



# In The Supreme Court of Bermuda

COMMERCIAL COURT

COMPANIES (WINDING UP)

2024: No 265

IN THE MATTER OF AFINITI LTD (IN LIQUIDATION)

IN THE MATTER OF THE COMPANIES ACT 1981

**BETWEEN:**                      **VCP CAPITAL MARKETS LLC**                      **APPLICANT**

**-AND-**

**(1) MUHAMMAD ZIAULLAH CHISHTI**

**(2) SARAH JENNIFER POBERESKIN**

**RESPONDENTS**

*Ex parte application by VCP Capital Markets LLC for worldwide Freezing Order against MC Chishti and SJ Pobereskin in aid of enforcement of costs award and applications for joinder and permission to serve out of the jurisdiction under RSC Order 11 rule 1 (c) and (m) and order for personal examination of MZ Chishti under RSC Order 48*

**MARTIN J**

**In Chambers**

**Dates of hearing: 17 and 19 September 2025**

**Date of Ruling: 22 September 2025**

*Appearances:*

*Claire van Overdijk KC and James Batten of Appleby (Bermuda) Limited for VCP Capital Markets LLC*

## RULING

### Introduction

1. This is an application made by VCP Capital Markets LLC (“VCP”) in relation to a costs award order made in its favour against Mr Chishti in a Ruling dated 10 June 2025 (paragraph 58 (iii)) (“the VCP Costs Award”)<sup>1</sup>.
2. This VCP Costs Award arose out of an application made to the Court last year for the grant of a sanction to the then Joint Provisional Liquidators of Afiniti Ltd (in liquidation) to enter into a compromise and sale of the enterprise assets of Afiniti Ltd to a new entity as a result of the insolvency of the company and its inability to service its debt burden to the company’s lenders (“the Secured Lenders”). VCP is the loan agent for the Secured Lenders and was awarded its costs of the sanction proceedings.
3. By the terms of the VCP Costs Award, Mr Chishti was ordered to make an interim payment of **US\$366,891.01** (“the Interim Order”) on account of his total liability which has not yet been the subject of a final taxation. VCP estimates the total amount recoverable under the VCP Costs Award will be at least **US\$428,039.59** plus interest. In addition, VCP seeks **US\$140,000** in enforcement costs. The total sum sought to be the subject of the injunction is therefore about **US\$570,502.19**.
4. Mr Chishti has failed to make any payment towards his costs liability to VCP and has not complied with the Interim Order. VCP has now applied to the Court for two further orders relating to the enforcement of the VCP Costs Award.
5. The first application is for a Freezing Order to restrain Mr Chishti from disposing of or reducing the value of his assets within the jurisdiction or elsewhere in the world below **US\$570,502.19**.
6. There are a number of factual grounds relied upon in support of the injunction. These relate to (i) the admittedly incomplete picture of Mr. Chishti’s financial affairs (ii) a pattern of Mr. Chishti’s failure to pay his debt obligations (iii) Mr. Chishti’s transfer of large amounts of liquid assets to his wife (Ms Pobereskin) at a time when Mr Chishti owes large amounts of money to third parties and (iv) the legal effect of certain specific transfers made by Mr. Chishti to his wife in the past.
7. It is said that these grounds taken together disclose solid evidence of an objective risk that unless restrained Mr. Chishti will continue to dispose of or transfer assets from his own name to his wife (or others) which will have the effect of putting them beyond the reach of his creditors. If not restrained from making further disposals of his assets, it is submitted that there is a clear risk that Mr. Chishti will seek to avoid his obligations to pay the VCP Costs Award made by this Court.
8. In aid of the injunction and the enforcement of the VCP Costs Award, VCP seeks an Order for the disclosure of the details of Mr. Chishti’s assets.

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<sup>1</sup> [2025] SC (Bda) 62 Civ

9. The second application is for leave to add Ms Sarah Pobereskin (Mr. Chishti's wife) as a necessary and proper party to the proceedings because she has received several very substantial gifts or transfers of cash from Mr. Chishti in the last three years.
10. It is said that one of these gifts have been used by Ms Pobereskin to further a joint plan between Mr. Chishti and Ms Pobereskin to obtain control of the TRG group of companies and that the monies transferred to Ms Pobereskin and the shares acquired by her in TRG Pakistan Ltd ("TRG-P") are in reality beneficially owned and controlled by Mr. Chishti.
11. It is also said that the same analysis may apply in relation to another large transfer of money made by Mr. Chishti to his wife to invest in a Caymanian company called Isbei Ltd.
12. Given the very unclear financial picture of Mr. Chishti's own financial affairs which, on VCP's analysis, appears to show that Mr. Chishti now has fewer assets in his own name than are available to meet his known obligations, it is submitted by VCP that it is necessary also to restrain Ms Pobereskin from disposing of certain assets until Mr. Chishti's liability to VCP is satisfied.
13. The third application is for permission to serve Ms Pobereskin out of the jurisdiction. The Rules of the Supreme Court 1985 ("the RSC") require the grant of permission to serve Ms Pobereskin out of the jurisdiction with the Orders adding Ms Pobereskin to the proceedings as a necessary and proper party and any Orders restraining her from disposing of specified property in her name, and so VCP also make applications for Orders in that regard.
14. The fourth application is for an Order that Mr. Chishti attend an oral examination before the Registrar of the Supreme Court to be examined on oath as to the nature, value and location of assets that Mr. Chishti has to assist in the enforcement of the costs award. Because Mr. Chishti is resident out of the jurisdiction, and the Order to attend an oral examination must be served personally on the examinee, permission to serve Mr. Chishti with the order for examination as to his means out of the jurisdiction is also sought.

### **Summary and Disposition**

15. For the reasons explained in the Ruling below, the Court is satisfied on the evidence contained in the affidavit of Mr Kennerth Burke dated 10 September 2025 and the materials exhibited thereto and the affidavit evidence of Mr Jerome Wilson dated 10 September 2025 and the materials exhibited thereto:
  - (i) there is solid evidence that unless restrained, there is a real risk that Mr. Chishti will dissipate his assets with the effect that they will be put beyond the reach of VCP in relation to the enforcement of the VCP Costs Award estimated to be not less than US\$570,502.19.
  - (ii) there is good reason to suppose (and therefore VCP has a good arguable case) that the shares in TRG-P acquired by Ms. Pobereskin with monies given to her by Mr. Chishti are in fact assets over which Mr. Chishti exercises control and in which he retains a

beneficial interest such that they can be required to meet Mr. Chishti's liability to VCP;

- (iii) Ms. Pobereskin is a necessary and proper party such that leave should be given to add Ms. Pobereskin as a party to these proceedings for the purposes of giving effect to the VCP Costs Award (including the Interim Order and any further sums that are awarded in VCP's favour on taxation as well as costs and interest in relation thereto);
- (iv) the balance of justice requires that an injunction should be granted in aid of execution of the VCP Costs Award (a) to prevent Mr. Chishti from transferring, disposing of or otherwise dissipating the value of his assets within the jurisdiction of Bermuda or elsewhere in the world save to the extent that the value of those assets exceeds the sum of US\$570,502.19 until payment of the VCP Costs Award or further Order of the Court and (b) to prevent Ms. Pobereskin from transferring, disposing of or otherwise dissipating the value of the TRG-P shares specified in the Order save to the extent that the value of those assets exceeds the sum of US\$570,502.19 until payment of the VCP Costs Award or further Order of the Court;
- (v) the balance of justice also requires that Mr. Chishti should give disclosure of the value and nature of his assets in the terms set out in the Order;
- (vi) that permission be granted to VCP (a) to add Ms. Pobereskin as a necessary and proper party to the proceedings for the purposes of the enforcement of the VCP Costs Award (b) to serve Ms Pobereskin with the Order joining her to the proceedings and the injunction Order described in (iv) (b) above out of the jurisdiction pursuant to RSC Order 11 Rules 1 (1) (c) and (m);
- (vii) that Mr. Chishti must attend for personal examination as to his means to satisfy the VCP Costs Award before the Registrar of the Supreme Court of Bermuda at 9.30 am on 5 November 2025;.
- (viii) that the Order for Mr. Chishti to attend for personal examination may be served upon Mr. Chishti out of the jurisdiction pursuant to RSC Order 11 Rule 1 (9).

### **Preliminary matters**

16. Following Mr. Chishti's failure to make payment of the Interim Order, VCP has spent the last several months undertaking an assessment of the publicly available information that relates to Mr. Chishti's financial affairs. It is necessarily incomplete and is based on historic information which may not be accurate at the present date, but it is the only information that is available to use as a starting point. Some information has only recently come to light, and this has been the impetus for VCP to make the present applications.
17. VCP submits that, until recently, VCP did not have sufficient evidence to meet the requirements for an application for injunctive relief, and that is the reason why the application has not been mounted until now. But it is submitted that the application is nonetheless urgent, and that the application was made on (very short) notice to Mr. Chishti's local attorneys. Mr.

Chishti's local attorneys have challenged the basis for the application in correspondence which was drawn to the Court's attention at the hearing, but Mr. Chishti's attorneys were not instructed to appear. No criticism is made against Mr. Chishti for deciding not to appear by counsel.

18. However, in the light of the information that has been presented, which is briefly evaluated in the reasons for the Court's decision below, the Court is satisfied that VCP was not in breach of its duty to make the application for injunctive promptly, and that it was justified in making the application on an urgent basis. This is because the VCP Costs Award was made on 10 June 2025, and the evidence that made the application possible only became available to VCP in September 2025.
19. In this decision the Court is not making any ultimate finding of fact or determination of the final merits of any of the factual matters which have been presented by VCP or precluding Mr. Chishti or Ms Pobereskin from challenging the accuracy of the information or the Court's conclusion that injunctive relief is justified on an interim basis.
20. The Court's task on this application was to evaluate whether VCP has demonstrated that there is solid evidence of a real risk of dissipation of assets and that justice requires the grant of an injunction to restrain Mr. Chishti and his wife Ms. Pobereskin from disposing of assets unless they exceed the value required to meet the VCP Costs Award. For the reasons explained, the Court is so satisfied on the evidence presented: but, as noted above, that evidence may be incomplete, and further information may justify the discharge or variation of the interim injunctions.
21. Therefore, either or both Mr. Chishti and Ms Pobereskin may apply to the Court to discharge the terms of the Orders made at the inter partes hearing of this application which has been listed for 9.30 am on 25 November 2025 in Commercial Court chambers. At that hearing the Court will consider whether the injunctions should be extended or varied or discharged.
22. In the meantime, the Court has ordered that Mr. Chishti attend to be examined on oath as to his means to satisfy the VCP Costs Award before the Registrar at 9.30 am on 5 November 2025 at the Registrar's chambers at the Commercial Court. This Order has been made pursuant to RSC Order 48.
23. The Order for an examination as to means is one to which any judgment creditor is entitled to apply as part of the ancillary mechanisms to enable a judgment creditor to decide what steps are available to be taken to satisfy the judgment debt. The Order for disclosure of information on the injunction Order has been modified to provide a schedule of information which Mr. Chishti is required to produce so that examination can proceed productively. Sufficient time has been provided to enable Mr. Chishti to gather and collate the information.
24. Usually, the disclosure of information of the type directed is made as part of the Order for examination, but it can also be made in aid of a Freezing Order. The Court has directed that the information must be provided as part of the Freezing Order so that Mr. Chishti is not required to make two separate disclosures in relation to two separate Orders.

## Mr Chishti's financial affairs

### *Known assets*

25. Mr. Burke exhibited a summary of Mr. Chishti's financial assets which was prepared by Mr Chishti in relation to arbitral proceedings in which Mr Chishti was involved. It shows that in 2018 Mr. Chishti stated that he had assets of US\$5,108,900 and liabilities of US\$5,228,000, i.e. a net deficit of US\$119,100<sup>2</sup>.
26. Since that date, VCP has identified a number of other statements by Mr. Chishti as to his assets and liabilities.
27. In December 2021, Mr Chishti redeemed 6,535,784 class A shares in The Resource Group International Ltd ("TRG-I") in return for US\$15,170,181.88 in cash and 981,314 common shares in a Bermuda company called Ibex Limited ("Ibex")<sup>3</sup>.
28. In January 2022, Mr. Chishti redeemed 7,204,904 Series B shares in TRG-I in return for US\$21,316,687 and 981,314 common shares in Ibex Ltd. In 2024 Mr. Chishti declared that he owned a total of 682,318 shares in Ibex. These shares are estimated to be worth approximately US\$20.5 million as at 5 September 2025<sup>4</sup>.
29. In August 2025, Mr Chishti said he owns 87,915,789 shares in TRG-P which are estimated to be worth US\$19.3 million<sup>5</sup>.
30. In August 2025 Mr. Chishti disclosed 23 different real property assets he holds in Pakistan, but which are not valued<sup>6</sup>.

### *Known liabilities*

31. In 2019, Mr. Chishti borrowed US\$7 million from JS Bank to pay an arbitral award of (approximately) US\$6.9 million in favour of Ms Spottiswoode (a former employee of Afiniti Ltd).
32. Mr. Chishti commenced proceedings in the Bermuda court (2023 No 162) for recovery of this sum under the terms of an Indemnity Agreement dated 1 January 2020 that he had entered into with Afiniti Ltd. In the course of those proceedings, in July 2023 Mr. Chishti deposed on oath that he was incurring legal expenses at the rate of a million US dollars a month<sup>7</sup>. It is unknown how extensive his outstanding obligations to his attorneys may be.
33. Mr. Chishti also has unpaid liabilities to the United States Internal Revenue Service of US\$10.3 million for the tax years 2018, 2019 and 2022. This implies a gross income of over US\$27 million for those years<sup>8</sup>.

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<sup>2</sup> Page 29 of exhibit to Burke 1.

<sup>3</sup> Pages 141-6 to exhibit to Burke 1.

<sup>4</sup> Paragraph 62 of Burke 1.

<sup>5</sup> Paragraph 57 of Burke 1.

<sup>6</sup> Paragraph 69 of Burke 1.

<sup>7</sup> Pages 79-98 of exhibit to Burke 1.

<sup>8</sup> Paragraphs 70-2 of Burke 1.

### *The JAMS Arbitration*

34. Reference is made in Mr Burke's affidavit to a loan facility entered into by Mr. Chishti in 2019 for US\$7 million with JS Bank which was taken out to pay an obligation in relation to the Spottiswoode arbitration proceedings. After a default in payment of the loan to JS Bank, Mr. Chishti pledged his shares in TRG-P in 2023.
35. TRG-I alleged that this pledge was in breach of a negative pledge agreement that Mr. Chishti had entered into with TRG-I and TRG-I commenced arbitration proceedings under the relevant agreement for relief. In the JAMS arbitration proceeding #542000846 between TRG-I and Mr Chishti, the arbitrator concluded that this pledge was in breach of a negative pledge obligation to TRG-I. In April 2025 the arbitrator awarded costs to TRG-I in the amount of approximately US\$9 million against Mr. Chishti.
36. In addition, the arbitrator also concluded that certain shares in TRG-P that had been acquired by Ms Pobereskin with monies given to her by Mr. Chishti were (as a matter of New York Law) to be treated as being under the beneficial ownership and control of Mr. Chishti.
37. On 18 June 2025, the United States District Court of the Southern District of New York confirmed both the arbitral award and the holding of the arbitrator as to Mr. Chishti's ownership and control of the shares held in TRG-P that were purchased with monies given by him to Ms Pobereskin<sup>9</sup>.

### *Transfers of assets by Mr. Chishti*

38. Over the last three years Mr. Chishti has transferred to Ms. Pobereskin approximately US\$43 million in cash transfers. These were:
  - (i) US\$3 million in April 2022 for Ms Pobereskin to purchase shares in her employer company.
  - (ii) US\$25 million in September 2023 to purchase shares in TRG-P.
  - (iii) US\$15 million in 2023 (the date is uncertain) for an investment in a company called Isbei Ltd.
39. In January 2022 Mr. Chishti either gave or lent US\$2 million to his mother so that she could invest in shares in TRG-P because (according to Mr. Chishti) she wanted to influence the vote on election of the directors to TRG-P's board.
40. Mr Chishti and Ms Probereskin have been examined in other arbitration proceedings about these transfers. They maintained that these transfers were gifts and that Ms Probereskin was free to use those monies as she chose and she says she used the funds to make those investments in her own name<sup>10</sup>. These statements were made under oath.

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<sup>9</sup> Page 854 of exhibit to Burke 1.

<sup>10</sup> See pages 529-30 and 650 of Burke 1.

### *Mr. Chishti's assets and liabilities*

41. The result of the comparison between Mr. Chishti's various statements about his financial affairs reveals known assets of US\$75 million comprising (i) a holding of shares in Ibex Ltd worth about US\$20.5 million (ii) a holding of shares in TRG-P worth about US\$19 million (iii) a property portfolio in Pakistan the value of which is unknown (iv) residual cash or liquid assets of (a) something more than US\$15 million which resulted from the sale of the class A preference shares in TRG-I (b) something more than US\$21 million which resulted from the sale of the class B preference shares in TRG-I and (v) an unknown amount of cash or liquid assets from other sources (inferred from the amount of the tax liability to the IRS).
42. Against this, Mr. Chishti has known liabilities of US\$26 million comprising (i) US\$10 million in unpaid taxes (ii) a US\$7 million loan obligation to JS Bank (iii) US\$9 million due to TRG-I in relation to the JAMS Arbitration. (It is assumed that Mr. Chishti has paid the liability due in respect of the Spottiswoode arbitration.) The TRG-P shares are subject to a pledge to JS Bank and are subject to injunctions which restrain his disposal of the TRG-P shares in his name.
43. From the cash assets described above of US\$36 million (i.e. leaving aside the values attributed to the shares in Ibex and TRG-P) account must be taken of the gifts of US\$ 45 million given to Ms Poberskin and Mr. Chishti's mother.
44. From this necessarily high level and rough and ready assessment of the available evidence, it reasonable to deduce that most of the available cash that Mr. Chishti had at his disposal from these sources has been transferred in the gifts he has given to Ms Pobereskin and his mother.

### **Good arguable case**

45. In order to obtain a Freezing Order over Mr. Chishti's assets pending enforcement of the VCP Costs Award, VCP must establish that there is a good arguable case to the relief sought. In a case where a judgment or order has been made for the payment of a quantified liability in costs, that requirement is readily satisfied<sup>11</sup>. There is no outstanding appeal against the VCP Costs Award, and there has been no application for a stay pending appeal. Therefore, the Interim Order represents a presently enforceable debt.
46. In addition, the likely existence of the potential liability for the additional amounts claimed is also supported by the fact that, in setting the amount for the Interim Order, the Court allowed 60% of the total amount of the estimated liability of taxed costs. There is also a good arguable case that Mr. Chishti will be liable for the additional amounts claimed by VCP.

### **Existence of Assets**

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<sup>11</sup> **Celtic Resources Holdings v Arduina Holding BV** [2006] EWHC 2553 at paragraph 20 per Clarke J (as he then was).



47. It is well established that before a Freezing Order will be granted the applicant must show that there are available assets upon which the Freezing Order will bite<sup>12</sup>.
48. From the detailed evidence gathered by VCP, it is clear that there are assets against which the injunction may bite. There do not appear to be any assets in the jurisdiction of Bermuda, except for a reference to a Bermuda registered company called The Resource Group Pakistan Ltd, which appears to be a mistaken reference to TRG-P. However, there are clearly substantial assets located outside the jurisdiction.

### **Real risk of dissipation**

49. In order to justify the grant of a Freezing Order, VCP must show on solid evidence that there is a real risk of dissipation<sup>13</sup> of assets by Mr. Chishti.
50. The risk of dissipation is put on the following grounds:
- (a) Mr. Chishti's assets are (largely) shares and cash which are fungible and easily disposable;
  - (b) Mr. Chishti is resident outside the jurisdiction and there are no known assets within the jurisdiction against which the VCP Costs Award can readily be enforced;
  - (c) Mr. Chishti has substantial debts some of which have gone unpaid for some time (e.g. the IRS tax debt and the loan from JS Bank) including the present liability to VCP in respect of costs (as well as the costs liability to the Joint Liquidators of the sanction proceedings);
  - (d) Mr. Chishti pledged his shares in TRG-P to secure the repayment of the loan from JS Bank in breach of his obligation not to do so, which represents a deliberate failure to honour his contractual obligations;
  - (e) Mr. Chishti transferred substantial amounts of cash to his wife at a time that he (a) had already incurred substantial debts but had not paid them (b) was embarking on substantial litigation and must have appreciated that he may (if unsuccessful) be liable to substantial liabilities in costs.
51. It is also established that VCP does not need to demonstrate a nefarious intent or deliberate intention on the part of Mr. Chishti to put his assets beyond the reach of his creditors. It is only necessary to show that on an objective assessment of the facts that a future judgment would not be met because of an unjustifiable dissipation of assets<sup>14</sup>.

### **The Court's assessment of the risk of dissipation**

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<sup>12</sup> **Locobail International Finance Limited v Manios et al** [1988] Bda LR 26 at page 7 per da Costa JA applying **Third Chandris Shipping Corp v Unimarine SA** [1979] QB 645.

<sup>13</sup> **Locobail** (supra) at pages 13-4 per da Costa JA applying **The Niedersachsen** [1983] 1 WLR 1412 at 1422 e per Kerr LJ and *Gee on Commercial Injunctions* 7<sup>th</sup> Ed (120-041).

<sup>14</sup> **Holyoake v Candy** [2018] Ch 297 at paragraph 34 per Gloster JA.

52. Applying the principles referred to in the cases cited in support of the various elements that VCP relies upon above, the Court accepts that VCP has established on the facts that there is solid evidence of a real risk of dissipation of assets by Mr. Chishti unless he is restrained from doing so. The Court's reasons are set out below.
53. Mr Chishti is a very rich man. The Court does not lightly interfere with the rights of individuals to arrange their financial affairs to suit their lifestyle and means, and there is nothing inherently wrong with a rich man or woman disposing of his or her assets as he or she pleases, and there is nothing necessarily suspicious about making large gifts to a spouse or relative or friend.
54. However, in the context of a very rich man with very large debts which have not been paid over a long period of time, it is unusual for him to make extremely large gifts instead of meeting those liabilities first or at least making arrangements to satisfy those debts in the ordinary course of his business.
55. Mr. Chishti and Ms Pobereskin have explained on oath in the JAMS Arbitration proceedings that the cash transfers by Mr. Chishti to Ms Pobereskin were gifts and that Ms Pobereskin could do as she pleased with the monies. This explanation was not accepted by the arbitrator who found that in fact the transfers of monies were part of a plan between Mr. Chishti and Ms Pobereskin to purchase shares in TRG-P in order to mount a bid for control of the TRG entities<sup>15</sup>. This is a finding of fact that is binding on Mr. Chishti, and supports the argument by VCP that assets held in Ms Pobereskin's name are in reality beneficially owned by Mr. Chishti and that they are held in Ms Pobereskin's name to disguise their true ownership.
56. VCP relied upon this finding for the proposition that it is more than arguable that the real purpose of the arrangement was to disguise Mr Chishti's ownership of the assets, and that these assets are in reality Mr. Chishti's assets, despite the oral evidence that they gave about it.
57. The Court accepts VCP's submission that this is a good arguable case. The Court agrees that the arbitrator's award is solid evidence of the risk of dissipation of assets by Mr. Chishti because it shows that Mr. Chishti has used the transfer of money to his wife as a means to conceal his beneficial ownership of the shares which were acquired with his money. The Court does not make any concluded findings on this issue at this stage.
58. Moreover, it appears that Mr. Chishti transferred all or most of his cash assets to his wife. These large gifts are not transactions made in the ordinary course of business. They are

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<sup>15</sup> See page 345 of the exhibit to Burke 1: " ...the Tribunal is persuaded that [TRG-I] has established {Mr. Chishti's} "beneficial ownership" of the TRG-P shares that Ms Pobereskin owns because: the testimony of Ms Pobereskin and [Mr. Chishti] collectively supports {TRG-I's} contention that they are actively pursuing a common plan to regain control of the TRG entities through the acquisition of publicly traded TRG-P shares; [Mr. Chishti] exercised a measure of control over the bank accounts and trading activity that facilitated Ms Pobereskin's prior acquisition/sale of TRG-P shares; [Mr. Chishti] at times provided Ms Pobereskin with the funds used to acquire TRG-P shares; and on at least one occasion, after selling TRG-P shares, Ms Pobereskin returned the proceeds of that sale to [Mr. Chishti]. The Tribunal concludes the foregoing facts establish "beneficial ownership" as a matter of New York law, irrespective of the Parties' marital relationship and/or their pre/post nuptial agreements."

transfers for no valuable consideration, at a time when he owed (and still owes) substantial unpaid debts. The scale of the transfers relative to the other assets that are under Mr. Chishti's control, and at a time when Mr. Chishti had several unpaid substantial debts, calls into question the true purpose of those transfers. Since those transfers were made, Mr. Chishti has become liable to further substantial debts which he has not paid.

59. The Court also takes into account that Mr. Chishti is prepared to deal with his assets in a manner which is inconsistent with the obligations he has committed himself to observe by pledging his TRG-P shares to secure payment of an obligation to JS Bank in breach of the negative pledge covenant. This is evidence that Mr. Chishti is not above breaking his contractual obligations.
60. The Court is not here deciding that Mr. Chishti has false motives or nefarious intentions in the present case: the Court is expressing the view that the objective evidence discloses a real risk that the VCP Costs Award will not be paid because of future disposals of assets by Mr. Chishti, which will have the effect that Mr. Chishti will not have any assets against which VCP can enforce the VCP Costs Award<sup>16</sup>.
61. VCP has therefore discharged the evidential burden of showing by solid evidence that there is a real risk of dissipation of assets by Mr. Chishti unless he is restrained from doing so by Order of this Court.

### **The balance of justice<sup>17</sup>**

62. The purpose of a Freezing Order is not to provide security for the payment of a debt, but to ensure that a defendant is not able to frustrate or stultify the enforcement of a future judgment. Here there is an established debt. The application for injunctive relief is not based on a claim which may not result in a judgment. VCP is in the throes of seeking to enforce the VCP Costs Award against Mr Chishti.
63. The Court must be satisfied that the balance of justice weighs in favour of granting a Freezing Order. In a case where an Interim Order has been made for the immediate payment of a substantial proportion of the VCP Costs Award, the Court expects its Order to be obeyed. There is no reason why Mr. Chishti should not pay the Interim Order, and no appeal or application for a stay has been made.
64. Mr. Chishti appears to have more than sufficient assets at his disposal to meet the liability to VCP. The failure to pay the debt is unexplained. The lack of explanation suggests an intention not to pay. There does not appear to be any evidence that weighs against the grant of an injunction to ensure that the assets which are under Mr Chishti's control remain so until he has met his obligations under the VCP Costs Award.
65. The Court concludes that it is manifestly in the interests of justice for the Freezing Order to be made on the basis of the evidence presently before the Court.

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<sup>16</sup> **TTMI v ASM Shipping Limited of India** [2005] EWHC 2666 (Comm) at paragraphs 25-6 per Clarke J.

<sup>17</sup> This is traditionally referred to as the just and convenient test: see Sir John Donaldson MR in **Francome v Mirror Group Newspapers Ltd** [1984] 1 WLR 892: it is about justice not convenience.

66. The Court appreciates and takes into account that the evidence is likely to be incomplete or out of date, and that there may be other aspects of Mr. Chishti's affairs that are unknown. However, these issues can be addressed in due course, and any undue infringement on Mr. Chishti's freedom to deal with his assets can be addressed at the *inter partes* hearing. For the time being the purpose of the Freezing Order is to 'hold the ring'.

### **Disclosure of assets**

67. VCP Capital has also sought an order for the disclosure of Mr Chishti's assets. The Court has acceded to the application on the basis that Mr Chishti's financial affairs are complex and the information presently available is (i) not up to date (ii) incomplete and (iii) confusing. The Court needs to be able to understand the full picture before being asked to make orders against Mr. Chishti in relation to his assets pending the enforcement of the VCP Costs Award.
68. The Court has modified the scope of the disclosure requested to be proportionate and relevant to the present proceedings. The Court has also made the revisions in the light of the second application made by VCP for an order for the personal examination of Mr Chishti as a judgment debtor under RSC Order 48. The Court has not made an order for the production of information under the application for examination under RSC Order 48 so that Mr. Chishti only has to comply with one disclosure order.
69. The Court has made adjustments to the time period for compliance with the disclosure order to accommodate the scheduling of (i) the examination as to his means and (ii) the *inter partes* hearing in respect of this application.

### **Personal allowance for living expenses and retention of legal counsel**

70. The Court has acceded to the suggestion made by VCP that a personal living allowance of US\$5000 a week is a realistic amount to allow a rich man who has no doubt ongoing commitments to maintain his lifestyle. It is open to Mr. Chishti to seek to agree a variation of that sum pending the *inter partes* hearing if that should be necessary or may apply to this Court if need be to obtain a variation.
71. The Court has also provided a sum of US\$100,000 for the retention of legal counsel for Mr. Chishti, recognising that he may have numerous matters which are ongoing and for which he should not be hindered in securing ongoing advice. If Mr. Chishti requires an adjustment to this allowance between now and the *inter partes* hearing, if he is unable to reach agreement with VCP, he may apply to the Court for a variation.

### **Ms Pobereskin**

72. The Court will not repeat all the evidence in relation to the background to the gifts made to her by Mr. Chishti that is set out above. However, it is relevant to note again what Ms Pobereskin used the monies given to her by Mr. Chishti to purchase.
73. The first US\$ 3 million was to buy shares in her employer. The next US\$25 million was used to buy shares in TRG-P. These are the shares that the arbitrator concluded were in fact part of

a plan on the part of Mr. Chishti and Ms Pobereskin to acquire control of TRG-P. The last US\$ 15 million was used to fund the operations of Isbei.

74. The question is whether the assets which are in Ms Pobereskin's name which were acquired by the monies given to her by Mr. Chishti are beneficially owned by Mr. Chishti and are or may be available to meet the VCP Costs Award in these proceedings.
75. These transfers made by Mr. Chishti to Ms Pobereskin were not in the ordinary course of business. They were very large disposals of capital, which based on Mr Chishti's known assets according to what is known about Mr. Chishti's financial affairs account for the entirety of his liquid net worth. This casts doubt on the explanation he has given that they were gifts to his wife.
76. In particular, the Court considers that it is arguable that the shares which were acquired by Ms Pobereskin in TRG-P with the US\$25 million given to her by Mr. Chishti are beneficially owned by Mr. Chishti on the strength of (i) the finding by the arbitrator and confirmed by the US District Court by Judge Rakoff and (ii) similar principles that apply under Bermuda law<sup>18</sup>.
77. Although the arbitrator and Judge Rakoff were careful to state that Ms Pobereskin was not a party to the arbitration so the arbitration award does not bind her directly, the issue to which the legal analysis applied was within the jurisdiction of the arbitrator. The arbitrator found that the transfer of monies and the investment of the money by Ms Pobereskin was part of a plan between them to seek to gain control of TRG-P. This is a finding of fact which must amount to a rejection of the explanations given by Mr. Chishti and Ms Pobereskin that the transfer of US\$25 million was a gift.
78. There is therefore a basis upon which VCP can assert that as a matter of US law the shares acquired by Ms Pobereskin in TRG-P are assets which belong to Mr. Chishti and are therefore available to meet the VCP Costs Award. It also affords a factual basis upon which VCP can assert that the transfer of US\$25 million was otherwise than a gift, and that Mr. Chishti retained a beneficial interest in the shares in Ms Pobereskin's name.
79. As a matter of Bermuda law, if Mr. Chishti retains a beneficial interest in or control over the shares which Ms Pobereskin has acquired with monies given to her by Mr. Chishti, Ms Pobereskin will be treated as holding those shares on bare trust for him. At this stage the Court is not making any finding to that effect but is simply recognising that such an argument is plainly open to VCP (on the facts as presently known) as a matter of Bermuda law.

### **Joinder of a third party**

80. The Court may exercise its jurisdiction to add a party either on the application of a party to the proceedings or by its own motion when (i) the court considers that the presence of a party before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or (ii) where there may be a question or issue arising out of or related to or connected with any relief or remedy which in

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<sup>18</sup> See page 854 of exhibit to Burke 1.

the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the action<sup>19</sup>.

81. In **TSB Bank International v Chabra**<sup>20</sup> the court took the view that where there was a good arguable case that assets apparently vested in one party may be beneficially owned by the defendant, and therefore available to satisfy the plaintiff's claims, the court would add the party in whose name the assets were held and issue a freezing order to restrain the third party from disposing of the relevant assets pending a determination of the ownership issue.
82. On the facts of this case, the Court is satisfied that there is a good arguable case that the shares acquired by Ms Pobereskin in TRG-P with the monies given to her by Mr Chishti are beneficially owned by Mr Chishti and are therefore available to satisfy the VCP Costs Award.
83. The Court is therefore satisfied that the Court should add Ms Pobereskin as a party to the proceedings so that the issue as to the beneficial ownership of the TRG-P shares registered in Ms Pobereskin's name can be effectually determined and whether those assets are available to meet the VCP Costs Award.
84. The Court is also satisfied that it is in the interests of justice to make a Freezing Order to restrain Ms Pobereskin from transferring, disposing or otherwise dissipating the TRG-P shares registered in her name pending the determination of the beneficial ownership of those shares or further Order of this Court. This is because if those shares were put into Ms Pobereskin's name so that it would appear that they did not belong to Mr Chishti, then there is a sufficient basis to conclude that there is a real risk that they may be dissipated to prevent VCP from enforcing the VCP Costs Award against Mr. Chishti's assets, particularly in the light of her statement that she is free to deal with them as her own property.
85. It is to be noted that the terms of the Freezing Order against Ms Pobereskin are in more limited terms than the Freezing Order made against Mr. Chishti.

#### **Service out of the jurisdiction upon Ms Pobereskin**

86. It follows from what the Court has said about the background to the transfers of money to Ms Pobereskin that there is good reason to suppose that the transfers were intended to put the TRG-P shares beyond the reach of Mr. Chishti's creditors, there is a good arguable case against Ms Pobereskin that she holds those shares for Mr. Chishti.
87. It also follows that Ms Pobereskin is a necessary and proper party to the proceedings and the Court has jurisdiction to permit VCP to add her to the proceedings for the purposes of VCP's enforcement claim against Mr. Chishti and that permission should be granted to serve Ms Pobereskin out of the jurisdiction with the proceedings and the Freezing Order under RSC Order 11 Rule 1 (c) and (m). The Court so orders.

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<sup>19</sup> RSC Order 15 rules 6 (1) and 6 (2) (b) (ii).

<sup>20</sup> [1992] 1 WLR 231.

### **Examination of Mr Chishti as to his means to pay the VCP Costs Award**

88. The second application is a routine application for an order to examine Mr Chishti as to his means to pay the interim award and for him to produce details of his assets, means and liabilities. The evidence of Mr Burke sets out the steps VCP has taken to date to enforce its award and the Court is satisfied there is no reason to refuse to make the order for his examination because Mr Chishti has not engaged in any meaningful dialogue with respect to the payment of his costs obligations to VCP.

### **Service of Order for examination out of jurisdiction**

89. However, RSC Order 48 requires the order to be served upon Mr. Chishti personally. Mr. Chishti is resident outside the jurisdiction, and although he has submitted to the jurisdiction for the purposes of the various proceedings he has brought over the last three years, the rule does not allow service of the order to attend for an examination to be served on his local attorneys. This is because a failure to attend the examination may result in an order being made for his arrest to compel him to attend the examination as to his means. Therefore, it must be served on him personally.
90. RSC Order 11 rule 1 (m) allows for the service of process outside the jurisdiction in relation to the enforcement of a judgment or order, and the Court is satisfied that a summons for the examination of a judgment debtor qualifies for leave to serve out of the jurisdiction under RSC Order 11 Rule 9. The Court therefore grants permission to serve the Order for examination out of the jurisdiction on Mr. Chishti.
91. VCP is to draw the necessary Orders.

**22 September 2025**



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**THE HON. MR. ANDREW MARTIN**  
**PUISNE JUDGE**