Neutral Citation Number: **[2025] EWHC 3151 (Comm)**

Case No: **CL-2025-000477**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **21 November 2025**

Before:

Mr Justice Butcher

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Between:

(1) TECNIMONT S.p.A and	**Claimants**
(2) MT RUSSIA LLC	
- and -	
(1) LLC EUROCHEM NORTH-WEST-2 and	
(2) EUROCHEM GROUP AG	**Defendants**

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Alan Maclean KC and Tom Leary (instructed by **McDermott Will & Schulte**) for the **Claimant**
Richard Millett KC and John Robb (instructed by **Collins Botiuk**) for the **First Defendant**

Hearing dates: **21st November 2025**

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JUDGMENT

Friday, 21 November 2025

MR JUSTICE BUTCHER

1. This is an application by the Claimants pursuant to section 42 of the Arbitration Act 1996 to enforce peremptory orders of a London arbitral tribunal consisting of Mr Peter Leaver KC, Professor Douglas Jones AO, and Mr Thomas Webster ('the Tribunal'), against the First Defendant, which I will call 'NW2', to restrain it from pursuing proceedings in Russia that were commenced notwithstanding the existence of arbitration agreements. Alternatively, the Claimants apply for permission to amend their arbitration claim form in order to seek the same relief from the court pursuant to section 37 of the Senior Courts Act 1981.

2. The Claimants and the Second Defendant, which has been called 'EAG', have agreed a consent order resolving the application as against EAG and the Claimants have filed and served a notice of discontinuance as against EAG on all parties and that part of the application does not need to be further considered.

Background

3. The Second Claimant, which has also been called 'MTR', and NW2 are Russian companies. The First Claimant, which has been called 'Tecnimont', is an Italian company and the majority owner of MTR. NW2 is a company which, it has been held by Mr Justice Bright in *LLC EuroChem North-West 2 v Société Générale SA* [2025] EWHC 1938 Comm, is owned and controlled by Mr Melnichenko, who is a wealthy Russian and a designated person under the Russia (Sanctions) (EU Exit) Regulations 2019 and is also listed by the EU for sanctions purposes and is subject to the restrictions on assets set out in Council Regulation EU 269/2014.

4. The immediate parent company of NW2 is MCC EuroChem JSC, which has been referred to as 'MCC'.

5. In June 2020, NW2 engaged the Claimants as EPC contractors to build a urea and ammonia fertiliser plant in Kingisepp, Leningrad Region, Russia. The contracts included an offshore engineering and procurement (or 'EP') contract dated 1 June 2020 between the First Claimant and the First Defendant, an onshore engineering local procurement and construction contract dated 1 June 2020 between the Second Claimant and the First Defendant, and a coordination and interface agreement (or 'CIA'), dated 1 June 2020, between the Claimants and the First Defendant.

6. The contracts contain essentially the same dispute resolution clauses, providing for any disputes between the parties to be referred to London arbitration under ICC Rules. The offshore EP contract and the CIA are governed by English law.

7. The Claimants' obligations under the contracts were secured in various ways, including by performance bonds issued by Société Générale and ING.

The arbitration

8. Following the imposition of EU trade sanctions in relation to Russia and economic sanctions on Mr Melnichenko, the contracts were suspended, as it is put by the Claimants, by the Claimants in May 2022. It is the Claimants' case in the arbitration that export controls on dual-use goods by EU Council Regulation 328/2022 and EU Council Regulation 269/2014 precluded them from obtaining numerous items that were necessary to perform the contractual services, despite their making applications for export authorisation.

9. The Claimants also contend that several of the Claimants' vendors and service providers refused to supply items for use in Russia. The Claimants have also maintained and maintain that NW2 is owned or controlled by Mr Melnichenko, such that they could not in any event perform the contracts in any manner that would involve Tecnimont providing economic resources to NW2, since to do so would be in breach of the EU's economic sanctions regime.

10. NW2 disputed the validity of the Claimants' suspension of performance and on 4 August 2022 terminated the contracts on account of the Claimants' alleged breach of contract.

11. The Claimants commenced a London-seated arbitration under ICC Rules against NW2 on 15 August 2022 and NW2 has, at least until recently, participated in the arbitration. It filed a counterclaim for damages in excess of 1 billion euros. The arbitration is, as I understand it, ongoing with the final hearing scheduled for January 2026.

12. In parallel, NW2 pursued the banks who had issued the performance bonds in Commercial Court proceedings for payment under those bonds. That claim was rejected in the recent decision of Mr Justice Bright, to which I have referred. There is, however, as I understand it, a pending appeal by NW2 and EAG against aspects of the judgment of Mr Justice Bright.

13. Since the judgment of Mr Justice Bright, it appears from the material which has been put before me that NW2's strategy in relation to the arbitration may have changed and that NW2 has now started to attempt to litigate what is the subject of its counterclaim in the arbitration through the Russian courts instead. In addition, NW2 has taken steps in Russia to restrain the Claimants from continuing the arbitration and has obtained interim measures in Russia against the Claimants' assets.

14. On or around 4 August 2025, MCC commenced what has been called the first Russian action against the Claimants, naming NW2 as a third party. The first Russian action involved the same claims as in NW2's counterclaim in the arbitration for restitutionary damages and repayment of advance payments made to the Claimants in respect of the project. MCC apparently pursued that claim on behalf of NW2 as its wholly owned subsidiary.

15. On or around 5 August 2025, NW2 served a pre-action letter on the Claimants and then filed what has been called the second Russian action against MTR on 2 September 2025. The second Russian action in effect replicated the balance of NW2's counterclaim in the arbitration for damages for breach of contract and repayment of advance payments made in respect of the project. As I understand it, the main hearing of the second Russian action has been listed for 27 November 2025.

16. On 2 October 2025, NW2 filed what have been described by the Claimants as Russian anti-arbitration applications before the St Petersburg Arbitrazh Court, seeking to injunct the Claimants from continuing the arbitration or instituting similar foreign proceedings. Apparently, in those proceedings, NW2 relies on the contention that EU sanctions law contradicts the public order of the Russian Federation and contends that because the arbitration is seated in London, it is in an unfriendly state. I have been told that a hearing on the Russian anti-arbitration applications has been listed for 26 November 2025 and that a ruling is expected ex tempore, or very shortly after that hearing.

17. The Claimants have obtained a number of orders from the Tribunal to restrain NW2's breaches of the arbitration agreements. On 2 September 2025 the Tribunal directed NW2 to make an application to stay the second Russian action by 3 September 2025

and not to take any further action against the Claimants in relation to the project or the arbitration in any Russian proceedings. NW2 applied to stay the second Russian action as directed. However, the Moscow Court nevertheless listed a preliminary hearing for 27 October 2025.

18. On 5 October 2025, the Tribunal ordered NW2 not to take any steps in relation to the first of the Russian anti-arbitration applications, as it has been called, and the next day the Tribunal ordered NW2 to withdraw the first of the Russian anti-arbitration applications by 8 October 2025. NW2 did not apparently comply with either of those directions.

19. On 9 October 2025, the Tribunal ordered NW2 to withdraw the second of the Russian anti-arbitration applications by 13 October 2025. Again, it appears that NW2 did not comply.

20. On 13 October 2025, by Procedural Order 18, which has been called PO18, the Tribunal concluded that the first and second Russian court actions and the Russian anti-arbitration applications constituted breaches of the arbitration agreements that formed part of the contracts and made peremptory orders that NW2 should, amongst other things, withdraw the second Russian action immediately, take all necessary steps to stay the first Russian action as a third party thereto until the arbitration and any post-award proceedings were finally concluded, and withdraw the Russian anti-arbitration applications and provide written evidence of that having been done to the Tribunal by 16 October 2025. The Tribunal also gave the Claimants permission to make a section 42 application to the court to secure NW2's compliance with PO18.

21. NW2 did not comply with PO18. The Claimants in consequence made the present application to the Commercial Court on 17 October 2025.

22. On 27 October 2025, at a preliminary hearing of the second Russian action, the first Defendant successfully applied to join Tecnimont as a co-defendant alongside MTR.

23. On 29 October 2025, Mr Justice Jacobs permitted service out and alternative service of the application on NW2 and made directions for this expedited hearing to take place on 21 November 2025.

24. The evidence indicates that on or about 30 October 2025, the Claimants discovered that NW2 had sought ex parte interim relief against the Claimants in the second Russian action. The Claimants therefore sought an order from the Tribunal to restrain the Russian interim measures application and, on 31 October 2025, the Tribunal ordered NW2 to withdraw the Russian interim measures application and have any relevant order discharged. It appears that NW2 failed to comply.

25. On 6 November 2025, the Moscow Arbitrazh Court confirmed that the first Russian action had been returned, which apparently effectively means withdrawn, by MCC. That may, as I understand it, have been as a result of a failure to lodge a particular document, but seems to have had the effect of bringing that action to an end.

26. On 11 November 2025, the Tribunal issued Procedural Order 22, or PO22, finding NW2 to be in breach of the 31 October interim directions and making a peremptory order that NW2 comply with the 31 October interim directions by 4 pm on 13 November 2025.

27. On 14 November 2025, the Tribunal issued Procedural Order 23, or PO23, finding NW2 to be in breach of PO18 in failing to withdraw the second Russian action and making a

further peremptory order that NW2 withdraw the second Russian action by 4 pm on 14 November 2025. NW2 has not complied.

The Application

28. Against that background, the Claimants seek today an order against NW2 in the terms which are attached to its Arbitration Claim Form, requiring NW2 to comply with the peremptory orders in POs 18, 22 and 23 by withdrawing the second Russian action, withdrawing the Russian anti-arbitration applications, and withdrawing the Russian interim measures application, and having any orders discharged.

Statutory Provisions

29. It is helpful at this stage to refer to the salient provisions of the Arbitration Act 1996.

[Section 40] **General duty of parties**.

(1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

(2) This includes—

(a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and

(b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 32 and 45).

[Section 41] **Powers of tribunal in case of party's default.**

(1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.

(2) Unless otherwise agreed by the parties, the following provisions apply.

(3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—

(a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or

(b) has caused, or is likely to cause, serious prejudice to the respondent,

the tribunal may make an award dismissing the claim.

(4) If without showing sufficient cause a party—

(a) fails to attend or be represented at an oral hearing of which due notice was given, or

(b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,

the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

(5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.

(6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.

(7) If a party fails to comply with any other kind of peremptory order of the tribunal, then, without prejudice to section 42 (enforcement by court of peremptory orders), the tribunal may do any of the following—

(a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;

(b) draw such adverse inferences from the act of non-compliance as the circumstances justify;

(c) proceed to an award on the basis of such materials as have been properly provided to it;

(d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

[Section 42] **Enforcement of peremptory orders of tribunal or emergency arbitrator.**

(1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal or (as the case may be) the emergency arbitrator.

(2) An application for an order under this section may be made—

(a) by the tribunal or the emergency arbitrator (upon notice to the parties),

(b) by a party to the arbitral proceedings with the permission of the tribunal or the emergency arbitrator (and upon notice to the other parties), or

(c) where the parties have agreed that the powers of the court under this section shall be available.

(3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the peremptory order.

(4) No order shall be made under this section unless the court is satisfied that the person to whom the peremptory order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

30. As is apparent, the Tribunal's power to grant peremptory orders is to be found in section 41(5) of the Arbitration Act. In making POs 18, 22 and 23, the Tribunal determined that NW2 had failed to comply with its previous directions and orders without sufficient cause.

31. Section 42(1) of the Arbitration Act provides that the court may make an order requiring a party to comply with a peremptory order made by the tribunal.

32. In relation to the requirement of section 42(3), I am satisfied that there is no further arbitral process available to the Claimants to enforce POs 18 or 22 or 23, or otherwise to restrain NW2.

33. There has been no dispute that the requirement in section 42(4) is fulfilled, and I am satisfied that the First Defendant has not complied with the peremptory orders in question.

Arguments against the making of an order under s. 42

34. NW2 has, however, raised a number of arguments against an order of the court under section 42. I will consider the arguments in turn, though not necessarily in the order in which Mr Millett KC addressed them orally.

35. The first such argument with which it is convenient to deal is that POs 18 and 22 and 23 were not valid peremptory orders because the underlying orders in respect of which they were made were not interim or conservatory measures for the purposes of Article 28.1 of the ICC Arbitration Rules 2021 because, so it is said, they were final orders. It is therefore said that the Tribunal did not have jurisdiction to make them.

36. I am prepared to assume for present purposes that the court can, on an application such as this, investigate a tribunal's jurisdiction to make the underlying orders. That is suggested by paragraph 62 of *Emmott v Michael Wilson & Partners (No.2)* [2009] EWHC Com, per Teare J. But Mr Millett KC did not contend that, even if the Tribunal did not have power to make an order, that would necessarily preclude the court from making an order under section 42, but he said that it was a matter to be taken into account.

37. I am, however, of the clear view that the Tribunal did have power to restrain NW2's breaches of the arbitration agreement and that POs 18 and 22 and 23 were interim or conservatory measures for the purposes of Article 28.1 of the ICC Arbitration Rules.

38. That POs 18, 22 and 23 are interim measures I consider to be apparent from their nature as procedural orders made prior to and in the interim pending the full trial, and from the facts that they are expressly stated to be subject to amendment by the Tribunal, that they bind the parties for the duration of the arbitral proceedings and that they are not awards.

39. I also regard it as apparent that the Tribunal intended these orders to be made on a provisional basis under Article 28.1 of the ICC Rules and section 39(1) of the Arbitration Act, as that is how the Tribunal had explained the anti-suit relief which it had previously granted in PO3 at paragraphs 107 and 126 thereof, and that is how the Tribunal also came to grant anti-suit relief in PO18 against the Claimants in EAG's favour, see paragraph 142.

40. I accept the Claimants' submission that it is not an answer to that analysis for NW2 to say that POs 18, 22 and 23 are not interim or provisional orders because a withdrawal of the Russian proceedings would have permanent effects under Russian procedural rules (a matter which, in any event, is the subject of a dispute by the Claimants which I do not need to resolve).

41. Thus, Lord Leggatt, at paragraph 105 of *UniCredit Bank v RusChem Alliance* [2025] AC 1177, said the following:

"Under the ICC Rules an arbitral tribunal also has power as soon as it is constituted, and at the request of a party, to order any interim or conservatory measure that it deems appropriate. Further, the ICC Rules provide for the appointment of an emergency arbitrator where a party needs urgent interim or conservatory measures that cannot await constitution of an arbitral tribunal. Such measures could, again, in theory include an order directing the other party to refrain from bringing or to terminate court proceedings brought in breach of the arbitration agreement."

42. That indicates that Lord Leggatt envisaged that an order requiring even the termination of other court proceedings might be an interim or conservatory measure within the ICC Rules, including thus Article 28.

43. Furthermore, in *The Anti-Suit Injunction* by Raphael and others, (second edition), at paragraph 13-65 it is said that:

"Interim anti-suit injunctions can ... be granted in mandatory form such as requiring the respondent or defendant to stay or even discontinue or withdraw the foreign proceedings."

44. Consistently with this, a mandatory anti-suit injunction requiring the defendants to withdraw proceedings in Russia that had been commenced in breach of an arbitration clause was granted by Mr Justice Henshaw on an interim basis in *Renaissance Securities Cyprus Limited v ILLC Chlodwig Enterprises* [2024] EWHC 1827 (Comm) at paragraph 46, notwithstanding the judge's acknowledgement at paragraph 48 that if the Russian proceedings were withdrawn, the evidence indicated that the defendants would no longer be able to pursue their claims against Renaissance in Russia.

45. I should also note, because these were points which were mentioned in argument, that an interim order does not cease to be an interim order because there was no order for a cross-undertaking in damages or a return date. Those are not necessary conditions of an interim order and they are matters which are sometimes dispensed with within interim orders. A matter will be an interim order if it is made in advance of the final hearing and, by its terms or its nature, is one which lasts only for the duration of the action or matter until the final hearing and can, if appropriate, be revisited by the tribunal or court making it and does not give rise to a *res judicata*. In my view, that was the nature of the orders made by the Tribunal here.

46. Given that I have concluded that the Tribunal had power to make the orders in question, that is a sufficient answer to this part of NW2's case.

47. I would, however, also have found that if the Tribunal had lacked the power to issue the underlying orders, or POs 18, 22 or 23, the First Defendant was precluded from raising this as an objection, on the basis that the Defendant was seeking to approbate and reprobate or that there would be an estoppel by conduct on the basis set out in paragraphs 55 to 62 of the Claimants' skeleton argument.

48. The second aspect of NW2's case is to the effect that the power to enforce a peremptory order under section 41(5) of the 1996 Act is limited to orders relating to a party's failure to do something necessary for the proper and expeditious conduct of the arbitration, to use the language of section 41(1) of the Act, and that an anti-suit injunction is not such an order.

49. I do not accept that that is the case. First, there is authority that where any order is made by a tribunal, compliance with it is to be treated as necessary for the proper and expeditious conduct of the arbitration.

50. Thus, in the case of *Pearl Petroleum Company Limited v Kurdistan Regional Government of Iraq* [2015] EWHC 3361 (Comm), Mr Justice Burton said at paragraph 24(iv):

"As is clear from section 41(5) …, it provides for the making of a peremptory order where there is a failure by a party to comply with '<u>any</u> order or directions of the tribunal'. Mr Dunning QC sought to point to section 41(1) as giving context. But that ignores section 40, on which he relies for his argument, the *General duties of parties*. Section 40(1) requires such parties to do *'all things necessary for the proper and expeditious conduct of the arbitral proceedings'* but that is then explained in terms in

section 40(2), namely that '*this includes complying ... with any order ... of the tribunal'* [my underlining]."

51. Secondly and in any event, I consider that an order restraining NW2 from seeking to litigate its arbitral claims in the Russian courts and preventing NW2 from seeking, in Russia, to injunct the Claimants from continuing the arbitration is one which can properly be said to be necessary for the proper and expeditious conduct of the arbitral proceedings.

52. In my judgment that is a natural interpretation of the words used. I also note that in *Gee on Commercial Injunctions*, (seventh edition), at paragraph 6.61, it is stated that:

"Section 42 includes a power for the court to enforce a peremptory order made by the tribunal where there has been a failure by a party to comply with an interim anti-suit order made by the tribunal, provided that it has been made by the tribunal acting within its jurisdiction."

I consider that to be correct. I have not been referred to an authority or textbook which suggests that what is said there in *Gee* is wrong.

53. Thirdly, I do not consider that in section 41(5) the words "peremptory order" were intended to mean only an "unless" order, though it would doubtless include "unless" orders. The definition of peremptory in the Act, under section 82(1), refers to a peremptory order as:

"one made under section 41(5) or made in the exercise of any corresponding power conferred by the parties."

That still leaves one with the meaning of the word "peremptory". Ordinarily, the word "peremptory" has the sense of absolute and admitting of no refusal, debate or delay. It is therefore not confined to a conditional or "unless" order.

54. NW2 also advances the argument that an application to restrain it from pursuing the Russian proceedings could be sought, not under section 42, but would need to be sought, although for other reasons it could not now be sought, under section 37 of the Senior Courts Act 1981.

55. NW2 relies on what was said in *AES Ust-Kamenogorsk v Ust-Kamenogorsk JSC* [2013] 1 WLR 1889 at paragraph 48 in relation to section 44 of the Arbitration Act. The argument as I understood it was that, as anti-suit relief cannot be considered to be for the purposes of and in relation to arbitral proceedings under section 44, so it cannot be considered to be necessary for the proper and expeditious conduct of the arbitral proceedings for the purposes of section 40(1) of the Arbitration Act (and thus that there is no power of the court to make an order under section 42).

56. I consider that that argument is wrong. Firstly, it does not take into account section 40(2) of the Arbitration Act, or what was said in *Pearl Petroleum* at paragraph 24(iv) in the passage to which I have referred above, which is authority to the effect that what is to be considered necessary for the proper and expeditious conduct of the arbitration for the purpose of section 40(2) includes compliance with any order of the tribunal.

57. Secondly, and in any event, *AES Ust-Kamenogorsk v Ust-Kamenogorsk JSC* concerned a freestanding application under section 44 to restrain breach of an arbitration agreement and is distinguishable where an application is made not merely to enforce a negative obligation not to commence foreign proceedings but rather to give effect to the positive

obligation to comply with an order of the tribunal which seeks to restrain a breach of an arbitration agreement.

58. I turn therefore to consider the other arguments raised by way of matters weighing against the exercise of any discretion I have under section 42 to grant an injunction of the type which is sought and which it would be involved in the enforcing of the relevant peremptory orders.

59. Some useful guidance as to how any discretion under section 42 should be exercised is provided by Mr Justice Teare in *Emmott v Michael Wilson (No.2)* at paragraphs 53 to 59 and 62. I refer in particular to paragraph 53, which says in part:

"... the court is exhorted by section 1, general principle (c), not to intervene in the arbitration save where permitted by the Act. If a party fails to comply with a peremptory order of the tribunal, the court is permitted to intervene in the arbitration by making an order that the party comply with the order, section 42. In the particular context of section 38(4) one would expect that the proper role of the court would be to support the tribunal by making the requested order. Indeed, more generally, given general principle (a) and the exhortation in general principle (c), one would expect the court to support, rather than frustrate, the tribunal."

60. At paragraph 62 Mr Justice Teare said:

"In what circumstances then might a court decide not to make an order that a party comply with the peremptory order of the tribunal? In general terms the answer to that question will be where such an order is not required in the interests of justice to assist the proper functioning of the arbitral process; see paragraph 212 of the DAC report.

This is not the occasion for a comprehensive list of such circumstances even assuming it were possible to compile such a list. One example might be where there has been a material change of circumstances after the peremptory order was made. Another might be where the tribunal has not fulfilled its duty to act fairly and impartially between the parties in breach of its general duty to do so. Another might be where the tribunal had made an order which it had no power to make."

61. The main basis on which I am invited by NW2 to exercise my discretion not to make the orders sought is that it is said that Russian law effectively requires NW2's directors to act inconsistently with compliance with the peremptory orders and that they might be liable for civil or criminal sanctions if they were to do so.

62. I am wholly unpersuaded that there are discretionary factors which should dissuade me from supporting the arbitration and enforcing the peremptory orders. In more detail, there are two main discretionary factors relied on.

63. First, as I have said, that it might lead to criminal or civil sanctions on NW2 or the directors of the company in Russia. As to that, I am prepared to assume that the possibility that the directors might be exposed to a risk of sanctions in Russia is a matter which I can take into account in the exercise of my discretion. However, I am not persuaded that there is a real risk of prosecution. The argument that there is rests in particular on the evidence of Mr Vyacheslavov that there might be liability under Article 201 of the Russian Criminal Code which criminalises conduct of directors who act against the legitimate interests of the company, causing substantial damage to the interests of the company, with the direct or indirect intention of obtaining benefits for the directors or the goal of causing harm to others.

64. I have to say that I am very sceptical that any director would be found, or indeed alleged, to have been acting against the legitimate interests of the company in ensuring that the company complies with its contractual obligations and is not prejudiced in the arbitration.

65. Furthermore, I am not persuaded that there is any real risk of its being found that the directors are acting for the purposes of obtaining benefits and advantages for themselves or of causing harm to others. That would, in my view, be a strained interpretation of what the directors would have done if they ensured the company's compliance with the Tribunal's orders.

66. In any event, Professor Yarkov's evidence, that there will be no criminal liability for decisions falling within the limits of normal business risk, appears to be credible and based on a decision of the Supreme Arbitrazh Commercial Court of the Russian Federation in Resolution Number 62 of the Plenum. The normal business risks for a company such as NW2 surely include having to comply with exclusive jurisdiction or arbitration clauses in its commercial contracts.

67. Moreover, the First Defendant has failed, in my view, to produce evidence of any regular prosecutions in cases which in any way resemble the present.

68. In any event, even if there were a real risk of the criminal prosecution of NW2's directors, I do not accept that that constitutes a factor in the exercise of my discretion which comes anywhere near outweighing the factors in favour of the grant of an order. In particular, it does not outweigh the concern of the court to support the arbitration and to ensure compliance by NW2 with the arbitration agreements and the Tribunal's orders.

69. In circumstances where the Russian proceedings are being pursued in breach of the English arbitration agreements and pursuant to Russian laws, which are, at least in large part, aimed at frustrating EU and UK sanctions against Russia, I do not consider that a risk of liability for NW2's directors in Russia or comity concerns can outweigh the court's concern to support the proper and expeditious conduct of the arbitration.

70. Such an exercise of discretion would, and in this I accept the claimants' submission, be contrary to the policy of these courts, both to uphold the integrity of London-seated arbitrations and to ensure, as far as is consistent with legality, the effectiveness of the UK and EU sanctions regimes against Russia.

71. NW2 has referred to the court's jurisdiction under section 37 of the Senior Courts Act to restrain breaches of arbitral agreements by way of injunction and has made the argument that in that context it would be necessary for the court to consider whether it is just and convenient to grant an injunction and, on the authority of *Mamidoil-Jetoil v Okta* [2003] 1 Lloyd's Reports 1 at paragraph 207, that it would not ordinarily be just and convenient to require a respondent to do something unlawful by the courts of the respondent’s domicile.

72. I agree with the Claimants, however, that the court in this case, where what is in issue is section 42 Arbitration Act, is not asking itself a general question of whether it is just and convenient to grant anti-suit relief; its primary focus is on a different question, namely whether an order is or is not required in the interests of justice to assist the proper functioning of the arbitral process, where those interests include ensuring that parties comply with the orders of the tribunal. In my judgment, an order clearly is required in the interests of justice to further that aim.

73. The other matter which it is said I should take into account in the exercise of my discretion is what is said to be the likely ineffectiveness of the injunction on the basis that Mr Egorov will comply, as NW2 puts it, with Russian law rather than English law, and that the order will not be enforced in the Russian courts.

74. Arguments that an order of the court will not be complied with are frequently made but are seldom treated by the courts as powerful reasons not to make an order. As was said in *Re Liddell's Settlement Trust* [1936] Ch 365 at 374:

"It is not the habit of this court, in considering whether or not it will make an order, to contemplate the possibility that it will not be obeyed."

75. Furthermore, in the present case, the Tribunal has already made orders and this court is only being asked to enforce them, not to re-exercise the Tribunal's discretion for itself. There is also force in the point made in *The Anti-Suit Injunction* at paragraph 8.51 that if an injunction defendant troubles to resist an injunction, it can be fairly assumed that it will constrain his behaviour in some useful way. As NW2 has been resisting the Claimants' application, it can be assumed that this is for a reason. One reason might be, as Mr Maclean KC for the Claimants surmised, that as NW2 is seeking to appeal Mr Justice Bright's order, it may wish to avoid breaching another order of this court for that reason alone.

76. Against that background, and for those reasons, I will grant the order sought under section 42. I do not consider that it is necessary to decide whether it might also have been possible to grant such an injunction under section 37 of the Senior Courts Act.