Approved Judgment

Neutral Citation Number [2023] EWHC 2619 (Ch) **CR 2021 002159**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST
IN THE MATTER OF VARITI MANAGEMENT SERVICES LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL
Date: 23/10/2023

Before:
ICC JUDGE BARBER

- -

Between:

(1) KONSTANTIN KAMENETSKIY
(2) STANISLAV LOZHKIN
(3) ANTON BARABANOV
(4) VLADIMIR SOTNIKOV
(5) SERGEY KONONENKO
(6) SERGEY NAZIROV

Claimants

- and –

(1) VITALI ZOLOTAREV
(2) OLEG LEKSUNIN
(3) YURI SHULKIN
(4) ROMAN FILATOV
(5) THE REGISTRAR OF COMPANIES
(6) VARITI MANAGEMENT SERVICES LIMITED

Defendants

- -

Ms Chantelle Staynings (instructed by **Withers LLP)** for the **Claimants**
Dr Natalia Perova (instructed by **Gately Legal**) for the **First to Fourth Defendants**
Hearing dates 28-29 June, 30 August 2023

Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.30 a.m. on 23 October 2023.

ICC Judge Barber

1. This is the Claimants' claim for:

   (1) a declaration that written resolutions dated 19 January 2021, purportedly appointing the Third and Fourth Defendants as additional directors of the Sixth Defendant ('the Company'), are void and of no legal effect;

   (2) a declaration that the First Claimant has at all times since 19 January 2021 held office as sole director of the Company;

   (3) a declaration that given documents listed at paragraphs 21 and 27 of the Points of Claim ('PoC') ('the Filed Documents') were (i) derived from the invalid written resolutions of 19 January 2021 (ii) were filed by the Third and/or Fourth Defendant without authority and (iii) are factually inaccurate;

   (4) a declaration as to the number of shares currently held by each member of the Company;

   (5) an order pursuant to Section 1096(1) of the Companies Act 2006 requiring the Registrar of Companies to (i) remove the Filed Documents and (ii) reverse the purported change of the address of the Company's registered office on 19 January 2021; and

   (6) attendant relief.

2. The Claim is opposed by the First to Fourth Defendants (hereafter 'the Defendants').

Background

3. The Company was incorporated on 16 May 2018 with the aim of expanding the Variti Group, which then comprised various Russian and Swiss companies. The Variti Group operates in the IT sector, providing cybersecurity services. The Company carries on business as a holding company and now has operating subsidiaries in the form of Variti Limited (a company incorporated in England and Wales) and a Swiss company, Variti International GmbH.

4. The First Claimant, Mr Kamenetskiy, was appointed sole director of the Company on its incorporation. He is also a shareholder in the Company. The Second, Third, Fifth and Sixth Claimants are shareholders of the Company as well, together with (on the Claimants' case) the Fourth Claimant, Mr Sotnikov. The Defendants dispute Mr Sotnikov's status as shareholder.

5. The First and Second Defendants are shareholders of the Company but have never been directors of it. The Third and Fourth Defendants are two individuals who are alleged by the Defendants to have been appointed as directors of the Company in January 2021, but the Claimants dispute the validity of their appointment. The Fifth and Sixth Defendants have not played any active part in the proceedings and are parties simply to bind them to the outcome.

Dispute regarding Mr Sotnikov's status: overview

6. The dispute regarding Mr Sotnikov's status as shareholder arises in this way. On 12 May 2020, the Company concluded an assignment agreement with Mr Sotnikov pursuant to which certain computer equipment based in Frankfurt ('the Equipment') was assigned to the Company for consideration ('the Assignment Agreement'). The Claimants maintain that in payment of the consideration due of £332,841.16, the Company allotted and issued 60,323 fully paid ordinary shares to Mr Sotnikov. The Defendants maintain that a condition for the allotment was never fulfilled and that Mr Sotnikov did not validly receive or hold any shares in the Company in May 2020.

Dispute regarding the 19 January 2021 resolutions: overview

7. The dispute regarding the written resolutions of 19 January 2021 arises in this way. By the second half of 2020, disagreements were emerging between the shareholders of the Company as to (among other things) the funding of its activities and the activities of its subsidiary, Variti Limited. On 23 December 2020, Mr Kamenetskiy approached shareholders for funding, inviting all shareholders to subscribe for 3,400,000 new ordinary shares of £0.01 each in the Company, with a deadline of 20 January 2021 for the acceptance of offers ('the December Notice').

8. On 19 January 2021 at 9.04am, one day before the deadline in the December Notice, Mr Zolotarev sent Mr Kamenetskiy an email (cc-ing all members), attaching a letter requiring the Company to circulate certain written resolutions to members pursuant to ss292 and 293 of the Companies Act 2006. The written resolutions proposed the appointment of Mr Shulkin and Mr Filatov as additional directors of the Company and the imposition of a limit of three on the number of directors ('the 19 January resolutions').

9. One minute later, Mr Leksunin sent Mr Kamenetskiy a pdf containing two copies of the 19 January resolutions, one signed by him and one signed by him and Mr Zolotarev.

10. At 9.09 am on the same day, Mr Zolotarev emailed Mr Leksunin (cc'ing the other shareholders and the Third and Fourth Defendants) saying that the 19 January resolutions had been passed and welcoming the Third and Fourth Defendants to the board.

11. On the same day, Mr Filatov and Shulkin purported to pass various written resolutions as directors of the Company, including a resolution to change the address of the Company's registered office to Mr Zolotarev's home address and a resolution to push back the deadline of 20 January 2021 contained in the December Notice. In addition, the Company's authentication code for web filings at Companies House was changed without Mr Kamenetskiy's consent, preventing him from accessing the Companies House system for web filings. Thereafter a number of documents were delivered to the Registrar of Companies purportedly in the name of and on behalf of the Company but in reality without Mr Kamenetskiy's consent.

12. The Defendants' primary position is that the Third and Fourth Defendants, Mr Shulkin and Mr Filatov, were validly appointed on 19 January 2021. They contend that Mr Kamenetskiy's actions as purported sole director from that date were

ineffective. Conversely, the Claimants contend that Messrs Shulkin and Filatov were not validly appointed and that therefore their actions from that date as purported directors were ineffective.

Summary of relevant events following 19 January 2021

13. Mr Kamenetskiy promptly challenged the validity of the 19 January resolutions. By a lengthy email dated 20 January 2021 (timed at 09.12) addressed to all shareholders, he summarised the relevant statutory provisions and explained why the resolutions had not been validly circulated and passed. His email also set out 'next steps', stating that in order properly to consider the request dated 19 January 2021 to circulate the written resolutions, he would need evidence of the proposed directors' consents to act and their CVs and certain other information. He stated that once such information had been received, subject to the resolution of the board within the relevant 21 day period, the proposed written resolutions would be circulated to the shareholders in accordance with CA 2006. Paragraph 13 of his email continued:

> '13. Following the circulation of the WR, each of the Shareholders (including VZ and OL) [ie the First and Second Defendants] may indicate their approval in the form to be set out in the notes to that WR (before it lapses)'.

14. The First and Second Defendants replied to Mr Kamenetskiy's email of 20 January 2021 (at 09.12) by email dated 20 January 2021 at 16.24, stating:

> 'Our position is that:
>
> 1. The written resolutions were duly circulated and passed by the shareholders.
>
> 2. Further to the above the new directors were duly appointed to the Company's Board…
>
> 3. The written resolution approved by the majority of the board was duly circulated.
>
> 4. Accordingly, all of the decisions subject to your email [of 09.12] were valid.'

15. Mr Kamenetskiy responded by email at 19.01 the same day, stating that the position adopted by the First and Second Defendants was not supported by law.

The January 2021 allotment

16. On 27 January 2021, pursuant to the December Notice, Mr Kamenetskiy allotted and issued 3,400,000 new ordinary shares to members. The Defendants do not challenge the validity of this allotment, save that they deny that Mr Sotnikov was entitled to receive any shares. On the same date, Mr Kamenetskiy sent forfeiture notices to Messrs Zolotarev, Leksunin and Barabanov in accordance with Article 28 of the Articles. These calls were paid by Mr Zolotarev and Mr Leksunin, but not by Mr Barabanov, who in consequence forfeited 46,295 of his ordinary shares on 11 March 2021 ('the Forfeited Shares').

The February 2021 resolutions

17. On 1 February 2021, following receipt of consents to act from Mr Filatov and Mr Shulkin, Mr Kamenetskiy circulated revised written resolutions relating to their proposed appointment ('the 1 February resolutions'). The resolutions bore a circulation date of 1 February 2021. The explanatory notes set out how members could indicate their approval.

18. None of the shareholders signed the 1 February resolutions.

The March Notice

19. The Claimants maintain that:

(1) on 23 March 2021, by written resolution in his capacity as sole director of the Company, Mr Kamenetskiy resolved to invite shareholders to subscribe for (i) the Forfeited Shares and (ii) 1,453,705 new ordinary shares of £0.01 each, for an aggregate subscription price of £15,000 on the terms of a written notice ('the March Notice'). The March Notice required shareholders to return a written application for shares by 5pm on 20 April 2021, failing which the relevant shareholder would be deemed to have declined the invitation to apply for shares;

(2) following delivery of the March Notice to shareholders, the Company received applications for new shares from Messrs Lozhkin, Kamenetskiy, Sotnikov, Kononenko and Nazirov;

(3) the Company allotted and issued a total of 1,133,535 shares to these individuals on 21 April 2021 ('the April 2021 allotment').

20. It is common ground that Messrs Zolotarev and Leksunin were invited to subscribe but chose not to.

21. The Defendants maintain that the April 2021 allotment was invalid because it was not approved by the majority of the board of directors, (the board on their case comprising Messrs Kamenetskiy, Shulkin and Filatov). The Claimants' position is that the allotment did not have to be approved by Messrs Shulkin and Filatov as they were never validly appointed as directors.

The Meetings of 1 October 2021

22. There is also a dispute as to which of two meetings convened on 1 October 2021 was a valid general meeting as a matter of law.

23. On 3 September 2021, Mr Filatov purported to exercise the power of a director of the Company to convene a general meeting of the Company to be held at 10am on 1 October 2021 ('the 10 a.m. meeting') for the purposes of considering and, if thought fit, passing a resolution under s168 CA 2006 removing Mr Kamenetskiy from his office as director of the Company with immediate effect.

24. The Claimants' maintain that,

(1) having learned of Mr Zolotarev's desire to propose Mr Kamenetskiy's removal from office as a director, on 3 September 2021, Mr Kamenetskiy exercised his power, as sole director of the Company, to give notice of a general meeting to be held at 9 a.m. on 1 October 2021 for the purposes of considering that resolution;

(2) in accordance with the notice given by Mr Kamenetskiy on 3 September 2021, a general meeting of the Company took place at 9am on 1 October 2021, attended by Mr Kamenetskiy, Lozhkin, Barabanov and Sotnikov in person and Messrs Kononenko and Nazirov by proxy ('the 9 a.m. meeting');

(3) at that meeting, Mr Kamenetskiy as chair proposed the resolution that he be removed as a director with immediate effect;

(4) all shareholders in attendance at that meeting voted against the resolution, which was accordingly defeated.

25. According to minutes supplied to the Claimants' solicitors, the 10 a.m. meeting did take place, attended by Mr Filatov as chair, Mr Shulkin, as proxy for Mr Leksunin, and Mr Zolotarev. At the 10 a.m. meeting, Messrs Leksunin and Zolotarev purported to pass a resolution removing Mr Kamenetskiy as a director of the Company.

26. The Claimants maintain that Mr Filatov could not validly call a general meeting on 1 October 2021 and that, in any event, Messrs Zolotarev and Leksunin did not hold the required majority to remove Mr Kamenetskiy from his position as director, even if the 10 a.m. meeting was validly called. Their case is that Mr Kamenetskiy has at all material times since 19 January 2021 held, and continues to hold, office as sole director of the Company.

27. The Defendants disagree and maintain that the 9 a.m. meeting was not validly called or alternatively that its results were overridden by the 10 a.m. meeting.

28. Following unsuccessful attempts to resolve matters amicably, these proceedings were issued.

Procedural Background

29. By a Consent Order dated 3 February 2022, it was ordered that draft Points of Claim exhibited to the witness statement of Julia Alaverdashvili (a solicitor at Withers LLP, the Claimants' solicitors) dated 18 November 2021 stand as Points of Claim and directions were given for the filing of Points of Defence and Points of Reply. The original timetabling was adjusted and permission to amend granted by subsequent orders, but little turns on that.

30. By a Consent Order dated 1 July 2022, Deputy ICC Judge Schaffer gave directions on evidence of fact, requiring the parties to file and serve witness statements within a given timetable and requiring makers of witness statements to attend for cross-examination on the usual terms. Permission was also given for a qualified interpreter with proficiency in Russian and English to be present at trial for the purpose of translating questions put to and answers provided by any witnesses whose native language was Russian. Directions were given (among other things) for an agreed list of issues to be prepared and the matter was listed for a three-day trial.

The Issues

31. As set out in the agreed list of issues, the trial before me concerned the following main issues (in broad summary):

(1) Issue 1: Whether the Fourth Claimant, Mr Sotnikov, was validly allotted and issued 60,203 ordinary shares by the Company in or around May 2020, or whether he was not entitled to be allotted those shares because he did not physically transfer computing equipment to the Company;

(2) Issue 2: Whether written resolutions were validly passed to appoint Mr Shulkin and Mr Filatov (the Third and Fourth Defendants) as additional directors of the company in January 2021 in circumstances where those resolutions were purportedly circulated by Mr Zolotarev and Mr Leksunin as shareholders of the Company (but they did not sign the written resolution later circulated on 1 February 2021 by the sole director Mr Kamenetskiy, the First Claimant);

(3) Issue 3: What are the legal consequences of the written resolutions being passed or not passed, including on the appointments of Mr Shulkin and Mr Filatov as directors of the company and the validity of certain acts by Mr Kamenetskiy, Mr Shulkin and Mr Filatov in their purported capacity as directors?

The Evidence

32. For the purposes of this hearing, I have read the following witness statements and their respective exhibits:

(1) witness statement of the First Claimant, Konstantin Kamenetskiy, dated 20 October 2022;

(2) witness statement of the Second Claimant, Stanislav Lozhkin, dated 20 October 2022;

(3) witness statement of the Fourth Claimant, Vladimir Sotnikov, dated 20 October 2022;

(4) witness statement of the Fifth Claimant, Sergey Kononenko, dated 20 October 2022;

(5) witness statement of the Sixth Claimant, Sergey Nazirov, dated 20 October 2022;

(6) (in partially redacted form and excluding exhibits) the witness statement of the Defendants' solicitor, Sergey Litovchenko, dated 7 December 2021;

(7) witness statement of the First Defendant, Vitali Zolotarev, dated 14 October 2022;

(8) witness statement of the Second Defendant, Oleg Leksunin, dated 14 October 2022.

33. I also considered further documents contained in agreed trial bundles, to which reference will be made where appropriate.

34. I heard oral evidence from the First, Second, Fourth, Fifth and Sixth Claimants and from the First and Second Defendants. With my permission, granted at the outset of the hearing, the Second and Fourth Claimants gave their oral evidence remotely.

35. Certain points were taken on the written witness evidence which were dealt with during closing submissions. In summary:

(1) by their witness statements the First and Second Defendant had stated that (subject to one or two corrections) they 'adopted' Mr Litovchenko's statement dated 7 December 2021. The Claimants initially objected to this, pointing out (among other things) that the evidence of Mr Litovchenko was not evidence that other witnesses could give in accordance with PD 57AC, that Mr Litovchenko's witness statement was not a trial witness statement (in fact it had pre-dated pleadings) and that Mr Litovchenko had not been tendered for cross-examination;

(2) a point was also taken by the Defendants' counsel (rather late in the day, following two full days of oral evidence and after evidence had closed), that witness statements had not been prepared in the witnesses' own language. This was something of a double-edged sword for the Defendants, as the point applied as much to their own witness statements as to those of the Claimants.

36. Following supplemental written and oral submissions on these issues, at the invitation of both Counsel and in the exercise of my discretion under PD32 paragraph 25.2, I waived all defects in the witness statements arising from any failure to prepare the same in the witnesses' own language. In addition, on the First and Second Defendant confirming by Counsel that their 'adoption' of Mr Litovchenko's witness statement should be treated as confirmation that they agreed with the facts and matters stated therein, I granted permission for a redacted version of Mr Litovchenko's statement to be read, notwithstanding the Defendants' failure to tender him for cross-examination.

The witnesses

37. In oral testimony the First, Second, Fourth, Fifth and Sixth Claimants engaged openly with questions put to them. In closing submissions, due to lack of time, Dr Perova listed a number of page references from the transcripts of their oral testimony which she maintained demonstrated evasiveness on their part. Since that time, I have checked all such transcript references. I am satisfied that, read in context, none of the references suggest or demonstrate evasiveness on the part of any of the Claimants who gave evidence. From their written and oral testimony overall, I am satisfied that the First, Second, Fourth, Fifth and Sixth Claimants were truthful witnesses who did their best to answer questions put to them honestly and to the best of their recollection and ability.

38. In contrast, the First Defendant was evasive and defensive at times in cross-examination. He refused to accept the obvious when taken to the email from the First Claimant dated 10 December 2020 referred to at [89] below. He initially feigned ignorance of any right under the articles to appoint more than 3 directors, when the written resolutions he circulated on 19 January 2021 had expressly proposed a cap of 3 directors. It was only on being pressed on this issue that he admitted that he had discussed the 'balance of power' with a 'lawyer professional acquaintance' prior to formulating the resolutions. It took intervention from the bench before he would

confirm unequivocally that given points in the email which he and the Second Defendant had sent the First Claimant on 20 January 2021 (quoted at [14] above) accurately reflected his view at the date of the email and remained his view. The First Defendant also claimed ignorance of the sources of funding which at one stage Mr Shulkin had offered to arrange to be introduced into the Company, when it was clear from correspondence in evidence that the First Defendant had been actively involved in negotiations with the underlying potential investors and that, by 2021, he was proposing to exercise his votes as a shareholder of the Company on behalf of some or all of such investors. From his written and oral testimony overall, I have come to the conclusion that save where supported by documentary evidence, the First Defendant's written and oral testimony should be viewed with caution.

39. From his written and oral testimony viewed as a whole, it was clear that the Second Defendant largely fell in line with whatever the First Defendant wanted to say or do as far as the Company and these proceedings were concerned and exercised little independent judgment in his own right. He signed the written resolutions of 19 January 2021 within minutes of the First Defendant doing so. He checked with the First Defendant whether he should sign the written resolution circulated by the First Claimant on 1 February 2021 and followed the First Defendant's lead in not doing so. His witness statement was in virtually identical terms to that of the First Defendant. He stated at the start of his cross-examination that he did not disagree with any of the answers given by the First Defendant. Overall, on the evidence which I have heard and read, I have come to the conclusion that save where supported by documentary evidence, the Second Defendant's written and oral testimony should also be viewed with caution.

40. As Mr Litovchenko was not called as a witness (notwithstanding being in attendance at court for part or all of the hearing), his written evidence could not be tested in cross-examination. That is a legitimate matter to take into account when assessing the weight to attach to his written evidence, to the extent that it went beyond commentary on documents and argument.

Issue 1: The allotment of shares to Mr Sotnikov

41. The Claimants maintain that on 12 May 2020, the Company entered into the Assignment Agreement with Mr Sotnikov, pursuant to which the Equipment was assigned to the Company and that, in payment of the consideration due of £332,841.16, the Company allotted and issued 60,323 fully paid ordinary shares to Mr Sotnikov.

42. The Defendants maintain that a condition for the allotment was the physical receipt of the Equipment by the Company (PoD paras 12-14). They maintain that this condition was never fulfilled and that accordingly Mr Sotnikov did not validly receive any shares in the Company, whether in May 2020 or at all.

43. The Claimants contend that the point taken by the Defendants is both opportunistic and unsustainable in law. They say that the Defendants were aware at all material times that the Equipment was both physically located in Germany and intended to remain there.

44. As put by Mr Kamenetskiy in his witness statement:

> 'Physical location of the equipment in Frankfurt, Germany has never precluded the Variti Group from obtaining benefit from the equipment long before it was assigned by Mr Sotnikov to the Company. Mr Zolotarev and Mr Leksunin were fully aware of this and did not object because at the time they were shareholders of the Russian Companies that benefited from the use of the equipment'.

45. An initial draft version of the Assignment Agreement (together with other documents) was circulated to the other shareholders for comment on 4 May 2020. Mr Zolotarev responded by email on 5 May 2020 stating:

> 'There are no questions regarding the equipment transfer agreement. Since the equipment is physically in Frankfurt, will there be something else - such as a delivery certificate or something like that?'

46. Mr Kamenetskiy took this suggestion on board. On 7 May 2020, he circulated a revised draft version of the Assignment Agreement to the shareholders under cover of an email stating:

> 'The equipment transfer agreement now has a clause confirming the physical transfer of equipment from [Mr Sotnikov] to the company.'

47. It is for this reason that Clause 1 of the Assignment Agreement in its final form provided:

> 'By signing the Agreement, the Assignee acknowledges and confirms to the Assignor the physical receipt by the Assignee from the Assignor of the equipment on the Execution Date'.

48. On 18 May 2020 (after the date of execution of the Assignment Agreement), Mr Kamenetskiy passed a sole director's written resolution regarding the allotment and the issue of shares to Mr Sotnikov.

49. On 18 May 2020, all the shareholders of the Company (including Mr Zolotarev and Mr Leksunin) signed a document headed 'unanimous written consent' to approve the proposed issue and allotment of the shares to Mr Sotnikov pursuant to the Assignment Agreement.

50. The Defendants rest their challenge of the allotment and issue of shares to Mr Sotnikov on the wording of the written sole director's resolution of Mr Kamenetskiy dated 18 May 2020. This provided that (with emphasis added):

> 'IT IS THEREFORE RESOLVED: …
>
> 4. *Subject to the physical receipt* by the Company of the computer equipment set out in Annex 1 hereto (the "Equipment"), which has been assigned to the Company by

> [Mr Sotnikov] pursuant to the duly executed equipment assignment agreement made between [Mr Sotnikov and the Company] and dated 18.05.2020 [sic] ("the Assignment"), to approve the Company to issue and allot 60,323 ordinary shares of the Company of £0.01 nominal value each and a share premium of £5.5176492844 each for non-cash consideration (being the assignment of the Equipment under the Assignment) to [Mr Sotnikov] at the above stated share premium and credited as fully paid.'

51. By paragraphs 37-38 of her skeleton argument, Dr Perova argued that:

> '(37) The written resolution of 18 May 2020 authorised Mr Kamenetskiy, as the director of the company at that time, to allot ordinary shares of the company without any further authority to Mr Sotnikov "subject to the physical receipt by the company of the computer equipment set out in Annex 1 hereto" (Written Resolutions of 18 May 2020, para 4..). The Claimants accepted that there was no physical receipt of the computer equipment by the company (e.g. Points of Reply, para 7.3..) and that it remains with Ancile company, controlled by Mr Sotnikov, who is a General Director and shareholder of Ancile (PoD, para 12.4 … Letter of Withers of 14 December 2021, para 67…) in Germany.
>
> (38) Contrary to the Claimants' arguments that the shareholders approved unanimously the allotment of shares to Mr Sotnikov, irrespective of the physical receipt by the company of the equipment, it is submitted that this was a precise condition that was included in the resolution passed by the shareholders for Mr Sotnikov to be allotted shares. As he did not satisfy this condition, the shares should not have been allotted to him by Mr Kamenetskiy, as he was authorised to allot shares to Mr Sotnikov, only if this condition was satisfied.'

52. The Claimants maintain that this challenge is unsustainable as a matter of law.

Issue 1: Discussion and Conclusions

53. An allotment of shares occurs when a person acquires the unconditional right to be included in the company's register of members in respect of the shares or, as the case may be, to have the person's name and other particulars delivered to the Registrar of Companies under Chapter 2A Part 8 CA 2006 and registered by the Registrar: s558 CA 2006.

54. On behalf of the Claimants, Ms Staynings submitted that the contract of allotment in this case was the Assignment Agreement itself. She maintained that Mr Sotnikov was allotted 60,323 ordinary shares of £0.01 each pursuant to the Assignment Agreement, as

(1) the Company confirmed (for the purposes of satisfying any condition as to delivery) the physical receipt of the Equipment by signing the Assignment Agreement; and

(2) there were no other conditions outstanding under the contract of allotment.

55. I accept Ms Stayning's submissions on this issue. In my judgment, read as a whole, the Assignment Agreement is the contract of allotment. By executing that agreement, the Company confirmed physical receipt of the Equipment. There were no other conditions outstanding under the contract of allotment at the time of its execution. On the execution of the Assignment Agreement, Mr Sotnikov acquired an unconditional right to the shares referred to in the agreement. It follows that allotment took place on the day of execution of the Assignment Agreement on 12 May 2020: s558 CA 2006.

56. During the course of submissions, Dr Perova made a belated attempt to challenge the date of execution of the Assignment Agreement. I reject that challenge. The point was not pleaded and I was taken to no persuasive evidence that the Assignment Agreement was not executed on the date that it bears. The Defendants relied upon a reference in correspondence exchanged after 12 May 2020 to a 'draft' agreement but read in context it is clear (and I so find) that the reference in question was a reference to an earlier draft. The sole director's resolution of 18 May 2020 refers to the Assignment Agreement in the past tense; ie as having already been executed. On the evidence before me I am satisfied on a balance of probabilities that the Assignment Agreement was executed on 12 May 2020. I so find.

57. As rightly submitted by Ms Staynings, no issues arise in respect of Mr Kamenetskiy's authority as at 12 May 2020, as sole director, to allot the shares in question. As the Company had only one class of shares, he did not require a resolution of the members to do so: s550 CA 2006. Statutory pre-emption rights under s561 CA 2006 did not apply, because the shares were wholly paid-up otherwise than in cash: s565 CA 2006.

58. The issue of shares, which is separate from allotment, occurs upon registration in the register of members: National Westminster Bank plc v Inland Revenue Commissioners [1995] 1 AC 119 per Lord Templeman at 126 (HL). The requirement to carry out the steps, however, flows from the prior allotment.

59. It is against that backdrop that Mr Kamenetskiy's written resolution of 18 May 2020, which post-dated the allotment, falls to be considered.

60. As soon as the allotment took place, the Company came under certain obligations by statute: companies must issue share certificates within two months of allotment (s769(1)(a) CA 2006) and must file Form SH01 within one month of allotment (s555 CA 2006).

61. Viewed in this context, Ms Staynings submitted that Mr Kamenetskiy's written resolution of 18 May 2020 could only take effect as an internal board resolution, to carry out steps *consequential* upon the prior allotment of shares, such as, to issue share certificates, update the register of members and file form SH01 at Companies House; any 'conditions' which Mr Kamenetskiy might otherwise be read as having included in his written resolution of 18 May 2020 were irrelevant to the allotment of shares. I accept these submissions. Allotment had already taken place prior to the sole

director's resolution on 18 May 2020 and certain mandatory requirements followed as a matter of statute: see [60] above.

62. The Defendants' challenge of the May 2020 allotment in favour of Mr Sotnikov therefore fails as a matter of law. I would add that the challenge was entirely lacking in merit on the facts as well. On the evidence which I have heard and read, it is clear (and I so find) that the Defendants were at all material times aware that the Equipment was physically located in Germany and was intended to remain there notwithstanding the assignment. This did not prevent the Company from treating the Equipment as an asset in its subsequent accounts: both the Company's filed accounts for 31 May 2020 and for 31 May 2021 (signed by Mr Filatov) recognised the value of the Equipment as an asset.

63. In an attempt to counter the obvious marked weaknesses in the Defendants' case on Issue 1, in oral submissions Dr Perova sought to develop a different line of argument, suggesting that the complaint was not that the Equipment was not physically transferred to the UK, but rather that possession or control of the Equipment was not transferred. This too is a hopeless argument as a matter of law, for the same reasons as those addressed in paragraphs [53] to [61] above and paragraph [64] below. It was also not supported by the evidence. The Assignment Agreement made no mention of such a condition. Mr Zolotarev's email of 5 May 2020 made no mention of such a condition. Even the resolutions of 18 May 2020 relied upon by the Defendants make no mention of such a condition.

64. As I have found, Mr Sotnikov was allotted the shares on execution of the Assignment Agreement on 12 May 2020. On the evidence which I have heard and read, I am satisfied that Mr Sotnikov was also, as a matter of fact, issued the shares in the Company by Mr Kamenetskiy. As (in my judgment rightly) submitted by Ms Staynings, it follows that, even if there *had* been a condition which required the physical location of the Equipment to change from Germany to the UK (or on the Defendants' later case, possession or control of the Equipment to change in some way), the consequence would either be that Mr Sotnikov was issued shares which remained unpaid, or that the register of members of the Company would be liable to be rectified under s125 CA 2006 (in the absence of any payment for the shares being forthcoming). As no application for rectification of the register of members has been made by the Defendants, in my judgment the court should proceed on the basis of the position as set out in the register of members.

65. For all these reasons, on the evidence and submissions which I have heard and read, I am satisfied that Mr Sotnikov was validly allotted 60,323 ordinary shares of 0.01 each shares in the Company on 12 May 2020. I am further satisfied that he was issued such shares and therefore became entitled to be - and was in fact- entered into the Company's register of members, with effect from 18 May 2020 at the latest, as the holder of the same. I so find.

66. The effect of this is that the contention put forward by the Defendants at paragraph 31 of their PoD, that Mr Sotnikov was not entitled to be allotted *further* shares on 27 January 2021 (or I would add the later April 2021 allotment), also falls away. On the evidence which I have heard and read, I am satisfied in each case that Mr Sotnikov was in fact allotted and issued such shares (and registered as the holder of the same in

the register of members), with no claim having been made to amend the register of members under s125 CA 2006.

Issue 2: The 19 January/1 February resolutions

67. The factual matrix relating to Issue 2 has already been addressed at paragraphs [7] to [27] above.

Legal Framework

68. A written resolution may be proposed either by members or directors: s.288(3) CA 2006.

69. In the case of a written resolution proposed by members, members holding 5% of the issued share capital can require the company to circulate a resolution: s292 CA 2006. Directors are then required to send or submit copies of the resolution to members within 21 days under s293(3) CA 2006. This is subject to the provisions of CA 2006 regarding payment of expenses by the members (s294(2)) and any application by an aggrieved person (including the company) that any statement accompanying the resolution should not be circulated (s295 CA 2006). In addition, the member's right is limited to resolutions 'that may be properly moved' within the meaning of s292 CA 2006 (i.e.it would not be ineffective if passed, defamatory or frivolous or vexatious).

70. On behalf of the Claimants, Ms Staynings submitted that:

(1) there is no 'self-help' mechanism enabling members to circulate written resolutions under CA 2006 (unlike the right to convene general meetings under ss303-305 CA 2006);

(2) the obligation under s292 is for the company to circulate the written resolution, which means that there must be a valid decision of the board to circulate the resolution on the company's behalf;

(3) in Re Sprout Land Holdings Ltd (in administration) [2019] EWHC 806 (Ch), a written resolution was held to be invalid where it had been circulated by one of the directors, without due consideration by the board;

(4) it would, in any event, be contrary to CA 2006 for members to purport to circulate any written resolution before the board has had an opportunity to consider whether to do so within the 21 days allowed by s293(3); and

(5) instead, the members' remedy, if the board fails to circulate a written resolution (or if they disagree with the characterisation of the resolution as not being able to be properly moved), would be to requisition and, if necessary, convene a general meeting or to seek the unanimous consent of shareholders on a Duomatic basis.

71. Ms Staynings submitted that, in light of the very clear provisions set out in CA 2006, the Defendants' contention that the written resolutions were validly circulated and passed on 19 January 2021 was hopeless; there was plainly no valid board resolution to circulate the resolutions on that date, nor did any member of the board purport to do so. She submitted that it would be entirely contrary to the scheme of CA 2006 (and to the protections and periods for reflection built-in for the benefit of companies, their

members and boards of directors) if members were entitled simply to circulate written resolutions and declare them effective without any board oversight whatsoever.

72. Ms Staynings went on to submit that, as the Defendants did not sign and return the resolutions circulated by Mr Kamenetskiy on 1 February 2021, the 1 February resolutions automatically lapsed on the date falling 28 days beginning with their circulation date (ie 1 March 2021): s291(1)(b) CA 2006. It followed that (1) neither the 19 January resolutions nor the 1 February resolutions were validly passed and (2) Mr Filatov and Mr Shulkin had never been validly appointed directors of the company.

73. On behalf of the Defendants, Dr Perova submitted that the 19 January resolutions were validly passed. Her fallback position was that Mr Zolotarev and Mr Leksunin should be taken to have 'pre-approved' the 1 February resolutions by their signing of the 19 January resolutions.

74. In summary, Dr Perova's arguments were as follows:

(1) the argument that it was for Mr Kamenetskiy, as sole director, to circulate the resolutions, not the shareholders, was a 'technical argument' which could not succeed in light of s293(7) CA 2006, which provides that 'the validity of the resolution, if passed, is not affected by a failure to comply with this section'. As put at paragraph 29 of her skeleton argument:

> '(29) … Even if the company had not complied with the circulation requirements, this should not affect the validity of the resolution itself. The purpose of this section is clear: it is to require the company to comply with the requirements and the imposition of a criminal liability on officers for not doing that, rather than allowing a technical argument later that because the company failed to comply to circulate, no resolution was passed.'

(2) that there was a 'previously established practice' of shareholders bypassing the board and circulating written resolutions for shareholder approval themselves; and

(3) that Mr Zolotarev and Mr Leksunin should be taken to have 'pre-approved' the 1 February resolutions by their signing of the 19 January resolutions.

75. The 'prior approval' argument was based upon some obiter observations of ICC Judge Prentis in the case of Re Sprout Land Holdings Ltd (in administration) [2019] EWHC 806.

76. At [34], ICC Judge Prentis had considered s296(1), which provides:

> '(1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) and authenticated document -
>
> (a) identifying the resolution to which it relates, and
>
> (b) indicating his agreement to the resolution'.

77. Commenting on this provision, Judge Prentis continued at [35]-[36] (with emphasis added):

> '[35] Thus, as it seems to me, *provided that the resolution has been duly circulated*, a member could signify agreement by a preset agreement; in other words, as here, an agreement which was actually signed a couple of days before. That would not interfere with the process which I have talked about**.**
>
> [36] By subsection (4) of 296:
>
> "(4) A written resolution is passed when the required majority of eligible members have signified their agreement to it".'

78. On behalf of the Defendants, Dr Perova submitted at para 31 of her skeleton argument:

> 'Therefore, even if the technical argument of the Claimants were to be accepted, the written resolution was circulated to all shareholders anyway: firstly, by both Mr Zolotarev and Mr Leksunin, with their signatures as majority shareholders and then by Mr Kamenetskiy himself on 1 February 2021. The resolution would still be passed, as it was signified by Mr Zolotarev and Mr Leksunin under s296(4) CA 2006 (see Re Sprout, para 36).'

Discussion and Conclusions on Issue 2

79. In my judgment, as a matter of law, the written resolutions circulated by the First and Second Defendants as shareholders on 19 January 2021 were not validly passed, whether on that date or at all. As rightly noted by Ms Staynings, there must be a valid decision of the board to circulate the resolutions on the company's behalf. There is no 'self-help' mechanism enabling the shareholders to circulate the resolutions themselves. This is supported by the ratio in Sprout itself, where a written resolution was held invalid when it was circulated by one of the directors, rather than following a board resolution.

80. If the First and Second Defendants had been frustrated in any way at the Company's response to their request for written resolutions to be circulated, their remedy was to require a general meeting, or to deal with the matter on a Duomatic basis. They did neither at the time.

81. The written resolutions later circulated by Mr Kamenetskiy on 1 February 2021 were not signed by any of the shareholders. By operation of s291(1)(b) CA 2006, they automatically lapsed on the date falling 28 days beginning with their circulation date (ie on 1 March 2021).

82. In short, on the evidence and submissions which I have heard and read, I am satisfied that neither the 19 January resolutions nor the 1 February resolutions were validly passed.

The s293(7) argument

83. In my judgment this argument is untenable. Section 293(7) provides (with emphasis added):

> 'The validity of the resolution, if passed, is not affected by a failure to comply with *this section'*

84. ICC Judge Prentis addressed the limited reach of s.293(7) at paragraph [30] of his judgment in Re Sprout, and I respectfully agree with his conclusions on that issue. On the facts of Re Sprout, one of a number of directors had circulated the written resolution rather than the company. As rightly noted by ICC Judge Prentis at [30] of his judgment, this was not simply a failure to comply with the requirements of s.293, *but also s292(4)*. Section 293(7) does not excuse a failure to comply with s292(4). The learned judge also noted that (i) 'a written resolution must be passed by section 282.. in accordance with chapter 2'; and that (ii) by section 288(1), a 'written resolution' means 'a resolution of a private company proposed and passed in accordance with this Chapter'. On the facts of Re Sprout, there had been no circulation of a written resolution by the company. This was fatal to the validity of the resolution and section 293(7) could not save it. In my judgment, the same reasoning applies on present facts.

Prior practice

85. It was not entirely clear how the 'previously established practice' defence was put as a matter of law. As noted by Ms Staynings, any estoppel by conduct would need to operate not simply against the directors, but also other shareholders.

86. Even if such a defence is in principle available as a matter of law, however, the Defendants failed to make out any such 'previously established practice' on the evidence.

87. For these purposes, the Defendants relied primarily upon (i) an email dated 26 October 2020 sent by Mr Zolotarev to Mr Kamenetskiy, purporting to direct Mr Kamenetskiy to circulate a written resolution requesting that various documents be made available to the Company's members and (ii) a purported resolution circulated on 9 December 2020 by Mr Zolotarev seeking to cancel a general meeting then scheduled for 11 December 2020 and preventing Mr Kamenetskiy from calling further meetings.

88. The email of 26 October 2020 was in reality a request for information and was ineffective as an ordinary resolution. Mr Kamenetskiy explained his response to the email at [37] of his witness statement. I accept his explanation. In broad summary his evidence, which in this regard I accept, was that he did not circulate the resolution but saw no reason for not providing the requested documents on a voluntary basis.

89. Similarly, Mr Kamenetskiy's evidence (which in this regard I accept) is clear that he did not comply with any purported resolution circulated by Mr Zolotarev on 9 December 2020. Instead Mr Kamenetskiy circulated an email dated 10 December 2020 to all shareholders (i) stating that he did not accept that shareholders were entitled to circulate written resolutions, (ii) summarising the correct procedure and (iii) making clear that a special resolution would be needed to require a director to take given steps, in accordance with Model Article 4.

90. Even if there had been some understanding prior to that point (and I was taken to no persuasive evidence to suggest, still less establish on a balance of probability, that there was), the email of 10 December 2020 made the position absolutely clear. Thereafter the Defendants would be in considerable difficulty demonstrating reasonable reliance on any prior practice.

91. In short, the Defendants have failed to make out a 'previously established practice' on the evidence.

Pre-approval

92. As a matter of legal principle, I accept Ms Staynings' submission that the obiter comments in Sprout regarding the possibility of 'pre-agreeing' written resolutions should be treated with a degree of caution. Pre-agreement is not contemplated by the Act and would completely cut across the circulation requirements of s293(2). There is a particular need for compliance with CA 2006 in the case of written resolutions, for the following reasons:

(1) written resolutions were only introduced on 1 October 2007 under CA 2006. They prevent members from debating matters in general meeting and are available only to private companies. In those circumstances, there are safeguards which, among other things, ensure that shareholders are kept fully informed. These include the 21 day period granted under s293(3) to directors, which serves an important purpose going beyond any practical issues inherent in circulating a resolution to all shareholders: among other things, it allows the directors to consider whether any expenses will be incurred that should be paid by the members, whether the resolution 'may be properly moved', whether it is appropriate to circulate any accompanying members' statement or to apply to court under s295 to prevent this, and to consider whether any directors' statement should be circulated in opposition to the resolution at the same time;

(2) a further safeguard is the provision under s293(2) that the company must send copies of the resolution at the same time (so far as reasonably practicable) to all eligible members or, if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn. Whilst non-compliance with this provision does not affect the validity of a resolution, it is enforced by the criminal penalty imposed on every officer of the company who is in default under s293(6). Directors might also be in breach of their statutory duties to the company if they deliberately failed to comply with this; for example, if they did so for an improper purpose, contrary to s171 CA 2006, or failed to act in the best interests of the company (including acting fairly as between shareholders) contrary to s172 CA 2006. There would be no comparable penalty on a member if he or she were entitled to circulate written resolutions under s293 but breached s293(2);

(3) under s.296(2), a member's agreement to a written resolution, once signified, may not be revoked. This mirrors the process in general meeting, where a vote once cast is final and gives certainty; and

(4) written resolutions are not permitted to linger indefinitely or grow stale. Accordingly, s.297 provides that a proposed written resolution lapses if it is not passed before the end of the period specified in the company's articles or the period of

28 days beginning with the circulation date. For this reason, the circulation date (as defined in s.290) is extremely important.

93. At most, pre-approval could in theory extend to pre-signing an actual resolution with the correct circulation date on it – akin to a proxy. It may be that this is what ICC Judge Prentis had in mind, when making the obiter observations set out at [35] of his judgment, although he did not have to grapple with such details on the facts of that case.

94. Ultimately however, the question whether pre-approval is in principle possible is academic on the facts of this case. It is clear from the evidence that the First and Second Defendants' emails of 19 January 2021 were not an attempt to 'pre-agree' a written resolution to be circulated on a later date by the Company following board approval within the 21 day period allowed under CA 2006. I so find. In this regard I note in particular the following:

(1) The resolutions signed by the First and Second Defendants on 19 January 2021 bore a circulation date of 19 January 2021 and stated that they would lapse on 18 February 2021 (ie 28 days after a circulation date of 19 January 2021).

(2) The resolutions of 19 January 2021 provided for the immediate appointment of the Third and Fourth Defendants as directors.

(3) The email later circulated by the First Defendant to other shareholders on the same day (at 9.09 am on 19 January 2021) stated that the written resolutions had been passed and welcomed the Third and Fourth Defendants to the board.

(4) Very shortly thereafter, on the same day (19 January 2021), the Third and Fourth Defendants purported to take steps as directors of the Company; steps which included purportedly extending the deadline under the offer notice of 23 December 2020 from 20 January 2021 to 5 February 2021.

(5) It is clear from the First and Second Defendants' response by email dated 20 January 2021 at 16.24 (quoted at [14] above) to Mr Kamenetskiy's email of 20 January 2021 (at 09.12) that by signing the resolutions on 19 January 2021, they were not 'pre-agreeing' future resolutions; they considered the resolutions to have been validly passed on 19 January 2021.

(6) The 1 February resolutions were circulated by Mr Kamenentskiy by email to all members. The explanatory notes to the 1 February resolutions made clear how members could indicate their approval. Paragraph 13 of Mr Kamenetskiy's earlier email of 20 January 2021 (timed at 9.12) had also made this clear. The First and Second Defendants could not have been under any misapprehension as to what was required of them should they wish to vote in favour of the 1 February resolutions.

(7) After a degree of vacillation on the part of the First Defendant, both the First and Second Defendants ultimately confirmed in cross examination that points 1 to 4 set out in their email of 20 January 2021 (reproduced at [14] above) represented their belief at the time and remained their belief at the date of trial. They each further confirmed, in terms, that they considered the January resolutions to have been validly passed on 19 January 2021 and the Third and Fourth Defendants to have been validly

appointed on that date. The First Defendant also confirmed in oral testimony that he had asked the Third and Fourth Defendants to extend the deadline under the December notice (from 20 January 2021 to 5 February 2021) after their appointment as he needed more time. This request was consistent with the First Defendant's belief that the Third and Fourth Defendants had been validly appointed on 19 January 2021.

95. From the written evidence and their oral testimony overall, it was clear (and I so find) that the reason why the First and Second Defendants each declined to sign the 1 February resolutions was not because they believed they had 'pre-agreed' the 1 February resolutions by signing the 19 January resolutions and had no need to sign again, but rather, because they considered the 19 January resolutions to have been passed on 19 January 2021. To the extent that their witness statements (and that of Mr Litovchenko) suggested otherwise, I reject that written evidence.

96. As the written resolutions later circulated by Mr Kamenetskiy on 1 February 2021 were not signed by any of the shareholders, they automatically lapsed on 1 March 2021 by operation of s291(1)(b) CA 2006.

97. For all these reasons, on the evidence and submissions which I have heard and read, I am satisfied that neither the 19 January resolutions nor the 1 February resolutions were validly passed.

Issue 3: The legal consequences

98. On the evidence which I have heard and read, I conclude that Mr Filatov and Mr Shulkin were never validly appointed directors of the Company. As they were never validly appointed as directors, (i) they had no authority to carry out any act on behalf of the board of directors and (ii) Mr Kamenetskiy has retained authority as sole director of the Company throughout.

99. As sole director, Mr Kamenetskiy had authority to allot and issue the January and April 2021 shares. The Defendants by their PoD put the Claimants to proof on the number of shares subscribed for and held by given shareholders. The First Claimant addressed this at paragraphs 40 and 45 of his witness statement. I accept his evidence on this issue. The register of members is also prima facie evidence of what is contained in it. It was not put to any of the Claimants' witnesses in cross-examination that they had not applied for given shares by the relevant deadlines.

100. In light of my conclusions on Issues 1 and 2, on the evidence which I have heard and read, I find that the shareholdings held in the Company are as set out at paragraph 20 of the POC, as follows:

Name	Number of Ordinary Shares	Percentage
Mr Zolotarev	2,169,614	38.8
Mr Lozhkin	1,811,185	32.4
Mr Leksunin	377,396	6.7
Mr Barabanov	142,407	2.5

Mr Kamenetskiy	239,454	4.3
Mr Kononenko	314,199	5.6
Mr Nazirov	92,408	1.7
Mr Sotnikov	445,881	8.0
TOTAL	5,592,544	100

101. In light of my conclusions on Issues 1 and 2, on the evidence which I have heard and read, I further conclude that:

(1) Messrs Filatov and Shulkin had no authority to deliver to the Registrar of Companies the documents referred to in [21] and 27] of the PoC (or indeed any other documents on behalf of the Company) or purportedly to change the registered office of the Company;

(2) Mr Filatov could not validly call a general meeting at 10 a.m. on 1 October 2021. I would add that Messrs Zolotarev and Leksunin did not hold the required majority to remove Mr Kamenetskiy from his position as director even if 10 a.m. meeting had been validly called;

(3) as sole director of the Company, Mr Kamenetskiy could and did validly call a general meeting at 9 a.m. on 1 October 2021. The outcome of that meeting was that the resolution that he be removed as a director with immediate effect was defeated; and

(4) Mr Kamenetskiy has at all material times since 19 January 2021 held, and continues to hold, office as sole director of the Company.

Relief sought

102. The Claimants seek declarations that:

(1) the written resolutions of 19 January 2021 are void and of no legal effect;

(2) Messrs Filatov and Shulkin were never appointed as directors of the Company and have no authority to deliver documents to the Registrar or to take any other actions in the name of, or on behalf of, the Company;

(3) Mr Kamenetskiy has at all times since 19 January 2021 held, and continues to hold, office as the sole director of the Company;

(4) the documents listed at [21] and [27] of the PoC were (ii) derived from the invalid written resolutions of 19 January 2021 (ii) were filed by Messrs Filatov and/or Shulkin without authority and (iii) are factually inaccurate;

(5) members of the Company hold the number of shares set out in the table at paragraph [20] of the PoC.

103. The Claimants further seek orders under s.1096(1) CA 2006 requiring the Registrar to (i) remove the documents referred to at [21] and [27] of the PoC and (ii) to reverse the purported change of the address of the Company's registered office on 19 January 2021, together with costs and consequential relief.

104. The Defendants resist the relief sought. Dr Perova submitted that the relief sought was beyond the bounds of Part 8 proceedings. I reject that submission.

105. Dr Perova also submitted that the Claimants do not have locus standi to seek relief under s.1096 CA 2006. I reject that submission. In my judgment the Claimants plainly have a legitimate and more than sufficient interest to seek such relief in these proceedings.

106. Dr Perova also argued that the Claimants should not be granted the declaratory relief sought (1) on the ground that 'delay defeats equity' and (2) by application of the maxims 'he who seeks equity must do equity' and 'he who comes to equity must come with clean hands'.

107. I reject the submission that relief should be refused on grounds of delay. Mr Kamenetskiy made his position clear on the invalidity of the 19 January 2021 resolutions from the outset. Thereafter he continued to act as sole director of the Company throughout. All attempts to achieve an amicable solution having proved fruitless, these proceedings were issued. In my judgment there has been no undue delay in the issue and progress of these proceedings. Such delay as there has been does not in my judgment warrant the refusal of relief.

108. I turn next to consider the submission that relief should be refused for want of 'clean hands'.

109. At the hearing before me, Dr Perova sought to argue that Mr Kamenetskiy acted improperly in causing further allotments of shares to be made at nominal value in 2021. The reasoning was somewhat muddled, but the gist appeared to be an allegation that Mr Kamenetskiy had wrongly diverted (or planned or attempted to divert) assets from the Company (including a patent) to other companies in which the Defendants had no interest and had then deliberately sought to dilute the shareholdings of the First and Second Defendants in the Company by making share offers in order to prevent them from taking steps to remove him and/or control or rectify his allegedly wrongful behaviour.

110. This elaborate (and somewhat desperate) narrative was entirely unpleaded. Dr Perova sought to downplay the significance of this, arguing that pleadings were not required in Part 8 proceedings. The reality is however that pleadings were ordered in this case. The Defendants not only filed professionally prepared points of defence but also amended points of defence. In my judgment the Defendants should not be permitted to raise serious allegations regarding the conduct of Mr Kamenetskiy as sole director of the Company on an unpleaded basis. The Claimants are entitled to know the case they have to meet.

111. Even if it had been open to the Defendants to raise these unpleaded points, however, on the evidence which I have heard and read the Defendants have failed to establish on a balance of probabilities that Mr Kamenetskiy acted in any way improperly as

sole director of the Company, whether in relation to the January 2021 and April 2021 share allotments or at all.

112. In relation to the January 2021 and April 2021 share allotments, on the evidence before me it was clear (and I so find) that these allotments (and the offers giving rise to them) were made as a means of raising funds needed by the Company at the time. I accept Mr Kamenetskiy's written and oral evidence on this issue. The Company's funding requirements were also addressed in contemporaneous correspondence in evidence before me. I further accept Mr Kamentskiy's explanation for raising the funds required in two tranches rather than one, the aim being to stagger the cash burden on shareholders.

113. The suggestion that Mr Kamenetskiy was seeking to dilute the shareholdings of the First and Second Defendants made no sense in any event. I have no hesitation in rejecting it. The facts of this case were plainly distinguishable from those of Howard Smith Ltd v Ampol Ltd (P.C.) [1974] AC 821, an authority on which Dr Perova sought to rely. The key distinguishing factor in this case is that *all* shareholders, including the First and Second Defendants, were offered the opportunity to subscribe for their pro rata entitlement of shares in accordance with the Company's articles. Both the First and Second Defendants accepted in cross-examination that they could have taken up the opportunity to subscribe for shares in April 2021 but chose not to. The fact that the First and Second Defendants ended up losing their majority was a situation entirely of their own making.

114. Dr Perova submitted that this outcome was 'inequitable'. She argued that Mr Kamenetskiy somehow 'knew' that the First and Second Defendants would not take up the opportunity to subscribe for shares in March/April 2021. I was taken to no persuasive evidence supporting the averment of 'knowledge', however. Both the First and Second Defendants had subscribed for shares in January 2021. No persuasive explanation was proffered in support of the contention that Mr Kamenetskiy 'knew' that they would decline to subscribe for shares in April 2021. As previously observed, the First and Second Defendants both confirmed in cross examination that they could have subscribed had they wished to.

115. On the evidence before me it is clear (and I so find) that the First and Second Defendants lost their majority as a result of their own decisions. The blame for this outcome cannot be laid at the door of the First Claimant. Even if they considered their view of the law (as summarised at [14] above) to be correct, it was open to them to subscribe for their pro rata entitlement of shares in March/April 2021 in response to the March Notice without prejudice to their contention that the First Claimant was no longer sole director. The fact that they chose not to do so and ended up losing their majority does not, in my judgment, render it 'inequitable' to grant the Claimants the relief sought.

Conclusion

116. For all these reasons, I am satisfied that the Claimants have made out their claim. I shall grant them the relief sought, as summarised at paragraphs 102 and 103 of this judgment.

117. I shall hear submissions on costs and any consequential relief following the handing down of this judgment.

ICC Judge Barber