

Neutral Citation No: [2022] NIMaster 4

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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 21/038193/01

Delivered: 01/03/2022

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (COMPANIES)**

on TUESDAY THE 1 DAY OF MARCH 2022

**IN THE MATTERS OF ASSOCIATED LEAD MILLS LIMITED,
JAMESTOWN METAL RESOURCES LIMITED
AND MET-SEAM LIMITED**

BETWEEN:

**MAURICE ELLIOT SHERLING
GRAHAM CHARLES HUDSON**

Applicants

-and-

THE COMPETITION AND MARKETS AUTHORITY

Respondent

**Mr Hopkins for the Applicants
Ms Addy KC with Mr Compton for the Respondent**

MASTER KELLY

Introduction

[1] By Originating Application filed on 13 May 2021, the applicants seek leave, pursuant to articles 13B(4) and 21(3) of the Company Directors Disqualification (NI) Order 2002 (“the CDDO”), to act as a director of, and take part in the management of, the above entitled companies (“the Relevant Companies”).

[2] Prior to the filing of this application, the applicants had each given disqualification undertakings to the respondent (“CMA”) under section 9(B) of the Company Directors Disqualification Act 1986 (“the CDDA”) in England & Wales in respect of infringements of competition law. Those disqualification undertakings given by the applicants to the respondent prevented them acting as a director of, or in any way, whether directly or indirectly, from being concerned or taking part in the promotion, formation or management of the Relevant Companies without the leave of the Court.

[3] While none of the Relevant Companies are incorporated or registered in Northern Ireland, they do carry on trading activities in Northern Ireland. Consequently, this leave to act application was issued in parallel with similar proceedings brought by the applicants in the High Court of England & Wales (“the E & W proceedings”). In the E & W proceedings the applicants sought and obtained the Court’s permission to act as a director, or otherwise be concerned in the management of the Relevant Companies notwithstanding the undertakings referred to above. The Court granted permission initially on an interim basis, with a final order being made (subject to conditions) on 22 July 2021 by Eason Rajah QC sitting as a Judge of the Chancery Division of the High Court of England & Wales (see: *Sherling and Hudson v CMA* [2021] EWHC 2463 (Ch)).

[4] Pausing there, it should be observed that the role of the CMA in this application is not an adversarial one. Rather, the CMA’s role in proceedings pursuant to Article 21(3) of the CDDO is to appear and draw to the attention of the Court any matters which appears to it to be relevant, and for that purpose it may give evidence or call witnesses. Such role is mandatory: where such an application is made in either jurisdiction, the CMA must appear. In this regard, the role of the CMA is the same as that in the parallel proceedings in England & Wales.

The leave to act application in Northern Ireland (“the NI proceedings”)

[5] The Relevant Companies are as follows:

- (i). Associated Lead Mills Limited (“ALM”), a company incorporated and registered in England & Wales;

(ii). Met-Seam Limited (“Met-Seam”), a company also incorporated and registered in England & Wales;

(iii). Jamestown Metal Resources Limited (“JMR”) a company incorporated and registered in the Republic of Ireland.

[6] At the heart of this application is the question of whether the applicants either require leave of this Court to act as directors of the Relevant Companies, given that they are not incorporated or registered in Northern Ireland, or indeed whether this Court has jurisdiction to grant any such leave.

[7] It is the applicants’ case that, as the Relevant Companies carry on significant trading operations and activities in Northern Ireland, they bring this parallel application out of an abundance of caution, having been guided to do so by **Director’s Disqualification: Law & Practice, by Davis-White**, at 16-10 which states:

“By art.17 of the Company Directors Disqualification (Northern Ireland) Order 2002, a person disqualified in Great Britain by order or undertaking, made or given, pursuant to the CDDA is disqualified to the same extent in Northern Ireland. Insofar as a CDDA disqualification imposed in Great Britain takes effect in Northern Ireland, art.17 of the 2002 Order confers jurisdiction on the Northern Ireland High Court (and not the relevant court in Great Britain) to grant permission to act notwithstanding disqualification.”

And also, by **Mithani: Directors’ Disqualification, Division IXB** at [41] which states:

“An order made in Great Britain is given effect in Northern Ireland: the person subject to the order may not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the

High Court of Northern Ireland, and may not act as an insolvency practitioner.”

Mithani explains that this is based upon Article 17 of the CDDO and then suggests that “as an abundance of caution, such a person should obtain the leave of both the High Court in Northern Ireland under Article 17 and the appropriate court in Great Britain in accordance with the provisions of section 17 of the CDDA 1986.”

[8] However, the CMA’s position is that the NI proceedings are unnecessary and/or that the High Court in Northern Ireland lacks jurisdiction to grant the leave sought. Consequently, interim leave to act was granted to the applicants pending full consideration of that particular issue. However, the jurisdiction issue is now particularly pertinent given that the applicants no longer seek leave in respect of JMR, leaving only the two companies registered in England now the subject of this application.

The jurisdiction issue

[9] The CMA submits that the relevant statutory framework which governs the jurisdiction issue is as follows:

1. The CDDO

Article 17 of the CDDO provides:

“A person subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) –

- (a) shall not be a director of a company, act as receiver of a company's property or in any way either directly or indirectly be concerned or take part in the promotion, formation or management of a company unless (in each case) he has leave of the High Court; and
- (b) shall not act as an insolvency practitioner.”

Article 2(1) of the CDDO provides that:

“[t]he Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly”

and that the Interpretation Act (Northern Ireland) 1954 provides at section 42 that

“High Court” in an enactment shall mean “Her Majesty’s High Court of Justice in Northern Ireland.”

Article 17 of the CDDO should therefore be construed accordingly.

Article 2(2) goes on to provide that:

“ company” means –

- (a) a company registered under the Companies Act 2006 **in Northern Ireland**, or
- (b) a company that may be wound up under Part 6 of the Insolvency (Northern Ireland) Order 1989 (unregistered companies).”[Emphasis added]

2. The Insolvency (Northern Ireland) Order 1989 (“the 1989 Order)

Article 185(1) of the 1989 Order provides that:

“Subject to the provisions of this Part, any unregistered company may be wound up under this Order; and all the provisions of this Order about winding up apply to an unregistered company with the exceptions and additions mentioned in paragraphs (2) to (4)”, and

Article 184 of the 1989 Order provides:

“For the purposes of this Part “unregistered company” includes any association and any company, **with the following exceptions –**

- (a) a railway company incorporated by a statutory provision;
- (b) **a company registered under the Companies Act 2006 in any part of the United Kingdom.**”
[Emphasis added]

The NI proceedings

[10] The parties are now *ad idem* on the issue of jurisdiction. In brief compass, the agreed legal position can be summarised as follows:

- a. Pursuant to Article 17 of the CDDO, the Undertakings mean the applicants cannot be a director of, or directly or indirectly concerned or take part in the promotion, formation or management of “*a company*” unless they have leave of the Northern Ireland High Court;
- b. Pursuant to Article 2(2) of the CDDO “*company*” means a company registered in Northern Ireland or one that may be wound up under Part 6 of the Insolvency (NI) Order 1989 (unregistered companies) (“the IO 1989”); and
- c. Article 184 of the IO 1989 provides that “*unregistered company*” can include any company except, inter alia, a company registered under the Companies Act 2006 in any part of the United Kingdom.

With that agreed position, the parties have come to the view that this Court neither needs to grant leave nor has jurisdiction to do so, and they invite the Court to rule accordingly. A draft order has also been agreed should the Court give the requested ruling.

Consideration

[11] The only question which the Court today has to determine is the question of whether it considers that the parties’ interpretation of the relevant statutory provisions is correct. If the Court agrees with that interpretation, then that really is the end of the proceedings, and in my view it also means that the reference in **Mithani** at [41] is to be interpreted as referring only to companies either registered in Northern Ireland or capable of being wound up in Northern Ireland. If the Court does not agree with the parties’ interpretation, then **Mithani** at [41] suggests that the application should proceed to full hearing out of an abundance of caution.

[12] In my judgment, the parties' interpretation of the relevant statutory provisions is correct. The terms of those provisions seem to me to be clear. And, by virtue of those provisions, if ALM and Met-Seam are neither registered in Northern Ireland nor may be wound up in Northern Ireland, they do not meet the requirements of Article 2(2) (a) or (b) of the CDDO. This, in turn, leads me to conclude that the reference in Mithani at [41] is to be interpreted as referring only to companies either registered in Northern Ireland or capable of being wound up in Northern Ireland.

Decision

[13] Accordingly, for the reason set out above, I am satisfied that the applicants do not require leave from this Court to act as directors of the two English companies, notwithstanding that I am further satisfied in all the circumstances of the case that it has no jurisdiction to grant said leave.