

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2025/0020

BETWEEN:

China National Gold Group Hong Kong Limited

Appellant

and

[1] Global Mining Development LP

[2] Gerald Metals LLC

Respondents

Before:

The Hon. Mr. Reginald T. A. Armour

Justice of Appeal

[Ag.]

Appearances:

Mr. Phillip Marshall KC with him, Ms. Rosalind Nicholson and Mr. James McWilliams for the Applicant/Appellant.

Mr. Peter De Verneuil Smith KC with him, Ms. Judy Fu, Mr. Johnathon Addo and Mr. James Wilton for the Respondents.

2026: January 19;

2026: March 20.

Application for a stay of execution – Unless order – Freezing Injunction – Whether there is cogent evidence that a stay should be granted – Balance of harm – Whether the party seeking the stay would suffer greater prejudice if the stay is not granted – Whether the appeal will be rendered nugatory if the stay is not granted – Whether the applicant has put forward strong grounds that the appeal would be successful – Whether the interests of justice are best served by hearing or refusing the party in contempt – Whether the Court ought to refuse to hear a party simply because he is in contempt or accede to hear the party because he is in the process of appealing a contempt order – Whether the appellant's failure to comply with the orders of the court amounts to an abuse of process – Whether the Debarring Order should be stayed in light of the appellant's continuously flouting of the orders of this Court – Whether granting a stay in the circumstances of this

case would have the effect of undermining the authority of the court and encourage disregard of its orders

JUDGMENT

- [1] **ARMOUR SC, JA [AG.]:** This is an application filed by China National Gold Group Hong Limited, the applicant/appellant herein (“CNG”) dated 31st July 2025 seeking a stay in terms of part (b) of that application that is to say, that there be a stay of the judge’s order contained in the Contempt Order dated the 16th July 2025 of the learned judge, Mr. Justice Mithani unless it (CNG) complies with its obligations under paragraph 14 of the Freezing Injunction made by Justice Wallbank dated 28th March 2024 to disclose all its assets over the value of USD 100,000 by 4:00 PM on 23rd July 2025, that it be debarred from being heard by the court pending the grant of leave to appeal and if granted the hearing of that appeal of paragraph 14 of the order of the learned judge, Mr. Justice Mithani.
- [2] Part (a) of that application dated 31st July 2025 was for leave to appeal the Contempt Order dated 16th July 2025. On 23rd September 2025, I granted leave to CNG to appeal that Contempt Order dated 16th July 2025 and adjourned the further hearing of Part (b) of the 31st July 2025 application for a stay, to be heard virtually before a single judge. I heard that Part (b), that is to say the Stay Application, virtually, on the 19th January 2026. This is my judgment and decision in respect of the same.

Background

- [3] On 18th December 2013, a joint venture was established for a polymetallic mining project in the Republic of Congo. Soremi Investments Limited (“SIL”), incorporated in the British Virgin Islands (“BVI”), was the joint venture vehicle. China National Gold Group Hong Kong Limited (“CNG”) acquired 65% of SIL’s shares while Global Mining Development LLP and Gerard Metals LLC (“the respondents”) acquired 35% under a Share Purchase Agreement (“SHA”). On 17th March 2015,

the parties' relationship was formalised by the SHA, which included restrictions on the transfer of shares and the rights of first refusal.

- [4] In 2017, CNG proposed to transfer its shares in SIL to China Gold International Resource Group Limited ("CGG"), an affiliated Canadian-listed company. A dispute arose as to whether CGG was a permitted transferee under the SHA and, whether the respondents had exercised a right of first refusal over the shares and thereby acquired ownership of them.
- [5] On 2nd March 2020, CNG issued a notice that later became central to the dispute as a potential transfer notice under the SHA.
- [6] On 13th November 2020, the respondents commenced arbitration under the Hong Kong International Arbitration Centre Rules ("HKIAC"). In that Arbitration there were issues as to whether (a) CGG was a permitted transferee under the SHA, (b) Global Mining Development LLP, the first respondent herein ("Global") had a right of first refusal in respect of the Shares, (c) a notice sent by CNG on 2nd March 2020 constituted a Transfer Notice under Clause 5 of the SHA and (d) if so, whether that Transfer Notice was validly accepted by the respondents.
- [7] In that Arbitration the Tribunal issued two arbitral awards recognising the first respondent, Global, as having exercised its Right of First Refusal in March 2020 and entitled to the transfer of CNG's 65% shareholding in SIL, thereby making Global the 100% shareholder of SIL. These awards are referred to in these proceedings as the First Partial Award ("the FPA")¹ and the Specific Performance Award ("the SPA"). These awards were made on 8th February 2023 and 21st November 2023, respectively. The FPA and the SPA are registered in the BVI as New York Convention Awards.

¹ Volume E of the Contempt Hearing Bundle, page 77.

[8] High Court proceedings have been commenced in the British Virgin Islands by Global and Gerald Metals LLC in BVIHC (COM) 0070 of 2023 concerning the enforcement of the FPA and the SPA, which have been resisted by CNG (hereinafter referred to as “the BVI Proceedings”).

[9] The BVI Proceedings are chronicled as follows:

- (i) By Order dated 25th April 2023, the Hon. Mr. Justice Wallbank recognised the FPA made in favour of the respondents against CNG and SIL by the Tribunal as a New York Convention Award in the BVI.
- (ii) By Order dated 18th December 2023, Justice Wallbank made an order, *inter alia*, recognising the SPA as a New York Convention Award in the BVI.
- (iii) CNG made an application to have the 25th April 2023 Order and the 18th December 2023 Order set aside. The applications to set aside were heard on the 9th to the 11th April 2024 and, were dismissed by Justice Wallbank on 15th April 2024².
- (iv) CNG also challenged the registration of the two Awards in the BVI, which culminated in a 3-day hearing before Justice Wallbank. The challenge was dismissed by the judge in a decision given orally on 15th April 2024, with reasons to follow and, Justice Wallbank handed down his reasons on 6th December 2024.
- (v) By Order dated 15th April 2024, CNG was ordered to comply with the FPA and the SPA and transfer its 65% interest in SIL to the first respondent.
- (vi) In March 2024, the respondents obtained disclosure under section 100 of the BVI Business Companies Act (“BCA”)³ which they say revealed that SIL had been largely stripped of its cash, with about USD\$140 million transferred in September 2023 to an affiliated company.
- (vii) By Order dated 28th March 2024⁴, an ex parte freezing and repatriation order was made against CNG requiring the SIL funds to be returned. This order was amended on 3rd July 2024 making it necessary for the SIL Funds to be paid into court until further order.

² Volume D of the Contempt Hearing Bundle, at page 25.

³ Act no. 16 of 2004 of the Revised Laws of the Territory of the Virgin Islands.

⁴ Volume D of the Contempt Hearing Bundle, at page 8.

- (viii) On 1st May 2024⁵, the respondent filed a contempt application alleging breaches of the freezing injunction by CNG.
- (ix) On 7th May 2024⁶, CNG objected that the contempt application had been issued before CNG had the opportunity to be heard on the merits of the freezing injunction.
- (x) From 26th-29th May 2025, the contempt application along with CNG's application to discharge the freezing injunction and the respondents' application to rectify the register of members of SIL to record that the first respondent is the legal owner of the shares were all heard before the Hon. Justice Abbas Mithani. Justice Mithani conducted what he referred to as "the Omnibus Hearing" of all three inter-related applications over those days.
- (xi) On the 16th July 2025⁷, Justice Mithani handed down three separate judgments which he referred to as (i) The Contempt Application Judgment, (ii) the Discharge Judgment and (iii) the Rectification Judgment.
- (xii) All three judgments found in the respondents' favour and, among others, Justice Mithani made the Contempt Order dated 16th July 2025 in that Contempt Application Judgment. It is this Order dated 16th July 2025 made by Justice Mithani which is referred to herein as the Contempt Order.

[10] In the Contempt Order, it was declared in that Order that:

- (i) "The First Respondent (therein), China National Gold Group (Hong Kong) Limited (CNG), and the Third Respondent (therein) Société de Recherche et D'Exploitation Minière Société Anonyme (Soremi S.A.) are in contempt of court in that they have breached paragraphs 11 and 14 and 16 to 17 of the Order of this Court dated 28th March 2023 as continued on 9th April 2024 (28th March Order) and as amended on 3rd July 2024 (3rd July Order)."
- (ii) "Mr. Cheng Shenghong as Chief Executive Officer of Soremi S.A, being aware of the terms of the 28th March Order and 3rd July Order and named in the penal notice therein, and being added as a party to this application by the 26th July Order, is in contempt of court in that he

⁵ Volume B of the Contempt Hearing Bundle, at page 7.

⁶ Volume E of the Contempt Hearing Bundle, at page 901.

⁷ Volume A of the Contempt Hearing Bundle, at page 128.

knowingly assisted in or permitted a breach by Soremi S.A. of the 28th March and 3rd July Orders.”⁸

[11] As part of the Contempt Order, Mithani J made the following further orders:

- (i) “The Application as against SIL and the SIL Directors is adjourned until after the hearing of the Set Aside Application.
- (ii) CNG shall serve on the Claimants legal representatives within 2 days of the date of this Order, sworn affidavit evidence given by one of its directors setting out all assets within its control located worldwide with a value in excess of \$100,000, whether in its own name or not and whether solely or jointly owned, providing the value, location and details of all such assets. If the provision of any of this information is likely to incriminate CNG, it may be entitled to refuse to provide it but is recommended to take legal advice before refusing to provide the information.
- (iii) Unless by 4 pm on 23rd July 2025, the affidavit of Mr Hou and/or any further evidence filed by CNG complied with the condition at paragraph 4 and the disclosure requirements of the 28th March Order as varied by the 3rd July Order, CNG will be debarred from being heard, making representations in or otherwise participating in these proceedings going forward. (the “Debarring Order”)
- (iv) CNG shall be required to pay a fine of USD 2.5 million by 4:00pm on 13th August 2025. The payment shall be made to an account of the Eastern Caribbean Supreme Court in accordance with the bank details at Schedule 1 to this order.
- (v) Mr. Cheng shall be required to pay a fine of USD 50,000 by 4:00pm on 16th October 2025. The payment shall be made to an account of the Eastern Caribbean Supreme Court in accordance with Schedule 1 to this order.
- (vi) Liberty to the Applicants to apply including further orders to enforce recognition of any sequestration or other order in other jurisdictions.
- (vii) CNG shall pay the Applicants’ costs of and occasioned by this Application, to be assessed if not agreed, and Mr. Cheng shall pay 15% of these costs to CNG and 15% of any costs paid on account of the contempt application.”⁹

⁸ Volume A of the Contempt Hearing Bundle, at page 101.

⁹ Pages 102-103 of the Contempt Judgment.

- [12] By the said notice of application filed on 31st July 2025 CNG sought leave to appeal the Contempt Order and also sought a stay of execution of the Debarring Order.
- [13] As stated¹⁰, on 23rd September 2025, I granted leave to CNG to appeal the Order dated 16th July 2025 and adjourned the application for a stay (“the Stay Application”) to be heard virtually before a single judge.
- [14] At the hearing of the Stay Application on 19th January 2026, the parties made oral submissions, and relied on their written skeleton arguments previously filed, namely, the applicant’s skeleton arguments filed on 1st August 2025 and 16th January 2026, the respondents’ skeleton arguments filed on 15th August 2025 and the applicant’s skeleton arguments in reply filed on 1st September 2025. I have carefully reviewed those written skeleton arguments and considered them along with the oral submissions.

Issue

- [15] The issue before the Court is simply whether on the application for the stay, having regard to all of the circumstances and having regard to the well-established guidelines set out in the authorities it is appropriate to exercise my discretion to grant or refuse the stay sought by the applicant/appellant.

Applicant’s Submissions

- [16] In the 31st July 2025 application filed herein, CNG asserts that the principles adumbrated in **C-Mobile Services Limited v Huawei Technologies Company Limited**¹¹ leads to the conclusion that the Stay Application should be granted as the circumstances are exceptional, the appeal will clearly be rendered nugatory if

¹⁰ Paragraphs 1 and 2 of this judgment.

¹¹ BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported).

a stay is not granted, the balance of harm test militates strongly in favour of a stay being granted and the prospects of the appeal being successful are very strong.

[17] CNG submits that the Debarring Order is founded on a freezing order that should never have been granted as a matter of law, because the respondent did not have, and were not pursuing a money judgment. Relying on **Convoy Collateral Ltd v Broad Idea International Ltd**,¹² CNG submitted that a freezing order requires a money judgment or good arguable case that such judgment will be obtained, which was not established. CNG contends that the judge's observation that a damages claim might be conceivable did not meet the required threshold of certainty. As to the absence of a real risk of dissipation, at the time of the hearing of the contempt application, the assets disclosed by CNG included a 40.1% shareholding in China Gold Resources Corp Limited ("CGRC"). The shares in CGRC are listed on the Hong Kong Stock Exchange and valued at around USD 1.04 billion. Given the very public nature of the shareholding and its value, there was never any possibility that those assets would be dissipated or any money judgment for a sum of USD 200 million would go unsatisfied. Furthermore, CNG submits, the Debarring Order was disproportionate and unjustified as it disclosed assets worth more than USD 1 billion and the imposition of such a sanction is excessive. Also, the disclosure of subsidiary assets would be oppressive and unnecessary, as the assets of a subsidiary are not those of the shareholder. For these reasons, CNG submits that the appeal has a strong prospect of success and, a stay should be granted.

[18] CNG submits that absent a stay, its appeal would be rendered nugatory because even if the appeal is successful CNG will have been prevented from participating in hearings in the meantime. CNG points to several imminent and outstanding matters, including hearings listed in the High Court for the 20th and 21st January 2026, the absence of any effective return date following the appointment of receivers in September 2024 forthcoming application concerning the continuation

¹² [2021] UKPC 24.

or discharge of the receivership and, an outstanding costs assessment. The exclusion from these proceedings would cause irremediable prejudice.

- [19] As it relates to the balance of harm, CNG submits that the balance of harm favours a stay. The respondents have identified no material prejudice that would result from a stay, whereas CNG would suffer significant and irreversible harm if prevented from participating in hearings before its appeal is determined.

Respondents' Submissions

- [20] In opposition, the respondents chronicle the history of the BVI proceedings and submit that the stay application is the latest attempt by CNG to evade its obligations and forms part of a long-running campaign of abusing the court's process. They contend that the balance of harm weighs firmly against the grant of a stay. In their submission, CNG has provided no evidence that its appeal would be stifled or rendered nugatory absent a stay, nor has it identified any immediate material prejudice in the BVI proceedings concerning recognition and enforcement of the arbitration awards.
- [21] The respondents argue that CNG's reliance on the need to pursue its application for leave to appeal is misconceived. The Debarring Order does not operate in the appellate jurisdiction and has not prevented CNG from bringing its application for leave to appeal. The contention that CNG would be prevented from pursuing its application for leave to appeal is wrong as the Debarring Order does not operate in the appellate jurisdiction and has never been suggested to bar CNG from appealing. Accordingly, they submit that neither the leave application nor any appeal would be stifled by the absence of a stay of the Debarring Order.
- [22] The respondents further contend that a stay cannot operate in any event because the Debarring Order has already crystallised. CNG has been debarred by the Commercial Court since 23rd July 2025, and any stay would therefore be nugatory. They submit that the only means by which CNG may lift the bar is by curing its

non-compliance through compliance with the Disclosure Order. The respondents maintain that the outstanding information remains within CNG's power to provide which CNG refuses to provide.

[23] Respondents' counsel submitted that the correct procedure following the crystallisation of an unless order is for the defaulting party to apply to the lower court for (a) a declaration that it has complied; or (b) if not, to cure the breach and seek relief from sanctions. That approach was followed, it was submitted, in **Thevarajah v Riordan**.¹³

[24] The respondents submit that CNG has failed to demonstrate strong prospects of success on appeal sufficient to justify a stay. They contend that the grounds of appeal do not show a strong likelihood of success and that the balance of harm clearly favours the Debarring Order remaining in place. They argue that the absence of a stay would not undermine any appeal, whereas lifting the Debarring Order would risk further abusive and vexatious litigation, enabling CNG to continue to evade its compliance with court orders.

[25] Further and by way of preliminary matters on the delivery of oral submissions on the 19th January 2026, counsel for the respondents submit that CNG's skeleton argument filed 16th January 2026, improperly advances allegations of bribery which are unsupported by evidence, are irrelevant to the stay application, and are the subject of separate proceedings in Hong Kong. CNG has sought, at a late stage and without permission, to rely on a risk of exclusion from first-instance hearings. This ground does not appear in the Stay Application, is unsupported by evidence and should not be entertained.

[26] With respect to the principles for the grant of a stay adumbrated in **C-Mobile Services Ltd v Huawei Technologies Co. Ltd** the respondents submit that the balance of harm test clearly weighs in favour of the stay not being granted and the

¹³ [2015] UKSC 78.

Debarring Order remaining in place. The absence of a stay as to the Debarring Order would not undermine the purpose of any appeal. However, CNG's lengthy past conduct of abuse of the court's process by use of tactical applications indicates that should the Debarring Order be lifted, CNG will only seek to bring further vexatious proceedings in a bid to avoid its obligations.

[27] In oral submissions, counsel for the respondents also relied on **PJSC Tatneft v Gennady Bogolyubov & Ors**¹⁴ and argued that full disclosure of all assets is required to prevent a defendant from cherry-picking assets or dissipating them in the circumstances where CNG argues that disclosure should be limited to \$200 million.

[28] As outlined in **C-Mobile Services Limited v Huawei Technologies Co. Ltd** the court, on an application for a stay, is essentially engaged in performing a balancing exercise which requires it to consider a number of factors: (i) the court must take into account all the circumstances of the case; (ii) a stay is the exception rather than the general rule; (iii) a party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted; (iv) in exercising its discretion the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered; and (v) the court should take into account the prospects of the appeal succeeding but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown (which will usually enable a stay to be granted).

[29] On the 19th January 2026 the Court drew the attention of the parties' Counsel to the authorities from this jurisdiction, of **Lunan Pharmaceutical Group Corporation v Zhao Long et al**¹⁵ and **Oscar Trustee Limited v MBS Software Solutions Limited**¹⁶ and asked for submissions as to the relevance of these

¹⁴ [2018] 1 WLR 5705.

¹⁵ BVIHCVAP2021/0007 and BVIHCMAP2022/0029 (delivered 27th April 2023, unreported).

¹⁶ BVIHCMAP2021/0024 (delivered 8th February 2023, unreported).

authorities in the Court's exercise of its discretion on the application. Both Counsel for the applicant/appellant and respondents were given time by the Court to consider the authorities and to address the Court on same.

[30] In **Lunan Pharmaceutical Group Corporation v Zhao Long et al** it was noted that the court is required to carefully consider the factual circumstances of the case to determine whether the interests of justice are best served by hearing or refusing to hear a party in contempt, and not merely refuse to hear him because he is in contempt; or entertain him because he is appealing the very order that has placed him in contempt. The peculiar circumstances of the case must be analysed to determine what the interests of justice dictate.

[31] **Oscar Trustee Limited v MBS Software Solutions Limited** highlights the consequences which may flow where a party has signally failed to comply with orders of the court and the court is called upon to protect its process from abuse. In that case, Chief Justice Pereira (as she then was), noted at para 32:

"It is evident from the principles outlined in Hammond Suddards and Lunan that the Court is required to undertake an evaluation of the particular factual circumstances of the case in determining whether to decline to further hear a party who has contemptuously flouted orders of the court. The authorities make pellucid that it is not sufficient for the court to refuse to hear the party in default merely because that party has not complied with orders of the court. While it is important for the court to ensure prompt observance of its orders and otherwise protect its processes from abuse, the critical consideration is whether the interests of justice are served by the court staying its proceedings until the defaulting party complies with the orders of the court. In like fashion, in considering abuse of process, the court is called upon to evaluate whether in all the circumstances a party's conduct is an abuse."

[32] Kings Counsel for the applicant/appellant submitted that having reviewed the same, neither authority alters the substance of his written and oral submissions. Kings Counsel for the respondents relied on both authorities, reiterating his references in his submissions to CNG's abuse of process with reference to **Oscar Trustee Limited**, and with reference to the case of **Lunan Pharmaceutical Group Corporation**, submitted that the decision goes no further than he had already submitted.

Discussion

[33] This Court has taken into consideration all the circumstances of the case and in particular the history and conduct on CNG's part:

- (i) CNG brought multiple applications in Hong Kong and the BVI to set aside the FPA and the SPA which were all dismissed.
- (ii) After the FPA and the SPA were both recognized in the BVI by Mr. Justice Wallbank, CNG sought to set aside the same. Those applications were heard over three days from 9th to 11th April 2024 and were dismissed by Wallbank J on 15th April 2024.
- (iii) CNG further challenged the registration of both Awards in the BVI. That challenge culminated in a three-day hearing before Wallbank J and was dismissed by him in an oral decision delivered on 15th April 2024.
- (iv) After the respondents obtained a freezing order on 28th March 2024 CNG did not repatriate the SIL funds as required by the order.
- (v) CNG has failed to comply with disclosure of all assets within its control with a value exceeding USD 100,000.00.

[34] The Court reminds itself of the totality of the circumstances of the case at bar and of the fact that a stay is the exception rather than the rule. In these circumstances the Court must be careful to not grant relief in a way that would reward or encourage non-compliance with court orders.

[35] The Court must consider whether the appeal would be rendered nugatory. CNG has not shown that, without a stay, its appeal would be stifled or rendered

nugatory. The Debarring Order does not apply to the proceedings in the appellate court. It has not prevented CNG from applying for leave to appeal nor from filing its notice of appeal. CNG has done both. CNG now argues that, without a stay, it may be prevented from taking part in first-instance hearings while the appeal is pending. Whether that occurs depends on whether CNG has complied with the unless order. That is a factual issue for the Commercial Court. It does not mean that the appeal itself will become nugatory. Even if CNG was temporarily excluded from those hearings, no clear evidence has been provided to show that this would cause irreparable harm. If the appeal succeeds, the Debarring Order will be set aside and CNG would be able to participate in the proceedings going forward. Any prejudice is therefore speculative and capable of being remedied.

[36] It must be emphasised that the Debarring Order was an unless order. It took effect automatically at 4:00 pm on 23rd July 2025 when CNG failed to comply. The Stay Application was filed on 31st July 2025, after that deadline had passed. Once an unless order has taken effect, there is little in practical terms that can be stayed. The Debarring Order is similar in effect to a strike-out. The proper course is for the defaulting party to apply to the lower court to show that it has complied, or to cure a breach and seek relief from sanctions as explained in the authority of **Thevarajah v Riordan** relied on by the respondents. CNG did not take that step, and this weighs heavily against granting a stay.

[37] With respect to the balance of harm, this Court is of the opinion that the balance of harm favours refusing a stay. Granting a stay would prejudice the respondents as well as it would undermine the enforcement of the court's orders. The Debarring Order was made to compel compliance with the court's previous orders. Suspending it risks reducing its effectiveness and risks further non-compliance. The history of this particular matter shows, on the part of CNG, repeated challenges to enforcement of court orders and, its ongoing failure to comply with final orders of the court. Granting a stay in these circumstances serves to

undermine the authority of the court and encourage disregard of its orders. In these circumstances, the interests of justice do not support that outcome.

- [38] Taking all matters into account, and applying the principles in **C-Mobile, Lunan Pharmaceutical Group Corporation v Zhao Long et al** and **Oscar Trustee**, the Court finds that (a) a stay of the Debarring Order would be exceptional and not justified; (b) CNG has not shown that its appeal would be stifled or rendered nugatory without a stay; (c) the balance of harm weighs against granting a stay; and (d) in the circumstances of this case, the interests of justice do not support that outcome.

Disposition

- [39] In all of the circumstances and based on the aforementioned, it is ordered as follows:
- (i) The application for a stay of paragraph 5 of the Order dated 16th July 2025 which stipulates *“Unless by 4 pm on 23 July 2025, the affidavit of Mr. Hou and/or any further evidence filed by CNG complies with the condition at paragraph 4 and the disclosure requirements of the 28 March Order as varied by the 3 July Order, CNG will be debarred from being heard, making representations in or otherwise participating in these proceedings going forward”* is refused.
 - (ii) Costs shall be costs in the appeal.

By the Court

Chief Registrar