Neutral Citation Number: [2025] CIGC (FSD) 74

Cause No: FSD 2025-0037 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN

(1) AL JOMAIH POWER LIMITED

(2) DENHAM INVESTMENT LIMITED

Plaintiffs

-and-

(1) IGCF SPV 21 LIMITED

(2) KES POWER LIMITED

Defendants

Appearances:	**Mr Iain Quirk KC instructed by Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin for the Plaintiffs**
	Mr Graham Chapman KC instructed by Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley of Dillon Eustace for the First Defendant
	The Second Defendant was not represented and did not appear
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**9 June 2025**
Ex tempore judgment delivered:	**9 June 2025**
Finalised judgment approved:	**31 July 2025**

Interlocutory injunction—whether serious issue to be tried that Plaintiff will obtain the relief sought at trial—whether damages likely to be an adequate remedy—whether Plaintiff or defendant likely to suffer uncompensatable damage—whether Plaintiff disentitled to equitable relief due to unclean hands or delay

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JUDGMENT

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Section **Para**

A. Introduction

1. This is my judgment on the Plaintiffs' summons filed on 26 February 2025 for an interlocutory injunction to restrain the First Defendant, which I refer to as "SPV21", from certain conduct in respect of the Second Defendant company, which I refer to as "KESP".

2. The issue between the parties arises out of a transaction on 3 August 2022, which involved an intended transfer of the sole voting share in SPV21 and a sale of the majority of the equity shares in SPV21. The Plaintiffs complain that that amounted to a change of control within the meaning of a shareholders agreement between the Plaintiffs and SPV21 dated 15 October 2008, as amended and revised, which therefore disentitles SPV21 from exercising certain powers, including a power to appoint some of the directors of KESP. SPV21 disputes this.

3. I heard argument on the summons on 9 June 2025 and gave a short *ex tempore* judgment on that date dismissing the Plaintiffs' summons. I indicated at that time that I would provide a more fulsome judgment if that were required. The Plaintiffs have asked me to do so, and this is that expanded judgment.

4. The Plaintiffs are represented by Mr Iain Quirk KC, supported by Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin. SPV21 instructed Mr Graham Chapman KC, with support from Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley of Dillon Eustace. I am grateful to all counsel and attorneys for their helpful skeleton arguments and for their oral presentations before me.

5. As explained more fully below, the current proceedings are one aspect of hotly contested disputes between the parties and their proxies that have arisen out of the disposal, within the wider liquidation of Abraaj Holdings and Abraaj Investment Management Limited ("AIML"), of the indirect interests in KESP. AIML is the former investment manager for a number of private equity funds and their related structures within the Abraaj group, including SPV21.

B. The factual background

6. The following summary of the underlying facts is taken from:

   6.1 the evidence filed in support of the Plaintiffs' summons, namely the affidavits of Leigh Mallon, a partner in the UK law firm of Steptoe International (UK) LLP, and Mustafa Farooki, the First Plaintiff's chief portfolio manager;

   6.2 the evidence of Casey McDonald, an independent director of SPV21, filed in opposition to the Plaintiff's summons; and

   6.3 the agreed chronology and dramatis personae.

B.1 The corporate structure and the involvement of Abraaj Holdings and Abraaj Investment Management Limited

7. SPV21 is an exempted company incorporated in the Cayman Islands. In addition to its participation shares, SPV21 has a single voting non-participating share ("the Voting Share"), which has been registered to AIML since 2014.

8. SPV21 was part of the Abraaj group of companies. It is one of the portfolio assets of Infrastructure and Growth Capital Fund LP ("IGCF Fund"). IGCF Fund is an exempted limited partnership registered in the Cayman Islands, with IGCF General Partner Limited ("IGCF GP") as its general partner. AIML was the majority owner of IGCF GP.

9. Until 2014, SPV21 was wholly owned by K Power Holdings Limited ("KPH") (formerly known as IGCF SPV 26 Limited), which was wholly owned by IGCF Fund. Following a reorganisation in 2014, IGCF Fund's interest in KPH was reduced to 70.6%, correspondingly diluting its interest in SPV21.

10. KESP is an exempted company incorporated in the Cayman Islands. It owns 66.4% of the shares in K-Electric Limited ("KEL"), a Pakistani publicly listed energy company. The other shareholders include the Government of Pakistan. KESP acquired its interest in KEL from the Government of Pakistan pursuant to a share purchase agreement dated 14 November 2005. At that time, KESP was wholly owned by the Plaintiffs. SPV21 was not a party to the share purchase agreement.

11. With the approval of the Government of Pakistan given on 27 November 2008, the Plaintiffs sold 50% of the shares in KESP to SPV21 for US $50 million pursuant to a Subscription Agreement dated 15 October 2008.

12. The current position is that the shares in KESP are owned as to 53.8% by SPV21 and as to 46.2% by the Plaintiffs, although I do not have details of how the adjustment of ownership between the Plaintiffs and SPV21 from 50% each came about.

13. At the time of the share sale to SPV21, the Plaintiffs and SPV21 entered into a shareholders' agreement dated 15 October 2008 (subsequently amended on 30 April 2009 and 5 January 2021) to regulate their conduct in relation to KESP ("the KESP SHA"). Of relevance to the Plaintiffs' current application for an injunction, the KESP SHA provides as follows:

    13.1 By clause 5.7:

> *"[SPV21] and the [Plaintiffs] shall procure that the directors of [KEL] to be nominated or appointed by [KESP] shall comprise:*
>
> *a) five persons nominated by [SPV21] (the Abraaj Nominees); and*
>
> *b) four persons nominated jointly by the [Plaintiffs] (the Original Shareholder Nominees).*
>
> *Where [KESP] is required, entitled or otherwise agrees to nominate or appoint a number of directors of [KEL] which is greater or less than nine directors, whether as required by local law or otherwise, the Shareholders shall have the right to nominate or appoint that number of directors of [KEL] pro-rata to their respective shareholdings in [KESP]. Nothing in this agreement shall have the effect of restricting, amending or varying any existing rights that the Government of Pakistan or any other third party has or may have to nominate or appoint directors of [KEL] or the ability of [KEL] to comply with local law requirements relating to the composition of its Board of directors."*

    13.2 By clause 9.4:

> *"[SPV21] undertakes and agrees that save for an Exit in accordance with clause 11 hereof, it shall not permit nor take any action that would result in a change of Control of [SPV21], provided*

that [SPV21] shall be deemed not to be in contravention of this clause in circumstances where (notwithstanding a change of Control of [SPV21]), [SPV21] remains managed by a member of the Abraaj Group."

13.3 By clause 17.1:

"Each of the parties (other than [KESP]) undertakes to the others that it will exercise all powers and rights available to it as a director, officer, employee or shareholder in [KESP] (or in any other Group Company) in order to give effect to the provisions of this agreement and to ensure that [KESP] complies with its obligations under this agreement."

13.4 By clause 25.2

"Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be settled by the English courts or the Grand Court of the Cayman Islands and those courts alone shall have exclusive jurisdiction to settle any such dispute."

13.5 In Schedule 9 – Interpretation

"Control means, with respect to any person, the possession, directly or indirectly, of the power to direct, or cause the direction of, the management of that person, whether through ownership of shares, voting securities, partnership or other ownership interests, agreement or otherwise, provided that if one person owns, directly or indirectly, fifty per cent. (50%) or more of the share capital, voting, securities, partnership or other ownership interests of another person, such person shall be deemed to Control such other person and Controlled and under common Control with shall be construed accordingly"

B.2 The collapse of Abraaj Holdings and Abraaj Investment Management Limited and the involvement of Mr McDonald and Mr Skelton

14. The Abraaj group, including AIML, collapsed in 2018 amid allegations of fraud and mismanagement by Mr Arif Naqvi, who was the founder and CEO of the Abraaj group, and his associates. The Grand Court appointed provisional liquidators over Abraaj Holdings and AIML on 18 June 2018. On 11 September 2019, AIML was placed into official liquidation.

15. The liquidators of AIML appointed Casey McDonald as an independent professional director of two Abraaj entities which held successive corporate directorships of SPV21. Then, on 31 May 2020, they appointed Mr McDonald directly as the sole director of SPV21, replacing the Abraaj entity which had until then been the director of SPV21, and of which Mr McDonald was a director.

16. Mr McDonald is a chartered accountant with over 20 years' experience and a professional director regulated by the Cayman Islands Monetary Authority amongst others. He has a focus on appointments to the boards of distressed funds and investment vehicles and has acted as a Court-appointed fiduciary in this jurisdiction and multiple other jurisdictions.

17. The liquidators of AIML also appointed Mr Mark Skelton (then of Duff & Phelps and now of Alvarez & Marsal) as a conflict director on the board of IGCF GP. Mr Skelton is similarly an experienced accountant used to acting as an independent director for companies in distress.

B.3 The disposal by the Abraaj liquidators of interests in KESP

18. On 3 August 2022, the liquidators of AIML caused AIML to conclude a share and asset purchase agreement with Sage Venture Group Limited ("Sage"). Sage's ultimate beneficial owner is a Mr Shaheryar Chishty. Sage is not part of the Abraaj group and has no connection with it. The relevant details of the transaction are that in return for a payment of US $18 million and additional consideration if certain conditions were satisfied within 36 months:

    18.1 Sage bought 75.5% of the shares in IGCF GP from AIML;

    18.2 Sage bought a debt from AIML of approximately US $41 million said to be owed by KESP for consultancy services provided by AIML – there is a dispute between the parties whether the debt is genuine; and

    18.3 Sage agreed to buy the Voting Share from AIML.

19. The transaction with Sage followed a transaction process during the summer of 2022 under the auspices of the liquidators of AIML. In the course of that process, TriCap Advisory Services Limited, which is associated with the Plaintiffs, was invited to submit an offer for the Voting Share or for a purchase of equity in SPV21. TriCap did so on 4 August 2022. However, AIML had already agreed to sell to Sage, so TriCap's offer did not progress.

20. AIML's liquidators sought sanction from the Grand Court to complete the transaction with Sage, which was granted on 14 October 2022 on terms requiring the liquidators of AIML to satisfy themselves that the transaction would not breach the terms of the relevant agreements concerning KESP and AIML or KEL's obligations to its lenders.

21. The Plaintiffs complain that, on or about 14 October 2022, Sage and the liquidators of AIML entered into two side letters concerning the transaction. In particular, by the second side letter, AIML and Sage noted that the Plaintiffs had asserted that the transaction with Sage constituted a breach of clause 9.4 of the KESP SHA and agreed that AIML's liquidators would hold the Voting Share as nominee for Sage and would exercise the associated voting rights in accordance with Sage's instructions. Sage

also agreed to indemnify AIML's liquidators against any legal fees and expenses incurred in connection with the transfer to Sage of the Voting Share in SPV21.

22. On or about 18 October 2022:

22.1 SPV21 resolved to nominate Mr Chishty, his brother Sameer Chishty, and Darin Baur, his business associate, as directors of KESP; and

22.2 IGCF GP wrote to KEL to indicate that Mr Chishty would be appointed as one of KESP's nominated directors of KEL.

23. The following day, 19 October 2022, KESP's company secretary wrote to KEL indicating that KESP was appointing Mr Chishty and Mr Baur as KESP's nominated directors of KEL with immediate effect. The Plaintiffs assert that this was done without the knowledge or consent of KESP's board of directors.

24. Notwithstanding the sanction granted by the Grand Court, it appears that to date Sage has only acquired the beneficial ownership of the Voting Share and that AIML retains legal title and continues to be the registered shareholder of the Voting Share.

25. Separately from the transaction with AIML, Sage also bought out the other owner of IGCF GP so that Sage now owns all the shares in IGCF GP.

B.4 The Plaintiffs' proceedings in Pakistan

26. On 21 October 2022, the Plaintiffs commenced proceedings in the High Court of Sindh at Karachi, Pakistan against SPV21 and others seeking declarations and a permanent injunction to restrain SPV21 from appointing any directors to KEL. On the same day, the Plaintiffs applied for and obtained an *ex parte* injunction restraining SPV21 from making any changes to the composition of KEL's board of directors. On 4 November 2022, SPV21 applied to set aside the injunction and to stay the Pakistan proceedings. That application was due to be heard on 20 February 2024 but was adjourned to 12 March 2024. There is no information before me regarding whether that hearing took place and its outcome if so.

27. The agreed chronology indicates that there has been other activity in Pakistan, both in the proceedings commenced by the Plaintiffs, where other interested parties have sought to be joined, and in separate proceedings started by others.

B.5 The Cayman anti-suit proceedings

28. SPV21 took the view that the Plaintiffs' action was a clear breach of the jurisdiction provision in clause 25.2 of the KESP SHA, providing that the Grand Court and the English courts have exclusive jurisdiction to determine any dispute between the parties. Initially, SPV21 invited the Plaintiffs to discontinue the proceedings in Pakistan and to commence a claim in either the Grand Court or the High Court of England & Wales. When the Plaintiffs refused, SPV21 commenced proceedings against the Plaintiffs in the Grand Court on 24 November 2022, assigned to Justice Segal, seeking an anti-suit injunction to restrain the Plaintiffs from pursuing the proceedings in Pakistan and requiring them to apply to set aside the *ex parte* injunction they had obtained.

29. Justice Segal made an order on 30 January 2023 and gave a judgment on 1 February 2023, granting an interim anti-suit injunction. Following further hearings on 31 March and 3 April 2023, Justice Segal gave final judgment on 20 July 2023 holding that the Plaintiffs were in breach of clause 25.2 of the KESP SHA and confirming the anti-suit injunction. However, on 17 October 2023, Justice Segal stayed the anti-suit injunction pending the Plaintiffs' appeal to the Court of Appeal. The Court of Appeal dismissed the Plaintiffs' appeal on 2 July 2024.

30. The Plaintiffs sought permission to appeal to the Judicial Committee of the Privy Council on the question whether SPV21 had submitted to the jurisdiction of the High Court of Pakistan. They also applied to the Court of Appeal for a stay of the anti-suit injunction pending their intended appeal or the determination of an application to be made by the Plaintiffs to the Grand Court for an injunction in terms similar to the *ex parte* injunction they had obtained in Pakistan. On 10 January 2025, the Court of Appeal gave the Plaintiffs permission to appeal to the Privy Council but refused their application for a stay pending the appeal. Instead, the Court of Appeal stayed the anti-suit injunction for up to five months upon an undertaking by the Plaintiffs to apply to the Grand Court for an injunction to replace the Pakistan injunction *"without delay"*. SPV21 points out that the draft of the Court of Appeal's judgment was provided to the parties on 27 November 2024, so that the Plaintiffs were aware from that date that they needed to apply to the Grand Court promptly for an injunction.

31. I was told by counsel that the Plaintiffs' appeal to the Privy Council is due to be heard on 6 October 2025. SPV21 says that the Plaintiffs' appeal to the Privy Council is limited to the question whether SPV21 submitted to the jurisdiction of the High Court in Pakistan by making its application to challenge jurisdiction. SPV21 contends that that issue does not involve any challenge to the findings of Justice Segal and the Court of Appeal that the Plaintiffs acted in breach of clause 25.2 of the KESP SHA in commencing and pursuing the Pakistan proceedings, which are therefore binding on the Plaintiffs. The Plaintiffs did not disagree in argument with SPV21's contention.

B.6 The English debt proceedings

32. AIML served a statutory demand on KESP in respect of the US $41 million debt owed by KESP to AIML on or about 30 November 2022. The parties agreed a standstill for 90 days from 23 December 2022. However, the dispute could not be resolved and AIML and Sage commenced proceedings in England & Wales once the standstill agreement had expired. The claim was served on KESP on or about 9 June 2023.

33. At the same time, AIML and Sage wrote to the Plaintiffs asserting that unless the Plaintiffs were willing to discuss a resolution of the issues between them then KESP should be put into liquidation as it would no longer serve any purpose. AIML and Sage proposed an overall settlement with the Plaintiffs including terms that:

    33.1 the Plaintiffs accept the appointments of Mr Chishty, Mr Sameer Chishty, and Mr Baur as directors of KESP, and the appointments of Mr Chishty and Mr Baur as directors of KEL;

    33.2 the Plaintiffs consent to the transfer of legal ownership of the Voting Share to Sage;

    33.3 the Plaintiffs authorise the assignment from AIML to Sage of the debt owed by KESP; and

    33.4 in return, Sage would extend the date for payment of the debt owed by KESP and would withdraw the English proceedings.

34. On 12 June 2023, KESP's directors met to discuss whether to instruct English solicitors to advise on and to resist AIML's and Sage's debt claim. However, the meeting was not quorate in the absence of Mr Skelton and was adjourned to 19 June 2023. On that date, the four directors appointed by the Plaintiffs voted in favour of engaging solicitors and Mr Skelton, voting himself and exercising four proxies, voted against. The Plaintiffs complain about Mr Skelton's conduct and about AIML's subsequent attempt to obtain judgment in default against KESP. I note that AIML's application for

judgment in default was refused and one of the directors of KESP was apparently authorised by the Plaintiffs to defend the claim on their behalf.

B.7 The current Cayman proceedings

35. Notwithstanding the Plaintiffs' undertaking to the Court of Appeal to do so *"without delay"*, the Plaintiffs had not commenced a claim before the Grand Court for an injunction by 12 February 2025, prompting SPV21's attorneys to challenge them on this. On 24 February 2025, SPV21 filed a notice of motion before the Court of Appeal seeking to lift the stay of the anti-suit injunction on the ground that the Plaintiffs had failed to comply with their undertaking to the Court of Appeal. This appears to have prompted the Plaintiffs into action, and on 26 February 2025 the Plaintiffs filed the writ in the current proceedings and their summons for an interlocutory injunction.

36. The cause was initially assigned to Justice Kawaley, but on the basis that he would not be able to hear the summons for an injunction until June 2025. The parties were asked whether an earlier date was needed. The Plaintiffs responded that the stay granted by the Court of Appeal was due to expire on 10 June 2025 and proposed hearing dates in the days leading up to that date. Neither side suggested at this time that the application should be heard before June 2025 or should be re-assigned to another judge with more availability.

37. On 28 February 2025, the Plaintiffs' summons was fixed for hearing on 5 June 2025. However, on 11 March 2025, the parties were informed that Justice Kawaley would not, after all, be able to hear the summons in June 2025 due to other commitments. They were asked whether it would be possible to list the summons for hearing in late May 2025. The Plaintiffs responded that their leading counsel would be available in late April 2025 but was not available in May 2025. The Plaintiffs enquired whether the case might be re-assigned to a different judge if it could not be listed in April 2025. SPV21 responded that its leading counsel was only available in early June 2025 and the Plaintiffs renewed their request for the case to be re-assigned. In light of these listing difficulties, the matter was re-assigned to me on 7 May 2025, and I was able to hear the summons on 9 June 2025.

B.8 Other proceedings involving the parties or their proxies

38. I note in passing that there are several other proceedings in the Cayman Islands and elsewhere involving the parties or their proxies, but which I do not consider to be material to the determination of the current application for an interim injunction. These include a winding up petition before the

Grand Court in respect of KESP presented by SPV21 on 11 July 2023, which the Plaintiffs unsuccessfully sought to strike out, and which they are appealing; two causes before the Grand Court relating to the removal of a director of KESP commenced in August 2023; two LCIA arbitrations commenced in June 2023 and February 2025 respectively regarding the management of IGCF Fund; recognition and enforcement proceedings in the Cayman Islands and in England & Wales in respect of the award in the first LCIA arbitration; and proceedings before the Grand Court brought by IGCF Fund and IGCF GP to restrain prosecution of the second LCIA arbitration.

C. Summary of the Plaintiffs' complaints

39. Against that factual background, the Plaintiffs assert that since 14 October 2022:

39.1 Sage has become the majority owner and effectively controls KPH, which in turn is the majority owner of SPV21;

39.2 Sage has acquired beneficial ownership of the Voting Share and therefore is in control of SPV21; and

39.3 by reason of his ultimate beneficial ownership of Sage, Mr Chishty has been the indirect majority owner and effective controller of SPV21.

40. The Plaintiffs submit that this amounts to a *"change of Control"* within the meaning of the KESP SHA and is a breach of clause 9.4 thereof. The Plaintiffs therefore seek an interim injunction, and a permanent injunction following trial, to restrain SPV21 from permitting or taking any action that would involve SPV21 acting in breach of the KESP SHA and would result in such a *"change of Control"* in respect of KESP and also in relation to KEL.

41. The Plaintiffs argue that Sage and Mr Chishty have sought to conceal the change of control from the Government of Pakistan. Mr Quirk took me to a number of documents said to support this submission. SPV21 disputes it. However, I do not consider that whether or not Sage and Mr Chishty may have sought to conceal the change of control is relevant to the issues before me concerning the grant of an interim injunction.

42. The Plaintiffs complain that Sage and Mr Chishty's aim is to use their control of SPV21 to further their own interests at the expense of the Plaintiffs, and that this will lead to uncompensatable damage to the Plaintiffs, justifying the grant of an interim injunction.

43. The terms of the injunction sought by the Plaintiffs are as follows:

> *"1. [SPV21] shall not implement and/or act on the direct or indirect instructions of [Sage] and/or [Mr Chishty], or their agents or associates, or cause or procure the same to occur;*
> 2. *[KESP] shall not assist with or procure the appointment of any persons connected to [Sage] and/or [Mr Chishty] or any of their agents or associates, to the board of K-Electric ("KEL");*
> 3. *SPV21 shall not, by itself and/or by its servants or agents, or by any director appointed by it to KESP, permit or take any action that would result in a change of control as defined in the [KESP SHA] ("Control") by [Sage] and/or [Mr Chishty], whether directly or indirectly;*
> 4. *[SPV21] shall forthwith cease to permit itself to be Controlled by Sage and/or Mr Chishty, whether directly or indirectly;*
> 5. *[SPV21] shall withdraw all instructions seeking to appoint or support the appointment of [Mr Chishty] and [Mr Darin Baur] as directors of KEL. Further, [SPV21] shall not seek to appoint any other person as directors of [KEL] to whom [the Plaintiffs] object;*
> 6. *[SPV21] shall not register any transfer of the sole [Voting Share] in [SPV21] without the written agreement of [the Plaintiffs]; and*
> 7. *[SPV21] shall not, without the consent of [the Plaintiffs], in any way permit and/or take any action that results in Control of [SPV21] by [Sage] and/or [Mr Chishty] or any other person (other than an a member of the Abraaj Group (as defined in the KESP SHA)).*"

44. The Plaintiffs say that they are pursuing this relief to protect their investment in KEL. The Plaintiffs assert that if relief is not granted, Mr Chishty, through Sage and SPV21, will implement changes to KEL that could severely and irremediably harm its operations and the Plaintiffs' interests in KEL. They say that their concern is increased by SPV21's refusal to give appropriate undertakings. The Plaintiffs conclude by saying that SPV21 is unlikely to suffer any prejudice if relief is granted, so that the balance of convenience is firmly in favour of ordering an injunction in the terms sought.

D. Summary of SPV21's response

45. SPV21's overarching response is that the Plaintiffs are aggrieved that they missed out on the opportunity to acquire the interest in KESP that was bought by Sage, and that they are intent on attempting to challenge and unwind the sale to Sage. SPV21 argues that this desire underpins all of the different proceedings that I have described earlier in this judgment. SPV21 suggests that Mr Naqvi might be behind the Plaintiffs or be associated with them, and that he may be the driving force for their actions. I note here that Mr Farooki responds that the Plaintiffs are not aggrieved that their bid for SPV21 was not successful, but they are aggrieved at having been invited to make a proposal when AIML and/or Mr Skelton had already agreed to the transaction with Sage, and the Plaintiffs believe that this was window-dressing to make the deal with Sage appear to be part of a transparent process.

46. As far as this particular summons is concerned, SPV21 says that the Plaintiffs are not entitled to the interim injunctive relief sought for five reasons:

46.1 The relief sought by the Plaintiffs goes far beyond any contractual rights in favour of the Plaintiffs in the KESP SHA. The Plaintiffs seek to restrain SPV21 from the exercise of its contractual rights, rather than to prevent breaches of its contractual obligations.

46.2 The Plaintiffs have failed to show that they would suffer substantial damage if the injunction were not granted, still less irremediable damage.

46.3 Damages would be an adequate remedy for any breaches of the Plaintiffs' rights.

46.4 There is therefore no serious issue to be tried on the Plaintiffs' claim for permanent injunctive relief. Accordingly, the Plaintiffs should not be granted interim injunctive relief.

46.5 The Plaintiffs are guilty of egregious delay in bringing their claim and have done so with unclean hands. They have delayed for over two years, during which period they have themselves deliberately breached and remain in continuing breach of the KESP SHA on which they seek to rely and have ignored findings by the Grand Court and Court of Appeal that they are in breach of it. The court should not reward the Plaintiffs' behaviour by a discretionary exercise of its equitable jurisdiction in their favour.

47. In addition, SPV21 complains vehemently about the quality and nature of the evidence filed on behalf of the Plaintiffs in support of their summons:

47.1 SPV21 complains that Mr Mallon is an English solicitor, rather than a participant able to give direct evidence, but has nevertheless made very serious allegations, described by SPV21 as scandalous and going beyond the Plaintiffs' pleaded case.

47.2 SPV21 refers to Mr Mallon's and his firm's engagement by Mr Naqvi as his solicitors and complains that this is a source of concern. SPV21 alleges that there is a risk of *"inevitable leakage of information to Mr Naqvi when confidential documents come into Mr Mallon's hands"*.

47.3 SPV21 asserts that Mr Farooki's evidence was filed in reply to make good the deficiencies in Mr Mallon's evidence, but Mr Farooki is not a director of either Plaintiff and it is unclear that he can give any relevant direct evidence.

47.4 Finally, SPV21 complains that Mr Farooki has also made serious unsubstantiated allegations of fraud, conspiracy, professional misconduct and breach of duty and other kinds of impropriety

against Mr McDonald, Mr Skelton, Mr Chishty and Mr Baur. SPV21 characterises Mr Farooki's assertions as inappropriate speculation, going beyond the Plaintiffs' pleaded case, which should not have been advanced.

48. In light of my reasons for dismissing the Plaintiffs' summons, it has not been necessary for me to address these complaints about the evidence in this judgment.

E. Applicable legal principles

49. There is very little between the parties on the applicable law. It is common ground that I have power to grant an interlocutory injunction where it would be just and convenient to do so importing, via s.11(a) of the Grand Court Act, the jurisdiction provided to the English High Court by s.37 of the Senior Courts Act 1981.

50. Both sides direct my attention to the well-known test in *American Cyanamid Co v Ethicon* [1975] AC 396, and to the useful summary of the principles set out in the judgment of Mangatal J in *Xie Zhikun v XiO GP Ltd* (unreported 09/06/17) at paragraph 101:

> *"a. Is there a serious issue to be tried; do the Plaintiffs have a real prospect of succeeding in their claim for permanent injunctions at the trial?*
>
> *b. If there is a serious issue to be tried, will the Plaintiffs be adequately compensated by damages for the loss they would have sustained as a result of the Defendants continuing to do that which it was sought to be enjoined, and are the Defendants in a position to pay the damages?*
>
> *c. If damages would not provide an adequate remedy for the Plaintiffs, if the Defendants were to succeed at trial, would they be adequately compensated under the Plaintiffs' undertaking as to damages? I bear in mind, that as Lord Hoffman said at paragraph 17 of* NCB v Olint*:*
>
> > *"In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy."*
>
> *d. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of the balance of convenience arises.*
>
> *e. Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.*
>
> *f. The Court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other."*

51. It is also common ground that the threshold for showing a serious issue to be tried is a low one – SPV21 referred to Kawaley J's description in *Frontera Resources Corp v Hope* (unreported, 22/01/19) that *"the standard which the Plaintiffs must meet is marginally higher than merely arguable or 'frivolous or vexatious'.*"

52. Where damages may not be an adequate remedy, the overarching principle is to determine the balance of convenience between the parties and to make an order that will do justice: SPV21 refers to the following dicta of Browne LJ in *Fellowes & Son v Fisher* [1976] 1 Q.B. 122 at 137, endorsed and adopted in the Cayman Islands by Sir Peter Cresswell in *RC Cayman Holdings LLC v Ryan* (unreported, 30/10/12) at pp46-47:

> *"(1) The governing principle is that the court should first consider whether, if the claimant succeeds at the trial, he would be adequately compensated by damages for any loss caused by the refusal to grant an interlocutory injunction. If damages would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the claimant's claim appeared to be at that stage.*
>
> *(2) If, on the other hand, damages would not be an adequate remedy, the court should then consider whether, if the injunction were granted, the defendant would be adequately compensated under the claimant's undertaking as to damages. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the claimant would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.*
>
> *(3) It is where there is doubt as to the adequacy of the respective remedies in damages that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.*
>
> *(4) Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.*
>
> *(5) The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies.*
>
> *(6) If the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the written evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party.*
>
> *(7) In addition to the factors already mentioned, there may be many other special factors to be taken into consideration in the particular circumstances of individual cases."*

53. Finally, consistently with its overall position, SPV21 stresses that the grant of an injunction is a discretionary equitable remedy, and that delay and whether the applicant has unclean hands are relevant considerations to the exercise of the court's discretion. On this last point, Mr Chapman relies in particular on the judgments at first instance and on appeal in the English case of *Chappell v Times Newspapers Ltd* [1975] 1 W.L.R. 482.

F. The Plaintiffs' submissions

F.1 Serious issue to be tried

54. The Plaintiffs refer to their Statement of Claim alleging a breach of clause 9.4 of the KESP SHA and to SPV21's Defence filed on 25 March 2025 disputing that claim. The Plaintiffs assert that their claim is clearly not frivolous or vexatious and clearly has a real prospect of succeeding. The Plaintiffs say that this suffices to establish that there is a serious issue to be tried.

55. The Plaintiffs flesh out that position by arguing that there has plainly been a change of control for the purpose of clause 9.4 of the KESP SHA because the materials before the Court show that Sage, and hence Mr Chishty, have purported to become:

55.1 the indirect majority owner of SPV21's equity shares; and

55.2 the equitable owner as well as controller of the Voting Share; and

Sage has entered into an agreement with AIML that AIML's liquidators will exercise the rights attached to the Voting Share according to Sage's instructions.

56. The Plaintiffs submit that SPV21's defence that it was not a party to the agreement between Sage and AIML is irrelevant because the obligation on SPV21 is *"to not permit nor take action that would result in a change of Control of [SPV21]"*, and that this applies whether or not SPV21 is a party to the agreement in question. The Plaintiffs add that clause 9.4 of the KESP SHA imposes a proactive obligation on SPV21 to prevent a *"change of Control"* from occurring. The Plaintiffs assert that SPV21 has failed to do so and instead has given effect to the *"change of Control"*, for example, by seeking to appoint Mr Chishty as a director of KEL.

57. The Plaintiffs submit that, as a result, the parties clearly have a live dispute that is not fictitious or vexatious and in respect of which the Plaintiffs have a real prospect of success, so that the Court should not hesitate to find that there is a serious issue to be tried in relation to the Plaintiffs' claim alleging breach of Clause 9.4 of the KESP SHA.

F.2 Inadequacy of damages as a remedy

58. The Plaintiffs say that damages would not be an adequate remedy because any prejudice to KESP and KEL, and hence to the Plaintiffs, arising from SPV21's unrestrained appointment of Mr Chishty and

his associates as directors of KEL would not be practically quantifiable as, or remediated by, damages after the fact.

59. Firstly, the Plaintiffs rely upon the following extract from Segal J's unreported judgment dated 17 October 2023 on the Plaintiff's application for a stay of the anti-suit injunction pending its appeal to the Court of Appeal:

> *"22. It seems to me that there is a real risk that if [SPV21] is permitted to proceed with the appointment of new directors to the KEL Board without restraint ... that action will (or could) be taken by them in relation to KEL that could well be difficult to unwind after a successful appeal. ... Allowing Mr Chishty on to the board now and allowing [SPV21] to proceed with the appointments will give them a substantial benefit and an opportunity to take action affecting KEL's business, rights, relationships and reputation which could well be difficult to reverse after, and would cause material damage to [the Plaintiffs] despite, a successful appeal. ..."*

60. As an example of the kinds of prejudicial action that additional directors appointed by SPV21 might take, the Plaintiffs say that they could cause KEL to enter into related party contracts with companies owned, controlled or affiliated with Mr Chishty or restructure and/or break-up KEL in some way that could not be undone upon the conclusion of the proceedings. The Plaintiffs say that it is telling that SPV21 has refused to give undertakings not to take any such steps.

61. Secondly, the Plaintiffs rely on events in England regarding collection of the debt owed by KESP to AIML, which they allege must have been pursued on the basis of a decision by SPV21 and, by extension, Sage and Mr Chishty.

62. Thirdly, the Plaintiffs submit that if SPV21 were to follow through with its threat to seek the winding up of KESP, that would give rise to a real risk that the Government of Pakistan would terminate the original share purchase agreement from 2005 pursuant to Article 7.1(b)(v), which would endanger the Plaintiffs' investment in KEL over the last 20 years. The Plaintiffs contend that if that were to happen, then Mr Chishty, Sage and another of his companies involved would be unlikely to have sufficient funds to compensate the Plaintiffs.

63. Fourthly, the Plaintiffs assert that their interests in KESP and KEL have already been prejudiced:

63.1 the governance of KESP and KEL has been destabilised;

63.2 communications with regulators in Pakistan have become contested;

63.3 independent decision-making at board level has been impaired by the assertion of one-sided rights; and

63.4 external parties, including financiers and counterparties, have raised questions about transparency and governance integrity.

64. Fifthly, Mr Farooki says that in the absence of an injunction, Mr Chishty, through Sage and SPV21, will be given free rein to stack KEL's board of directors in its favour and to take or to influence strategic decisions despite SPV21's right to do so being in dispute. He argues that such steps would not be easily reversible and could result in binding commercial decisions, commitments to third parties, or the implementation of a strategic direction that the Plaintiffs cannot unwind.

F.3 Balance of convenience

65. The Plaintiffs contend that, if it is necessary to consider the balance of convenience, then that balance comes down firmly in favour of granting an interim injunction. They submit that SPV21 has failed to identify any prejudice should an interim injunction be granted.

66. The Plaintiffs dispute SPV21's argument that it would suffer prejudice as a result of being unable to exercise its contractual right under the KESP SHA to tender nominees as directors of KEL. The Plaintiffs assert that KEL has had operational successes, which Mr Farooki describes, and that SPV21 has itself taken or threatened to take actions that would destroy SPV21's ability to appoint directors to KEL, which is inconsistent with its stated desire to do so. The Plaintiffs say that SPV21 has not identified any other potential prejudice.

67. Mr Quirk submits that SPV21 has not identified any different actions that KEL would take if SPV21 were able to nominate two additional directors, which he says supports the Plaintiffs' argument that SPV21 will not suffer any form of prejudice if an injunction is granted.

68. An injunction would maintain the status quo, according to the Plaintiffs. They submit that SPV21 and the Plaintiffs currently each have three nominees on the Board of KEL and there are three vacant directorships reserved for KESP nominees, so there is parity on the Board preventing either party from having control; the Board has a sufficient number of directors to ensure that there is a quorum at meetings and that it is able to function; and the existing board arrangements have served the parties well since the Plaintiffs obtained the injunction in Pakistan.

F.4 Delay in seeking injunctive relief?

69. The Plaintiffs dispute that they have been guilty of delay in seeking an injunction from the Grand Court or that they have come to court with unclean hands. They rely on the fact that they sought and obtained an *ex parte* injunction in Pakistan within days of learning of Sage's intention to appoint Mr Chishty, Sameer Chishty and Mr Baur as directors of KESP and/or KEL to rebut SPV21's complaint of delay.

70. Mr Farooki seeks to justify applying to the High Court in Pakistan instead of the Grand Court or the High Court in England, despite the clear wording of clause 25.2 of the KESP SHA, on the basis of *"[the] large number of parties – including a listed company incorporated in Pakistan, regulators within Pakistan and the Government of Pakistan itself"*, as well as an alleged desire to avoid *"the proceedings [being] fragmented across many jurisdictions."*

71. The Plaintiffs assert that they have progressed the various applications diligently notwithstanding that they may incur wasted costs if their various appeals are successful.

F.5 Do the Plaintiffs have unclean hands?

72. The Plaintiffs argue that there is no evidence that they have acted dishonestly, improperly or unconscionably, and SPV21's only complaint appears to be that the Plaintiffs breached the terms of clause 25.2 of the KESP SHA by commencing proceedings in Pakistan. The Plaintiffs contend that they did so *"in good faith and with legitimate justification in the context of the parties' wider dispute"*.

73. The Plaintiffs submit that they are not seeking to duplicate the interim injunction granted in Pakistan in that the relief they now seek from the Grand Court is intended to be *"back-to-back"* relief. They explain that by this they mean that the injunction from the Grand Court is intended to become effective upon its recognition by the High Court of Sindh, and the discontinuation by the Plaintiffs of the proceedings in Pakistan, as contemplated in Justice Segal's Order dated 16 August 2023. The Plaintiffs seek to justify this approach as necessary and pragmatic to ensure that the Plaintiffs do not have overlapping equitable relief from different courts whilst avoiding any window without an injunction in place to preserve the position.

G. SPV21's submissions

G.1 Serious issue to be tried

74. SPV21 disputes that there is a serious issue to be tried on the question whether SPV21 has breached clause 9.4 of the KESP SHA by facilitating a change of control from AIML or another Abraaj group company as a result of the transaction with Sage. SPV21's position is that any change of control is the result of that transaction, by which Sage obtained control of the Voting Share, not as the result of anything done by SPV21. SPV21 is not a party to that transaction and did not participate in AIML's application to the Grand Court for sanction to conclude the transaction. Any change of control in favour of Sage is the responsibility of AIML, not of SPV21.

75. In addition, SPV21 relies on Mr McDonald's evidence, as sole director of SPV21, that neither he nor SPV21 had any involvement in the Sage transaction and that they both adopted a neutral position at all times.

76. More significantly, SPV21 submits that the Plaintiffs are focussing on the wrong issue in arguing that there is a serious issue to be tried regarding breach of clause 9.4 of the KESP SHA. SPV21 contends that, based upon Justice Mangatal's summary of the principles in *Xie Zhikun v XiO GP Ltd*, the correct question is whether there is a serious issue to be tried that the Plaintiffs will obtain the final injunction at trial that they are seeking in these proceedings.

77. SPV21 complains that the scope of the injunction sought by the Plaintiffs goes much wider than protection against an alleged breach of clause 9.4 of the KESP SHA in that it seeks to restrain SPV21 from exercising its separate contractual right in clause 5.7 of the KESP SHA to appoint its nominees as directors of KEL. Mr Chapman argues that SPV21's right enshrined in clause 5.7 is independent of, and is not contingent upon or otherwise predicated on, clause 9.4 or compliance with that clause. He adopts the confirmation by Lord Leggatt at paragraph 52 of *Broad Idea International Ltd & Anor. v. Cho Kwai Chee* [2021] UKPC 24 of Lord Diplock's earlier statement in *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corpn Ltd* [1981] AC 909 at 979G-H that an injunction may only be granted to protect a legal or equitable right. He says that the Plaintiffs are not seeking an injunction to protect the Plaintiffs' rights but to grant them additional rights, which is inappropriate.

78. SPV21 argues that, despite being minority shareholders in KESP, the Plaintiffs are seeking prohibitory and mandatory injunctions which effectively give the Plaintiffs the right to dictate who

SPV21 may nominate as directors of KEL and thereby how and by whom SPV21 is run, where there is no obvious source for such a right. Mr Chapman says that the purported reason given by the Plaintiffs for this far-reaching relief is to prevent the possibility of unsubstantiated damage being done to them in the future, but there is no credible or coherent evidence that the Plaintiffs would or could suffer any such damage.

79. The result of this, Mr Chapman argues, is that there is no serious issue to be tried that the Plaintiffs would obtain final injunctive relief at trial of the kind sought, which goes far beyond the Plaintiffs' legal or equitable rights.

80. Separately, Mr Chapman criticises the form of the injunction sought by the Plaintiffs on the grounds that:

80.1 it would leave KESP in permanent paralysis as a result of the restrictions sought on SPV21's ability to appoint directors and the limitations on what SPV21 is permitted to do;

80.2 many of the specific provisions are framed in mandatory form, without the Plaintiffs meeting the burden necessary for a mandatory injunction; and

80.3 it offends the certainty principle, in that it is not framed in sufficiently clear and unambiguous language to enable SPV21 to know exactly what it can and cannot do as a result.

Mr Chapman therefore says that the court could not grant such injunctions at trial and it cannot and should not grant them on an interim basis now.

G.2 The Plaintiffs will not suffer any loss or damage

81. SPV21 says that the crux of the Plaintiffs' purported claim that they are likely to suffer loss and damage is the assertions by Mr Mallon that:

81.1 if not restrained, SPV21 will *"immediately appoint Mr Chishty and Mr Baur (and/or persons connected with (and under the influence of or controlled by) Mr Chishty) to the Board of KEL"*; and

81.2 upon being appointed Mr Chishty *"could use his influence to implement changes that could severely harm the operation of KEL and the [Plaintiffs'] interests therein"*.

SPV21 summarises the Plaintiff's position as amounting to seeking *quia timet* injunctive relief because of a purported fear that SPV21's nominees will act in a way to cause destruction in value to

KEL and thereby devalue the Plaintiffs' investment in KEL via its shareholding in KESP. SPV21 says that is not sufficient – there must be evidence that the Defendant has threatened to do the wrongful act in order to justify the grant of a *quia timet* injunction. There is no such threat of any wrongful act by SPV21.

82. SPV21's overarching response is that action of this kind would obviously be contrary to SPV21's own commercial interests as the majority shareholder in KESP – any damage to the value of KESP would proportionally affect SPV21 and Sage as well. It is therefore not credible that SPV21 would behave in such a way.

83. In more detail, SPV21 dismisses the Plaintiffs' purported fear that it will suffer loss and damage as being illogical and fantastical in a number of respects:

83.1 Any nomination of directors to KEL by SPV21 will be subject to approval of KEL's existing Board. The current composition of KEL's Board is:

(a) the CEO of KEL (occupying one of the positions otherwise available to SPV21), who is independent of SPV21;

(b) two persons nominated by SPV21;

(c) three persons nominated by the Plaintiffs;

(d) three directors nominated by the Government of Pakistan; and

(e) an independent director.

Any approval of SPV21's nominees as directors would therefore require the approval of a majority of KEL's directors independent of SPV21.

83.2 Even if the nominations of Mr Chishty and Mr Baur were to be approved, SPV21 would still only have four directors out of thirteen on KEL's Board (assuming the Plaintiffs appoint an additional director to fill their currently vacant seat on the Board). Mr Chishty and SPV21's other nominees would always need support from at least three other non-SPV21 nominated appointees to be able to implement any changes to the operation or management of KEL.

83.3 Mr Farooki asserts that the Securities and Exchange Commission of Pakistan has placed a prohibition on any changes to the board of KEL. If correct, then that:

(a) undermines the need for any injunction at all; and

(b) adds a layer of independent oversight into the approval process for the appointment of any directors to KEL who were to be nominated by SPV21.

G.3 No irremediable harm if injunction refused

84. Relying on the same arguments as to loss and damage, SPV21 contends that the Plaintiffs will not suffer any irremediable harm if an injunction is refused. SPV21 draws my attention to paragraph [71] in the Court of Appeal's judgment on the Plaintiffs' application for leave to appeal to the Privy Council and for a stay, *IGCF SPV 21 Ltd v Al Jomaih Power Ltd* [2025] CICA (Civ) 001, where Sir Richard Field, JA, said:

> *"71. In my judgment … I think the risk of irrecoverable harm to the Appellants if there is no stay is decidedly on the small side because: (i) even with five directors representing the interest of SPV 21/Mr. Chishty on the KEL Board, there will be eight other directors having no connection with SPV 21 and Mr. Chishty; and (ii) the alleged scenario that Mr. Chishty would cause KEL to purchase coal from his coal interest to the detriment of KEL involves Mr. Chishty cutting off his nose to spite his face, which I think is rather unlikely."*

85. SPV21 goes on to say that, even if there is a risk that the Plaintiffs would suffer loss and damage, it would be easily compensatable by an award of damages. The Plaintiffs' interest derives from the value of KESP's shareholding in KEL, and the Plaintiffs' minority ownership of KESP. Given that KEL is a publicly listed company in Pakistan, any diminution in the value of KEL could be easily calculated by consideration of the market price for its shares at appropriate dates, and hence any diminution in the Plaintiffs' interest in KESP could equally easily be calculated. In answer to the Plaintiffs' concern that Sage, Mr Chishty and SPV21 might not be good for the money, SPV21 points out that it owns a majority share of KESP, which in turn owns a valuable interest in KEL.

G.4 Harm to SPV21

86. In contrast to the Plaintiffs' position, SPV21 asserts that it is suffering immediate and irremediable harm by being unable to exercise its contractual rights to nominate directors to KEL, and as a result it is being deprived of the opportunity to take part in Board discussions and Board decisions with a view to improving KEL's financial performance.

87. SPV21 stresses that it has a contractual right to take a full and proper part in those Board discussions and decisions and has been deprived of that right since 2022 as a result of the action taken by the Plaintiffs in breach of the KESP SHA to obtain the injunction in Pakistan. It says that this is precisely the kind of harm that is not compensatable by an award of damages against the Plaintiffs.

G.5 Balance of convenience

88. SPV21 argues that the court should already have rejected the Plaintiffs' position before the court reaches the question of balance of convenience, but if not, then any consideration of the balance of convenience should come down in favour of SPV21 for the reasons as I have already set out regarding the impact of an injunction on SPV21's rights to be involved in KEL's management and the absence of any likely loss to the Plaintiffs.

G.6 Equitable bars to relief

89. Finally, SPV21 submits that the court should refuse to exercise its discretion in the Plaintiffs' favour because of:

    89.1 the Plaintiffs' gross delay in issuing these proceedings and progressing the injunction summons – with details having been set out in Mr McDonald's evidence;

    89.2 the Plaintiffs' own breaches of the KESP SHA, including seeking and maintaining injunctive relief in Pakistan instead of before the Grand Court of the High Court of England as required by clause 25.2 of the KESP SHA; and

    89.3 the Plaintiffs' conduct in obtaining that injunction on an *ex parte* basis, founded on spurious and untrue allegations, which SPV21 therefore had no opportunity to rebut at the time and which the Plaintiffs have abandoned in these proceedings.

90. SPV21 argues that the Plaintiffs must be taken to have deliberately chosen to breach the terms of clause 25.2 of the KESP SHA by commencing proceedings and applying for an injunction in Pakistan, and points out that in September 2022, the Plaintiffs' Cayman Islands attorneys wrote complaining about the alleged change of control, indicating that the Plaintiffs must have been aware that they could bring proceedings before the Grand Court if they wished.

91. SPV21 also criticises the Plaintiffs for applying for the injunction in Pakistan on an *ex parte* basis, which it says is an aggravating feature. This appears to be borne out by the fact that SPV21's application to set aside the injunction was not listed until February 2024 and, even then, was adjourned.

92. SPV21 complains that the Plaintiffs have not made any promise or given any undertaking in these proceedings to purge their breach of contract, abandon the Pakistan proceedings and release the

injunction they wrongfully obtained in Pakistan. SPV21 queries why the Plaintiffs have suggested that the injunction is Pakistan should only be discharged once any injunction granted by the Grand Court has been recognised in Pakistan. SPV21 says there is no good reason why an injunction granted by the Grand Court, which would immediately be binding on SPV21, would not be sufficient and would enable the Plaintiffs to take steps to end their continuing breach of contract. SPV21 suggests that the reality is that the Plaintiffs want to retain the Pakistan injunction in place for as long as possible because they believe it gives them some strategic advantage.

93. SPV21 contends that the only reason that the Plaintiffs can give for the delay in commencing and progressing the current proceedings for an injunction is that *"they were busy acting in breach of contract – the very contract they seek to rely upon in the present proceedings – in bringing proceedings in Pakistan and then in trying to persuade the Cayman Courts that clause 25.2 does not mean what it says."* It is totally without merit for the Plaintiffs to attempt to rely on their own breach of contract as an exculpatory reason for their delay, says SPV21.

H. Discussion and decision

H.1 Serious issue to be tried

94. Notwithstanding SPV21's argument that it was not a party to the transaction between AIML and Sage and that it took a neutral position, in my judgment there is a serious issue to be tried whether SPV21 may have been in breach of clause 9.4 of the KESP SHA in facilitating the change of control to Sage.

95. I bear in mind in expressing that view that it is a relatively low bar for the Plaintiffs to meet and that my conclusion implies that I do not wholeheartedly accept the evidence of Mr McDonald. I stress that, at this stage, I am not making any concluded findings. However, Mr Quirk has shown me contemporaneous documents that could support a finding that SPV21 did facilitate the completion of the Sage transaction by issuing documents required for the transaction to go forwards. Applying the appropriate low bar, I consider that these documents sufficiently demonstrate that there is a serious issue to be tried on this question. In particular:

    95.1 The definition of *"Finance Documents"* in the Share and Asset Sale Agreement between AIML and Sage includes *"Charges"* and a *"Pledge"*, which in turn are defined to include a form of charge over SPV21's shares and a negative pledge to be given by SPV21 in favour of AIML.

95.2 Clause 2(b)(ii) and (iii) of Schedule 1 to the Share and Asset Sale Agreement required Sage to obtain the executed charge over SPV21's shares and the negative pledge by SPV21 and to deliver them to AIML at completion.

95.3 SPV21 was not a party to the charge over its shares, but the form of charge required SPV21 to provide certain documents to enable the charge to be executed, including a memorandum signed by SPV21's director that the charge was endorsed on SPV21's Register of Members, an executed notice of charge and an executed letter of undertaking and confirmation, again to be signed by SPV21's director, and all in the form annexed to the form of charge.

95.4 Whilst there is no copy of the negative pledge in the materials before me, equally there is no suggestion that it was not provided by SPV21.

96. Whether or not SPV21 provided the documents required, whether it thereby facilitated or did not prevent a *"change of Control"*, and whether that amounts to a breach of clause 9.4 of the KESP SHA are issues that need to be determined on the basis of evidence, cross-examination and argument as necessary. They are thus paradigm examples of a serious issue to be tried.

97. However, I agree with Mr Chapman that that is not the question that the court must address when considering whether there is a serious issue to be tried in the context of determining whether or not to grant an interim injunction. As Justice Mangatal indicated in *Zhikun v XiO GP Ltd*, the correct question is whether there is a serious issue to be tried that the plaintiff will obtain the relief that it is seeking in the action. It is not enough to focus on only one aspect of the claim that is intended to be advanced, the court has to consider the claim overall. For example, if the plaintiff has a strong case on breach but no case at all that the breach had any causative effect, such that the claim would be bound to fail at trial, the court would not conclude that there is a serious issue to be tried on breach and grant an interim injunction. The court would have to consider also the question of causation, conclude that the claim is bound to fail for lack of causation, and decline to grant any interim injunction for that reason. Otherwise, the court would be taking a blinkered approach and would be granting an interim injunction in circumstances where it would be bound subsequently to refuse to grant a permanent injunction following a trial of all issues. That would not be a just approach.

98. In this case, the potential breach of clause 9.4 of the KESP SHA is only one step on the path towards the injunctive relief that the Plaintiffs are seeking to obtain. It is necessary to look in detail at the relief that is sought by the Plaintiffs and to consider, as SPV21 invites me to do, whether there is a

serious issue that the court would grant a permanent injunction at trial in the terms sought or in broadly similar terms.

99. I agree with Mr Chapman's primary submission that the orders sought go a long way beyond what would be appropriate as a remedy for any breach by SPV21 of clause 9.4 of the KESP SHA that might be proved and impermissibly stray into granting the Plaintiffs additional rights which are not to be found within the KESP SHA.

100. At a practical level, I have looked carefully at the way in which the Statement of Claim and the interim order that I am being asked to make have been drafted. I agree with Mr Chapman that there are real problems with the scope of the orders sought, both in terms of drafting, but, more importantly, in the ability of the court to enforce any orders that were to be made in the terms proposed. One example is paragraph 51.4 in the Statement of Claim, replicated in paragraph 1.4 of the summons for an interim injunction. The Plaintiffs seek an order:

> *"Directing IGCF SPV 21 forthwith to cease to permit itself to be Controlled by Sage and/or Shaheryar Chishty, whether directly or indirectly."*

I simply have no idea how that would be achieved in practice, in other words, what SPV21 is meant to do or not to do in order to comply. I have no idea and do not understand how the court could police that order to make it effective. There are similar difficulties with their scope, meaning and enforceability of the other paragraphs in the relief sought.

101. I have tried to consider whether there is an irreducible minimum that might be ordered by way of final injunction, for example, if I were to limit the orders to essentially what is in paragraph 51.1 of the Statement of Claim and paragraph 1.1 of the summons, namely:

> *"Restraining SPV21 from implementing and/or acting on the instructions of Sage and/or Mr Chisty, or their agents, or associates, or causing or procuring the same to occur."*

Even this wording, in my judgment, would be unworkable. For example, what would happen if the instructions that were given to SPV21 by Sage were clearly in SPV21's best interests, or in the best interests of KESP or KEL? An order in the terms sought by the Plaintiffs would require SPV21's director not to accede to such instructions and arguably to be in breach of his or her fiduciary duties, or to require SPV21's nominated directors at KESP or KEL to act in breach of their fiduciary duties to those companies.

102. In my view, to be workable, any order would have to be caveated to allow for that and other reasonable possibilities, and it seems to me that it would be likely to end up being so qualified that there would be nothing of real substance that would be left.

103. Accordingly, I am not satisfied that there is a serious issue to be tried that the Plaintiffs will achieve the relief which they are seeking in these proceedings.

H.2 Likelihood of uncompensatable loss or damage to the Plaintiffs

104. I accept SPV21's case that it is difficult to see how SPV21 could actually cause any damage to the Plaintiff's interests in the way that the Plaintiffs seek to argue. If I do not order an injunction, and the Plaintiffs comply with the anti-suit injunction that has been made by Justice Segal against them, then they should promptly obtain the discharge of the injunction and withdraw the Pakistan proceedings.

105. Once that happens, SPV21 will no longer be restrained from exercising its contractual right to appoint additional directors to KEL. The net result of that will be that SPV21 will be permitted to appoint two additional directors to KEL, bringing its quota on the board of KEL from two to four directors. The Plaintiffs also have four directors on KEL's Board, or are entitled to four directors, and there are five independent directors.

106. I am entitled to conclude that all directors, but in particular the five independent directors, will exercise their judgment in the best interests of KEL, according to their fiduciary duty to KEL. Accordingly, Mr Chapman is right to argue that neither Sage nor Mr Chishty are realistically going to be able to control the way in which KEL carries on its business and will only be able to influence its management to the extent that at least three other directors agree that their proposals are in KEL's best interests. Pursuing KEL's best interests may involve them voting with SPV21's nominees or it may involve them voting with the Plaintiffs' nominees depending on the question that the Board has to resolve. It may well be the case that all directors agree on a particular way forward. But it certainly does not seem to me that Sage and Mr Chishty, as a result of being able to nominate four members of KEL's Board out of thirteen in total, are going to be able to drive through decisions that they want KEL to reach against the wishes of, first of all, the Plaintiffs' nominated directors and secondly the five independent directors. Accordingly, I cannot see how Mr Chishty will be able to stack KEL's Board of Directors in his favour, as Mr Farooki asserts. For the same reason, I cannot see that there is any real risk of damage to the Plaintiffs' interests that will be caused by refusing the injunction sought.

107. Further, I agree with Mr Chapman that, to the extent that the Plaintiffs were to suffer any damage to their interests in KEL, then that damage should be easily quantifiable as a result of KEL being a publicly listed company in Pakistan, and would therefore be compensatable by an award of damages.

H.3 Likelihood of uncompensatable loss or damage to SPV21

108. I consider it is less clear whether or not SPV21 is likely to suffer uncompensatable damage if I were to grant an injunction. SPV21's submission is superficially attractive that an injunction would have the effect that it would be unable fully to involve itself in management decisions within KEL, that it is very difficult to predict what kind of hypothetical issues affecting KEL might arise in the future on which SPV21 or its nominated directors of KEL would want to have input, and that attempting to quantify any resulting damage to SPV21 would be extremely difficult.

109. However, SPV21 does currently have two directors on KEL's board out of the current complement of ten, and so it is able to provide input and influence and to exercise decision-making powers to that extent. If I do not grant the Plaintiffs the injunction they seek, SPV21 would be able to increase its number of nominated directors of KEL from two to four, and so would have increased voting power, but the Plaintiffs would also be entitled to increase their nominated directors from three to four. The ending position would therefore not be significantly different from the current arrangement in that SPV21 would have four out of thirteen directors instead of two out of ten – effectively SPV21 would have one extra vote on any board decision.

110. In those circumstances, SPV21 has not satisfied me that it is likely to suffer uncompensatable loss if I were to grant an injunction in the Plaintiffs' favour.

H.4 Balance of convenience

111. In light of my conclusions on uncompensatable loss on either side, the question of balance of convenience does not arise.

H.5 Delay and unclean hands

112. Finally, Mr Chapman raises the question of delay and unclean hands on the part of the Plaintiffs, albeit he addresses unclean hands first.

113. When I delivered my *ex tempore* judgment on 9 June 2025, I indicated that I was not convinced at that time that the combination of unclean hands and delay were so strongly and clearly against the Plaintiffs that I would dismiss the application on that basis alone. I said that I would wish to give some further thought to the strength of both of those issues, but there was insufficient time available on 9 June 2025 to reach a final conclusion on whether, on their own, they would justify refusing the relief that the Plaintiffs seek.

114. I have now had the additional time to consider these points, and I conclude that they do merit the dismissal of the Plaintiffs' summons as I now explain.

115. I start with the judgments in the English case of *Chappell v Times Newspapers Ltd* [1975] 1 W.L.R. 482. Megarry J (as he then was) said at 495A-D:

> *"There is a general principle which lies enshrined in the maxim 'He who seeks equity must do equity.' That maxim, like the other maxims of equity, is not to be construed or enforced as if it were a section in an Act of Parliament; but it expresses in concise form one approach made by the court when the discretionary remedy of an injunction is sought. If the plaintiff asks for an injunction to restrain a breach of contract to which he is a party, and he is seeking to uphold that contract in all its parts, he is, in relation to that contract, ready to do equity. If on the other hand he seeks the injunction but in the same breath is constrained to say that he is ready and willing himself to commit grave breaches of the contract at the behest of a body or person (whether his union or not) engaged in an active campaign of organising the repeated commission of such breaches, then it seems to me that the plaintiff cannot very well contend that in relation to that contract he is ready to do equity. One may leave on one side any technicalities of law or equity and simply say, in the language of childhood, that he is trying to have it both ways: he is saying 'You must not break our contract but I remain free to do so.'"*

116. This was echoed by all three judges in the Court of Appeal. Lord Denning MR, giving the first judgment, said at 502A-F:

> *"It has long been settled both at common law and in equity that in a contract where each has to do his part concurrently with the other, then if one party seeks relief, he must be ready and willing to do his part in it. You will find the common law so stated in* Smith's Leading Cases*, 13th ed. (1929) vol. 2, p. 10: notes to* Cutter v. Powell *(1795) 6 Term.Rep. 320. You will find the equity stated in* Measures Brothers Ltd. v. Measures *[1910] 2 Ch. 248 where Sir H. H. Cozens-Hardy M.R. said, at p. 254:*
>
> > *'I prefer to base my judgment upon the ground that the plaintiffs, who are seeking equitable relief by way of injunction, cannot obtain such relief unless they allege and prove that they have performed their part of the bargain hitherto and are ready and able also to perform their part in the future.'*
>
> *The principle was stated by Lord Radcliffe more recently in* Australian Hardwoods Pty. Ltd. v. Commissioner for Railways *[1961] 1 W.L.R. 425,432-433:*
>
> > *'... where the agreement is one which involves continuing or future acts to be performed by the plaintiff, he must fail unless he can show that he is ready and willing on his part to carry out those obligations, which are, in fact, part of the consideration for the undertaking of the defendant that the plaintiff seeks to have enforced.'*

> *In this case it seems to me impossible for any of the plaintiffs to say that he is ready and willing to perform his part of the contract when on the statement of his union, the National Graphical Association, (which he has never disavowed) he may be called upon, or other members of his union may be called upon, to take industrial action so as to bring great losses to their employers. Not being ready and willing to do their part, they cannot call on the employers to continue to employ them. They are seeking equity when they are not ready to do it themselves.*
>
> *This is enough to decide the case."*

117. Stephenson LJ added at 504E-G:

> *"Finally—and, I agree with Lord Denning M.R., decisively—the plaintiffs have not shown, as I think they must ... that they are able, ready and willing to carrying out their obligations under their contract with the defendants. ... Unless the plaintiffs show that ability, that readiness and that willingness, they are not willing to do equity, and are in effect saying, as the judge put it: 'You must not breach our contract, but I am free to do so.'"*

118. Lane LJ concluded at 506E-G:

> *"Finally, this being equitable relief which is sought, would it be equitable to grant it? The decision in* Measures Brothers Ltd. v. Measures *[1910] 2 Ch. 248, and the passages in the judgment of Cozens-Hardy M.R., at p. 254, make it plain that the burden is on the party seeking the relief to show that he deserves to get it. In this the plaintiffs in the present case have signally failed. Nothing said or done by them or on their behalf has dispelled the clear impression on my mind, at least, that they would, if required—and I quote the words of the union—'give full support, loyalty and co-operation' to the industrial action already resumed by other union members. Such action would perhaps be loyal to the union but certainly disloyal, to say the least, to their employers. It ill befits them in these circumstances to come to this court and ask for relief and particularly equitable relief. I agree entirely with Megarry J and I too would dismiss this appeal."*

119. There are many judgments of the Grand Court where the doctrine of clean hands has been raised. However, *Chappell v Times Newspapers Ltd* [1975] 1 W.L.R. 482 does not appear previously to have been cited in the Cayman Islands. Nevertheless, I have no hesitation in concluding that it represents the law of the Cayman Islands in that a contract breaker cannot at the same time seek an injunction to enforce performance of the contract by his counterparty – that is the antithesis of doing equity. I am supported in this view by the judgment of Justice Harre in *Cayman Arms (1982) Ltd v English Shoppe Ltd* [1990-91] CILR 299, which is entirely consistent with *Chappell*. Justice Harre stated at 321:

> *"However, I have found that the plaintiff was in breach of cl. 2, a fundamental term of the lease at the time when his claim for specific performance was made. I would see no obstacle other than that to a decree of specific performance. But, as counsel for the plaintiff observed, the 'unclean hands' defence to the claim for specific performance depends on whether the plaintiff is found to be in breach of the lease. I have so found. The plaintiff remained in breach at the date of the writ and in my judgment his claim for specific performance must be dismissed."*

120. The Plaintiffs deliberately chose to commence proceedings in Pakistan, in clear breach of clause 25.2 of the KESP SHA. They have taken no steps to discontinue those proceedings and to discharge the *ex*

parte injunction that they obtained despite both Justice Segal and the Court of Appeal concluding that they had acted in breach. As noted earlier, the Plaintiffs' appeal to the Privy Council does not challenge those findings of breach, it is founded on the different argument that, notwithstanding the Plaintiffs' breach, SPV21 subsequently submitted to the jurisdiction of the High Court of Pakistan by applying to set aside the injunction and to stay the proceedings.

121. Mr Farooki's explanation for the Plaintiffs commencing proceedings in Pakistan, namely that there may parties and that the Plaintiffs wanted to avoid the proceedings being fragmented across different jurisdictions is not a justification for the Plaintiffs' action but in fact aggravates it. The inference to be drawn from what Mr Farooki says is that the Plaintiffs consciously considered whether they should comply with clause 25.2 of the KESP SHA and bring proceedings in the Cayman Islands or in England & Wales and made a deliberate decision not to, and to sue in Pakistan instead.

122. In my judgment, the Plaintiffs' position is analogous to that of the union members in *Chappell* who wished to be free to breach the terms of their contract whilst at the same time holding their employers to that contract. As Megarry J and the English Court of Appeal indicated, the idea that *'You must not breach our contract, but I am free to do so.'* is not equity. Their position is not excused by the fact that the Plaintiffs persuaded Justice Segal and then the Court of Appeal to grant them stays in respect of the anti-suit injunction ordered by Justice Segal.

123. I would therefore have refused to grant the Plaintiffs the interim injunction they seek as a matter of the exercise of my discretion, on the ground that they do not come to the court with clean hands, if I had not already concluded that I should dismiss the summons.

124. Secondly, Mr Chapman relies on the Plaintiffs' alleged delay in bringing the proceedings before the Grand Court. Mr Chapman submits that the Plaintiffs have known since at least 1 February 2023, when Justice Segal granted the interim anti-suit injunction, that they might have to concede the Pakistan injunction at any time. Nevertheless, the Plaintiffs did nothing to commence these proceedings for an injunction from the Grand Court until 26 February 2025, more than two years later. SPV21 draws my attention to the procedural chronology of events in the Cayman Islands and submits that the Plaintiffs' conduct demonstrates that they are simply attempting to hold onto the fruits of their initial misconduct in Pakistan.

125. The chronology and the evidence of Mr McDonald indicates that during 2024 the parties were in discussion with the Court of Appeal regarding the Plaintiffs' application for a stay. Over that period, the Plaintiffs stated on multiple occasions that if a stay were not granted, they would be ready to commence proceedings before the Grand Court within 7-14 days for an injunction to replace the Pakistan injunction. As already recorded in this judgment, in fact the Plaintiffs did not commence these proceedings until 26 February 2025, having given an undertaking to the Court of Appeal to do so *"without delay"*.

126. In my judgment, this represents substantial unexplained or unjustified delay in commencing the current proceedings. However, the question of delay is complicated by the existence of the Pakistan injunction, which has had the practical effect that the status quo as at November 2022 has been maintained in the interim, and the fact that both Justice Segal and the Court of Appeal granted stays of the anti-suit injunction. In those circumstances, I do not consider that the Plaintiffs' delay in commencing the current action is so plain and obvious that it is sufficient, on its own, to justify refusing to give the Plaintiffs the relief that they seek. However, it is significant in the overall balancing exercise and weighs in favour of refusing to exercise my discretion to grant the requested interim injunction.

I. Conclusion

127. In conclusion, I dismiss the Plaintiffs' summons for an interim injunction for the following reasons:

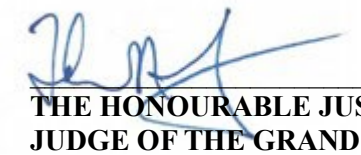
127.1 There is no serious issue to be tried that the Plaintiffs will obtain at trial the relief that they seek in these proceedings, namely a permanent injunction restraining SPV21 from taking or requiring SPV21 to take action as set out in paragraph 54 of the Statement of Claim. This is because the terms of the injunction sought are overbroad in scope, unclear in meaning and present real difficulties regarding enforcement.

127.2 I am not satisfied that the Plaintiffs are likely to suffer uncompensatable damage if an injunction is refused. To the contrary, it appears very unlikely that they will suffer any damage and, if they do, it should be easy to quantify. There are no apparent difficulties with enforcement against SPV21 of any liability that might arise.

127.3 The Plaintiffs are deliberate contract breakers, seeking to hold SPV21 to the same contract they have themselves breached. The Plaintiffs have come to the court with unclean hands, disentitling them to the equitable relief that they seek.

127.4 Whilst insufficient on its own to justify refusing relief, the Plaintiffs have been guilty of significant delay in seeking relief, which is not justified by their reliance on the existence of the Pakistan injunction that they obtained as a result of their deliberate breach of contract. This provides an additional supporting reason to refuse to exercise the court's discretion in the Plaintiffs' favour.

Dated 31 July 2025



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT