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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
ELETSON HOLDINGS INC.,	Case No.: 23-10322 (JPM)
Debtor[1]	

MOTION OF APARGO LIMITED, FENTALON LIMITED, AND DESIMUSCO TRADING LIMITED FOR RECONSIDERATION OF MARCH 25, 2025 ORDER

[1] The Court has ordered the following footnote to be included in this caption: "Prior to November 19, 2024, the Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. On [March 5, 2025], the Court entered a final decree and order closing the chapter 11 cases of Eletson Finance (US) LLC and Agathonissos Finance LLC. Commencing on [March 5, 2025], all motions, notices, and other pleadings relating to any of the Debtors shall be filed in the chapter 11 case of Eletson Holdings Inc. The Debtor's mailing address is c/o Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119." Dkt. 1515 ¶ 7.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Apargo Limited, Fentalon Limited, and Desimusco Trading Limited (collectively, the "Preferred Shareholders") hereby move the Court for reconsideration and amendment of the Court's March 25, 2025 oral ruling (the "March 25 Order") (3/25/25 Tr. at 6:5-9:22) to the extent the Court found that the Greek arbitration confirmation proceeding, identified on Line 2 of Exhibit 1 of the *Order in Further Support of Confirmation and Consummation of the Court Approved Plan of Reorganization* (Dkt. 1537) (the "March 13 Order"), "violates the plan, the confirmation order, the January 29 order, and the March 13th order" (3/25/25 Tr. at 9:20-22) and to the extent if further found that "proceeding is properly included in the [Sanctions Order.]" *Id.* at 9:22. For the reasons stated herein, together with the exhibits to the accompanying Declaration of Hal S. Shaftel, dated April 8, 2025 ("Shaftel Decl."), the Court should reconsider the March 25 Order and strike and/or vacate the Greek arbitration proceeding from the Sanctions Order or, alternatively, set the matter down for hearing.

PRELIMINARY STATEMENT

1. To the extent this Court's oral ruling is read as summarized above, then the Preferred Shareholders respectfully assert that the Court erred by entering the March 25 Order, which, on this reading, effectively enjoins non-debtor and non-party Eletson Gas LLC ("Gas") from pursuing a Greek arbitration confirmation proceeding. As the owner of the preferred shares in Gas, as found by the Final Arbitration Award (the "Final Award") issued by the Hon. Ariel E. Belen of JAMS on September 29, 2023,[2] the Preferred Shareholders have a direct, cognizable interest in the reconsideration of the March 25 Order to the extent it seeks to restrict or sanction the conduct of Gas, particularly as to its ability to pursue judicial remedies. Again, assuming the

[2] By Order dated April 19, 2024, the District Court confirmed the Final Award in substantial respects. *See* Case No. 1:23-cv-07331-LJL ("D. Ct. Dkt.") D. Ct. Dkt. 104. On February 14, 2025, the Court amended its April 19, 2024 Order to state it was confirmed "[s]ubject to the resolution of Levona's pending motion to vacate the award and its defense based on fraud in the arbitration." D. Ct. Dkt. 268.

reading articulated above, the March 25 Order would appear to be based on the mistaken assumption that, without the consent of what has been termed "reorganized" Eletson Holdings, Inc. ("Reorganized Holdings" or sometimes "Holdings"),[3] Gas has violated this Court's orders by filing a petition **to confirm** the Final Award in Greece. Such a decision runs counter to Gas's corporate governance documents, the Plan,[4] the Confirmation Order,[5] and controlling case law. Gas is not a subsidiary of Reorganized Holdings, and any change in the management of Reorganized Holdings does not affect the operation or decision-making abilities of Gas.

2. *First,* there is no proof (and the Court did not consider any) that remotely suggests that the Greek Arbitration Confirmation Petition (defined below) "oppose[s] or undermine[s] in any way the judicial recognition of the Confirmation Order." Dkt. 1537 ¶ 1. On this basis alone, the Court should vacate the March 25 Order and strike the Greek Arbitration Confirmation Petition from the March 13 Order.

3. *Second,* this Court did not appear to consider Gas's controlling limited liability agreement when it issued the March 13 Order and March 25 Order. Reorganized Holdings acquired only and—at most—an interest in the common shares of Gas by virtue of the Petitioning Creditors'[6] plan of reorganization, and nothing more. As Gas's corporate governance documents make clear, there is no basis to find that Gas requires the consent of Reorganized Holdings, or its

[3] As used herein, Reorganized Holdings refers to the reconstituted entity giving effect to the Plan of Reorganization approved in this proceeding. However, the Preferred Shareholders reserve, and do not waive, any rights, claims, or positions of any party with respect to the reconstituted entity or the Plan.

[4] On October 25, 2024, the Court issued a decision confirming the Petitioning Creditors' Chapter 11 plan of reorganization (the "Plan"). Dkt. 1212.

[5] On November 4, 2024, the Court entered the Confirmation Order. Dkt. 1223.

[6] On March 7, 2023, Pach Shemen LLC ("Pach Shemen") initiated with two other creditors (the "Petitioning Creditors") an involuntary bankruptcy proceeding against Holdings and two affiliates. Dkt. 67-26, 67-30. On September 25, 2023, the involuntary bankruptcy proceeding was converted to a voluntary Chapter 11 bankruptcy. Dkt. 215.

designated directors, to pursue a Greek Arbitration Confirmation Petition, where Reorganized Holdings does not control Gas's preferred shares; rather, the Preferred Shareholders do.

4. *Third,* the Greek Arbitration Confirmation Petition does not "frustrate[] a key asset retained by Holdings under the Plan through the Retained Causes of Action." Dkt. 1457 at 2. The Plan provides Holdings only with causes of action to the extent Holdings possesses a claim, if any, against Gas or the Preferred Shareholders (or other specifically identified parties) relating to "any purported transfer of preferred shares in Eletson Gas LLC" or the "transfer of the Award from Eletson Holdings to Eletson Gas and the [Preferred Shareholders] as a Retained Cause of Action." *See* Dkt. 1132 §§ 1.65, 1.128, 5.15; Dkt. 913 at 39. Reorganized Holdings is free to pursue those claims; however, the Plan and/or Confirmation Order does not—and cannot—enjoin non-debtor entities from asserting their own rights, including against other non-debtor entities.

5. *Fourth,* per the reading above, the March 25 Order would purport to enjoin Greek Arbitration Confirmation Petition proceedings, in contravention of the New York Convention, which specifically contemplates multiple, parallel proceedings to confirm an arbitration award. If Reorganized Holdings wants to stay the Greek proceedings, the New York Convention provides them with a basis to seek to do so. But Reorganized Holdings cannot use the Plan and Confirmation Order as an improper vehicle to enjoin those legitimate proceedings on behalf of its affiliates.

FACTUAL BACKGROUND

A. The Structure and Corporate Governance of Eletson Gas LLC

6. Gas is a limited liability company formed under the laws of the Republic of the Marshall Islands. Gas's governing document, which provides rules for the general management of the company, is its Third Amended and Restated Limited Liability Company Agreement, dated August 16, 2019, as amended on April 16, 2020 (the "LLCA"). Shaftel Decl., Ex. A (LLCA), Ex. B (LLCA Amendment). Pursuant to the LLCA, Gas's membership interests are made up of

common unit holders (the "Common Shares") and preferred unit holders (the "Preferred Shares"). LLCA § 2.1. Since the formation of Gas in 2013, Eletson Holdings, Inc. ("Holdings") has held 100% of the *Common* Shares of Gas. Beginning in November 2021 through March 11, 2022, Levona Holdings Ltd. ("Levona") held Preferred Shares in Gas. Dkt. 286-1 ("Final Award") at 7, 46, 95.

7. The LLCA, as amended, provides that (i) the holders of the Common Shares may designate two directors on Gas's Board, (ii) the holders of the Preferred Shares may designate four directors on Gas's Board, and (iii) a seventh director shall be designated by the majority of the remaining directors. LLCA Amendment§ 3.3(a).

8. Further, "[t]he Board may appoint individuals that are nominated by a Majority in Interest as officers" of Gas; "provided, however, that **during the Class B-2 Period** such appointment and nomination **shall only require a Majority-in-Interest of the Preferred Units."** LLCA § 3.1(b) (emphasis added). The "Class B-2 Period" is defined as "the period commencing on the date of funding of any Class B-2 Capital Contributions and ending on the date on which both (i) all outstanding Class B-2 Preferred Units and Class B-1 Preferred Units have been redeemed in accordance with the terms of this Agreement and (ii) the Unpaid Cash Preferred Return is zero." LLCA at 5. To date, the Class B-2 Preferred Units and Class B-1 Preferred Units have not been redeemed, and accordingly, Gas remains in a Class B-2 Period. *See* LLCA Amendment. Relatedly, "[a]ny Officer may be removed by the Board **(acting by majority vote of all Directors** other than the Officer being considered for removal, if applicable) with or without cause at any time." LLCA § 3.1(b) (emphasis added).

B. The Preferred Shareholders' Acquisition of the Preferred Shares of Gas

9. As contractually authorized, the Preferred Shareholders were nominated by Gas to acquire the Preferred Shares from Levona following the exercise of a purchase option contained in a certain Binding Offer Letter, dated February 22, 2022. Final Award at 27-32, 95-96. Following the exercise of the purchase option, "[t]he preferred interests in [Gas] were transferred to the Preferred Nominees, effective as of March 11, 2022." *Id.* at 96. However, four months later, and unbeknownst to Gas, Levona sought to exercise rights as a preferred shareholder—rights which (as the arbitral Final Award found) it no longer held in Gas—and unilaterally sell substantially all of Gas's remaining assets to Gas's competitor. *Id.* at 9, 47.

10. On July 29, 2022, Holdings and Eletson Corporation ("Corp.") commenced an arbitration in JAMS in New York pursuant to the mandatory arbitration provision in the LLCA (the "Arbitration"). *Id.* at 11. During the Arbitration, "representatives from each of the Preferred [Shareholders] ... testified that they are bound by any award in th[e] arbitration." *Id.* at 31.

11. On August 15, 2023, the Hon. Ariel E. Belen (the "Arbitrator") issued a Corrected Interim Award in the Arbitration, and a Final Award on September 29, 2023. *Id.* at 4. In the Final Award, the Arbitrator found:

- "[Petitioners] effectively exercised the buyout option granted in the Binding Offer Letter dated February 22, 2022 on and as of March 11, 2022, and any alleged precondition to the exercise of that option was either satisfied or waived."
- As of March 11, 2022, [Levona] ... had no membership interest in the Company, Eletson Gas."
- "The Company exercised its rights under the BOL to nominate three entities—Fentalon, Apargo, and Desimusco, (the Preferred [Shareholders])—affiliated with the principals of [Petitioners], as the parties to receive the preferred interests in [Gas], previously held by Levona."

- "The preferred interests in the [Gas] were transferred to the Preferred [Shareholders], ***effective as of March 11, 2022,*** and the Preferred [Shareholders] are permitted transferees under the LLCA. They have stipulated to be bound by this Award and any Judgment entered hereon." (emphasis added).

- "Eletson Holdings and Eletson Corporation never held any of the preferred interests in the Company." Final Award at 95-96.

12. The Arbitrator also concluded that substantial damages should be paid directly to the Preferred Shareholders "as they flow directly from Levona's refusal to relinquish the preferred interests, and the Preferred [Shareholders] hold all title and interests in the preferred interests." Final Award at 64. The Arbitrator further awarded over $47 million in damages to Gas and $39 million to the Preferred Shareholders (not including interest which continues to accrue) for losses arising out of Levona's misconduct, including the improper arrest of Gas's vessels. *Id.* at 64-67, 99-100.

13. On August 18, 2023, Holdings and Corp. petitioned the United States District Court for the Southern District of New York for an order confirming the Corrected Interim Award, which upon issuance of the Final Award was amended to seek confirmation of the Final Award (the "Confirmation Proceeding"). *See* Case No. 1:23-cv-07331-LJL ("D. Ct. Dkt.") at Dkt. 62. On February 9, 2024, the District Court issued a decision confirming, in substantial part, the Final Award (the "Confirmation Decision"). Dkt. 403; D. Ct. Dkt. 83. In the Confirmation Decision, the District Court concluded that the Arbitrator properly exercised his authority "to award relief in favor of Gas and/or the Preferred [Shareholders] as third-party beneficiaries of the LLCA." D. Ct. Dkt. 83 at 70; *see also* Dkt. 721 at 36 ("Here, as the Arbitrator found (and the District Court confirmed), the transfer of the Preferred Shares occurred on March 11, 2022, which was nearly a year before the involuntary cases were filed."). *Id.* at 10-11.

14. Nearly five months after the District Court issued the Confirmation Decision, and eleven months after Holdings and Corp filed the petition to confirm the Final Award, Levona moved for leave to file an amended answer to the petition to confirm the Final Award and cross-petition to vacate the Final Award. D. Ct. Dkt. 123. The District Court granted Levona's motion, D. Ct. Dkt. 162, and set a discovery and briefing schedule, with briefing on Levona's amended cross-petition to conclude on February 24, 2025. The District Court thereafter (1) issued a full stay of the Confirmation Proceedings on October 31, 2024, D. Ct. Dkt. 205; (2) extended the stay except for potential motions for intervention and certain third-party discovery on November 14, 2024, D. Ct. Dkt. 207; (3) again issued a full stay of the proceedings until January 10, 2025, on November 25, 2024, D. Ct. Dkt. 218,221; (4) lifted the stay "for all matters except discovery on the motion to vacate the award" on December 30, 2024, D. Ct. Dkt. 234; and (5) lifted the stay of discovery on March 25, 2025, nearly five months after the initial stay of discovery and over a year after the District Court issued the Confirmation Decision. D. Ct. Dkt. 297.

C. The Contempt and Sanctions Orders

15. On October 25, 2024, the Court issued a decision confirming the Petitioning Creditors' Chapter 11 plan of reorganization, Dkt. 1212, and subsequently, on November 4, 2024, entered the Confirmation Order. Dkt. 1223.

16. On November 25, 2024, Reorganized Holdings moved for an order pursuant to Bankruptcy Rule 9020 seeking injunctive relief and sanctions (the "First Sanctions Motion'') against a broad range of entities and individuals, including the Debtor's pre-confirmation shareholders, directors, and officers, as well as law firms representing those parties, both foreign and domestic. *See* Dkt. No. 1268 at 1. **Neither Gas nor the Preferred Shareholders were specifically named as respondents on the First Sanctions Motion.** Indeed, the basis for the First

Sanctions Motion was purportedly that each of the named entities, individuals, and law firms were in violation of the Plan and Confirmation Order for failing to file a change of Holdings' address of record ("AOR") and to "file Reorganized Holdings' new corporate documents with LISCR," the Liberian corporate registry. *Id.* at 2-3.

17. Following an evidentiary hearing and post-trial briefing, on January 29, 2025, the Court issued an *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "January 29 Order"), Dkt. 1402, ordering specifically identified parties (referred to as the "Ordered Parties", **which did not include Gas or the Preferred Shareholders),** among other things, (1) "to comply with the Confirmation Order and the Plan to assist in effectuating, implementing, and consummating the terms thereof," and (2) "to take all steps reasonably necessary as requested by Holdings to unconditionally support the effectuation, implementation, and consummation of the Plan, including but not limited to, by no later than seven (7) days from the date of service of this Order in accordance with applicable law ... taking all steps reasonably necessary to update or amend (a) Holdings' AOR to reflect that Adam Spears is Holdings' AOR and (b) Holdings' corporate governance documents on file with LISCR as directed by Holdings." Dkt. No. 1402 at 2. The January 29 Order further provided that if the Ordered Parties did not "cause the specific acts set forth in" the Order to occur within seven days, Reorganized Holdings could move on short notice for sanctions against the Ordered Parties. *Id.* at 4.

18. On February 6, 2025, Reorganized Holdings again moved for sanctions against the Ordered Parties (the "Second Sanctions Motion") on the grounds that the Ordered Parties failed to cause the AOR and Holdings' corporate governance documents to be updated. *See* Dkt. No. 1416 ¶¶ 1-2, 6-26. On February 20, 2025, the Court issued its decision on the Second Sanctions Motion, requiring specifically identified parties—which, again, **did not include Gas or the Preferred**

Nominees—to certify that they have taken certain steps to assist with implementing the Plan and Confirmation Order. 2/14/2025 Tr. at 105:10-107:12.

19. On February 27, 2025, the Court entered the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization and Imposing Sanctions on Certain Parties* (the "February 27 Order"). Dkt. No. 1495. The February 27 Order issued sanctions of $1,000 per day against "the purported Provisional Board, Vasilis Hadjieleftheriadis, and the Former Majority Shareholders" and "the AOR" until those parties undertook certain actions relating to updating the AOR and corporate governance documents of Holdings. *Id.* ¶¶ 1-2. The February 27 Order was apparently issued after Reorganized Holdings failed to include any respondent on the Second Sanctions Motion in an *ex parte* communication with the Court. Dkt. 1509, Ex. C.

20. On February 19, 2025, Reorganized Holdings again moved for sanctions against the ***Ordered Parties*** (the "Third Sanctions Motion" and, together with the First Sanctions Motion and the Second Sanctions Motion, the "Sanctions Motions"), seeking both monetary sanctions and injunctions for "failing to withdraw their oppositions ***to the judicial recognition of the Confirmation Order*** by Liberian and Greek courts." Dkt. No. 1459 ¶¶ 1- 2, 39 (emphasis added). **Neither Gas nor the Preferred Shareholders were named as respondents on the Third Sanctions Motion.** *See id.*

21. On February 28, 2025, Reorganized Holdings filed a letter with the Court addressing conduct of "the former officers, directors and shareholders of Holdings," Dkt. 1496 at 1 and addressing in the letter solely actions purporting to "collateral[ly] attack" the Confirmation Order "in foreign jurisdictions." *Id* at 1-2. Reorganized Holdings then proceeded to *list, for* ***the first time,*** a "Petition for Recognition of The Arbitration Award In Order to Be Executable

In Greece," filed on behalf of Gas and the Preferred Shareholders against Levona, Pach Shemen LLC and Murchinson Ltd. (the "Greek Arbitration Confirmation Petition"), in Exhibit 2, seemingly suggesting, without any support, that the Greek Arbitration Confirmation Proceeding "undermine[s] and nullif[ies] the authority of this Court." *Id.* at 2, Ex. 2. On March 3, 2025, Reorganized Holdings then proceeded to file a revised proposed order in connection with the Third Sanctions Motion (the "Revised Proposed Order"), requesting that specifically identified parties be held in contempt (referred to as the "Violating Parties," **which did not include Gas or the Preferred Shareholders),** and directing the Violating Parties to "withdraw any and all filings **that oppose or undermine in any way the judicial recognition of the Confirmation Order,** including, without limitation, filings in the Liberian Proceedings and the Greek Proceedings set forth on Exhibit l," which included the Greek Arbitration Confirmation Petition. Dkt. 1499 (emphasis added).

22. On March 7, 2025, Reorganized Holdings filed its reply brief in support of the Third Sanctions Motions. Dkt. 1522. Notably absent from the reply brief is any reference to the Greek Arbitration Petition, including any argument that it purportedly opposes or undermines in any way the judicial recognition of the Confirmation Order. *See id.;* Dkt. 1523. In fact, Reorganized Holdings did not even attach a copy of the Greek Arbitration Confirmation Petition to any of its filings supporting the Third Sanctions Motion. *See* Dkt. 1459, 1496, 1499, 1522, 1523.

23. On March 12, 2025, this Court issued an oral ruling on the Third Sanctions Motion, finding "the following parties ... in contempt for violating the Chapter 11 plan, the [C]onfirmation [O]rder and the January 29th order": "the former minority shareholders, the former majority shareholders, purported Eletson Holdings, the purported provisional board, and Vassilis Hadjieleftheriadis." 3/12/25 Tr. at 79:17-23. The Court further ruled that those specifically

identified parties are "authorized, required and directed to withdraw **any and all filings that oppose or undermine in any way the judicial recognition of the confirmation order, including,** without limitation, **filings in** the Liberian proceedings **and the Greek proceedings,** and are enjoined from making any filings in any court seeking to oppose undermine in any way the judicial recognition of the confirmation order, including, without limitation, by initiating or prosecuting any legal actions that seek to oppose or undermine the confirmation order." *Id.* at 80:1-10 (emphasis added). At no point during this Court's oral ruling did it specifically reference the Greek Arbitration Confirmation Petition or explain how it "oppose[s] or undermine[s] in any way the judicial recognition of the" Confirmation Order.

24. On March 13, 2025, the Court entered the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "March 13 Order") directing the Violating Parties (as defined in the March 13 Order) "to withdraw any and all filings that oppose or undermine in any way the judicial recognition of the Conformation Order including, without limitation, filings in the Liberian Proceedings and the Greek Proceedings set forth on Exhibit 1," which included the Greek Arbitration Confirmation Petition. Dkt. 1537 ¶ 1.

25. Following letter submissions by Reorganized Holdings and Reed Smith LLP ("Reed Smith")[7] regarding the March 13 Order, on March 25, 2025, this Court issued a further oral ruling on the Third Sanction Motion (the "March 25 Order"). *See* 3/25/25 Tr. at 6:5-9:22 This Court ultimately ruled that "to the extent that" non-debtor Gas "is acting without the consent of Reorganized Holdings, because the interests in the subsidiaries, including Eletson Gas, vested in Reorganized Holdings . . . [t]he Greek arbitration proceeding violates the [P]lan, the

[7] It is unclear whether the Court considered Reed Smith's submissions. *See* 3/25/25 ("[T]he Court notes that it is not clear that Reed Smith has standing to raise any issues related to Eletson Gas, which it does not purport to represent here, and it is not clear whether Eletson Gas would agree with any of the positions set forth by Reed Smith.")

[C]onfirmation Order, the January 29 order, and the March 13 order, and that proceeding is properly included in the March 13th order." *Id* at 9:22.

ARGUMENT

I. LEGAL STANDARD

26. Motions for reconsideration are appropriately brought through both Rule 9023 (adopting Rule 59) and Rule 9024 (adopting Rule 60). *See In re FairPoint Communs., Inc.,* 462 B.R. 75, 79 (Bankr. S.D.N.Y. 2012) ("Motions for reconsideration are reviewed under Federal Rule of Civil Procedure 60(b), which is made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 9024.") (cleaned up); *In re Vivenzio,* 2021 Bankr. LEXIS 230, at *6 (Bankr. E.D.N.Y. Jan. 29, 2021) ("Motions to Reconsider are properly considered under FRCP 59, which is incorporated into bankruptcy proceedings by Bankruptcy Rule 9023."). Motions to reconsider are granted, where, as here, "the moving party can point to controlling decisions or data that the court overlooked matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *In re Banfi,* 2021 Bankr. LEXIS 1553, at *5 (Bankr. E.D.N.Y. June 9, 2021); *In re Asia Glob. Crossing, Ltd.,* 332 B.R. 520, 524 (Bankr. S.D.N.Y. 2005) ("The movant must show that the court overlooked controlling decisions or factual matters that might have materially influenced its earlier decision."). In fact, Rule 60(b)(1) is expressly "available for a [bankruptcy] court to correct legal errors by the court." *Gey Assocs. Gen. P'ship v. 310 Assocs.* (In re 310 Assocs.), 346 F.3d 31, 35 (2d Cir. 2003).

27. To the extent this Court's oral order intended the effects recited in the first paragraph of this brief, the Court made fundamental errors of law and fact when it issued the March 25 Order, including controlling decisions and factual matters not before it that would have materially influenced its decision in issuing the March 25 Order.

II. RECONSIDERATION OF THE MARCH 25 ORDER IS WARRANTED

28. There are several independent grounds warranting reconsideration, any one of which is sufficient for this Court to strike the reference to the Greek Arbitration Confirmation Petition in the March 13 Order and March 25 Order.

A. The Court Overlooked That There Is No Evidence That Gas Is a Subsidiary of Holdings

29. This Court premised its holding on the explicit assumption that under the Plan "the interests in the subsidiaries, including Eletson Gas, vested in Reorganized Holdings." 3/25/25 Tr. at 9:22. However, Gas is not and has never been Holdings' "subsidiary." *See* Dkt. 579 ¶ 23 (citing Offering Memorandum, dated December 12, 2013); LLCA (setting forth ownership structure); Dkt. 721 at 9 (referencing **"non-debtor** Eletson Gas LLC") (emphasis added).

30. Rather, under the express terms of the LLCA, Holdings holds only the Common Shares of Gas, while the owners of the Preferred Shares exercise the lion's share of control over Gas. Because Gas is not a subsidiary of Holdings, there is no ground under the Plan to enjoin the actions of Gas, including the Greek Arbitration Confirmation Petition. *See also, infra,* Section I.D.

B. The Court Overlooked That There is No Evidence Establishing That the Greek Arbitration Confirmation Petition Opposes or Undermines Judicial Recognition of the Confirmation Order

31. "A contempt order is warranted only where the moving party establishes by clear and convincing evidence that the alleged contemnor violated the [] court's edict." *King v. Allied Vision, Ltd.,* 65 F.3d 1051, 1058 (2d Cir. 1995). In order to demonstrate contempt, "a movant must establish that (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner." *King,* 65 F.3d at 1058. Accordingly, a bankruptcy court may hold a party in contempt for violation of its prior order only "if there is no fair ground of doubt as

to whether the order barred the [non-debtor's] conduct." *Taggart v. Lorenzen,* 139 S. Ct. 1795, 1799 (2019).

32. Critically here, Reorganized Holdings pointed to no evidence in connection with its Third Sanctions Motion to support any position that the Greek Arbitration Confirmation Petition violates the Plan, the Confirmation Order or the January 29 Order. In fact, Reorganized Holdings did not attach the Greek Arbitration Confirmation Petition to its submissions or point to any language in it that purports to oppose or undermine the judicial recognition of the Confirmation Order—it does not. Thus, there is a complete lack of evidence—let alone clear and convincing evidence—purporting to suggest that Gas and the Preferred Shareholders have violated the Plan and/or the Confirmation Order through its filing of the Greek Arbitration Confirmation Petition. Accordingly, the Court should reconsider its March 25 Order (and the March 13 Order) and vacate the aspect of its ruling relating to the Greek Arbitration Confirmation Petition.

C. The LLCA Does Not Require the Consent of Reorganized Holdings to Pursue the Greek Arbitration Confirmation Petition

33. When the Court issued the March 25 Order, it did not have before it-nor did it consider-the LLCA, which sets forth the corporate governance structure of Gas. Notwithstanding this, the Court ruled that the Greek Arbitration Confirmation Petition violates the Plan, Confirmation Order, January 29 and March 13 Order "to the extent that" non-debtor Gas "is acting without the consent of Reorganized Holdings." 3/25/25 Tr. at 9:16-22. In reaching its decision, the Court relied on paragraph 7 of the Confirmation Oder, which provides, in relevant part, "that any property acquired by any of the Debtors, including **interests held by the Debtors in their respective non-Debtor direct and indirect subsidiaries and Affiliates,** shall vest in Reorganized Holdings free and clear of all claims, Liens, encumbrances, charges, and other interests." Dkt. 1223 ¶ 7 (emphasis added); *see also* Dkt. 1132 ("Plan") *§* 5.2(c).

34. But the plain language of the Plan and Confirmation Order indicates that the Debtors' **interests** in Gas, *i.e.*, interests in the Common Shares, vests in Reorganized Holdings-nothing more. As the LLCA makes clear, this does not—and cannot—give Reorganized Holdings unfettered control over Gas. In fact, there is nothing in the LLCA that requires the consent of Reorganized Holdings or its designated director to pursue the Greek Arbitration Confirmation Petition. To hold otherwise would ignore the reality of Gas's corporate form.

35. To the extent Reorganized Holdings relied on a Unanimous Written Consent, dated November 29, 2024, which purports to remove Gas's "Pre-Existing Officers" Vasilis Kertsikoff and Laskarina Karastamati, and appoints Leonard J. Hoskinson as Gas's Chief Executive Officer, as means to require the "consent" of Reorganized Holdings, *see* Dkt. 1523, Ex. 43, this is inherently flawed and invalid. In fact, the LLCA expressly restricts the removal of Gas's officers without the "majority vote of all Directors," LLCA § 3.1(6), which, here, did not include any of the directors designated by the Preferred Shareholders. *See* Dkt. 1523, Ex. 43. Further, the LLCA also restricts, during a Class B-2 period, the appointment of an officer without "a Majority-in-Interest of the" Preferred Shareholders, LLCA § 3.1(b), which similarly did not occur here. Thus, the Unanimous Written Consent violates the LLCA and is without any force and effect.

36. For these reasons, the Court should reconsider the March 25 Order.

D. The Greek Arbitration Petition Does Not Involve a Key Asset Retained by Holdings Under the Plan

37. In its March 18, 2025 letter, *see* Dkt. 1457, Reorganized Holdings argued, without support, that the Greek Arbitration Confirmation Petition "frustrates a key asset retained by Holdings under the Plan through the Retained Causes of Action." *Id* at 2.

38. Nothing could be further from reality. From the outset, all parties to this bankruptcy proceeding knew that any reorganization would have no effect on the operation or management or

Gas and that, for there to be any effect, further proceedings would be necessary. *See e.g.,* Dkt. 721 at 34, 38. That conclusion flows from the fact that, as the creditors understood, Gas—a non-subsidiary of Holdings—was never part of the bankruptcy estate; the creditors explicitly understood that Gas assets were not part of their pool of assets available for repayment. *See* Dkt. 579 ¶ 23 (noting "Gas is not a guarantor of the obligations due to the Noteholders ... and it was never contemplated that the assets of Gas would be included in the consolidated financials made available to the Noteholders"); Dkt. 721 at 9 (acknowledging Gas is a "non-debtor"). In addition, because of the chaos that Murchinson and its alter-egos (e.g. Levona) sought to cause at Gas at the commencement of the Arbitration, the Arbitrator entered and reaffirmed explicit *status quo* injunctions enabling Gas to continue to operate without Levona's interference. Final Award at 13-15. To the extent Judge Liman's Confirmation Decision is final, subject to remaining proceedings as that Court has stated, then the Final Award's determination that Gas is controlled by the Preferred Shareholders is now final as well, having supplanted the *status quo* injunctions with the District Court's rulings. And to the extent that the Final Award is not final in the District Court, then the Arbitrator's *status quo* injunctions remain in place. In no case did the bankruptcy proceeding have an effect on the management and control of Gas.

39. The Plan and related documents confirm this. The Plan defines Retained Causes of Action as "certain Causes of Action of the Debtors or the Estates that are not released or waived pursuant to this Plan or a Final Order of the Bankruptcy Court. For the avoidance of doubt, the Retained Causes of Action shall include Avoidance and Other Actions and all claims and Causes of Action related to or arising under the Eletson Gas Transfer." Dkt. 1132 § 1.128. "Eletson Gas Transfer" is in turn defined as "any purported transfer of preferred shares in Eletson Gas LLC." *Id.* § 1.65.

40. Section 5.15(a) of the Plan, entitled "Preservation of Causes of Action," states, in relevant part, that Debtors and their Estates shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Claims and Causes of Action (including, without limitation, all Retained Causes of Action), including, among others, (i) the Avoidance and Other Actions and (ii) **claims and Causes of Action against, related to or arising from (A) the Eletson Gas Transfer,** (B) any Debtor or its Related Parties, (C) any non-Debtor Affiliate or its Related Parties, (D) any non-Debtor direct or indirect subsidiary or its Related Parties, and (E) any Eletson Insider and its Related Parties, whether arising before or after the Petition Date, and Reorganized Holdings' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. *Id.* § 5.15(a) (emphasis added).

41. Section 5.15(b) of the Plan further provides that:

> Except as otherwise provided in the Plan (including the Plan Supplement) and the Confirmation Order, Reorganized Holdings expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), laches, or other preclusion doctrine, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Cause of Action that a Debtor may hold against any Person or Entity shall vest in Reorganized Holdings. Reorganized Holdings may pursue such Causes of Action, or decline to do any of the foregoing, as appropriate, in accordance with the best interests of Reorganized Holdings and without further notice to or action, order or approval of the Bankruptcy Court or these Chapter 11 Cases. *Id.* § 5.15(b).

42. Moreover, in the Petitioning Creditors' Plan Supplement, they specifically listed as a "Retained Cause of Action":

> Any and all claims and Causes of Action against, **related to or arising from the Eletson Gas Transfer,** including, but not limited to, claims and Causes of Action against any professionals, including, but not limited to, Reed Smith LLP, Watson Farley & Williams LLP, the Timagenis Law Firm, and Kostelanetz LLP, that represented the Debtors and their affiliates in connection with the Eletson Gas Transfer, and all claims and Causes of Action related to or arising **from the transfer of the Award from Eletson Holdings to Eletson Gas and the Nominees,** including, but not limited to, any damages, fees, costs, or expenses awarded in the Arbitration. Dkt. 913 at 39 (emphasis added)

43. The foregoing provisions of the Plan do not—and cannot—support Reorganized Holdings' assertion that the Final Award, or confirmation of the Final Award, "is vested with Holdings by the terms of the Confirmation Order and Plan." Dkt. 1457 at 2. Rather, Holdings retained the right, if any, that Holdings may have to prosecute "any purported transfer of preferred shares in Eletson Gas LLC" or the "transfer of the Award from Eletson Holdings to Eletson Gas and the [Preferred Shareholders] as a Retained Cause of Action." *See* Dkt. 1132 §§ 1.65, 1.128, 5.15; Dkt. 913 at 39.

44. Under the Final Award, as third-party beneficiaries at the least, Gas and the Preferred Shareholders were awarded over $47 million and $39 million in damages, respectively. *See* Final Award at 99-100. Thus, the Final Award—to which Gas and the Preferred Shareholders stipulated to be bound—created a separate and independent contract right. Indeed, "[a]n unconfirmed award is a contract right that may be used as the basis for a cause of action." *Florasynth, Inc. v. Pickholz,* 750 F.2d 171, 176 (2d Cir. 1984) (emphasis added) (*citing E.A. Bromund Co. v. Exportadora Affonso de Alburquerque,* 110 F. Supp. 502, 502-03 (S.D.N.Y. 1953); *see also Trs. Of the NY State Nurses Ass'n. Pension Plan v. White Oak Glob. Advisors, LLC,* 102 F.4th 572, 596 (2d Cir. 2024) ("[A]n award has legal force only because the parties have elsewhere promised to be bound by it."); *Stafford v. IBM,* 78 F.4th 62, 68 (2d Cir. 2023) ("An unconfirmed award is a contract right ... "). As Judge Liman acknowledged as recently as March 24, 2025, the Final Award runs in favor of the Preferred Shareholders and Gas, and "[u]nder the New York Convention, that award can be enforced anywhere in the world, without being reduced to a judgment." D. Ct. Dkt. 295 at 15; *see also id.* at 21 ("More important, the Preferred [Shareholders]—who are the principal beneficiaries of the Award—have a direct interest in whether the Award is confirmed, suspended, or vacated.").

45. There is no provision in the Plan or Confirmation Order that prevents Gas and/or the Preferred Shareholders, as express third-party beneficiaries to the Final Award, from confirming their own interests in the Final Award, including in accordance with the New York Convention. Any other finding is not only contrary to statute, but it also conflicts with the terms of the Plan, which provides only that Holdings retains the right to **assert a Retained Cause of Action.** To assert that parties with potential litigation claims related to a non-debtor, non-subsidiary-that were not discharged or enjoined by a plan of reorganization-are precluded from asserting their own rights because a reorganized debtor may want to prosecute an action in the future is beyond the scope of the Bankruptcy Code.

E. The New York Convention Contemplates and Permits Multiple Arbitration Confirmation Proceedings

46. The Court should also reconsider and vacate its March 25 Order because it is contrary to controlling law, and effectively and improperly enjoins the Greek Arbitration Confirmation Petition proceedings.

47. Specifically, the New York Convention envisions multiple arbitration confirmation proceedings (as Judge Liman acknowledged). *See* D. Ct. Dkt. 295 at 15; *CBF Industria de Gusa v. AMCI Holdings, Inc.,* 850 F.3d 58, 73 (2d Cir. 2017) "New York Convention did away with" "double exequatur" requirement that "'a court in the rendering state recognize an award before it could be taken and enforced abroad"'); *Karaha Bodas Co. v. Negara,* 335 F.3d 357, 367 (5th Cir. 2003) ("By allowing concurrent enforcement and annulment actions, as well as simultaneous enforcement actions in third countries, the Convention necessarily envisions multiple proceedings that address the same substantive challenges to an arbitral award."); *accord Ingaseosas Int'l Co. v. Aconcagua Investing, Ltd.,* 479 F. App'x 955, 961 (11th Cir. 2012) ("[T]he Convention envisions multiple proceedings that address the same substantive challenges to an arbitral

award."). The Second Circuit has explained that "[w]hile uniquely empowering courts in the primary jurisdiction to set aside or annul an arbitral award, the Convention also anticipates that an arbitral party that has prevailed may sue elsewhere to enforce an award before the award has been reviewed by courts in the arbitral seat." *Thai-Lao Lignite* (*Thail.*) *Co. v. Gov't of the Lao People's Democratic Republic,* 864 F.3d 172, 176 (2d Cir. 2017). In fact, "[u]nder the Convention, a court maintains the discretion to enforce an arbitral award even when nullification proceedings are occurring in the country where the award was rendered." *Karaha,* 335 F.3d at 367.

48. Accordingly, since the New York Convention explicitly contemplates what Reorganized Holdings complains of—numerous and simultaneous reviews of a single arbitration award—this Court's March 25 Order enjoining the Greek Arbitration Confirmation Petition proceedings cannot stand. This is especially critical where, as here, Gas and the Preferred Nominees have sought confirmation, **not enforcement,** of the Final Award while the proceedings in the District Court have been embroiled by stays in what is otherwise intended to be a summary and expedited arbitration-confirmation proceeding.

49. Instead, what Reorganized Holdings really is arguing is that this Court should improperly use the Plan and Confirmation to enjoin proceedings filed against its affiliated, alter-ego entities, Levona, Pach Shemen, and Murchinson. This is improper. But in any event, **those entities** are not without recourse. Levona, Pach Shemen, and Murchinson can seek a stay—which they have not done—of the Greek Arbitration Confirmation Petition proceeding. *See* N.Y. Conv. Art. VI ("If an application for the setting aside or suspension of the award has been made to a competent authority [of the country in which . . . that award was made] referred to in article V(l)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award").

50. As explained above, the March 25 Order overlooks controlling facts and law, including that Gas is a non-debtor and not a subsidiary of Holdings. There is simply no basis on which the Greek Arbitration Confirmation Petition can be construed as violating the Plan, the Confirmation Order, the January 29 Order or the March 13 Order. Rather, the Greek proceeding seeks to preserve clear contract rights arising under the Final Award, which Levona, Pach Shemen and Murchinson repeatedly have sought to undermine.

CONCLUSION

Accordingly, the Preferred Shareholders respectfully request that the Court grant their motion for reconsideration, vacate the March 25 Order in the respects set forth herein, strike the Greek Arbitration Confirmation Petition from the March 13 Order, and grant such other relief as the Court deems proper.

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Respectfully submitted

By: /s/ *Maura M. Miller*

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