THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

SBM BANK (MAURITIUS) LTD
(a Limited Company)

Claimant

and

(1) RENISH PETROCHEM FZE
(a Limited Company)
(2) MR HITESHKUMAR CHINUBHAI MEHTA
(3) PRIME ENERGY FZE
(a Limited Company)

Defendants

JUDGMENT OF H.E JUSTICE ALI AL MADHANI

Hearing : **12 January 2021**

Counsel : Mr James Weale instructed by Dentons & Co for the Claimant
Mr Peter Duckworth instructed by Ashish Mehta & Associates for the First and Second Defendants

Judgment : **19 October 2021**

UPON hearing from counsel for the Claimant and First and Second Defendants

AND UPON considering the Claimant's application for committal of the First and Second Defendants dated 14 December 2020 (the **"Committal Application"**)

AND UPON considering the worldwide freezing injunction made against the First and Second Defendants of His Excellency Justice Ali Al Madhani dated 2 August 2018 and continued on 7 August 2018 against the First and Second Defendants (the **"Freezing Injunction"**)

AND UPON considering the affidavit of Andrew Cheung dated 7 December 2020 and filed on behalf of the Claimant

AND UPON considering the witness statement of the Second Defendant dated 12 December 2020

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The First Defendant has been found to have committed breaches 1, 2 and 3 of the Freezing Injunction, as set out in paragraph 4 of the schedule of reasons attached hereto.

2. The First Defendant has been found to have committed breaches 5, 6, 7, 9, 10 and 11 of the Freezing Injunction, as set out in paragraph 4 of the schedule of reasons attached hereto.

3. The Claimant is to file written submissions as to the sanction to be imposed on the Defendant by **4pm on 26 October 2021**.

4. The Defendant is to file written submissions in response and any mitigation by **4pm on 2 November 2021**.

5. The First and Second Defendants shall pay the Claimant's costs of the Committal Application, such costs to be assessed by the Registrar if not agreed.

Issued by:
Nour Hineidi
Registrar
Date of Issue: 20 October 2021
At: 8am

SCHEDULE OF REASONS

1. The breaches that are being put forward in these contempt of Court proceedings relate to the alleged failure by the First and Second Defendants predominantly to provide information as required under the information orders contained within the worldwide freezing injunction granted without notice on 2 August 2018 and continued on the return date on 7 August 2018. Both orders for the purposes of this judgment shall collectively be referred to as (the **"Order"**).

2. On 27 September 2020, I granted an application by the Claimant for immediate judgment as against the First and Second Defendants for

judgment in the sum of USD 31,245,932.94. On 18 October 2020, the First Defendant filed an appeal notice with the Courts.

3. The Claimant filed an application for committal in relation to the First and Second Defendants for breach of the information provisions of the Order as set out above (the **"Committal Application"**). The application was purported to be served on the First and Second Defendants via email to their legal representatives on 14 December 2020. The Second Defendant had filed a short witness statement dated 12 December 2020. The application for committal was brought before me for determination on 12 January 2021. The First and Second Defendants made a cross-application for adjournment of the committal hearing for a period of two to three months so as to better prepare for the hearing and respond to the allegations in the interests of justice.

4. The Order imposed a number of obligations on the First and Second Defendants which the Claimant contends have been breached. The breaches put before this Court for determination are as follows:

(i) Breach 1

In breach of paragraph 9(1) of the Order, the First Defendant failed to provide information in respect of its assets referred to in that therein by 4pm on 7 August 2018, within a reasonable period of time upon receiving notice or at all.

(ii) Breach 2

In breach of paragraph 9(2) of the Order, the First Defendant failed to provide information on what had become of the sums, referred to in paragraph 9(2), transferred from the Claimant by 4pm on 7 August 2018, within a reasonable period of time upon receiving notice or at all.

(iii) Breach 3

In breach of paragraph 10 of the Order, the First Defendant failed to swear and serve an affidavit setting out the information referred to in paragraph 9 of the Order by 4pm on 12 August 2018, within the reasonable period of time upon receiving notice or at all.

(iv) Breach 4

In breach of paragraph 5 of the Order, the First Defendant expended monies and/or incurred liabilities in respect of its legal costs in these proceedings. In the absence of any sworn evidence to the contrary, it is to be inferred that such sums and/or liabilities have been discharged using First Defendant's assets.

(v) Breach 5

In breach of paragraph 9(1) of the Order, the Second Defendant failed to provide information in respect of its assets referred to therein by 4pm on 7 August 2018, within a reasonable period of time upon receiving notice or at all.

(vi) Breach 6

In breach of paragraph 9(2) of the Order, the Second Defendant failed to provide information about what had become of the sums, referred to in paragraph 9(2), transferred from the Claimant by 4pm on 7 August 2018 within a reasonable period of time upon receiving notice or at all.

(vii) Breach 7

In breach of paragraph 10 of the Order, the Second Defendant failed to swear and serve an affidavit setting out the information referred to in paragraph 9 of the Order by 4pm on 12 August 2018, within the reasonable period of time upon receiving notice or at all.

(viii) Breach 8

In breach of paragraph 5 of the Order, the Second Defendant has expended monies and/or incurred liabilities in respect of his legal costs in these proceedings. In the absence of any sworn evidence to the contrary, it is to be inferred that such sums costs and/or liabilities have been or will be discharged using the Second Defendant's assets.

(ix) Breaches 9, 10, 11 and 12

In circumstances where the Second Defendant is the owner and/or controller of the First Defendant, the Second Defendant procured and/or permitted the First Defendant to commit Breaches, 1, 2, 3, and 4 above.

5. The first matter for me to consider is a procedural one regarding service of the Committal Application. The Claimant's representatives appear to concede within the draft order provided that service of Committal Application was not in accordance with RDC 52.9(1), which requires personal service. This matter should have been properly dealt with in submissions and while service has not been contested by the First and Second Defendants, in the absence of an order from the Court, service is defective. The First and Second Defendants have not provided any addresses for personal service and the only contact information, other than a questionably functional email address, is that of their legal representatives. In the circumstances and in accordance with the overriding objective, I grant an order that the Committal Application be deemed served on 14 December 2020, being the date the Committal Application was emailed to the First and Second Defendants' legal representatives by Dentons.

6. Turning now to the application for an adjournment; I do not accept that in the circumstances the provision of information is particularly urgent given that the Order was made some years ago and the monies in relation to the substantive claim were paid over before that date. However, the First and Second Defendants were served with the application notice on 14 December 2020 and were put on notice of a potential application for committal in a letter dated 17 November 2020, which also attached a copy of the Order, thereby giving months to prepare for the hearing.

7. While the issues in the substantive claim may be complex, the issues engaged in the Committal Application are narrow and straightforward. I noted the First and Second Defendants' contention that they were only able to obtain full representation in early January 2021 due to funding issues. Although I sympathise with this, the First and Second Defendants were provided with limited legal advice prior to this date which allowed them to file grounds for appeal. Legal representation is an entitlement of any party but it remains only an entitlement, not a requirement, and ignorance of the law is not a defence. In my judgment, the First and Second Defendants have been allowed a reasonable period of time to prepare, obtain legal advice and consider the Committal Application.

8. I do not accept that if the First and Second Defendants remain unsanctioned for any purported breach this will act as an incentive to comply, as submitted by Mr Duckworth. To the contrary, the imposition of a sanction for a purported breach would demonstrate the serious nature of the breach and the reach of the Court. If anything, I would hope that any sanction would act as an incentive to comply to prevent further committal proceedings being issued against the First and Second Defendants as, if a breach is proved and a party thereafter sanctioned in committal proceedings, this does not cause the original order to simply evaporate. The obligation for compliance remains ongoing and further committal proceedings may be brought for further breaches/failures to comply.

9. Furthermore, simply adjourning the application will not change what has already occurred. If the First and Second Defendants have breached the Order, while they may be able to comply with the Order at a later date, this does not turn back the clock and remedy any breach that has already occurred; any breach would be ongoing. I, therefore, do not accept Mr Duckworth's arguments in this regard and I dismiss the First and Second Defendants' application for an adjournment on the basis of the First and Second Defendants' unreasonable conduct.

10. I now turn to consider the Committal Application. Freezing injunctions generally serve two purposes. The first is to prevent the dissipation of assets in the hope that any liability determined by the Court may be satisfied and the second is to provide information as to the assets of a Defendant. I accept Mr Weale's submission that freezing injunctions would be rather toothless if the information orders were not complied with, as not only would a Claimant be left in the dark as to what assets it may be able to recover, but also the Claimant would be unaware as to whether the substantive orders, those prohibiting dissipation, were being complied with. The information element of freezing injunctions is of particular importance in cases such as these, where a party is accusing another of fraud or wrongdoing and is seeking to trace back its assets before they were dissipated by the wrongdoer. Moreover, in cases of fraud it is most often the case that the wrongdoer has left very little in the way of evidence. And so, the Claimant seeks relief from the Court in the form of provision of information under the terms of a freezing injunction to piece together events and trace their assets.

11. The Second Defendant's witness statement dated 12 December 2020 was served in support of the First and Second Defendants' appeal and runs to only three pages. It is surprising that the contents of this statement are as minimal as they are given the time that has now elapsed and the seriousness of the allegations against the First and Second Defendants. Despite this statement, no exact date as to when the First and Second Defendants became aware of the Order is given.

12. It is the First and Second Defendants' case that they only became aware of the Order in October 2020 when undertaking a "google search". I reject this contention entirely. It cannot be coincidental that the Second Defendant undertook a "google search" just after immediate judgment was given. While I accept that the Second Defendant may have retreated into himself when he became subject to proceedings by other banks and the bank loan the subject of these proceedings was called in. I do not accept that he was oblivious for the entire period of two years and that by sheer coincidence the Second Defendant undertook a "google search" which revealed the proceedings against him. I have no evidence as to the nature and extent of the "google search". Nor have I been provided with an exact date as to when this search was undertaken. I find that the First and Second Defendants were aware of the Order before this date but in the absence of clear evidence I am unable to pinpoint exactly when.

13. Even if the First and Second Defendants' contention were accepted, October 2020 was by the time of the hearing three months prior and by the time of filing his witness statement dated 12th December 2020 two months prior.

14. The Second Defendant, on his own counsel's submission, "retreated into himself and avoided contact with the outside world" as a result of the calling in of the bank loan and the guarantee being called in. The sums sought in this case are vast. I also remind myself that the loan was provided to the First Defendant on a very short-term basis. The short-term nature of the loan was not something which could simply be forgotten about and should have been at the very forefront of the Second Defendant's mind, both in his personal capacity and in his capacity as owner of the First Defendant. The Second Defendant surely cannot have thought this matter would simply go away, certainly not for the entire period of two years. Seemingly, the Second Defendant not only avoided contact with the outside world but took steps to ensure that he was uncontactable. He fled the United Arab Emirates and the First Defendant's office leaving no forwarding or alternative address. The timing of this is surely not coincidental and I take an adverse inference from the same.

15. In accordance with RDC 52.14, the Second Defendant had the opportunity to submit a witness statement in response to the Committal Application and to attend Court himself to give oral evidence. A number of questions arise from the First and Second Defendants' conduct and the evidence submitted. Moreover, it has been left to counsel's skeleton to update the Court as to the efforts of the First and Second Defendants in complying with the Order. In this further context, I also take an adverse inference of the decision of the Second Defendant to not attend the hearing or give any oral or written evidence. The only evidence submitted by the First and Second Defendants was the witness statement of 12 December in support of the appeal which falls far short of the requirements of the Order.

16. Mr Duckworth confirmed in his skeleton argument that a full list of the First and Second Defendants' assets was in the process of being compiled and that the same included information on some 27 bank accounts. This was the first instance in which the First and Second Defendants represented to the Court that they were intending to comply with the information provisions of the Order. However, at the time of the hearing, those provisions had still not been complied with. The First and Second Defendants' representatives had been on the record by the time of the hearing for 3 months, presumably having been provided with instructions before then. I do not accept that any party can be so laissez-faire about their assets, or that assets might be so extensive that a party cannot provide even a partial account thereof within the time allotted to provide information. It was stated numerous times throughout the hearing that the First and Second Defendants' ability to comply had been hampered due to only having partial legal representation due in turn to funding issues. When a legal representative comes on the Court record, they cannot pick and choose the extent to which they represent their client, whether they are paid or not. Either they are on the Court record or they are not. In any

event, the terms of the Order are clear and it does not take specialist knowledge to understand the information that needed to be provided. I, therefore, find the First and Second Defendants in breach of the Order and in contempt of Court.

17. The Second Defendant, as confirmed in his statement, is the sole shareholder of the First Defendant. I do not accept that this in itself gives rise to the inference that the Second Defendant is in control of the First Defendant. It is the director of the company who is in control of a company and there is no direct evidence before me that the Second Defendant is the current director of the First Defendant. However, the Second Defendant's witness statement was submitted on behalf of the First Defendant in these proceedings. No other evidence has been put before the Court and seemingly the Second Defendant has instructed representatives on behalf of the First Defendant. The First Defendant acted through the Second Defendant in relation to the bank loans that are the subject of the substantive proceedings and he provided guarantees in relation to the same. When the Second Defendant vacated the United Arab Emirates, the offices of the First Defendant closed at the same time. Looking at the circumstances as a whole, I find that the Second Defendant is in control and responsible for acts of the First Defendant.

18. With regard to the findings of fact I have been asked to make, I find as follows. I was asked to find that the First and Second Defendants were aware of the Order shortly after 2 August 2018. For the purposes of the Committal Application, I am unable to make such a finding. My attention was drawn to the affidavit of Mr Cheung in which it was confirmed that there was no "bounce back email" when serving the Order upon the Second Defendant's email address. I was also turned to the fact that the Second Defendant fled the United Arab Emirates around this time and the First Defendant's offices were also shut down at this time. This evidence is circumstantial and, while suspicious, does not prove to the criminal standard that the First and Second Defendants were aware of the Order shortly after service. Against this, I also note that the First and Second Defendants were subject to other proceedings by other banks during this time and from the Second Defendant's evidence, he was in a state of shock and was overwhelmed at the time. This is not improbable. I am, therefore, unable to find as a fact for the purposes of the Committal Application that the First and Second Defendants were aware of the Order "shortly after 2 August 2018".

19. Be that as it may, even on the First and Second Defendants' own case, they are in breach of the Order as, they submit, they were aware of the Order in October 2020. The First and Second Defendants were put on notice of the Committal Application on 17 November 2020 via letter but still took no steps to comply with the Order. The First and Second Defendants have had a reasonable period time to comply with the Order but have not made any meaningful attempt to comply with the same.

20. Turning to the second request for a finding of fact, in which I have been asked to find that the First and Second Defendants have utilised funds subject to the Order to finance their legal representation, relating to the breaches 4, 8 and 12. Again, I am unable to make such a finding. There is no direct evidence of this. There is, however, confirmation from the First and Second Defendants' representatives that they were instructed initially without payment and have now been able to secure third party funding. In response to this contention, Dentons on behalf of the Claimant confirmed in correspondence that they accepted this and would not be pursuing it any further. Ashish Mehta & Associates are officers of the Court and are under duty not to mislead it. I, therefore, accept that assets subject to the Order were not utilised to fund the First and Second Defendants` legal representation and breaches 4, 8 and 12 have not been proved.

21. In considering the evidence before me, the submissions from counsel for the parties and the non-attendance of the First and Second Defendants, I find that the First and Second Defendants deliberately failed to comply with the Order beyond reasonable doubt and therefore find them in contempt of Court. I, therefore, find that breaches 1, 2, 3, 5, 6, 7, 9, 10 and 11 are proved. I do not find that breaches 4, 8 and 12, relating to the expending of monies, have been proved beyond reasonable doubt.

Sanction

22. Having now found that the First and Second Defendants are in breach of the information provisions of the Order, I must now move on to consider the relevant sanctions. The First and Second Defendants have not been given a full opportunity to address the Court on the sanctions to be imposed on them, if found in contempt. Nor have I been provided with guidance or any case law from the Claimant as to the nature and extent of the sanctions they consider would be appropriate. I, therefore, order that the parties file further submissions from the parties as to the nature and the extent of the sanctions which they consider should be imposed. I also, given the seriousness of these proceedings and the fact that we are discussing penalties to be imposed on the First and Second Defendants, order that the Second Defendant attend the hearing. For clarity, I will be considering all options available to the Court.

Costs

23. In this case, I see no reason to depart from the usual rule that costs follow the event and as such I order that the First and Second Defendants jointly bear the costs of the Committal Application. In coming to this decision, I have had regard to the circumstances at RDC 38.8.