



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 278 OF 2021 (DDJ)

**IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2021 REVISION)
AND IN THE MATTER OF THE COMPANIES ACT (2021 REVISION) AND THE
PARTNERSHIP ACT (2013 REVISION)**

IN THE MATTER OF NEW SILK ROUTE ADVISORS, L.P.

Appearances: Ben Valentin KC, Harry Shaw and Guy Cowan of Campbells LLP for
Gupta Associates LLC for the Petitioner
Peter Hayden and Ella van der Schans of Mourant Ozannes (Cayman)
LLP for limited partners Saxena Holdings LLC and Tagusi Holdings
LLC
Justin Naidu of Maples and Calder (Cayman) LLP for New Silk Route
Advisors, L.P. by its general partner New Silk Route Partners Ltd

Before: The Hon. Justice David Doyle

Heard: 27 June 2023

***Ex tempore* Judgment
Delivered:** 27 June 2023

**Draft Transcript of
Ex tempore Judgment
circulated:** 3 August 2023

**Transcript of
Ex tempore Judgment
approved:** 8 August 2023

230627 - In the matter of New Silk Route Advisors, L.P. – Judgment - FSD 278 of 2021 (DDJ)

HEADNOTE

Determination of applications to lift a case management stay and to amend a winding up petition

JUDGMENT**Introduction**

1. I shall now deliver a judgment in FSD 278 of 2021 (DDJ). On 10 February 2022 I delivered a judgment in these proceedings. Paragraphs 48-71 dealt with my decision granting a case management stay.
2. At paragraph 58 I recorded Mr McQuater's powerful and persuasive submissions. Mr McQuater appeared on behalf of Saxena Holdings LLC and Tagusi Holdings LLC (the "Saxena Parties"). I stated:

“58. Mr McQuater, in a powerful and persuasive way, submitted that there were strong reasons in this case for granting a case management stay given the significant overlap of issues considered in the petition and the 2020 New York Complaint and the clear benefits that would result from a stay. Mr McQuater stressed, among others, the following points:

- (1) the 2020 New York Complaint which was commenced in July 2020 was brought over a year before the petition and is well advanced with the following schedule: (i) 28 February 2022: completion of party dispositions and all fact discovery; (ii) 21 April 2022: completion of expert and all discovery; (iii) 20 May 2022: Dispositive motions;
- (2) the New York court has already heard two interim motions in relation to the Voting Agreement in which extensive evidence has been filed and two decisions have been handed down following oral hearings;
- (3) the 2020 New York Complaint will determine the key elements of the dispute in a manner that is binding on the relevant parties and in the

forum originally and correctly selected by the Petitioner itself. If the Petitioner is ultimately successful in New York, it could then apply to lift the stay of the petition. The Grand Court would then be faced “with a hugely simplified exercise” in determining the petition;

- (4) this will avoid a multiplicity of proceedings running concurrently, the risk of inconsistent judgments, duplication of time and costs and a waste of court resources;
- (5) if the petition were to proceed in the Grand Court, directions would have to be given leading to a substantial trial of the many contentious issues, including disclosure and witness evidence. There is no reason to think that the petition could be resolved more quickly than the 2020 New York Complaint which has a significant head start and is a proceeding in the Petitioner’s own choice of forum;
- (6) given the overlap in issues the same documentary and witness evidence would be required in both proceedings with many of the key witnesses based in the United States including Mr Saxena and Mr Gupta;
- (7) the New York court is already familiar with the issues (especially around the Voting Agreement) and the parties have legal teams in New York which are already familiar with the issues and have been contesting them for over 18 months; and
- (8) in all the circumstances a case management stay will promote the most efficient, fair and cost-effective means of resolving the dispute.”

3. By Order made on 22 February 2022 (the "Order") I ordered that:

- “1. All further proceedings on the Petition be temporarily stayed pursuant to the Court's case management powers, pending the determination of the proceedings in the Supreme Court of the State of New York, County of Westchester in the matter of Gupta Associates, LLC v Parag Saxena (Index No. 57453/2020), save that there shall be permission to apply as necessary for a

validation order or orders in relation to section 99 of the Companies Act (2022 Revision) or confidentiality and sealing.” (the “Stay”).

4. The Order did not contain an express liberty to apply provision. No appeal was lodged in respect of the Stay.

The Summons

5. By summons dated 17 March 2023 (the “Summons”), Gupta Associates LLC (the “Petitioner”) applied for an Order that the Stay be lifted without conditions and that the Petitioner shall have leave to amend its petition.

The Evidence

6. I have considered the evidence in respect of the Summons.
7. The Summons is supported by evidence including the second affidavit of Gregory John Orman (“Mr Orman”) sworn on 16 March 2023. He says that he is an adviser to the Petitioner and has been for several years. He says that he is the duly authorised agent and attorney in fact of the Petitioner and that he has been involved in the Petitioner’s dealings with New Silk Route Advisors, L.P. in which the Petitioner is a limited partner and that he is duly authorised to make the affidavit on the Petitioner’s behalf.
8. Mr Orman says “it is now clear that the New York Complaint will not be resolved on anything close to the timetable predicted by the Saxena Parties at the time that their application to stay the Petition was made. In light of this change of circumstances, along with the concerning matters identified above, the Petitioner seeks to have the Court’s case management stay lifted to enable the Petitioner to proceed.” (paragraph 14).
9. The “concerning matters above” are outlined in paragraphs 11 (current fair value) and 12 (alleged misappropriation and misuse of the Partnership assets) of the affidavit. At paragraph 8, Mr Orman refers to the fact that the Petitioner seeks leave to amend its Petition in two distinct ways. First, the removal of substantial portions which overlap with allegations in the existing New York proceedings (Index No 57453/2020) “the New York Complaint”. The Petitioner

says that “In light of those amendments the 14 common issues listed at paragraph 66 of the judgment no longer feature in the amended Petition (save only in relation to the Voting Agreement which is relied upon for entirely different reasons in the two proceedings...)” That is stated at paragraph 60 of the Petitioner’s skeleton argument dated 21 June 2023.

10. The second way in which it is sought to amend the Petition is to introduce various new issues following a review of records, including those accessible to the Petitioner in late February 2022.
11. Mr Orman at paragraph 30 of his second affidavit says that “the New York Complaint has, regrettably, not progressed in any meaningful way since the hearing of the stay application in January 2022, and the parties have been locked in a discovery quagmire ever since...”
12. At paragraph 32, Mr Orman sets out his understanding of the advice of New York counsel for the Petitioner in relation to which privilege is not waived, as follows:
 - (1) the deadline for fact discovery has been extended to 10 May 2023;
 - (2) expert discovery will take at least a further 60 days;
 - (3) summary judgment motions and appeals will further delay the final resolution of the New York Complaint;
 - (4) a trial date will then be set within a further 6-12 months; and
 - (5) appeals from any substantive determination generally take between 6-24 months to get finally determined.
13. Mr Orman in paragraph 33 says that the most optimistic timeline is a final judgment in the New York Complaint in late 2024. He adds that realistically interlocutory motions and appeals will lead to a substantive hearing not occurring until sometime in 2025. If there is an appeal the New York Complaint will be unlikely to be completely resolved until 2026 or 2027.
14. Adam Mitzner, US counsel for Mr Parag Saxena, New Silk Route PE-SPV, L.P, New Silk Route Advisors, L.P. and New Silk Route Partners Ltd in the New York Complaint, swore his affidavit in these proceedings on 25 April 2023. Mr Mitzner says that the New York Complaint “have progressed substantially since January 2022” (paragraph 5) and fact discovery is scheduled to conclude on 10 May 2023 (paragraph 7). Mr Mitzner says that the expectation is that all depositions will be completed before 30 June 2023 (paragraph 10). Mr Mitzner at paragraph 12 somewhat vaguely, and without giving a date, says that subject to the resolution

of outstanding issues relating to discovery and the completion of the discovery exercise and depositions “the matter should be ready for trial”, but does not indicate his view of when.

15. Rishi Bhandari, US counsel for the Petitioner, in an affidavit sworn on 8 May 2023, does not agree that substantial progress has been made and considers that a trial is “several years away” (paragraph 10).
16. Mr Bhandari says that a status conference has been set for 23 October 2023 (paragraph 12) and that the discovery deadline of 20 October 2023 will be further extended as necessary to accommodate the appeal process.
17. Mr Bhandari agrees that there has been progress with the taking of depositions but says a significant number are outstanding (paragraph 21).
18. Mr Bhandari at paragraph 23 says that “A substantive trial in late 2025 or the first half of 2026 seems realistic, assuming the appeal judgment is not delayed more than 12 months. Any substantive appeal against the trial ruling could take between 6-24 months.”
19. I also note the contents of Mr Mitzner’s second affidavit sworn on 17 May 2023. Mr Mitzner does not expressly dispute the New York Complaint timeline as referred to in the evidence provided by the Petitioner.
20. I note also the Petitioner’s evidence in respect of its allegations of financial impropriety based on evidence accessed post the hearing in January 2022.

The Submissions

21. In respect of submissions I should record that I have considered all the written and oral submissions put before the court. I do not set them all out in this relatively short *ex tempore* judgment but have full regard to them.
22. Mr Valentin KC for the Petitioner refers to what he describes as the “substantial delays” in the New York Complaint.

23. In relation to the relevant material change of circumstances he relies on two areas. First, significant delays in the New York Complaint. Secondly, the evidence of what he describes as “continuing financial impropriety.”
24. Mr Valentin spends 3 pages of his 23 page skeleton argument and some of his oral submissions setting out the law on case management stays on the basis that it applies to an application to lift a case management stay or at least goes to the court’s exercise of discretion, if the court is satisfied that Mr Valentin has jumped the first hurdle of establishing a relevant material change of circumstances.
25. I remind myself however that the hearing before me today was not a re-hearing of an application for a case management stay or an appeal against the Order made in February 2022 but was a hearing to consider an application for the case management stay that has already been imposed, after a day’s argument in January 2022, to be lifted on the basis of a relevant material change in circumstances. The Court’s focus therefore should be on whether there has been any relevant material change in circumstances. I have carefully considered the evidence and arguments in that respect.
26. I note also Mr Valentin’s submissions in connection with references to removing the overlapping issues referred to at paragraph 66 of my judgment delivered on 10 February 2022, with the exception of the issues surrounding the Voting Agreement governed by New York law which Mr Valentin submits is relied upon for entirely different reasons in the two sets of proceedings.
27. Mr Valentin refers to the evidence in respect of the new allegations of financial impropriety and when such evidence became available. I have full regard to that evidence.
28. Mr Valentin also highlights concerns over the failure to bring validation proceedings before the Court so that there would be judicial scrutiny of certain payments.
29. Mr Hayden for the Saxena Parties stresses the finality principle (*AIC Ltd v Federal Airports Authority of Nigeria* [2022] UKSC 16) and the need for the Petitioner to show a relevant material change of circumstances (*Tibbles v SIG plc* [2012] EWCA Civ 518 and *Arnage v*

Walkers FSD unreported judgment of Doyle J 28 October 2022). He adds that the mere fact that a case takes longer than expected to come on for hearing does not of itself represent a relevant change of circumstances and in that respect heavily relies on the comments of Neuberger J (as he then was) in *Kingsley Healthcare Ltd* [2001] 9 WLUK 329 which arose in the context of an application to vary a freezing order and undertakings. In that case an initially anticipated delay of some 4-6 months turned into some 16 months.

30. Mr Hayden also refers to and heavily relies on paragraph 20 of his helpful skeleton argument dated 21 June 2023 which reads as follows:

“It follows that, in the current application, it is for the Petitioner to show that there has been a material change of circumstances since the CMS [case management stay] was granted; that the Petitioner has become aware of facts which they could not have reasonably known, or found out about, at the time of the previous order; that the new circumstances have fundamentally undermined the basis for the previous order; and that the circumstances are out of the ordinary or exceptional. Even if the Petitioner can demonstrate these matters, in exercising its discretion the Court should have regard to considerations of finality, the undesirability of allowing litigants to fight a battle that has already been fought and the need to avoid undermining the concept of appeal.”

31. I note also all that Mr Hayden says in relation to the validation issue and the New York Complaint.

The Law

32. In relation to the relevant law, this is helpfully outlined in skeleton arguments and submissions before the court which form part of the court record. I do not set it all out again in this *ex tempore* judgment but some of it is briefly touched upon above.

Determination

33. I now turn to my determination of the Summons.

34. In considering whether to lift the Stay I am conscious that I must consider the nature of the Order, namely a temporary case management stay, and I must consider whether there has been a relevant material change of circumstances since I made the Order.
35. In my judgment there has been relevant material changes of circumstances since the hearing of January 2022 and the Order in February 2022, namely:
- (1) The timeline for the determination of issues in the New York Complaint has significantly changed. That in my judgment is the principal relevant material change of circumstances in this case; and
 - (2) another relevant material change of circumstances, though secondary to the principal finding on the timeline, is that access to information in late February 2022, post the January 2022 hearing and post the judgment and Order, leading to evidence upon which serious allegations of financial impropriety are now based. That is another, albeit secondary, material change of circumstances.
36. I find on the evidence before me that the Petitioner could not reasonably have known or found out about the evidence on which the new allegations are based at the time of the Order. This disclosure was made pursuant to a Consent Order, initially provided in December 2021 but the evidence shows that that was in a format unable to be accessed by Mr Valentin's clients until late February 2022. I note Mr Hayden's point with reference to page 374 of the bundle (letter from Maples Group to Campbells dated 28 March 2022) that it could have been accessed in December 2021 and that there was an offer of assistance on 17 December 2021 but that was not taken up. The reality is even if that offer had have been taken up it would have taken a reasonable time to consider and analyse that information and that would have taken matters beyond the hearing date and the Order in this case, in any event.
37. I should add, as I hope I have made clear, I find the case on the significant delays of the New York Complaint on the change of circumstances point far more persuasive than the reliance on the new allegations of financial impropriety but both, in my judgment, amount in law and in fact to a relevant material change in circumstances justifying the lifting of the Stay.

38. As it happens, these new circumstances also fundamentally undermine the basis of the Order I made in February 2022.
39. In my judgment therefore, even taking into account the importance of finality, I have concluded that it is appropriate to exercise this court's discretion to set aside the Order and lift the Stay.
40. Mr Hayden sensibly, and appropriately in my view, conceded that if I was against him and lifted the Stay in its entirety, he could not reasonably oppose the application for leave to amend the Petition.
41. I grant leave to amend the Petition to add the fresh allegations and also to delete those issues no longer relied upon. The draft was referred to in my exchanges with counsel and there were at least two further areas where amendments are required, I think at paragraph 90, 2022 should read 2023 and also 13.3 needs to come out.
42. I note also from paragraph 70 of the Petitioner's skeleton argument that the Petitioner accepts that any costs occasioned by the amended Petition as distinct from the costs of the contested Summons hearing be met by the Petitioner to be taxed on the standard basis if not agreed.
43. I also direct that the attorneys should liaise with each other and put forward hopefully an agreed draft Order for further directions in connection with the progress of the Winding Up Petition, such draft to be filed within the next 28 days. If not agreed then competing versions to be filed within the next 28 days with concise submissions in support of the same. Subject to any further Orders I may grant, I would be minded to deal with a directions Order on the papers.
44. That is my judgment in respect of the Summons.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT