it. Mr Stavrou explained what he had understood and meant by the term “original communication”: the letter was undated and bore no address. He said that it was therefore almost certainly sent as an attachment to an email or a fax. When saying he could not find the “original communication” he was referring to the covering email or fax.
62. As regards emails, he described the retention policy at his PKF office. It seeks to mitigate cloud storage charges by ensuring that important documents received by email are printed and a hard copy is kept on file. Each employee therefore knows that when they start to get close to their maximum cloud storage capacity, they can safely delete as many old email items as they feel appropriate. This protocol allows them to retain what they consider to be sufficient documents to comply with their regulatory obligation to keep everything for 7 years (or longer if an investigation is commenced during that time).
63. Mr Stavrou confirmed that as far as he was aware, the Letter of Wishes was the only document that recorded the agreement between Mr Zernov and Mr Matveyev. He described the Undated Letter in the following way:
- “To the best of my understanding, this was a document sent to me by Mr Zernov when he was negotiating, when he was started thinking about the division of the assets that they held either through the Trust or separately in different forms, that they were thinking of entering into this kind of an agreement, through an escrow agreement; that was my understanding. He sent this to me to check it out with maybe a lawyer here in Cyprus to see if we could go ahead with it. Then he changed his mind and then I heard through the Letter of Wishes.”
64. From this, the court can infer that he was not aware of the Elektrovolt SPA which formed part of the “divorce” arrangement between Mr Matveyev and Mr Zernov.
65. Mr Stavrou talked about the occasion in January 2012 when, according to Mr Nikiforov, he and Mr Diyakov travelled to Cyprus to meet Mr Stavrou to discuss an unrelated

matter that had arisen in relation to the Petitioner's predecessor, Foleran. Mr Stavrou explained that he enjoyed a very good business relationship with Mr Diyakov, Mr Zernov and Mr Matveyev over many years and often travelled to Russia at their convenience to discuss matters, as well as them travelling to Cyprus. He was asked about the occasion described in Mr Nikiforov's evidence when he travelled to Cyprus with Mr Diyakov for a meeting with Mr Stavrou, but only learned on arrival that Mr Stavrou had abruptly departed for Greece, leaving Mr Diyakov and Mr Nikiforov to meet Mr Stavrou's brother instead. Mr Stavrou's recollection was that he was given scant notice of this particular visit and that even before Mr Diyakov and Mr Nikiforov arrived, he was already in Poland (not Greece) seeing another very important client. He was unable to explain why Mr Nikiforov thought that they had met his brother instead. He has two brothers, neither of whom are involved in PKF's business, neither of whom went to university and neither of whom are involved in financial matters.

66. His evidence regarding Mr Zernov acquiring the majority shareholding in PML, free of any obligation to transfer half of the Matveyev Shares to Mr Diyakov was consistent with Mr Zernov's evidence:

"My recollection I think is clearly stated in my witness statement. My understanding, not only throughout the years that I have met both Mr Matveyev on many occasions here in Cyprus and in Moscow, as well as Mr [Diyakov] until he passed away in 2015, I have met him a few times in Moscow, since 2006 no one ever mentioned to me that the shares in PML should be 50/50, and no one told me that I should have made arrangements to certain possible documents to assist and have in the background such documents to be able to fall back to and say the shares are 50/50. The shares were one third, one third, one third originally, according to my understanding, and according to the records, and when Mr Matveyev left, the shares in PML were two thirds to Mr Zernov's family and one third to what is now Cossacs. I never had any other instructions or conversations with anyone, neither Mr Matveyev, nor Mr [Diyakov] ever complained to me, or mentioned to me anything different of what is now the shareholding."

67. Mr Stavrou's written evidence was not undermined in cross-examination.

**Mr Vasilyev**

68. Mr Vasilyev has worked for JSCE since 1999, initially as head of its financial statistics department, and from 2006 to 2015 as a deputy CEO responsible for economics and finances. From November 2015 to March 2020, he served as CEO of JCSE, but resigned due to health issues and now works as an economic advisor to the present CEO, Mr Davydenko.
69. Mr Vasilyev gave evidence via the interpreter. He expressed concern that some of the matters raised during cross-examination are the subject of the criminal proceedings. However he appeared content to answer questions regarding the matters set out in his witness statement.

70. His evidence appeared to me to be carefully and precisely given. One example is when counsel suggested that in his witness statement, Mr Vasilyev had criticised Mr Nikiforov's actions on JSCE's board of directors. He said that he did not recall saying anything in his evidence about Mr Nikiforov's conduct during board meetings and asked to be shown the relevant paragraph. When Mr Crossley referred him to the paragraphs, and reformulated his question to suggest simply that Mr Vasilyev was critical of Mr Nikiforov's actions, Mr Vasilyev replied:

“I agree with the way you put it forward now. I agree with this statement.”

71. Another example is when he highlighted that Mr Crossley had referred to Mr Diyakov instead of to Mr Diyakov's heirs.

72. In his witness statement, Mr Vasilyev recalled working closely with the Founding Shareholders at board meetings and other gatherings and that they appeared to him to have enjoyed a good working relationship, not clashing or arguing, but working together as a team to ensure the company's success.

73. He stated:

“As far as I remember, at some point in 2009, Mr Matveyev finally left JCSE. I saw certain official reports that JCSE were required to produce under the laws of the Russian Federation governing joint stock companies. I remember deducing from these statements that Mr Matveyev had sold his shareholding in JCSE to Mr Zernov.

My understanding is that the reason for Mr Matveyev's departure is that he wanted to be involved in the construction business as he considered construction to be a more lucrative industry. I recall that, after Mr Matveyev left JCSE, he still had a friendly relationship with Mr Zernov.”

74. During cross-examination he was challenged about how accurately he could remember now what he deduced from documents he had not seen for many years. His answer was credible: in addition to general rumours among the company's employees at the time that Mr Matveyev was leaving JSCE to develop his construction business, the company was rated by a number of agencies which “always state the main beneficiaries of the company”. The cross-examination continued:

“My recollection is based on the fact that there was a change in the composition of affiliated entities, and the change in the composition of affiliated entities only took place as a result of certain transactions; from which I deduce if the equity used to belong to Mr Matveyev and now belongs to Mr Zernov, that means that the sales and purchase transaction took place. Apart were that, there was a non-documentary-based information that that was exactly the case.

Q. That is not correct, is it, Mr Vasilyev, because it is possible that the equities could have changed because one person could have given their shares to another, is it not?

A. I doubt it very much because under the Russian legislation if there is a deed of gift, that attracts significant tax consequences unless the gifting took place between close relatives.”

75. Mr Vasilyev was asked how he could be so certain that during the period between Mr Matveyev’s withdrawal in 2009 and Mr Diyakov’s death in 2015, nothing was said about Mr Zernov’s obligation to transfer half the Matveyev Shares to Mr Diyakov. He replied that he would remember any conversations about a change in the ultimate beneficial owner of a company because that is a very rare and memorable event:

“Obviously I cannot assert that I remember every single conversation, but the discussions related to the departure of Mr Matveyev, I remember very well. Because this is not about remembering all the conversations. This is about something which is a substantive moment in this entire situation. You do certainly remember the birthday of your child, perhaps although it took place many years ago.”

76. Finally, when asked to confirm that he had received a letter from the Second and Third Respondents’ solicitors asking him to search his emails for the period 2002 and 2006 he confirmed that he had complied but it was a fruitless exercise as he does not keep emails going back beyond 2019.
77. I am satisfied that Mr Vasilyev answered all questions put to him honestly and truthfully to the best of his recollection. I found his evidence straightforward and reliable.

### **Assessing the Petitioner’s case**

#### ***The criminal proceedings in Russia***

78. During the trial, Mr Crossley referred on several occasions to criminal proceedings taking place in Russia which I understand concern alleged tax evasion by JSCE and Mr Zernov’s ownership of shares in Elektrovolt. Allegations have been made against Mr Zernov and JSCE which have apparently been determined suitable for investigation. The general tenor appeared to be, that the fact that the Russian criminal authorities have considered the claims to be worthy of opening an investigation, including interviewing 25 members of JSCE’s staff, strongly suggests that there is no smoke without fire. Mr Crossley sought, during cross-examination, to portray Mr Nikiforov as a whistleblower, rightly drawing the criminal authorities’ attention to his concerns regarding alleged tax evasion and misconduct.
79. The JSCE witnesses countered such a suggestion by saying that they consider the criminal allegations to be fabricated, that the tax investigation has been satisfactorily resolved and that disputes between shareholders regarding their interests in companies should be pursued through the civil courts. They consider that far from acting altruistically, Mr Nikiforov is pursuing criminal proceedings for his personal gain.

80. I have very little to say about the allegations or what either party considers the court should conclude about or from them. They are *sub judice* in Russia and it is not for this court to form or express any view about them. This court's role is to consider counsel's submissions and to assess the evidence before it and it is to that evidence that I shall now turn.

*The witness evidence*

81. I have already explained why the court attaches very little weight to Mr Matveyev's Witness Summary and the statements he is recorded to have made in separate criminal proceedings. Of all the incidents described in Mr Nikiforov's evidence, the only ones of which Mr Nikiforov was able to give direct evidence were:

- i) the circumstances surrounding his first introduction to Mr Diyakov;
- ii) his conversations with Mr Diyakov, the steps he took to prepare the Octopus Diagram and the Preliminary 2011 Meeting;
- iii) his recollection of the 2011 Meeting;
- iv) his trip to Cyprus for a meeting with Mr Stavrou;
- v) his conversations with family members regarding their proposed support for Mr Zernov to become Chairman of JSCE; and
- vi) the steps that he is directly aware were taken by Mr Zernov following his appointment as Chairman.

82. Insofar as Mr Nikiforov gave evidence to prove the existence or terms of the Fundamental Understanding of: (i) what Mr Diyakov and Mr Matveyev told him regarding the alleged Fundamental Understanding; and (ii) what Mr Krasnikov told him Mr Zernov had said regarding the continued application of the Fundamental Understanding, it is hearsay.

83. In *Miller v Associated Newspapers Ltd* [2012] EWHC 3721 (QB), Sharp J referred at paragraph 36 of her judgment, to difficulties that can arise when a party seeks to rely on hearsay evidence regarding issues which are important, as opposed to merely peripheral to a trial. She cited with approval a passage from paragraph 29-15 of *Phipson on Evidence*, (17th edition):

“the [Civil Evidence] Act is not intended to provide a substitute for oral evidence. The basic principle under which the courts operate is that evidence is given orally with cross-examination of witnesses, and the admission of hearsay evidence is, and should be the exception to the rule. Caution should be exercised before tendering important evidence through hearsay statements. Hearsay evidence is better used where the evidence is peripheral or relatively uncontroversial.”

84. The Civil Evidence Act 1995 sets out at section 4(2) a non-exhaustive list of relevant considerations:

“(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”

85. Far from being evidence regarding peripheral matters, Mr Nikiforov’s evidence goes to the heart of the Petitioner’s claims and was the only evidence advanced by the Petitioner for which the court had the benefit of cross-examination.

86. In my judgment it is striking that:

i) in his witness statement, Mr Nikiforov said that when he asked Mr Diyakov what provision was made as part of the Fundamental Understanding regarding payment for a departing shareholder’s shares, Mr Diyakov had told him that the question of what should be paid was not addressed by the Founding Shareholders;

ii) during cross-examination, Mr Nikiforov said he had not discussed with Mr Diyakov:

a) how the alleged Fundamental Understanding would operate if and when any of the Founding Shareholders wished to retire, or was forced to leave as a result of illness or criminal charges;

b) what would need to be paid for the shares of such a departing Founding Shareholder; nor

c) what agreement had been reached in or around 2006 when Mr Matveyev left JSCE. In relation to this last point, he said:

“All I can say in this relation, that Mr Diyakov told me that the shares of Matveyev should be split up, but he told me that much later.”;

and

iii) Mr Nikiforov was unable to explain why the Petitioner had not provided any evidence to support its case from Mr Krasnikov and was unable to explain why

Mr Matveyev had failed to attend court to support a case which appears to have been based almost entirely on his allegations of wrongdoing by Mr Zernov.

87. Applying the considerations set out at section 4(2) of the Civil Evidence Act 1995 in relation to Mr Nikiforov's evidence, in addition to the points I have already noted, most of the statements were not made contemporaneously with the matters to which they pertained (the establishment of the Fundamental Understanding and the agreement of what was to happen to his shares when Mr Matveyev left the business) and Mr Nikiforov does not have a dispassionate interest in the proceedings. If the Petitioner succeeds in its case, Mr Nikiforov's family stand to gain half of the Matveyev Shares.
88. On the other side of the fence, the Second Respondent and Mr Zernov's witnesses' evidence was consistent with Mr Zernov's evidence that:
- i) there was no Fundamental Understanding beyond an undocumented agreement between the Founding Shareholders that for as long as they worked together at JSCE, they would conduct themselves as if they were equal partners in the business, cooperating with each other and requiring all important decisions to be agreed upon by all three of them, with an intention that each would hold one third of the shares in JSCE. In fact Mr Diyakov continued to hold 40% of the shares in Elektrovolt with Mr Zernov and Mr Matveyev each holding only 30%, but that made no difference: they ran JSCE as if they were equal partners;
  - ii) nothing was discussed or agreed about what would happen if and when circumstances arose which would result in one or more of the Founding Shareholders no longer being engaged in JSCE's business;
  - iii) when Mr Matveyev decided to leave, he transferred his shares to Mr Zernov who acquired them in return for Mr Zernov's interests in various construction projects with a balancing payment to be made by Mr Matveyev; and
  - iv) there was never any suggestion by Mr Diyakov to Ms Yakovleva who maintained shareholder registers, nor to Mr Stavrou who attended to administrative matters concerning the English-registered PML, that he was entitled to receive from Mr Zernov, half of the Matveyev Shares.

*The documentary evidence*

89. The documentary evidence to which I was taken is consistent with the Second Respondent's and Mr Zernov's case. Mr Stavrou explained that the Undated Letter was soon superseded by the Letter of Wishes. The Letter of Wishes is addressed to Hive Management as trustees of the Seasons Trust which held Mr Matveyev's and Mr Zernov's interests in various entities. It sets out the parties' proposal for Mr Zernov's shares in a property investment company, Hardman Investment Ltd to be transferred to Mr Matveyev, for Mr Matveyev's shares in PML to be transferred to Mr Zernov and for there to be a balancing payment. The court was also shown the Elektrovolt SPA, signed by both Mr Zernov and Mr Matveyev, for the sale of Mr Matveyev's shares in Elektrovolt.
90. The Letter of Wishes was acknowledged by a letter from Hive Management also dated 27 November 2006. Hive Management stated that if the estimated balancing payment

were to be made on 28 November 2006, applying the formula in the Letter of Wishes, it would amount to US\$23,438,484. Hive Management attached a sheet which apparently shows how that figure had been calculated.

91. The fact that Mr Stavrou had not seen the Elektrovolt SPA did not undermine the Second Respondent and Mr Zernov's case: he saw the documents concerning PML which was an English-registered company and one with which he was closely involved, whereas Elektrovolt was a Russian company.

### **Conclusions regarding the issues for trial**

92. The following conclusions flow from the striking absence of direct witness or documentary evidence that supports the Petitioner's case and my assessment of the documentary and witness evidence that was before the court.

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

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

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

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

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

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

95. No. I find that such circumstances were not contemplated by, nor discussed between them. The Petitioner failed to explain how such an agreement could or would operate: whether (a) the remaining Founding Shareholders would receive the shares for no consideration. If that was the alleged understanding it would make no commercial sense: there would be no incentive to continue working for a business in respect of which the shareholder could so readily lose their ownership rights; or (b) the remaining shareholders would be obliged to buy a proportionate share of the departing shareholder's shares. If that was the alleged understanding, it fails to explain how a fair



price would be agreed and what would happen if they did not want, or could not afford, to buy the shares. Such an understanding would make no commercial sense. The only “evidence” before the court of such an understanding was from Mr Matveyev. The court has explained why it carries almost no weight. Even Mr Nikiforov recognised that Mr Diyakov had never said anything to him about how the alleged Fundamental Understanding would operate if and when any of the Founding Shareholders wished to retire, or was forced to leave as a result of illness or criminal charges, nor what would need to be paid for the shares of such a departing Founding Shareholder.

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

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

*(iv) On what terms were the shares in PML, formerly beneficially owned by Mr Matveyev, transferred to the beneficial ownership of Mr Zernov in or around 2006? In particular:*

- a) What consideration was payable to and/or received by Mr Matveyev for such transfer, including its form and provenance?*
- b) Was there an agreement that Mr Zernov would divide such shares equally between himself and Mr Diyakov?*

97. I find that the agreement between Mr Matveyev and Mr Zernov was reduced to writing in the form of the Letter of Wishes and Elektrovolt SPA. Each was signed by both parties and each was dated contemporaneously with Mr Matveyev’s departure from the business. I find that these documents, combined, were intended to regulate the terms under which Mr Matveyev would depart from JSCE and transfer his indirect shareholding in JSCE to Mr Zernov. The parties had taken time and effort to reduce their agreement to these documents. That demonstrates an element of care and thought as to how their business interests were to be divided. There is no written evidence, in respect of events that took place more than ten years ago, that contradicts the Letter of Wishes and Elektrovolt SPA. There is no reliable evidence to support the Petitioner’s case that Mr Zernov was obliged or intended to transfer half of the Matveyev Shares to Mr Diyakov. Whilst the Petitioner sought to cast doubt on the value of the consideration to be paid by Mr Zernov for the Elektrovolt shares, it failed to produce any evidence to undermine the explanation given by Mr Zernov for the manner in which the final price was agreed.

*(v) Was there a meeting in or around 2011 between Mr Zernov, Mr Diyakov, Mr Krasnikov and Mr Nikiforov at which Mr Zernov confirmed:*

- a) his intention to transfer half of the shares, formerly beneficially owned by Mr Matveyev, to Mr Diyakov;*

b) *that the First Respondent would continue to be run on the basis of the understanding referred to in paragraph 1 above?*

98. There is a direct conflict of evidence between Mr Nikiforov's and Mr Zernov's recollection of what was said at the 2011 Meeting. At the time of the meeting, Mr Nikiforov's only involvement with the business was in connection with his wife's divorce. Other than the alleged Preliminary Meeting, he was not party to any of the discussions between JSCE's Founding Shareholders and board members before or after the 2011 Meeting and did not hold a trusted position in that company. I find it inherently implausible that a successful and experienced businessman of Mr Diyakov's standing, having apparently seen his long-trusted, fellow director and business partner exposed by his son-in-law for failing to transfer valuable shares to him – whether as a result of intention or, as Mr Nikiforov claims Mr Zernov explained, logistical difficulties and oversight – would then fail, at any point in the next four years, to follow up the issue and ensure that the records had been corrected.
99. I do not find it credible that Mr Diyakov would not attach importance to such a discovery, but would instead continue to work harmoniously with Mr Zernov, making no mention of the incident at all. I prefer Mr Zernov's recollection of the 2011 Meeting. I find that at that 2011 Meeting, Mr Zernov did not state that he intended to transfer half of the Matveyev Shares to Mr Diyakov. This is consistent with the evidence of Ms Yakovleva, Mr Vasilyev and Mr Stavrou, none of whom heard anything about a residual obligation on Mr Zernov to transfer half of the Matveyev Shares.
100. Issue (v)(b) falls away as a result of my decision in relation to the Fundamental Understanding.
- (vi) In light of the answers to the issues above:*
- a) *Are half of the shares in the First Respondent, previously beneficially owned by Mr Matveyev, now held on trust by the Second Respondent for the Petitioner?*
- b) *Should the register of the First Respondent be rectified and, if so, how?*
101. The Petitioner failed to advance any persuasive evidence to show that it is entitled, beneficially or otherwise, to any of the Matveyev Shares. There are no grounds before the court to justify an order being made for the register of PML to be rectified.
102. I invite the parties to agree the terms of an order.