IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

VIRGIN ISLANDS

COMMERCIAL DIVISION

CLAIM NO.: BVIHC (COM) 0070 OF 2023

BETWEEN:-

(1) GLOBAL MINING DEVELOPMENT L.P.

(2) GERALD METALS LLC

Claimants / Applicants

- AND -

(1) CHINA NATIONAL GOLD GROUP HONG KONG LIMITED

(2) SOREMI INVESTMENTS LIMITED

Defendants/Respondents

Mr Peter De Verneuil Smith KC and, with him, Ms Judy Fu (instructed by Harney Westwood & Riegels (BVI) LP) and, with them, Mr Jonathan Addo and Ms Natasha Guthrie, both of Harney Westwood & Riegels (BVI) LP, for the Claimants

Mr Stuart Adair (instructed by Walkers) and, with him, Miss Rosalind Nicholson and Ms McKay Drigo of Walkers, for China National Gold Group Hong Kong Limited

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2025: 26 to 29 May

16 July 2025

JUDGMENT

INTRODUCTION

[1] This is my judgment ("this Judgment" or "the Rectification Judgment") on the application of the Claimants to rectify the Register of Members of SIL to show that the SIL Shares are now held legally and beneficially by Global.

[2] Unless otherwise stated, or the context otherwise requires, the words and expressions used in the Rectification Judgment shall have the same meanings as the meanings ascribed to them in the Contempt Judgment.

[3] This Judgment only deals with the Rectification Application. My judgments on the Contempt Application and the Discharge Application are dealt with separately. Nor is there any need for me to deal with any issues arising in the Rectification Judgment that I have already dealt with in the Contempt Judgment or the Discharge Judgment.

[4] There is no need for me to set out the dispute between the parties in this Judgment. A summary of the relevant factual background is set out in the Contempt Judgment.

[5] The application for rectification states, *inter alia*, that "following the Court's determination of the First Defendant's (CNG) application to set aside the Awards as set out and defined below, the following consequential orders be made, namely:

(1) The register of members of the Second Defendant, Soremi Investments Limited (company number 1457776) (SIL/The Company), be rectified to show that:

(i) The 65% shareholding in SIL formerly held by CNG, is transferred to the First Applicant, Global Mining Development L.P. (Global);

(ii) CNG is removed as the holder of 10791.3 shares in SIL and Global is substituted in its place as the holder of these said shares; and

(iii) Global is the registered shareholder of 100% of the issued shares in SIL.

(2) Vistra (BVI) Limited (Formerly Tricor Limited), as the registered agent of SIL, be directed to immediately:

(i) update the register of members in the manner set out in paragraph 1 above; and

(ii) provide the Applicants with a certified true copy of the updated register of members following the updating of the register in accordance with paragraph 1 above.

(3) If appropriate, should CNG not provide the Applicants with a duly executed share transfer form within 2 days of the date of the order, the Registrar be authorised to take all necessary steps to effect an executed share transfer form pursuant to section 25 of the Supreme Court Act (Cap 80).

(4) Immediately following the transfer of the shares, the CNG directors namely Jiang Liangyou, Tong Junhu, Wang Wanming and He Shuiqing, be removed as directors of SIL in accordance with the shareholders resolution."

[6] The Defendants' "defence" to the Application is remarkable. It amounts to a direct collateral attack (in accordance with the principles set out in **Hunter v Chief Constable of the West Midlands Police [1982] AC 529**) upon: (a) the FPA and the SPA; (b) the judgment of **Mimmie Chan J** dismissing the Defendants' application to set aside the FPA in Hong Kong; and (c) the orders of **Wallbank J** recognising the awards. It, therefore, constitutes a clear abuse of process. Alternatively, it is an "issue estoppel" type of abuse of process (in accordance with the principles set out in **Henderson v Henderson (1843) 3 Hare 100**) because it seeks directly or indirectly to challenge those awards and judgments[1].

ANALYSIS AND DISCUSSION

[1] It is clear that foreign decisions can give rise to issue estoppel, though the circumstances in which this will be so are narrowly drawn: **Carl Zeiss Stiftung v Rayner and Keeler Ltd (No 2) [1967] 1 AC 853, [1966] 2 All ER 536, HL**; **The Sennar [1985] 2 All ER 104, [1985] 1 WLR 490, HL**; and **House of Spring Gardens Ltd v Waite [1991] 1 QB 241, [1990] 2 All ER 990**, **E&W CA**.

[7] I understand it to be CNG's case now that any order made on this Application should include a provision that CNG should not be required to transfer shares without Global paying the purchase price of USD 86.32 million.

[8] CNG's case on this and the other "defences" is put by Mr Adair in the following terms.

[9] First, it is alleged by CNG that the Rectification Application is defective and tainted by fraud and abuse of process and should not be granted.

Is the Rectification Application defective?

[10] The basis upon which it is alleged that the Rectification Application is defective is said to be as follows:

> "9 The Rectification Application is defective because the Notice of Application and the Draft Order do not provide for the payment of the Purchase Price and do not therefore give effect to the FPA. If granted the Rectification Application would effect the transfer of the Shares into the legal ownership of Global without the payment of any consideration. It is submitted that this is not an oversight but a deliberate act.
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> 10. The Notice of Application and the Draft Order in the Rectification Application seek relief to which the Claimants are not entitled and are very misleading in relation to the basis for that relief:
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> (1) Paragraph 1 of the Notice of Application (i.e. the order sought by the Claimants) merely seeks the rectification of SIL's Register of Members to show the transfer of the Shares to Global. There is no reference to (a) this being a sale of the Shares or (b) Global paying the Purchase Price (USD 86.32 million). The Notice of Application seeks no provision for the payment of the Purchase Price;
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> (2) Paragraph 1 of the Grounds of the Rectification Application states that in the FPA the Tribunal had "determined that Global was legally entitled to ownership of 100% of SIL because of Global's operation of a validly exercised right of first refusal in March 2020 under a shareholders agreement dated 17 March 2014…" This is misleading because the FPA actually determined that a contract had been concluded for the purchase of the Shares by Global for the Purchase Price. The payment of the Purchase Price of USD 86.32 million is clearly a condition precedent to Global acquiring ownership of the Shares, but there is no mention in the Notice of Application of any such payment being made by the Claimants;

(3) Paragraph 2 of the Grounds of the Rectification Application merely states that "the FPA ordered CNG to transfer its 65% shareholding in SIL to Global…". Again, there is no reference to paragraph 5(a) of the FPA and the payment by Global of the Purchase Price of USD 86.32 million;

(4) The draft order makes no provision for the payment of the Purchase Price of the Shares and if an order were to be made by the Court in those terms it would result in Global acquiring the Shares for nothing and would constitute a gross miscarriage of justice.

11. The only basis for a transfer of the Shares to Global is the FPA. The Rectification Application purports to give effect to the FPA, but does not do so. Instead, it seeks relief to which the Claimants are not entitled. In these circumstances, the Rectification Application is defective and should be dismissed. It certainly cannot be granted in its present form."

[11] There is nothing defective in the Rectification Application. The Claimants' case is explained in detail in the grounds specified in the Application and the written evidence in support. There is, and never was, any need to amend the Rectification Application. But if I am wrong about that, I would unhesitatingly waive any defect under **ECSC CPR 26.9** and do so now.

[12] At best, paras. 9-11 of Mr Adair's submissions amount to a series of *non-sequiturs*. But, in my judgment, they are hopeless points, devoid of any merit. So far as the failure to refer to the payment of the purchase price is concerned, the grounds of the Application and/or the written evidence in support expressly set out the obligations of each of the parties to the arbitral proceedings. The suggestion that any more is required is simply fanciful.

Is the Rectification Application an abuse of process?

[13] The answer to this is an emphatic "NO".

[14] Mr Adair's submissions on this point are included in the following paragraphs of his skeleton argument:

"15 It is submitted that the Rectification Application is tainted by an abuse of the process of the Court. As drawn to the attention of the Court in the short "Overview" skeleton argument lodged on behalf of CNG, it has been the practice of the Claimants to file Certificates of Urgency as a matter of course in order to

obtain draconian relief at ex parte hearings without CNG having the opportunity to be heard.

16 This practice was followed in relation to the Freezing Injunction17 granted at the ex parte hearing on 28th March 2024. Despite CNG not being heard on the merits of the Freezing Injunction, the Claimants then issued a Contempt Application18 (supported by a Certificate of Urgency) on 1st May 2024. The relief sought in the Contempt Application was a debarring order and until relatively recently the Claimants were insistent that the Contempt Application should be heard before any other application. In particular, they procured that the Contempt Application was listed to be heard on 2nd October 2024 and the Rectification Application was listed to be heard on 24th October 2024.

17. It is submitted that it was the intention of the Claimants to obtain a debarring order and prevent CNG being heard by the Court on any of the other applications. The consequence of this, as far as the Rectification Application is concerned, is that no one would have pointed out to the Court that any transfer of the Shares required the payment of the Purchase Price of USD 86.32 million. Thus, the defect in the Rectification Application is the result of the Claimants' own abuse of the process of the Court.

18. CNG's skeleton argument for the Contempt Application explains this conduct and asserts that the Contempt Application was filed and prosecuted with the collateral purpose of silencing CNG (through a debarring order) and obtaining the Shares without paying the Purchase Price."

[15] I have already dealt with this in my other judgments. It is astonishing that CNG can legitimately say that the purpose of the applications, supported by certificates of urgency, was that it was somehow designed to mislead the Court into believing that the transfer of the SIL Shares would take place without the Court being aware of the fact that CNG was entitled to be paid $86.32 million. Disregarding the fact that it amounts to insulting the intelligence of the Court, i.e., that it would accept the contents of the Rectification Application at face value (without considering any of the material lodged in support of it and the other applications which were pending) and determine the application without giving the opportunity to CNG to respond to it, it is staggering that an allegation of this type should be made without any evidence whatsoever supporting it.

[16] My other judgments deal with why there was no collateral purpose in seeking the determination of the Rectification Application on an urgent basis. I reiterate that.

[17] I deprecate the use of certificates of urgency when they are not necessary. They take up a valuable judicial resource when they are submitted and found not to be urgent. They are governed by strict guidelines, and those guidelines must be followed. In the present case, the

hearing of the Rectification Application was not urgent at any rate after the appointment of the Receivers. However, I am clear that there was neither an ulterior motive nor a collateral purpose in submitting the certificates. The most that can be said about them is that what appeared to be urgent to the Claimants' lawyers was not considered urgent to the Court. The suggestion made in para. 18 of Mr Adair's skeleton argument is, therefore, incorrect. In addition, the suggestion made in para. 19 of the skeleton argument about the Claimants and, by implication, their lawyers, being dishonest by seeking to obtain the SIL Shares for nothing, for which there is no evidence whatsoever, seems to me to be quite improper for counsel to make.

[18] The most appropriate way, it seems to me, to deal with the various certificates of urgency that were not necessary is to impose an appropriate costs sanction.

Is there fraud impugning the FPA?

[19] This point was briefly mentioned in the course of the Omnibus Hearing. Subsequently, there was a certificate of urgency filed requesting that an application made by Campbells, on behalf of CNG, for a stay be dealt with urgently.

[20] On 25 June 2025, the Court received the following email from Campbells:

> "Please can this email be provided to His Lordship at your earliest convenience as there seems to be some confusion over our client's outstanding request to have its application (i) listed, and (ii) heard.
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> Our client, CNG filed, an application notice, supported by affidavit evidence dated 20 May 2025, amended on 22 May 2025 (the "**Application**"). The certificate of urgency accompanying the Application was refused, but the Application remains outstanding and requires a listing and thereafter determination by the Court. The Respondents have taken the decision to file no evidence in answer to the Application, and have likewise not sought permission to file any evidence out of time.
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> Given the current circumstances, we respectfully suggest that the Application needs to be listed for a hearing, in one of the following ways:
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> a. The Application is listed immediately following the handing down of the judgment arising from the May hearing (there is no current date for this handing down to our knowledge). In which case, CNG respectfully requests reasonable notice of when the judgment will be handed down so that the Application can be adequately prepared for and presented by Counsel. If the Court adopts this course we assume the

Respondents will agree to advance notice as it is clear the Application is opposed;

b. The Application is given its own distinct listing date. If this route is preferred by His Lordship, CNG respectfully requests that a listing is provided without further delay, and the Court confirms whether the Application will be heard before or after the handing down of the judgment and a stay on enforcement be imposed until the Application has been heard and determined; or

c. A short directions appointment be listed purely to deal with the listing of the Application."

[21] On 5 June 2025, the Court wrote to Campbells on my direction in the following terms:

> "The certificate of urgency is refused. This matter was mentioned at the hearing on 26 to 29 May, but no application or intimation was made at that stage for a stay. In any event, based on as yet incomplete information, I do not consider that it is so urgent that it should take priority over other matters that are in my list.
>
> Once my judgments are issued, it may be appropriate, at that stage, to decide at the consequentials hearing that follows, whether a stay application is appropriate."

[22] I have not considered the application made by Campbells. However, it does seem to me that seeking a stay of the Rectification Application when, so far as I am aware, no "originating" claim challenging the FPA or the SPA on that ground has been made (whether in this or any other jurisdiction) by CNG, is somewhat premature.

[23] This Judgment and the other judgments may be shared with Campbells, and I will deal with the listing of their application after I have heard submissions from the other parties. At this stage, neither this allegation nor those referred to in para. 53-69 in Mr Adair's skeleton argument need to be dealt with by me. Nor do I express any view on the admissibility of those allegations.

Is there an unpaid vendor's lien over the SIL Shares?

[24] Mr Adair's skeleton also submits that "If, as it contends, Global has acquired the beneficial ownership of the Shares by virtue of the contract arising from its exercise of its right of first refusal under clauses 5.3 and 5.4 of the SHA, any such proprietary interest will be subject, at the very least, to CNG's lien over the Shares for the payment of the Purchase Price." This assertion is, frankly, absurd.

[25] Even supposing that an unpaid vendor's lien can arise in the present case, it is difficult to see how the Court can recognise its existence in circumstances where the only reason that the purchase price of the SIL Shares has not been paid is because CNG has failed to comply with its obligations under the FPA and SPA, specifically, the obligation to provide its account details so payment can be made to it. If the Court recognised this as a valid reason to refuse the Rectification Application, it would effectively allow CNG to benefit from its own wilful and deliberate acts to refuse to comply with the SHA and the arbitral awards. It would be manifestly unfair to the Claimants to allow CNG to do so and would amount both to an abuse of process and bring the administration of justice into disrepute.

[26] But it seems to me that there can be no unpaid vendor's lien in this case on the basis that the parties simply could not have intended there to be such a lien: see, by way of example, **Mitchell v Al Jaber [2024] EWCA Civ 423**. There are several reasons for this. It only suffices if I mention what I regard as the most important one. It simply cannot have been the intention of the parties that where CNG had breached the terms of the SHA by not providing the Claimants with their bank details to allow them to pay CNG the purchase price of the SIL Shares, CNG would nonetheless have a lien over those shares. If I am wrong about that, then, for my part, I would treat the lien as having been lost once CNG failed to comply with its obligations to provide its bank account details under the SHA and the SPA because that made it impossible for the Claimants to comply with their obligation to pay the purchase price of the shares. Further, and in any event, so far as this was within my discretion, I would not allow the lien to be enforced until the Claimants had defaulted in the payment of the purchase price for the Shares.

[27] If payment for those shares is not made by the Claimants as required by the terms of this Order, CNG will be entitled to obtain a money judgment for the price of the shares and be able to enforce it in the same way as any other money judgment, including (though I have not checked), at that stage seeking a charging order over the SIL Shares. Of course, if there is any risk of dissipation of those shares, the Defendants will also be entitled to obtain a freezing order over the Shares. But I am clear that they are not entitled to the benefit of any unpaid vendor's lien in this case.

Should any order made on the Rectification Application containing a requirement for payment?

[28] CNG argues that the order should include a provision that CNG should not be required to transfer shares without Global paying the purchase price of USD 86.32 million.

[29] The SPA provides, *inter alia*, as follows:

> "a) Within 5 days of the date of this order, CNG shall provide to Global:
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> i. Bank account details into which the Purchase Price shall be paid;
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> ii. A signed and executed instrument effecting the immediate transfer of the Shares; and
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> iii. A copy of Soremi's register of members recording Global as the holder of the Shares.
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> b) Immediately on receipt of items i. and ii. above, Global shall transfer the Purchase Price and take all necessary steps to effect the transfer of the Purchase Price to the nominated bank account provided by CNG pursuant to i. above."
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> (Emphasis supplied).

[30] CNG has failed to comply with any of the requirements of para. a), above, including the requirement to provide the Claimants with the bank details therein referred to.

[31] If and when it complies with its obligations, the purchase price of the SIL Shares becomes "immediately" payable. It has to follow from this that no obligation to make payment arises until the obligation in para. a), above is complied with.

[32] The FPA and SPA are binding upon CNG. What CNG is seeking to do is amend their terms. This amounts to a clear collateral attack upon those awards and the orders recognising them. It is a palpable abuse of process: see above.

[33] Nor is it appropriate for CNG to fail to provide its bank account details and then seek to blame the Claimants for not paying the purchase price of the shares. It is frankly difficult for me to see, even if a provision of the type sought by Mr Adair is included in the order, where the payment made by the Claimants would need to be made without those account details being provided. Nor does it seem to me that CNG has any intention of complying with its obligations under the SHA, FPA, or the SPA.

[34] Accordingly, there is no basis to include in any order I make in the Rectification Application that CNG should be paid the purchase price of the SIL Shares. Once the Register is amended and the title of the Claimants to the shares is perfected, the amount of the purchase price will be payable and, if not paid, will give rise to a claim for its payment under the terms of the FPA and SPA and the orders made by this Court recognising them. To require the order to contain a provision that payment of the USD 86.32 million should be made by the Claimants would amount to this Court "acting in vain".

Paragraph 4 of the Rectification Application

[35] I understand that this part of the Rectification Application is largely otiose and does not need to be determined by me.

CONCLUSION

[36] For the above reasons, other than the relief sought in para. 4, which I do not have to decide, I grant the substantive relief sought in the Rectification Application.

[37] As stated in the Contempt Judgment, the parties should endeavour to agree the drafts, or updated drafts, of the orders for consideration by me to reflect this Judgment.

[38] I again thank counsel for all their assistance in this case.

Abbas Mithani KC
High Court Judge

By the Court

Registrar

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