



## ENGLISH HIGH COURT REFUSES WORLDWIDE FREEZING ORDER IN US\$1.5 BILLION DAMAGES CLAIM

*Arcelormittal USA LLC v Ruia & Ors [2020] EWHC 740 (Comm) (30 March 2020)*

### **Introduction**

In a decision handed down on 30 March 2020, the English High Court refused an application for a worldwide freezing order in support of Arcelor Mittal's claim for damages of US\$1.5 billion against the defendants, on the grounds that the applicant had failed to show that it had a good arguable case or that there was a risk of dissipation.

### **Background**

The Applicant, Arcelor Mittal USA, is a subsidiary of Arcelor Mittal, one of the world's leading steel manufacturing companies. The respondents for the purposes of this application were Essar Global Fund Limited (the parent company of Essar Steel Limited) and Ravi Ruia and Prashant Ruia who were alleged to be key individuals at the Essar group who were at the heart of the alleged wrongdoing.

The Applicant applied for the freezing order in support of its claim for damages in excess of US\$1.5 billion in respect of loss alleged to have been caused by an unlawful means conspiracy between the Defendants to frustrate enforcement of liabilities under a 10-year iron ore supply contract entered into between Arcelor Mittal and three companies in the Essar group, which Arcelor Mittal terminated in May 2016, and an ICC arbitral award in its favour against Essar Steel Limited in respect of those liabilities.

In January 2019, in previous proceedings, the English High Court granted the freezing order against Essar Steel on a without notice basis. In March 2019, this order was continued following a finding of a serious risk of dissipation of Essar Steel's assets. Permission to appeal against this decision was refused. Also in March 2019, Essar Steel went into administration and was wound up in December 2019 without satisfying the ICC arbitral award against it.

As to the allegations of unlawful means conspiracy, the Applicant's case was that a number of steps had been taken to strip Essar Steel of its assets, including a restructuring in 2012 and changes in accounting treatment in 2016.

## **Decision**

The High Court (Mr Justice Henshaw) refused the application.

In order to grant the application, Arcelor Mittal had to show that it had a good arguable case and that there was a real risk of dissipation, and the Court had to consider whether it would in all the circumstances be just to impose such a freezing order.

Arcelor Mittal failed to satisfy any of these criteria.

As to good arguable case, having considered in detail the allegations made by the Applicant, Mr Justice Henshaw was not satisfied, on the facts, that the Applicant had a good arguable case on the claim itself or the level of damages sought.

When considering the risk of dissipation, the Court set out the factors that would lead to such a finding as set out in *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm) (per Males J), *Fundo Soberano de Angola v Jose Filomeno dos Santos* [2018] EWHC 2199 (Comm) (per Popplewell J), and, most recently, in *Lakatamia Shipping Co Ltd v Morimoto* [2019] EWCA Civ 2203 in which the Court of Appeal approved, in the main, Popplewell J's formulation.

Considering the facts and matters alleged by the Applicant, Mr Justice Henshaw held that while there had been aspects of the Essar group's conduct that gave rise to concern, he was ultimately not persuaded that there was solid evidence of a risk of dissipation such as might justify the imposition of a freezing order over the respondents' assets.

Finally, Mr Justice Henshaw considered whether, had he made a finding of good arguable case and risk of dissipation, it would have been just to grant the freezing order, taking into account the impact on the respondents and third parties, and the effect of the delay in seeking the order. He concluded that it would not have been just to make such an order on the basis, inter alia, that the Applicant had not shown a good arguable case on the merits of its substantive claim or its quantum; there was no solid evidence of a risk of dissipation by any of the respondents; in any event, the order sought would be gravely detrimental to the business of the Essar group, a conglomerate headed by Essar Global Fund Limited comprising multiple operations across several countries with many employees, and also to VTB, the Essar group's main lender, a third party against whom no allegation of wrongdoing is advanced; there had been delay, at least between March and November 2019, in bringing the application; and in circumstances where the freezing order was sought against persons out of the jurisdiction, in respect of assets outside the jurisdiction, and in relation to matters with relatively limited links with England & Wales, it was appropriate for the court to proceed with particular caution in such cases.

Accordingly, the application for the freezing order would be refused.

## **Concluding Observation.**

Worldwide freezing orders issued by the English High Court are seen as a major benefit of litigating or arbitrating in England & Wales. The decision of Henshaw J. illustrates the importance of ensuring that the application is based upon sufficient evidence to satisfy the requirements to obtain such orders.