

JERSEY / JUDGMENT

Dresser-Rand BV v Al Rushaid Petroleum Investment Company and Ors [2022] JRC 034 (02 February 2022)

[2022] JRC 034

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judgment

the COMMISSIONER: 1. The Defendant applies for the stay, agreed by a consent order of 18 th January 2022, to be extended until 28 th March 2022. I am going to use the same definitions in this short judgment as were contained in the Court's judgment of 21 st December 2021 (Dresser-Rand BV v Al Rushaid Petroleum Investment Company

[2021] JRC 321). 2. The reasons for the application are contained in the third affidavit of the Defendant's Chief Financial Officer, Gerald Ibler, but in brief:- (i) The Defendant has now been ordered by the Khobar Court of Enforcement in Saudi Arabia to pay the outstanding sums due under the Award and has confirmed that it will comply with the order and this at the instance of Dresser-Rand Arabia. (ii) The Defendant's assets in Saudi Arabia to the extent of some \$US500 million have been seized bringing its business to a close. (iii) An appeal against the order was rejected on 12 th January 2022. That has in turn been appealed by the Defendant, but the outcome will not be known for some two months and in the meantime, there is no stay. (iv) The Defendant wishes to pay the amounts due under the Award as soon as possible so as to lift the execution measures imposed upon it, but needs time to generate the liquid assets of some \$US43 million required. (v) At the same time there are settlement discussions in progress in relation to all issues outstanding between the Plaintiff and the Defendant. 3. That whilst the Second and Third Parties Cited have complied with the disclosure order made on 21 st December 2021, the Defendant has not. It was required to disclose its assets in Jersey by 14 th January 2022. 4. It is worth setting out what Mr Ibler says in paragraphs 14 to 16 of his affidavit (the Defendant being referred to as "ARPIC"):- "14. The practical implication of these enforcement measures is that ARPIC has since 24 November 2021 been unable to conduct any business or transactions at all. The freeze which has been placed against ARPIC's certificate of registration means that it is unable to conduct any transactions within KSA [Kingdom of Saudi Arabia] of any value whatsoever. By way of example, without a valid certificate of registration ARPIC is unable to receive any new orders from Saudi ARAMCO, which is its sole customer, sell or deal with its assets or access its bank account. ARPIC is currently

unable to pay any of its operating expenses including its staff salaries or legal fees without breaching the KSA courts' order and facing further sanction/ including criminal proceedings.

15. In effect all ARPIC's business has now been halted. I cannot overstate the damage which the KSA court's enforcement measures have caused and are continuing to cause to ARPIC's business. This situation is only sustainable for a very short period of time and ARPIC wishes to find a resolution to the situation as soon as is possible.
16. It is not possible at this stage to provide a precise valuation of ARPIC's assets which have been frozen by order of the Khobar Court of Enforcement. However, given that substantially all of ARPIC's business is conducted in KSA this comprises effectively all of ARPIC's trading assets. I would give a broad estimate that ARPIC's business and assets exceed USD 500,000,000 in value. These are all currently frozen and/or arrested and are available for execution at the KSA Courts' discretion. DRA therefore currently has the benefit of security over assets many times more valuable than the sums it has been ordered to pay in KSA and which are sought in proceedings in Jersey and elsewhere." 5. A further stay is resisted by Advocate Holden on behalf of the Plaintiff. He points to the fact that the decision of the Saudi Arabian Court is being appealed and if successful the whole enforcement process in Saudi Arabia may come to nothing. If the Defendant is committed to pay, why he asks is this order being appealed? The stay will only in practice apply to the Defendant's obligation to disclose its assets in Jersey. He points out that Mr Ibler has not sought to confirm in his affidavit that there are no such assets which may imply that the Defendant does have assets in the Island. The Plaintiff is an award creditor and is entitled to enforce the award wherever assets can be found to do so. 6. As to the application for a worldwide disclosure order, currently adjourned, the Plaintiff does not intend to pursue that at the moment. Advocate Holden had not been instructed otherwise to take issue with the evidence put forward by Mr Ibler, although he points to a lack of clarity as to what exactly has been seized and its value. 7. In its judgment of the 21 st December 2021 the Court determined provisionally to order the Defendant to disclose its worldwide assets, which was the main issue in the proceedings being taken in Jersey. It did so for two reasons, inter alia , set out in paragraph 39 of its judgment:- "(iii) The Plaintiff has been unable to enforce the Award in Saudi Arabia, where the Defendant is resident, because it specifically enforces the Defendant's obligation to the Plaintiff to make a payment in favour of Dresser-Rand Arabia. The Plaintiff is therefore in the same position as the plaintiff in the Dalemont case. ... (vi) The making of a worldwide disclosure order will not interfere with the management of the case in any other court or give rise to disharmony or confusion and/or the risk of conflicting inconsistent or overlapping orders in any other jurisdictions, in particular in the courts of the state where the Defendant resides, namely Saudi Arabia. There are no proceedings in Saudi Arabia, the Courts of which have declined to enforce the award (but see below) and there are no proceedings anywhere else save for England and Wales, but those proceedings are stayed. There is no potential conflict as to jurisdiction rendering it inappropriate to make the worldwide disclosure order. 8. The position has now completely changed. Both the

Defendant and Dresser-Rand Arabia, the joint venture vehicle, are Saudi Arabian companies and the Saudi Arabian Courts are now, and have been, fully seized of the enforcement of the Award against the Defendant at the instance of Dresser-Rand Arabia, which is the beneficiary of the Award. The Plaintiff owns 51.1% of Dresser-Rand Arabia and is clearly able to procure that it takes enforcement action that it has in Saudi Arabia, the jurisdiction that demonstrably has the closest connection to the enforcement of the Award and whose Courts are now actively and rigorously enforcing the Award. 9. Advocate Holden has confirmed that the agent of Dresser-Rand Arabia, who initiated the proceedings in Saudi Arabia, did so on the instruction of the Plaintiff. This brings me to a matter of serious concern to the Court. Advocate Holden is dealing with the in-house legal department of Siemens, which owns the Plaintiff, and who have the conduct of the enforcement proceedings in Saudi Arabia, through Dresser-Rand Arabia and its agent, which they did not disclose to Advocate Holden and through him to the Jersey Court, which therefore proceeded in November 2021 without the knowledge of these material developments in Saudi Arabia. No explanation for this or an apology has been provided to the Court. 10. Taking this into account together with the evidence now supplied by the Defendant, on oath through its Chief Financial Officer, that the Defendant is a company of a very substantial value, way in excess of the amount of the award, assets of some USD500 million dollars have been seized in Saudi Arabia rendering the Defendant unable to operate or even pay its staff salaries, its reasonable request for time to realise liquid assets of some USD43 Million and its formal statement that it will pay the amount of the Award leaves me to conclude that a further stay as requested should be granted. 11. Therefore turning to the summons: (i) I grant prayer 2, that the January Act of Court be varied so as to extend the stay of these proceedings to the close of business on 28 th March 2022 (which for the avoidance of doubt, includes the period for any appeal of the Royal Court Judgment). (ii) That costs be in the cause. (iii) That there be liberty to apply, but I am adding to that the following, "in particular by the Plaintiff to lift the stay should there be a material change in circumstances."

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Prepared on 22 October 2026 · Esheria