Eletson Gas LLC v A Limited & Ors [2025] EWHC 1855 (Comm): important findings by the Commercial Court on the recognition of foreign arbitral awards

A. Introduction

On 14 July 2025, judgment was handed down by the Commercial Court *in Eletson Gas LLC v A Limited & Ors* [2025] EWHC 1855 (Comm). The case concerns an application made under s32 of the Arbitration Act 1996 ("AA") to resolve a dispute between two rival groups (the fourth to eighth defendants and the ninth and tenth defendants). Each group purported to be the "true" board of Eletson Gas LLC ("Eletson Gas") as lawfully constituted and each claimed that they had validly appointed an arbitrator on behalf of the company.

HJJ Pelling KC (sitting as a Judge of the High Court) resolved the dispute in favour of the fourth to eight defendants. The judgment clarifies important points of principle in relation to the recognition and enforcement of foreign arbitral awards in England and Wales.

B. Background

The bareboat charters

D1-D3 own three oil tankers. The tankers were bareboat chartered to Eletson Gas on terms which contained London arbitration agreements. The charters gave the claimant an option to purchase the tankers by an option date, exercisable by service of a purchase option notice. Notices were served purporting to be on behalf of Eletson Gas by (i) D9 and (ii) D8 on behalf of D4-D8 by the purchase option dates (as extended) of 31 July 2025. D1-D3 needed to know which notice it could safely act upon (i.e. which notice was in fact validly served on behalf of the claimant).

The dispute about the rival notices was referred to arbitration in London and both camps (D9-D10 and D4-D8) purported to appoint arbitrators on behalf of the respondent i.e. Eletson Gas. That gave rise to a further dispute about who was entitled to appoint an arbitrator on behalf of Eletson Gas. D9-D10 commenced s32 proceedings ostensibly in the name of Eletson Gas to resolve that dispute.

The JAMS arbitration

In fact, the rival claims of D9-D10 and D4-D8 in respect of control of Eletson Gas had a longer pedigree. A US-seated arbitration (the "JAMS arbitration") was commenced in 2022 to resolve a dispute about whether the preferred shares in Eletson Gas had been sold to companies nominated by or represented by D9-D10 pursuant to an agreement called the Binding Offer Letter ("BOL").

While the JAMS arbitration was afoot, Chapter 7 bankruptcy proceedings were commenced in the US against Eletson Holdings (a party to the BOL, claimant in the JAMS arbitration, and holder of the common shares in Eletson Gas). The

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arbitrator stayed the JAMS arbitration pending further order of the Bankruptcy Court after Lenova (also a party to the BOL and the purported transferor of the preferred shares via that agreement) argued that the effect of the Chapter 7 proceedings was to impose a mandatory stay of the JAMS arbitration pursuant to s. 362(a) of the US Bankruptcy Code.

The Bankruptcy Court made an order with the apparent effect of lifting that statutory stay to allow the JAMS arbitration to continue in part. The order included a provision that "*Any Arbitration Award*…" obtained in the arbitration "…*shall be stayed pending further order of the Bankruptcy Court*…"

An award was subsequently published which found that companies were nominated by or represented by D9-D10 to hold the preferred shares. Confirmation proceedings were commenced before the US District Court for the Southern District of New York ("the District Court"). The District Court Judge, Judge Liman, initially allowed in part that application for confirmation and a cross-application to vacate.

However, Levona then applied to have the JAMS award set aside on the basis that it had been obtained by fraud. That application has not yet been resolved in the US. In light of the application to set aside the JAMS award, in February 2025 Judge Liman amended his partial confirmation and partial vacation order so as to make the order "*subject to the resolution of Levona's pending notion to vacate the award and its defence based on fraud in the arbitration*".

The Chapter 11 plan

In the meantime, the Bankruptcy Court had approved a Chapter 11 Plan for Eletson Holdings on 25 October 2024 after the Chapter 7 proceedings had been converted into Chapter 11 proceedings.

The purported effect of the plan was (relevantly) to replace the Board of Eletson Holdings with a new board consisting of D7 and D8 (and a Mr Matthews). The new board of Eletson Holdings removed D9-D10 as the directors appointed by Eletson Holdings and appointed D8 in their place. D9-D10 disputed the validity of the plan.

The rival boards

The board of Eletson Gas was made of directors appointed by two groups of shareholders. The owner of the common shares (which was common ground was Eletson Holdings) was entitled to appoint up to two directors. The owner of preferred shares was entitled to appoint up to four directors.

Each of D4-D8 and D9-D10 contended that associated interests controlled all of the shares and were therefore entitled to appoint the full board of Eletson Gas and, in consequence, entitled to appoint and remove the officers of the company.

D4-D8 contended that they were in control of Eletson Holdings (and hence the common shares) as a result of the Chapter 11 Plan, and that Levona owned the preferred shares. D9-D10 contended that they remained in control of Eletson Holdings notwithstanding the Chapter 11, and that the preferred shares had been transferred to their nominees.

C. The Commercial Court decision

In deciding who had control of Eletson Gas (and specifically whether D4-D8 were directors), the Commercial Court had to decide (i) who controlled Eletson Holdings (as the agreed holder of the common shares) and (ii) who controlled the preferred shares in Eletson Gas (as between Levona and D9-D10's nominees).

On the first issue, HHJ Pelling KC decided that the Chapter 11 plan gave the answer [37]-[40]. The Chapter 11 plan provided that the old board of Eletson Holdings was deemed to have resigned with effect from 19 November 2024 and from that date D7-D8 and a Mr Matthews were Eletson Holdings' directors. HHJ Pelling KC rejected the contention (amongst others) by D9-D10 that the Chapter 11 plan has no effect because it was not recognised in Liberia and/or by the

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courts in the Republic of the Marshall Islands (the "RMI") [38].

On the issue of who controlled the preferred shares, the Court had to decide whether the shares had been transferred to companies nominated or represented by D9-D10 pursuant to the BOL. D4-D8 submitted that D9-D10 relied exclusively on the findings in the JAMS award to that effect, but that the JAMS award does not avail them because *inter alia* (i) no application has been made for recognition of that award in England and Wales under s101 of the AA and (ii) in any event no application for recognition would succeed because (amongst other reasons) the JAMS award has been suspended in the US.

HHJ Pelling KC accepted both of those submissions. Of particular interest are the following aspects of HHJ Pelling KC's reasoning in respect of the argument that D9-D10 are not entitled to rely on the JAMS award:

1. If it is right that the parties to the Commercial Court proceedings are not the same as the parties to the JAMS award (as D4-D8 argued), the rule in *Hollington v Hewthorn* [1943] KB 587 applies [50]. That rule states that findings made in earlier proceedings are inadmissible in subsequent proceedings between different parties as evidence of the facts found. As such, the JAMS award and its findings are inadmissible in the Commercial Court proceedings.

2. If, however, D9-D10 are right that the JAMS award can be treated as having been issued between the same parties as the parties to the Commercial Court proceedings, or their privies, it is possible in principle that an issue estoppel arose as an exception to the default position in *Hollington v Hewthorn*. Yet:

a. The JAMS award cannot be relied upon for issue estoppel (or any other) purposes because it has not been recognised under s101 of the AA (which gives effect to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") [48]-[49]. This is believed to be the first English decision whose *ratio* is that recognition is required under the New York Convention before evidential reliance can be placed on a foreign arbitral award in domestic proceedings.

b. In any event, any application for recognition of the JAMS award under s101 which had been made would probably have been stayed pending the determination of the application to set aside the award in the US under s103(5) of the AA. HHJ Pelling KC also decided that the effect of Judge Liman's orders was to suspend enforcement / recognition of the JAMS award until after the application to set aside had been resolved i.e. the orders were a suspension by competent authority within the meaning of s103(2) (applying the test formulated by Jacobs J in *Leidos Inc v The Hellenic Republic* [2019] EWHC 2738 (Comm) 2020 1 LLR 37) [53].

D. Conclusions

This is a case which will be of interest to commercial law and arbitration practitioners. It provides insight into the Commercial Court's approach to resolving difficult section 32 applications; the issue of which of the two rival Eletson Gas boards had validly appointed an arbitrator on behalf of the company gave rise to a host of factual, procedural and foreign law expert questions involving at least three foreign jurisdictions (the US, Libera and the RMI). It moreover clarifies significant points of principle relating to the approach in England and Wales to the recognition and enforcement of foreign arbitral awards under the New York Convention.

In particular, it is now clear that before a party can rely on a foreign arbitral award in Commercial Court proceedings, the award needs to be recognised under the New York Convention (via s101 of the AA). Absent recognition, a party will not be entitled to rely upon that award by using domestic principles of issue estoppel – and should a party seek recognition, it may be met by one or more of the statutory defences in s103. It is suggested that HHJ Pelling KC's conclusions on the

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interaction of recognition and issue estoppel will be of interest not only to practitioners in England and Wales but to international arbitration practitioners in the US and other New York Convention signatory states.

Alexander Wright KC and Jonathan Schaffer-Goddard, together with Wei Jian Chan of Essex Court Chambers (instructed by Luke Zadkovich, Edward Cole, Philip Vagin and Augusto Garcia of Floyd Zadkovich LLP) acted on behalf of the fourth to eighth defendants. Sean O'Sullivan KC and Richard Nicholl (instructed by Adam Rizzo and Alexander Witt of Orrick, Herrington & Sutcliff UK LLP) acted on behalf of the first to third defendants.

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