IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
(COMMERCIAL DIVISION)
Claim No: BVIHC (COM) 2013/160

BETWEEN:

By way of Claim:

(1) RENOVA INDUSTRIES LTD
(2) WEDGWOOD MANAGEMENT LTD
(3) ZAPANCO LIMITED
(4) LAMESA HOLDINGS SA

Claimants/Respondents

and

EMMERSON INTERNATIONAL CORP

Applicant

and

(1) TOMSA HOLDINGS LIMITED
(2) ALABASTER ASSOCIATES LIMITED
(3) GARDENDALE INVESTMENTS LIMITED
(4) MIKHAIL ABYZOV
(5) ROMOS LIMITED
(6) FRESKO FINANCIAL LIMITED

Defendants

And by way of Counterclaim:

~~(1)~~ EMMERSON INTERNATIONAL CORPORATION
~~(2) TOMSA HOLDINGS LIMITED~~
~~(3) ALABASTER ASSOCIATES LIMITED~~
~~(4) GARDENDALE INVESTMENTS LIMITED~~

Claimants by way of Counterclaim

-and-

(1) RENOVA INDUSTRIES LTD
~~(2) WEDGWOOD MANAGEMENT LIMITED~~
~~(3) ZAPANCO LIMITED~~
(4) LAMESA HOLDING SA

(5) VIKTOR VEKSELBERG
(6) INTEGRATED ENERGY SYSTEMS LIMITED
(7) ODVIN FINANCIAL INC

Defendants by way of Counterclaim

And by way of Ancillary Claim:

(1) MIKHAIL ABYZOV
(2) ROMOS LIMITED
(3) FRESKO FINANCIAL LIMITED

Claimants by way of Ancillary Claim

and

RENOVA INDUSTRIES LTD

~~(1) WEDGWOOD MANAGEMENT LIMITED~~
~~(2) ZAPANCO LIMITED~~
(3) LAMESA HOLDING SA
(4) VIKTOR VEKSELBERG
(5) INTEGRATED ENERGY SYSTEMS LIMITED
(6) ODVIN FINANCIAL INC
(7) FLOPSY OVERSEAS LIMITED

Defendants by way of Ancillary Claim

Appearances:

For the Applicant: Stephen Atherton QC, T H C Taylor QC, Stuart Adair and Oliver Clifton
For the Respondents: Ali Malek QC, Simon Birt QC and Arabella di Iorio

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2016: May 30, 31, June 10

JUDGMENT

Application for summary judgment in relation to issue whether document headed Principal Terms created a binding contractual commitment – whether there was an intention to create a contractual commitment – whether the Principal Terms was too uncertain to do so

– held that there is a realistic prospect of establishing that the parties did intent to create such a commitment and that the document is certain enough to sustain such a commitment – disposal of this single issue would not in any event dispose of the proceedings – case unsuitable for an application for summary judgment – application dismissed.

[1] SHER J [Ag]: This is an application for summary judgment in respect of (and a consequential application to strike out) the Claimants' entire claim (and many parts of their Defence to Counterclaim and their Defence to an Ancillary Claim brought against them in these proceeding). This is one of those applications that will not, if successful, dispose of the proceedings because, even if successful, it will leave to be decided at trial all the issues the subject of the Counterclaim and Ancillary Claim. It is, regrettably, another example of an inappropriate use of the summary judgment procedure. I heard the application over two days last week and dismissed it at the end of the second day saying that I would give my reasons later, which I now do.

The Parties

[2] The First to Third Claimants are companies within the Renova Group of companies and indirect subsidiaries of Renova Holding Ltd., the shares of which are held by a discretionary trust of which Mr. Victor Vekselberg is a beneficiary. Although the Fourth Claimant is not part of that group of companies, for the purposes of these proceedings it has been included within the definition of "Renova Group" in the pleadings. The Claimants, together with the other Defendants to the Counterclaim and Ancillary Claim, are collectively described in this judgment as the "Renova Parties".

[3] Mr. Mikhail Abyzov was added to these proceedings (at his own request) as Fifth Defendant and brings a claim by way of Ancillary Claim. He is said to be the ultimate beneficial owner of the corporate Defendants, and the corporate Claimants by way of Counterclaim and by way of Ancillary Claim. These companies have been referred to in the documents (and will be in this judgment) as the "MA Group". Together with Mr. Abyzov they will collectively be referred to in this judgment as the "Abyzov Parties".

Background

[4] Integrated Energy Systems ("IES", also sometimes known as "KES", an abbreviation of its name in Russian) comprises a group of companies, including the Belize-incorporated Integrated Energy Systems Limited ("IES Belize"), the Cyprus-incorporated Integrated Energy Systems Limited ("IES Cyprus") and the Russia-incorporated ZAO KES ("IES Russia"). IES Cyprus (and in turn IES Russia) was formerly a subsidiary of IES Belize, but it was subsequently transferred to and became a subsidiary of another Belize company called Starlex Company Limited ("Starlex"). IES is one of the largest private power generation and distribution groups in Russia, having acquired (through IES Cyprus and IES Russia) generation assets in Russia. IES is indirectly owned 95% by the First Claimant ("Renova Industries") and 5% by Mr. Mikhail Slobodin, the former Director General of IES Russia.

[5] In about 2006, Mr. Vekselberg, Mr. Abyzov and Mr. Slobodin (IES' manager who, together with the Renova Group, had established IES around 2002) held discussions concerning Mr. Abyzov investing in IES. They came to an arrangement whereby the Renova Group and Mr. Abyzov (and the companies he owned and controlled) would make investment contributions so as to result in the following shares in IES: Mr. Vekselberg and his companies – 48.45%; Mr. Abyzov

and his companies – 46.55%; and Mr. Slobodin and his companies – 5%. The Abyzov Parties assert (by Counterclaim and Ancillary Claim) that this resulted in a legally binding and enforceable oral agreement (the "2006 Oral Agreement").

[6] While Mr. Abyzov (or his companies) began to make contributions to the pool of assets held by IES (and by 2011 had contributed US$475,339,291), he was informally treated as a partner in the IES joint venture but his participation was not formalised by the issue of shares because he did not, at the time, want to be seen to have a formal equity participation in IES. Further, there is a dispute in these proceedings as to whether these discussions resulted in an agreement for Mr. Abyzov to have what he calls an "exit mechanism" by which he, through his companies, could withdraw from IES and be repaid the sums he had invested plus interest (which the Abyzov Parties refer to as the "2006 Exit Mechanism"). The Claim, Counterclaim and Ancillary Claim concern the attempt of the Abyzov Parties to extricate themselves from IES. In the early stages of this litigation they sought to do so by exercising a put option referred to in a signed document headed PRINCIPAL TERMS dated 21 October 2011 (which will be referred to in this judgment as "the Principal Terms").

[7] The claim which is sought to be struck out is (inter alia) for declaratory relief that the attempted exercise of that option by the Abyzov Parties was ineffective. The option mentioned in that document was the means whereby the Abyzov Parties hoped they could extricate themselves from IES and thus get their contribution back. Although they initially relied upon that document as part of the legally binding arrangements between them and the Renova Group, their present position is that that document did not create a binding contractual commitment and they now rely on the 2006 Exit Mechanism. They say that they exercised that mechanism by their service of the Re-Amended Defence and Counterclaim and

Ancillary Claim on 16 December 2014. This summary judgment is simply about one issue, namely, whether the Principal Terms created a binding contract or not. The Renova Group says they did do so. The Abyzov Parties say they did not.

[8] The application for summary judgment (and the consequential strike out) is made solely by the first Defendant Emmerson International Corporation ("Emmerson"), one of the Abyzov Parties. Emmerson's position on the present application is that the Principal Terms were not intended to be, and were too uncertain to be, legally binding. Emmerson asks the Court, on this application, to address the question of the legally binding nature of the Principal Terms without addressing the issue and the evidence relating to the alleged earlier oral agreement.

[9] Discussions relating to Mr. Abyzov's participation in IES continued, on and off, for a number of years. The Abyzov Parties contended at one time that the 2006 Oral Agreement was amended (again, orally); they now rely solely on the 2006 Oral Agreement; the Renova Parties say there was no such oral agreement and no oral amendment to it. They say no agreement was reached until 2011 in the form of the Principal Terms.

[10] During 2011, there were further discussions as to the terms of an agreement relating to, amongst other matters, the parties' respective shareholdings in IES and the corporate governance rules for IES. Mr. Abyzov was unable to contribute as much as was needed to bring his and his companies' share up to the 46.55% originally envisaged. These discussions were a continuation of the discussions that had taken place over previous years. Particular impetus was given to them in 2011, and to the need for arriving at a concluded agreement, by parallel discussions that were taking place with Gazprom, the largest natural gas producer in Russia, regarding a potential merger of assets with IES (in relation to which all

parties recognised the need to have a legal agreement in place relating to IES). The discussions relating to IES subsequently became crystallised in the Principal Terms which set out, in a signed document, the parties' respective shareholdings and details of further steps to be taken.

[11] However, the Abyzov Parties always contended, up until the service of their draft newly amended case on 11 September 2015, that there was a separate (and indeed overriding) oral agreement made in September 2011, prior to the Principal Terms (but which the Principal Terms implemented and reduced to writing in at least some respects). There was a dispute as to whether a legally binding and enforceable oral agreement was reached in September. The Abyzov Parties also contended that a put option was agreed between Mr. Abyzov and Mr. Vekselberg as part of the September 2011 Oral Agreement (which the Abyzov Parties referred to as the "KES Put Option").

[12] As I have indicated, between 2006 and 2010 the Abyzov Parties had made a variety of financial contributions to IES but not enough to achieve the 46.55% share originally envisaged. The Principal Terms recorded total contributions as at 1 July 2011 by the Renova Group of US$1,259,870,228 and by the MA Group of US$475,339,291. After a pro rata reduction to allow for the 5% interest of Mr. Slobodin, the Renova Group's shareholding was agreed at 68.9759% and the MA Group's at 26.0241%.

[13] This summary judgment application does not specifically concern the exercise of any put option to achieve an exit from IES. That will be the subject of the main proceedings. Nonetheless, as it is so central to the issues underlying this application, I should briefly record the terms of the option. The Principal Terms in essence provided for the investment into IES so as to give the MA Group

26.0241%. That document provided that at completion a shareholders' agreement would be entered into containing the detailed provisions in clause 5 of the Principal Terms. By clause 5.7 of the Principal Terms, the MA Group was to have (in the shareholders' agreement) a put option, under which an MA Group company could, on or before 1 July 2013, serve a notice on a Renova Group company for that Renova Group company to purchase all of that MA Group company's shares in IES. The MA Group purported to exercise this option on the 27 June 2013 as mentioned below.

[14] By letter dated 27 June 2013 signed on behalf of each of the First to Fourth Defendants, notice was given of a purported "exercise of the option pursuant to Clause 5.7 of the Principal Terms". The price to be paid to the MA Group as a result of the exercise of the option was stated to be 95% of the contributions recorded in the Principal Terms, namely US$451,572,326.45 made by the MA Group. The Abyzov Parties contended in this litigation that by that letter they exercised the put option pursuant to Clause 5.7 of the Principal Terms, or alternatively (although this was not referred to in the letter) an oral put option. It was this exercise of the option that triggered the commencement of these proceedings by the Claimants who claimed declaratory relief that the exercise was ineffective on three grounds, namely, (i) that no MA Group company held any shares in IES at the date of the exercise; (ii) that it did not specify a MA Group company that was to sell any shares in IES nor did it specify to which Renova Group company such shares would be sold; and (iii) it did not comply with the procedure contained in the Principal Terms.

[15] It is fairly obvious from this brief history that the Abyzov Parties wanted to extricate themselves from IES and get their money and assets back. They initially relied on the Principal Terms, then abandoned that and relied on orally agreed exit options

and, ultimately, on the 2006 Exit Mechanism which they say was exercised by service of their re-amended Defence and Counterclaim and Ancillary Claim on 16 December 2015. During the course of argument on this summary judgment application there were echoes of yet further amendments to come in the future concerning an exit from IES. Nothing in this judgment must be taken as expressing any view as to the underlying merits of this Claim, Counterclaim and Ancillary Claim. I have no doubt however that this is a case in which the trial Judge will want to look at all the evidence in the round and that an attempt to excise from his or her consideration just one issue would be wholly inappropriate.

The Principal Terms

[16] With that introduction I turn to the Principal Terms which is the central concern of this summary judgment application. First of all, the document was agreed in Russian and Emmerson has put in evidence a professionally certified translation. Before I look at the provisions I should make a few points about this document. It covers nearly 50 closely typed pages. It is signed by Mr. Abyzov on behalf of the MA Group and a Mr. Vladimir Kuznetzov on behalf of the Renova Group. Mr. Kuznetzov was the Chief Investment Officer of Renova Management AG as well as the Managing Director for Strategic Development. He is a member of the Board of Directors of Renova Management AG. He has given evidence in this summary judgment application. Mr. Abyzov has not done so. The Principal Terms went through 17 drafts and was initialled on every page in two originals by the more junior individuals who were tasked with drawing up the document. The execution process itself had been the subject of discussion between the parties to ensure that the right people signed at the right time. The negotiations were led on each side by the executives at the top of their respective organizations, Mr. Vekselberg and Mr. Kuznetzov for the Renova Group and Mr. Abyzov for the MA Group. If it

was not intended to be binding it is difficult to see why the parties went to all this trouble. Mr. Kuznetzov gives evidence that the intention from the outset of the negotiations relating to the Principal Terms was that they would result in a binding agreement. He says that at a meeting on the 31st of May 2011, he, Mr. Abyzov and Mr. Vekselberg discussed the drawing up of an agreement and that they would use their best efforts to sign a legally binding document by not later than 1st July 2011.

The Law

[17] It appears to be common ground between the parties that the issue as to the status in law of the Principal Terms is to be determined by reference to English law. Certainly, there is no evidence of Russian law put before me. The application is brought on two grounds: (i) that the parties to the Principal Terms did not intend to be bound by them; and (ii) that the Principal Terms represents an "agreement to agree" and is therefore not binding. These grounds are distinct though the latter reflects back upon the former and, ultimately, the two grounds have to be examined together in the round. Starting however with the first, Lord Clarke sets out the position in RTS Ltd. v Molkerei Alois Muller GmbH.[1]

> "...Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for

[1] [2010] 1 WLR 753 at paragraph 45

> the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement."

[18] Mr Malek QC, leading Counsel for the Renova Parties, submits, in addition, in relation to an intention to create legal relations, that the essential starting point is that when agreements of a commercial nature are committed to writing and signed, they are generally intended to be legally binding (unless expressly provided otherwise). A signed document is an important factor in assessing (objectively) the parties' intentions. In relation to commercial transactions, when the parties have entered into an express agreement, the onus of proving there was no intention to create legal relations "is on the party who asserts that no legal effect is intended, and the onus is a heavy one": see ***Edwards v Skyways Ltd***[2]. He submits further that commercial parties are capable of (and are often used to) making it clear, in a written document that records agreement, when such documents are not intended to create any legally binding obligations. The absence of a phrase such as "subject to contract" in such a document is important.

[19] Mr Atherton QC, leading counsel for the Abyzov Parties, submits as follows: "Whether parties engaged in negotiations have intended a document resulting from those negotiations to be legally binding on them with immediate effect is a matter to be determined objectively by reference to the words used in the document, the background facts and the conduct of the parties both prior to and following the production of the document in question. It is well established that

[2] [1964] 1 WLR 349 355 and see also Chitty on Contracts 32nd ed. 2-168

where the issue is the construction of an agreement, the court will look at the words used and the background facts, but that evidence of both pre-contractual and post-contractual negotiations is inadmissible. However, that rule is displaced where the issue is as to whether or not a binding contract was actually concluded".

[20] Mr Atherton cites Electricity Corporation of New Zealand v Fletcher Challenge Energy LTD[3]. The Court of Appeal of New Zealand there stated:

> "[54] Whether the parties intended to enter into a contract and whether they have succeeded in doing so are questions to be determined objectively. In considering whether the negotiating parties have actually formed a contract, it is permissible to look beyond the words of their "agreement" to the background circumstances from which it arose - the matrix of facts. This can include statements the parties made orally or in writing in the course of their negotiations and drafts of the intended contractual document".

The Court went on to make it clear that conduct both before and after the date of the alleged contract was admissible in deciding whether the contract was formed in the first place.

[21] Mr Atherton further submits that the fact that a signature is applied to a document produced during the course of negotiations does not render that document a binding contract if that was not the intention of the parties and the conduct of the

[3] [2001] NZCA 289

parties evidenced the fact that important terms were still to be agreed. For this he cited Hussey v Horne-Payne[4] where Lord Selborne said:

> "The observation has often been made that a contract established by letters may sometimes bind parties who, when they wrote those letters, did not imagine that they were finally settling the terms of the agreement by which they were to be bound: and it appears to me that no such contract ought to be held established, even by letters which would otherwise be sufficient for the purpose, if it is clear, upon the facts, that there were other conditions of the intended contract, beyond and besides those expressed in the letters, which were still in a state of negotiation only, and without the settlement of which the parties had no idea of concluding any agreement."

[22] All of these submissions are plainly correct and neither side takes issue with the submissions of the other, though each side naturally calls attention to the principles that best suit his side of the argument. Mr Atherton is concerned to point out that existence of a signature does not render a document a binding contract if that was not the intention of the parties. However, it is one thing when the court is looking at a contract alleged to have been created in letters, which was the case in Hussey v Horne-Payne. It is quite another when the court is faced with a 50 page document that is the product of 17 drafts and is formally signed by the most important people in both organisations which are party to the transaction. Mr Atherton readily accepted that he had a very high threshold to get over in persuading me that no binding contract was intended by the Principal Terms. Moreover, he asks me to find that there was no intent to be bound because of irremediable uncertainties in the Principal Terms and based on the fact that

[4] See (1879) 4 App Cas 311

negotiations continued in relation to further detailed documents after the signing of the Principal Terms; but he asks me to decide the issue without reference to the background history starting with the 2006 negotiations, the events between that date and 2011 and the negotiations which were restarted in that year. It is plain from the authorities that all of this background conduct is (or at least may be) relevant in deciding whether there was an intention to create a binding commitment and, moreover, is likely to be contested. A summary judgment application is hardly an appropriate occasion on which to invite the Court to make such a decision against such a fact intensive background.

[23] That is not to say, of course, that if the Principal Terms is incurably uncertain (whatever the background) Mr Atherton could not succeed. Such uncertainty inevitably would reflect back upon the question of intention to create a binding commitment and it is in this area that Mr Atherton concentrated his fire.

[24] Here again there is much agreement between the parties. The law is clear. Mr Atherton cites Mamidoil-Jetoil Greek Petroleum Company SA v Okta Crude Oil Refinery AD[5] where Rix LJ summarised the law relating to uncertainty as follows:

> "in my judgment the following principles relevant to the present case can be deduced from these authorities, but this is intended to be in no way an exhaustive list:
>
> (i) Each case must be decided on its own facts and on the construction of its own agreement. Subject to that,
>
> (ii) Where no contract exists, the use of an expression such as "to be agreed" in relation to an essential term is likely to prevent any contract

[5] [2001] 2 All ER (Comm) 193

coming into existence, on the ground of uncertainty. This may be summed up by the principle that “you cannot agree to agree”.

(iii) Similarly, where no contract exists, the absence of agreement on essential terms of the agreement may prevent any contract coming into existence, again on the ground of uncertainty.

(iv) However, particularly in commercial dealings between parties who are familiar with the trade in question, and particularly where the parties have acted in the belief that they had a binding contract, the courts are willing to imply terms, where that is possible, to enable the contract to be carried out.

(v) Where a contract has once come into existence, even the expression “to be agreed” in relation to future executory obligations is not necessarily fatal to its continued existence.

(vi) Particularly in the case of contracts for future performance over a period, where the parties may desire or need to leave matters to be adjusted in the working out of their contract, the courts will assist the parties to do so, so as to preserve rather than destroy bargains, on the basis that what can be made certain is itself certain. Certum est quod certum reddi potest.

(vii) This is particularly the case where one party has either already had the advantage of some performance which reflects the parties’ agreement on a long term relationship, or has had to make an investment premised on that agreement.

(viii) For these purposes, an express stipulation for a reasonable or fair measure or price will be a sufficient criterion for the courts to act on. But even in the absence of express language, the courts are prepared to imply an obligation in terms of what is reasonable.

(ix) Such implications are reflected but not exhausted by the statutory provision for the implication of a reasonable price now to be found in

section 8(2) of the Sale of Goods Act 1979 (and, in the case of services, in section 15(1) of the Supply of Goods and Services Act 1982).

(x) The presence of an arbitration clause may assist the courts to hold a contract to be sufficiently certain or to be capable of being rendered so, presumably as indicating a commercial and contractual mechanism, which can be operated with the assistance of experts in the field, by which the parties, in the absence of agreement, may resolve their dispute."

[25] For his part, Mr Malek relied upon the statements of Lloyd LJ in Pagnan SpA v Feed Products Ltd [1987] 2 Lloyd's Rep 601 (at page 619):

> "(4)...parties may intend to be bound forthwith even though there are further terms still to be agreed or some further formality to be fulfilled.. ...
>
> (5) If the parties fail to reach agreement on such further terms, the existing contract is not invalidated unless the failure to reach agreement on such further terms renders the contract as a whole unworkable or void for uncertainty. ...
>
> (6) It is for the parties to decide whether they wish to be bound and, if so, by what terms, whether important or unimportant. It is the parties who are ... "the masters of their contractual fate". There is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so-called "heads of agreement".

[26] He also relied on Lord Clarke's characterisation of Pagnan in his judgment in RTS (supra, at paragraph 48):

> "In the Pagnan case it was held that, although certain terms of economic significance to the parties were not agreed, neither party intended agreement of those terms to be a precondition to a concluded agreement. The parties regarded them as relatively minor details which could be sorted out without difficulty once a bargain was struck. The parties agreed to bind themselves to agreed terms, leaving certain subsidiary and legally inessential terms to be decided later."

The Uncertainty relied upon

[27] The Principal Terms are extremely detailed and it will make this judgment unwieldy if I were to quote extensively from it in this judgment. On the other hand, in order to understand the essence of the conflict concerning uncertainty, and particularly in light of the fact that the document is in translation from the Russian (where, conceptually, there is a difference in approach both as a matter of structure and language), it is necessary to quote rather extensively from the document in order to make sense of the arguments presented to me. For that reason I have decided to put the quotations I am making from the Principal Terms into an Appendix to this judgment.

[28] Mr Atherton makes a great number of arguments in relation to the Principal Terms, many of which are not even foreshadowed in his fifty page skeleton. He recognized in the end that many of these arguments were peripheral but he identified some fundamental points on which he was relying. I hope that by the end of this judgment I will have dealt at least with his main points and some more besides. I fear that it may not be practicable to deal with all of the less important, peripheral, points he made.

[29] One central point made by Mr Atherton is that, as a matter of construction and commercial common sense the Principal Terms cannot be regarded as a binding agreement because there is throughout the document a failure to identify or designate the specific companies which are to incur liabilities or acquire rights and no mechanism is put in place to identify or designate those companies. For example, he refers to clause 4.2(i) which reads as follows: "[company] of Renova will sell to [company] of the MA Group a number of shares in IES corresponding to the MA Group's percentage interest as indicated in par. 3.1… for a price agreed by all Parties…". He says one cannot identify the Renova company which will be the seller of the IES shares, nor the MA Group company that will be the buyer. He also makes the point that this is a sale for a price to be agreed.

[30] However, when one reads the entire document it becomes apparent that this is an agreement between two groups of companies under which the MA Group was buying a share in a pool of assets (defined as KES) held by IES Belize so that the MA Group would end up with 26.0241% of KES (subject to adjustment in accordance with the provisions of clause 2.5). It mattered not to the Renova Group which of the companies in the MA Group was the entity in which the 26.0241% share would be ultimately vested. Nor did it matter to the MA Group which company or companies in the Renova Group transferred the shares in IES Belize so as to achieve the ultimate shares in KES set out in clause 3.1. Of course I make no findings in this respect. I say merely that this is by no means a fanciful construction of this agreement. The professional translator comments that there is no equivalent of the definite article in the Russian language and the original Russian is unclear as to whether "the company" or "a company" should be used in the translation. It seems to me that the nature of the agreement between the two Groups is that one Group agrees to sell and the other to buy so that all the

companies defined as belonging to each group are contractually bound, but it is up to each group to fulfill its obligations by identifying the company or companies within the Group which will transfer or receive the shares the subject of the sale. There is no suggestion that the individuals who signed the document were not authorized to commit the members of their respective Groups to the terms of the Principal Terms. (This central point relied upon by Mr Atherton to establish incurable uncertainty became known in argument as the "identity point". It is relevant not only to the critical clause 4.2(i) but to many other clauses (such as the drag-along and tag-along clauses 5.10 and 5.11 and the put and call option in clauses 5.7 and 5.8. Where it plainly does not matter, the choice of Group company is left to the Group concerned, and where it does matter (because of counterparty risk), all companies in the Group are bound and it is a matter of construction whether the liability is joint or joint and several. I will not therefore single out every clause put forward by Mr Atherton in which the identity point arises (save for clause 4.2(ii) because it carries a substantial obligation of $166.29 million and much was made of it in argument)).

[31] As to the words "for a price agreed" in clause 4.2(i), the translator comments that, subject to the context of the document, this could mean "as agreed" or "to be agreed". When one takes into consideration the entire document, it seems clear that the appropriate sense is "as agreed" because the price is plainly set out at length in the detailed contributions already made to the pool of assets by the MA Group. Those details are included in three closely typed pages in Schedule 1 to the Principal Terms. The Schedule includes the assets contributed to the pool by the Renova Group in the sum of US$1,259,870,228 and by the MA Group in the sum of US$475,339,291, resulting (after providing for Mr. Slobodin's 5% which was given to him as a management incentive) in the share of Renova Group at 68.9759% and of the MA Group of 26.0241%.

[32] Clause 2.5 provided, as will be seen from the Appendix, that these percentages should be subject to adjustment to reflect the due diligence verification exercise that was to be embarked upon immediately after the signing of the Principal Terms. (I should take in here one of the peripheral points made for the first time at the hearing, that the appointed representatives to conduct this due diligence exercise might not agree and that that would make the agreement unworkable and thus void for uncertainty. This is an example of the kind of detailed point that was made by Mr. Atherton in the course of argument. The court would in my judgment not let an agreement like this fail on such a point. What the representatives had to do was to verify some objectively ascertainable facts, namely, the actual contributions made by the two Groups, and, if they could not agree, the court would step in to provide its own machinery to establish and verify those facts.)

[33] A further major point raised by Mr Atherton is associated with the fact (briefly alluded to early on in this judgment) that in May of 2011 IES Belize transferred IES Cyprus, which held all the companies in the KES pool of assets, to a company called Starlex Company Limited, another Belize company. It will be seen from the Appendix that IES is defined as "Integrated Energy Systems, established in Belize, or any other company, registered outside the jurisdiction of the Russian Federation, consolidating majority of the assets in KES, that agreed by the Parties for the purpose of the Transaction".

[34] Much was made of the fact that the MA Group never agreed to the substitution of the holding company for the KES assets from IES Belize to Starlex. It is said by Mr Atherton that in the absence of such an agreement the agreed holding company, whose shares were the main subject of the agreement, remained IES Belize but, at the date of signing of the Principal Terms (21 October 2011), there was nothing

in IES Belize. Accordingly, he says, the agreement was unworkable and Mr. Kuznetzov knew it was unworkable, and therefore could not have intended it to create a binding contractual relationship.

[35] Mr Malek responds by pointing out that the Principal Terms provided the terms on which the MA Group would obtain a formal interest in IES. KES was the business and IES was the entity that consolidated the majority of the pool of assets in the business. IES was the entity in which the MA Group would obtain shares. Its definition was clear. It was IES Belize or another company registered outside Russia, agreed by the Parties, which consolidated the majority of the assets of KES. The fact that the parties had laid down criteria within which they might agree to substitute another company does not make the definition of IES uncertain or unclear. Failing agreement on another company, it remained IES Belize. The fact that the shares in IES Cyprus had been transferred from IES Belize to another Belize company, namely Starlex, did not make the agreement uncertain or unenforceable: the agreement, he submits, remains what is set out in the Principal Terms. If the MA Group had agreed to Starlex being substituted, then Starlex would have been "IES" for the purpose of the Principal Terms – that was the purpose of wording the definition in the way it was. If the MA Group had not so agreed, then the MA Group would have been able to rely on this definition to resist that change. There may or may not have been arguments about breach, but that would be an application of the terms, not an example of uncertainty or enforceability of them.

[36] In any event, according to Mr Kuznetzov, the MA Group were told about and accepted the fact that the assets had been transferred to Starlex. Mr. Kuznetzov's evidence is that Mr. Abyzov was informed of the substitution of IES Belize by Starlex at a meeting in around July 2011, although this is said by Mr Atherton to be

inconsistent with other evidence coming from the Renova Group. Mr Malek points out that in the first draft of the share purchase agreement sent to the MA Group on 18 November 2011, Starlex was named as the company in which shares were to be sold by Renova Bahamas to Emmerson. The MA Group raised no questions or objections to this, either in relation to that draft or subsequent drafts.

[37] The Abyzov Parties confirmed in their previous pleadings that they had no objection to the transfer to Starlex because (amongst other things) it was not inconsistent with (their then alleged) 2011 Oral Agreement "under which IES could be substituted as a designated holding company by another vehicle if circumstances so required; the same was recorded in the 2011 Principal Terms"; and after the transfer to Starlex "the parties understood, and acted on the assumption, that the identity of the designated holding company had changed from IES to Starlex, as the bulk of the KES assets were now consolidated within Starlex." It was specifically pleaded that this change "was consistent with … the Principal Terms" for which purpose the Abyzov Parties relied upon the definition of "IES" set out in the Principal Terms. As set out above, it does not matter for the purposes of "uncertainty" or enforceability whether they did or they did not agree the transfer to Starlex – they had a clear and binding contractual term and, if they had not agreed, the parties could have stood on their rights.

[38] The next point raised by Mr. Atherton is that the Principal Terms represent an agreement to agree because the company in which the shares will be held i.e. IES is not a party to the Principal Terms. However, the fact that "IES" is not a party to the Principal Terms does not bear upon the binding nature of the obligations on the parties to the Principal Terms to ensure that the claims and assets set out in Schedule 1 are converted to shares in "IES". Clause 4.2(iv) of the Principal Terms

sets out what was to happen, and it was incumbent upon the parties to the Principal Terms to implement that.

[39] In any event, Mr Malek submits, there was nothing to indicate that IES would not be willing to issue shares to both parties as envisaged in the Principal Terms. Moreover, the Renova Group had the controlling stake in IES Belize (and Starlex) and therefore was in a position to procure the issue of shares in the relevant company (whether it was IES Belize or another company within the definition of "IES"). If necessary, an obligation on the Renova Group to so procure could have been implied in the Principal Terms. The fact that "IES" itself was not a party to the Principal Terms did not make it uncertain or otherwise a non-binding contract.

[40] A major point is then made in respect of clause 4.3(ii). I say "major" because on the second day of the hearing I was handed a paper headed: "Submission on the main uncertainty of the Principal Terms". This paper revisited this clause 4.3(ii). To explain the point I should refer to the definition of KES which provides that the pool of assets comprises "not only the assets held by IES but also the assets that "temporarily are not held by IES or its subsidiary companies, but are being managed by IES." Before the transfer to Starlex, the majority of assets in the pool were in the ownership of IES Belize. It is said that after that transfer all the assets in the pool fell into the category of assets managed but not owned by IES. In any event, it is said, even if that is not right, the assets held outside IES to begin with included very valuable assets such as an asset listed in Schedule 1 called Merol (CY) at a sum of US$136,172,995. The point being made is that the assets held outside IES Belize, but in the pool, are very substantial, and potentially constitute the entire pool because of the transfer to Starlex. In the circumstances, the alleged uncertainty covering clause 4.3(ii) is of great importance, Mr Atherton submits, and that provision cannot therefore (because of its size in the scheme of things) be

excised so as to leave the remainder of the agreement intact. The uncertainty on which Mr Atherton bases his submission as to clause 4.3(ii) arises because the provision requires at the point of completion a proposal for "guarantees, reasonably acceptable for the MA Group, for the protection of MA Group interests" in the assets managed but not owned by IES. The provision goes on to require the MA Group to review this proposal "acting reasonably" and the Parties are to agree upon such guarantees.

[41] The MA Group would not have the same protection with regard to the assets managed but not owned by IES as they would have in relation to the assets and companies within the ownership of IES, which would be governed by the provisions of the shareholders' agreement that had to be entered into containing the detailed provisions in clause 5 of the Principal Terms. Clause 4.3(ii) was, it seems, saying that suitable guarantees (meaning no more than protective provisions) were to be put in place by the Renova Group to ensure that the MA Group received protection similar to that they enjoyed in respect of the assets owned by IES. It will be noticed that some attempt at creating an objective reference point for these guarantees was attempted by the reference (twice) in the provision to the proposal being reasonably acceptable to the MA Group.

[42] I find it difficult to accept that this entire detailed and complicated commercial agreement could fail to take effect because of this one provision. Certainly, for purposes of summary judgment, there is a reasonable prospect of establishing that clause 4.3(ii) would not undermine an otherwise effective agreement on the grounds of uncertainty.

[43] There is a further contention concerning clause 4.2(ii) of the Principal Terms. That provision provided for an entitlement of an Abyzov company to the benefit of a

debt of US$166.9 million maturing on 01.01.2029. The debtor was described as "[company] of Renova". It is said by Mr. Atherton that this is incurably uncertain because the debtor company could not be identified. This was an indebtedness that was to mature in 2029 bearing no interest or security and it is not conceivable that the MA group would have left it to Renova to choose the company on whom this counterparty risk should be placed. Mr Malek accepts that in this instance there was a binding obligation on all the Renova Group's companies that were parties to the Principal Terms and it would be a question of construction whether the obligation to pay lay upon each of those companies or only one of them. That does not render the clause too uncertain in his submission. The clause was clear about the terms upon which this debt would be owed. That is the deal the MA Group made. It was sufficiently certain to be enforceable.

[44] A further point is taken in relation to clause 4.2(iii). By reason of the definition of the shareholders' agreement, which requires Mr Slobodin's company to be a party, it is suggested that there is incurable uncertainty because Mr Slobodin's company was not a party to the Principal Terms. The response is that this does not bear on the binding nature of the parties' obligations under clause 4.2(iii), which constituted an obligation on the parties to the Principal Terms to ensure conclusion of the shareholders' agreement i.e. to procure the entities which were to hold IES shares to enter into the shareholders' agreement. The obligation to procure that Mr Slobodin's company entered into the shareholder's agreement was plainly on the Renova Group, in light of the relationship the Renova Group and Mr Slobodin had since the beginning of the IES business. There was therefore, in the submission on behalf of the Renova Group, no need for Mr Slobodin's company to be a party to the Principal Terms.

[45] Further points are taken in respect of the shareholders' agreement. It is defined as including the matters envisaged in the Principal Terms (which are pretty exhaustive and remarkably detailed in clause 5 of the Principal Terms) "as well as matters additionally agreed by the Parties". It is said that this is an agreement to agree. I cannot accept that submission. When one looks at the vast amount of detail to be included in the shareholders' agreement it is unattractive to suggest, and I cannot accept, that the agreement could fail because of the addition of these few words. It is obvious that any "additionally agreed matters" were inconsequential and unimportant; otherwise they would have been agreed in the welter of detail contained in clause 5. The failure to agree anything more would have no impact on whether a binding commitment had been reached.

[46] Clause 4.2(vi) is yet another provision relied upon to assert uncertainty because it refers to "terms agreed" which the translator comments could mean "as agreed" or "to be agreed". The clause refers to the MA Group receiving a participation in certain rights and obligations relating to Mr. Slobodin's company's participation in IES. In particular, it refers to the preemptive right of purchase of his company's interest in the event of its exit, and the obligations relating to his company's put option and its financing. The clause makes it clear that the MA Group were to share in these pro rata to their participation in IES. In other words, the MA Group was to have the same rights and obligations towards Mr Slobodin's company (as regards the right of first refusal to purchase its shareholding and its put option and financing) as the Renova Group, adjusted in proportion to the MA Group's shareholding in IES. Accordingly, this was not something that remained to be agreed – the parties to the Principal Terms had agreed that they would share (pro rata, in proportion to their respective shareholdings in IES) in the rights and obligations in the particular respects identified in the clause as regards Mr Slobodin's company.

[47] Another aspect of the shareholders' agreement relied upon is to be found in paragraph 10 of Schedule 2. Schedule 2 sets out a number of warranties that are to be provided in the shareholders' agreement. The warranty set out in paragraph 10 relates to assets which are under IES' management, but held outside its ownership structure, and provides that such assets are to be put under the ownership of KES "within a set term, which shall be agreed … taking into account, among other things, the requirement to avoid negative material consequences for KES as a result of receipt of ownership of such assets", and that KES would not suffer "economic losses" as a result of such transfer, and "the term "economic losses" shall be agreed by the Parties on signing the Shareholders' Agreement". Reliance is placed on two points that are "to be agreed": (i) the "set term" within which the assets are to be transferred, and (ii) the term "economic losses".

[48] As to the first of these points, it is submitted by Mr Malek that the fact that the "set time" was not agreed in the Principal Terms did not make this paragraph unenforceable. The words as to a "set time" in paragraph 10 have to be read in the context of Schedule 2 more generally. Paragraph 1 of Schedule 2 explained that the warranties would have a validity period which was to be the longer of (a) one year, or (b) three months from the completion date of a compliance audit for representations and warranties as prescribed by clause 2.7(i) of the Principal Terms, but no longer than 2½ years. The parties clearly intended that the transfer the subject of the warranty in paragraph 10 would be completed within that period of time (not only because otherwise it would be ineffective, but also in order that the envisaged audit could review the position). Accordingly, the "set time" at paragraph 10 must have been intended to mean that the transfer would take place by the end of that period or such earlier time as the parties were able to agree. In other words, if there is no agreement on a particular "set time", there is effectively

a default period built in via paragraph 1 of Schedule 2. A failure to agree a further "set time" would not, therefore, render the provision unenforceable.

[49] Alternatively, it is submitted, the Court would impose a reasonable period of time in the circumstances, taking into account the factor specifically mentioned in paragraph 10 (the negative material consequences to KES were to be avoided) and as to the second of the points, the fact that the definition of "economic losses" was to be agreed by the Parties in the shareholders' agreement does not render paragraph 10 unenforceable either. Paragraph 10 gave the parties licence to agree a particular meaning for that phrase, but if they failed to do so, there would be no problem giving it an effective meaning.

[50] I should briefly mention clause 4.3(i) which requires the Renova Group to transfer the Agency Investments into the pool "on the terms of deferred payment of the assets to be transferred". A point was taken that these investments are not sufficiently identified. They were defined in clause 1 to be those defined as such in Schedule 1. That Schedule identified these assets under the section headed "Investments made by Renova". The MA Group and the Renova Group had discussed for a long time (prior to and during negotiations of the Principal Terms) the contributions made by each group to IES, including the contributions which were to be transferred by the Renova Group to IES and which were referred to in the Principal Terms as "Agency Investments". It is submitted that the MA Group must have known what these investments were. There were sufficient criteria set out in Schedule 1 to identity these investments. In any event the investments made would have been subject to the due diligence process that could have led to an adjustment of the figures and, ultimately, the percentage shareholdings. The provision was sufficiently clear to be enforceable; but even if it was not it would

simply mean that the Renova Group could not be compelled to transfer those assets into KES, with a corresponding adjustment to its percentage share.

[51] Yet a further point is taken in relation to clause 4.2(iv) which provided for the existing claims of the Renova Group and the MA Group to be converted into shares in IES. It is said on behalf of the MA Group that the absence of a reference to Mr Slobodin's company made the agreement uncertain. The Renova Group responds by saying that clause 4.2(iv) was not prescriptive about how this was to be done. The key point was the end result set out in clause 3.1. Existing shares could have been transferred or new shares issued in whatever combination was required to effect that result. Accordingly, the clause does not render the agreement uncertain.

[52] I hope I have done justice to Mr Atherton's detailed and sustained arguments on uncertainty. I have dealt with the main points he made in this respect and many of the less important ones, though not all. However, I have considered all the points he made and he failed to persuade me that the Principal Terms are too uncertain to amount to a binding commitment. The submissions on behalf of the Renova Group have persuaded me that they have a realistic prospect of succeeding at trial, which is the well-known test enunciated by Lord Woolf MR in Swain v Hillman.[6]

Conduct after the signing of the Principal Terms

[53] The main burden of the submissions before me concentrated on the issue of uncertainty. It remains for me to consider whether conduct after the signing of the Principal Terms throws doubt upon the intention of the parties to enter into a binding commitment. As Mr Atherton submitted (see paragraph [20] above), in

[6] [2001] 1 All ER 91

considering whether the parties have actually formed a contract, their conduct both before and after the date of signing is admissible evidence. Following the signing of the Principal Terms the Abyzov Parties and the Renova Parties instructed their lawyers Skadden, Arps, Slate, Meagher & Flom ("Skadden') and Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") respectively to draft what was described in clause 4.2 of the Principal Terms as "the legal documentation to be concluded on the completion of the Transaction". In the course of negotiations relating to those documents the Principal Terms was variously referred to as a "term sheet" or an MoU (i.e. a memorandum of understanding) and it is suggested that this evidences that the parties did not intend the Principal Terms to be a legally binding and enforceable agreement.

[54] In the first English translation of the Principal Terms supplied to the Abyzov Parties on 29 November 2011 the Principal Terms was translated as a "Term Sheet". On the same date Ms Pigaleva, a Russian law advisor of the Abyzov Parties, forwarded that translation to Skadden as a Microsoft word document named "Mou-English. docx" and referred to it as "Mou in English". This sort of evidence does not, in my judgment, merit serious consideration on a summary judgment application such as this one. The translators were not involved in the negotiation of the Principal Terms; nor was Ms. Pigaleva. In any event, the descriptions "term sheet" or 'Mou' carry the issue no further. They are not inconsistent with a binding commitment. However, more to the point, in an "entire agreement" clause in a draft share purchase agreement in circulation in May of 2012 the Principal Terms was referred to as "that certain non-binding term sheet…..which shall cease to have any further force or effect". This draft was produced by Akin Gump for the Renova Parties.

[55] Earlier drafts did not include those words. In the draft circulated on 13 December 2011 it was stated that on execution of the share purchase agreement the Principal Terms would "cease to have any further force or effect", which implied that the Principal Terms would have force and effect up to the time of execution of the share purchase agreement. Despite this it must be recognized that "non-binding term sheet" is quite strong and to the point. However, at best, the parties seem to have described the Principal Terms in various ways that might occasion some cross-examination at trial. In my judgment these descriptions do little to suggest that the Renova Parties do not have a realistic prospect of success in establishing at trial that the Principal Terms amounted to a binding commitment.

[56] Both sides have tended to chop and change their attitude to the Principal Terms. It will be noticed that I have paid little attention to the fact that the Abyzov Parties contended at one time in this litigation that the Principal Terms were binding. The Renova Parties relied heavily on that as showing that the Abyzov Parties intended to enter into a contractual commitment. However, the Renova Parties themselves have hedged their bets concerning the binding nature of the Principal Terms. What is more, they relied for their contention that the exercise of the put option was not effective on the ground (still in their amended statement of claim) that such exercise "did not specify an MA Group company that was to sell any shares in IES nor to which Renova Group company such shares would be sold".

[57] Mr Atherton made a big point out of this saying that there was an over-arching contradiction in the Renova Group position because this ground of resistance to the exercise of the put option identifies the very uncertainty (the identity point) the Abyzov Parties rely upon for saying that the Principal Terms is too uncertain. During the course of the negotiations on the share purchase and shareholders' agreements after the signing of the Principal Terms, both sides hedged their bets.

Each side took the opportunity in those negotiations to make changes to the deal reached in the Principal Terms. That, of course, does not signify that they were not bound at the point of signing the Principal Terms, but they may have downgraded the binding status of the Principal Terms to justify such changes. If the parties want to deploy this post Principal Terms conduct on the issue of the binding nature of the Principal Terms, the place and time to do so is in a trial and not a summary judgment application.

Conclusion

[58] I have paid little attention to the changing positions of the parties since the signing of the Principal Terms. Rather, I have looked at the Principal Terms and asked myself whether, objectively, there is evidence of an intention to create a contractual commitment and whether that document is too uncertain to create such a commitment. It is plain to me that the Renova Group has a realistic prospect of establishing that the parties did intend to create such a commitment and a realistic prospect that that document is certain enough to sustain a contractual commitment. On that basis I dismiss the application for summary judgment and the consequential application to strike out the claim.

APPENDIX

1. DEFINITIONS

"*The Agency Investments*" – the investments defined in Schedule 1 to these Principal Terms.

"*The MA Group*" – the group of companies controlled by M.A. Abyzov, including the following companies: Emerson International Corp., Tomsa Holdings Limited, Gardendale Investments Limited, and also, for the purposes of these Principal Terms, Alabaster Associates Limited.

"*KES*" – Collectively, IES and all subsidiary companies and assets directly or indirectly owned by IES, including RKS and GAZEKS, and also for the purposes of these Principal Terms, the assets that temporarily are not held by IES or its subsidiary companies, but are being managed by IES.

"Renova" the Renova group of companies, including the following companies: Renova Industries Ltd., Wedgwood Management Ltd., Zapanco limited, and also, for the purposes of these Principal Terms, Lamesa Holding S.A.
"The Transaction" – transactions and actions referred to in par. 4.2 collectively.

"The Shareholders' Agreement" – the Shareholders' agreement to be concluded by the Parties and the third shareholder ([company]) in which M. Yu. Slobodin has an effective shareholding) in relation to IES upon conclusion of the Transaction, governing the relations between the shareholders of IES with regard to IES and other matters envisaged in these Principal Terms, as well as matters additionally agreed by the Parties.

"The Value of KES as of 01.07.11" – for the purposes of these Principal Terms, the Value of KES as of 01 July 2011, calculated as the total amount of investments (with interest) indicated in Schedule 1, accepted by the Parties for the purposes of the Transaction.

The "*Parties*", a ""Party" – Renova and MA Group jointly, and Renova or MA Group separately
…..

"IES" – Integrated Energy Systems Limited, established in Belize, or any other company, registered outside the jurisdiction of the Russian Federation, consolidating majority of the assets of KES, that agreed by the Parties for the purposes of the Transaction.

2. The financing made, reconciliation

2.1 The Parties confirm that the persons appointed by the Parties have conducted a preliminary reconciliation of the financing made by the Parties in respect of KES as of 01 July 2011, the results of which are reflected in Schedule 1 to these Principal Terms.

2.2 The Parties will ensure that the persons appointed by the Parties will conduct due diligence of the underlying documentation

confirming the financing made by the Parties in respect of KES and that such appointed persons prepare and execute the corresponding statement of final reconciliation. Within five business days from the date of signature of these Principal Terms, the Parties' representatives will provide each other with an exhaustive list of the documents reasonably required to conduct the due diligence. Within 10 business days of receiving the said list form the other Party, the receiving Party will provide the other Party with documents in accordance with this list (and, should it be necessary to obtain documents from the companies of KES, Renova will ensure they are made available to the MA Group). This due diligence is not to be conducted for the investments mentioned in par.1 of the Section "Investments made by the MA Group and in par.1 of the Section "Investments made by Renova" of Schedule 1, which are unconditionally confirmed by the Parties and are not subject to revision.

2.3 The Parties agree that interest shall accrue on the principal amounts of the financing made by the Parties in respect of KES at the annual interest rate of 9.6%. In particular, the amounts of financing indicated in Schedule 1 have been calculated at the annual interest rate of 9.6%.

2.4 The Parties agree that, for the purpose of these Principal Terms, the investments made by them in KES are to be indicated in Dollars. The Parties agree that, when converting the amounts of financing made in Roubles into US Dollars, the official exchange rate of the Bank of Russia on the date of making such financing should be used and that the investments indicated in Schedule 1 have been converted based on said exchange rate.

2.5 The amounts of financing made by the Parties, or on behalf of the Parties in respect of KES may be corrected and are subject to recalculation (as of 01.07.11) in order to reflect the results of the due diligence performed in accordance with par. 2.2.

2.6 The Parties confirm that the financing provided by the MA Group to the joint "UTZ/Elsib" project is not deemed to be financing with regards to KES and is not taken into account for the purposes of these Principal Terms.

2.7 (i) the Parties agree that, after closing of the Transaction, a verification will be conducted of performance of the representations and warranties made when concluding the Transaction, as indicated in the last paragraph of par. 4.2 below. This verification shall be performed by a "Big 4" auditor, jointly hired by the Parties for this purpose, and such auditor will act in accordance with the terms of reference jointly formulated by the Parties' representatives, and must send reports on the results of the verification to each Party's representative. The Parties will make efforts for the verification mentioned in par. 2.7(i) to be completed by 31.12.2011, and the Parties will proceed from the understanding that the time of performance of such a verification should be no less than two months.

(ii) Prior to the signature of the legal documents pursuant to the Transaction, the Parties shall conduct good faith discussions regarding the draft of the terms of reference for the auditor who is to perform the check in accordance with par. 2.7(i), the candidacy of such an auditor, and will also agree on the procedure for the performance of the check and the consequences arising from the auditor's report, including the consequences of the Parties not concurring with the auditor's conclusions and the consequences in cases in which the auditor is unable to provide an opinion due to a failure to provide information and/or documents due to the actions (or failure to act) by the management.

(iii) Moreover, after the closing of the Transaction, an overall audit of KES's financial and economic status will be performed in accordance with the parameters and deadlines jointly agreed by the Parties.

(iv) Renova will make every effort in its power for this auditor to receive the documents in possession of Renova and KES which are reasonably necessary for the performance of this audit. Renova shall not be liable for failure to provide the auditor with documents or information in respect of KES's assets that are the subject of the Strategic Transaction after the conclusion of the Strategic Transaction, however, Renova must make reasonable efforts to provide such information/documents after the conclusion of the Strategic

Transaction. Renova shall not be liable in the event of the auditor being unable to formulate an opinion due to the non-receipt of information/documents.

3. Calculation of interest in KES

3.1 Based on Schedule 1 and par. 3.2, the effective interests in KES of the Parties and [company] of M. Yu. Slobodin's immediately after conclusion of the Transaction will be:

- Renova: 68.9759%
- The MA Group: 26.0241%;
- The company of M. Yu' Slobodin's 5.00%

The above-mentioned interests are subject to adjustment based on the revisions and recalculation of the amounts of the financing with regards to KES in accordance with par. 2.5

3.2 The Parties have agreed that {company} controlled by M. Yu. Slobodin shall receive from the Parties (in proportion to the size of the Parties' investments as indicated in Schedule 1, subject to potential correction in accordance with par. 2.5 of these Principal Terms) an effective 5% of the shares of IES as at 01.07.11 as a bonus for managing KES during previous periods.

4. Procedure governing the settlement of accounts (the Transaction), obligations prior to conclusion of the Transaction

4.1 The Parties agree to resolve all issues connected to the financing of KES and to conclude the Transaction in accordance with the principal terms provided below in this Section 4.

4.2 On the date of the conclusion of the Transaction agreed by the Parties, the Parties will ensure simultaneous conclusion of all the following transactions and actions:

(i) [company] of Renova will sell to [company] of the MA Group a number of shares in IES corresponding to the MA Group's percentage interest as indicated in par. 3.1 (subject to possible adjustment as referred to in par. 3.1)

for a price agreed by the Parties, and {company }of the MA Group acting as the buyer as payment of the aforementioned sale price, will ensure either the transfer to {company} of Renova acting as the seller (in a legal form agreed by the Parties) or the termination of all claims with regards to all indebtedness under the agreements indicated in par. 4) of the Section entitled "Investments made by the MA Group" in Schedule 1. As a result of this Transaction, the interests, as percentages, of Renova and MA Group in IES will be equal to the corresponding interests indicated in par. 3.1 (subject to possible adjustment as referred to in par. 3.1);

(ii) In exchange for {company} of Renova assuming a debt to [company] of the MA Group in the amount of $166.9 million maturing on 01.01.2029, bearing no interest or security, [company] of the MA Group will transfer to {company} of Renova rights to a portion of the loans indicated in par. 3 of the Section "Investments made by the MA Group" in Schedule 1, with a principal amount of $119,114,500 together with all the interest accrued on the principal amount between 27.04.2007 and 01.07.2011 inclusive and accruing after 01.07.2011.

(iii) the Shareholder's agreement and all associated agreements and other documents will be concluded;

(iv) all existing claims of the Parties with regard to the financing extended on the date of the conclusion of the Transaction, as indicated in Schedule 1 and taken into account by the Parties for the purposes of the Transaction (subject to the changes envisaged in this par. 4.2.), but excluding investments indicated in par. 1 of the section "Investments made by MA Group" and par. 1 of the section "Investments made by Renova" in Schedule 1, existing on 01.07.2011, will be converted into IES shares in such a manner that the Parties' interest percentages, as indicated in par. 3.1. shall remain unchanged unless the Parties decide that part of these claims will not be converted and will be transferred to a special company in which companies of the Parties will

have shareholding, in accordance with an arrangement and on conditions which may be agreed by the Parties. Pursuant to this par., from 01.07.2011 interest will not accrue on the parties' claims converted into IES shares;

(v) The companies of the MA Group shall assume legal obligations to [company] of Renova agreed with Renova (acting reasonably), arising from the latter's existing obligation to the EBRD (with content derived from Renova's corresponding obligations to EBRD) with an amount proportional to the MA Group's percentage interest as indicated in par. 3.1;

(vi) [company] of the MA Group shall receive a proportionate participation in the pre-emptive right of purchase of an effective interest of {company} of M. Slobodin in IES in the event of its exit and takes upon itself (pro rata) the obligations connected to exercise by {company] of M. Slobodin of the put option granted to it and the obligation of finance of {company} of M. Slobodin on terms agreed with it; and

(vii) [company] of Renova shall pay {company} of the MA a part of the amount of $10,992,266, proportional to the MA Group's interest as indicated in par. 3.1 (subject to possible adjustment of the amount of the interest as indicated in par.3.1) received by Renova as payment of interest on loans extended by Renova to KES in December 2010 for a total amount of 6.6 billion roubles plus 9.6% annual interest accruing on that part of this amount from the time of its receipt by Renova until its actual payment to MA Group;

At the same time, the legal documentation to be concluded on the completion of the Transaction shall contain provisions regarding representations and warranties and related provisions described in Schedule 2 of these Principal Terms.

4.3 Prior to signing of the legal documents for the Transaction:

(i) Renova shall transfer the Agency Investments to KES on the terms of deferred payment of the assets to be transferred;

(ii) Renova shall provide to the MA Group's representative a proposal for guarantees, reasonably acceptable for the MA Group, for the protection of the MA Groups' interests in respect of those assets that are not owned by IES or its subsidiary companies, but are being managed by IES, and the MA Group's representative, in turn, will review this proposal (acting reasonably) and the Parties will agree upon such guarantees;

Jules Sher QC
Commercial Court Judge [Ag]
10 June 2016