

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



FSD NO. 0056 of 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF EBULLIO COMMODITY MASTER FUND L.P.

WINDING UP PETITION



To: The Grand Court of the Cayman Islands

The humble Petition of Noble Resources International Pte Ltd of 60 Anson Road, #19-01 Mapletree Anson, Singapore 079914 (the "**Petitioner**") SHOWS THAT:

- 1 Ebullio Commodity Master Fund L.P. (the "**Partnership**") was registered as an exempted limited partnership with registration number 25243 on 4 April 2008 under the Exempted Limited Partnerships Law (2007 Revision).
- 2 The registered office of the Partnership is at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands.
- 3 The Partnership is the master fund in a "master-feeder" fund structure.
- 4 The Petitioner understands that Ebullio Capital Management LLP (registered in the United Kingdom) is the investment manager of the Partnership and the other funds within the group structure (the "**Investment Manager**").
- 5 The Partnership invests and trades in commodities on the open market.
- 6 The Petitioner understands that the business of the Partnership is conducted by the Investment Manager from offices at 33 Clarence Street, Southend-on-Sea, SS1 1BH, United Kingdom.
- 7 The Petitioner is a subsidiary of Noble Group Limited which is a market-leading global supply chain manager of agricultural and energy products, metals and minerals established 25 years ago. Noble Group Limited is listed in Singapore (SGX: N21), with headquarters in Hong Kong and operates from over 140 locations.
- 8 **The First Contract**
 - 8.1 By a contract in writing dated 3 September 2012, and numbered CU118681SJZ (the "**First Contract**"), the Partnership agreed to buy from the Petitioner 2000 metric

tonnes ("t") \pm 2% of LME registered Grade A Copper cathodes for delivery CIF Rotterdam and/or in Warehouse Rotterdam at the Petitioner's option in 4 lots of 500t during October 2012. The price of the copper was to be the LME Cash Settlement Price for Copper established during the period not more than 10 and not less than 4 London working days prior to arrival in Rotterdam (at the Partnership's option), plus a premium of US\$132 per t.

- 8.2 Save as set out above, the First Contract was subject to the Petitioner's General Terms and Conditions in respect of Physical Non-Ferrous Metals trading of the Petitioner.
- 8.3 The First Contract was varied by agreement, as evidenced by a series of written addenda, as follows:

	Date	Variation
(a)	11 September 2012	<u>Quantity:</u> Revised to 5,500t \pm 2% <u>Period of Delivery:</u> Revised to add 7 additional deliveries
(b)	29 October 2012	<u>Period of Delivery:</u> Revised to amend the delivery schedule
(c)	2 November 2012	<u>Period of Delivery:</u> Revised to amend the delivery schedule
(d)	16 November 2012	<u>Period of Delivery:</u> Revised to amend the delivery schedule
(e)	22 November 2012	<u>Period of Delivery:</u> Revised to amend the delivery schedule
(f)	26 November 2012	<u>Period of Delivery:</u> Revised to amend the delivery schedule
(g)	27 November 2012	<u>Period of Delivery:</u> Revised to amend the delivery schedule
(h)	15 January 2013	<u>Period of Delivery:</u> Revised to amend the delivery schedule

	Date	Variation
(i)	31 January 2013	<p data-bbox="769 254 984 296"><u>Period of Delivery:</u></p> <p data-bbox="769 296 1297 415">Revised to amend the delivery schedule to: At the Petitioner's best efforts during October 2012 in 2 lots of 500t as follows:</p> <p data-bbox="769 443 1256 485">500t for week commencing 8 October 2012</p> <p data-bbox="769 485 1268 527">500t for week commencing 15 October 2012</p> <p data-bbox="769 554 1297 625">At the Petitioner's best efforts during February March 2013 in 9 lots of 500t as follows:</p> <p data-bbox="769 653 1036 695">4000t for February 2013</p> <p data-bbox="769 695 1000 714">500t for March 2013.</p>

- 8.4 The two deliveries due to be made in October 2012 were duly made.
- 8.5 During the first two weeks of February 2013, the Partnership sent a series of instructions to the Petitioner to fix the price for the 4,500t of copper for delivery in February and March 2013 and the price was duly fixed in accordance with the mechanism set out in the First Contract as recorded in formal Pricing Confirmations issued by the Petitioner on 6, 7 and 13 February 2013.
- 8.6 Towards the end of February 2013, the Partnership requested the Petitioner to vary the delivery schedule set out in the First Contract again and to postpone to March 2013 delivery of the 4000t currently due for delivery in February 2013.
- 8.7 The Petitioner offered to do so on condition that the Partnership provided cash payment for margin, being the difference between the current market copper price and the contractual price (which was by that time significantly above market levels), such condition to be incorporated into a further addendum to the First Contract.
- 8.8 The Partnership was unable to provide margin in cash or in any other form that was acceptable to the Petitioner. Nevertheless, the Petitioner ultimately agreed to postpone the February 2013 delivery to March 2013, despite the fact that the Partnership was unable to provide satisfactory margin, but made it clear that no further postponements would be agreed.
- 8.9 The copper was ready to be delivered in Warehouse Rotterdam in March 2013. Accordingly, on 25 March 2013, the Petitioner sent to the Partnership an invoice for 4,499.827t of copper, at the contractual price, in the total sum of US\$37,581,680.14 together with a conditional release instruction to the warehouse whereby the Partnership was entitled to take delivery of the copper from the warehouse on payment of the sum set out in the invoice.

8.10 However, in breach of the First Contract, the Partnership refused to make payment against the Petitioner's invoice and to accept delivery of the copper either in accordance with the delivery schedule or at all.

8.11 In the circumstances, the Petitioner has a right to damages, calculated in accordance with section 50 of the English Sale of Goods Act 1979 which states:

Damages for Non-Acceptance 50. (1) *Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.*
 (2) *The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.*
 (3) *Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.*

8.12 There is an available market for the copper, and accordingly, the Petitioner has suffered a loss of not less than **US\$3,722,732** as a result of the Partnership's refusal to accept delivery of the cargo, calculated as follows:

(a)	Contract Price per Pricing Confirmation and invoice	US\$37,581,680.14
(b)	No. of t	4,499.827
(c)	LME Copper cash settlement for 2 April 2013 ¹ per t	US\$7,434.50
(d)	Maximum Market Premium per t	US\$90
(e)	Market Price = (b) x [(c)+(d)]	US\$33,858,948.26
	Total	US\$3,722,732

8.13 Further, on 25 March 2013, the Petitioner sent the Partnership an invoice numbered DN-R060/13 in the sum of **US\$109,860.63** for the costs of carrying the February 2013 delivery to March 2013, which the Partnership has failed to pay.

8.14 There is no defence to the Petitioner's claim for damages or for its claim for payment of Invoice DN-R060/13 and the Partnership is therefore justly and truly indebted to the Petitioner.

9 The Second Contract

9.1 By a contract in writing dated 15 January 2013, and numbered CU200243SRK (the "Second Contract"), the Partnership agreed to buy from the Petitioner 1500t ± 2% of LME registered Grade A Copper cathodes for delivery CIF Rotterdam and/or in

¹ 31 March and 1 April 2013 were public holidays and no prices were published.

Warehouse Rotterdam in 3 lots of 500t during March 2013. The price of the copper was to be the LME Cash Settlement Price for Copper established during the period not more than 10 and not less than 4 London working days prior to arrival in Rotterdam (at the Petitioner's option), plus a premium of US\$132 per t.

- 9.2 Save as set out above, the Second Contract was subject to the Petitioner's General Terms and Conditions in respect of Physical Non-Ferrous Metals trading of the Petitioner.
- 9.3 On 12 February 2013, the Partnership sent a request to the Petitioner to fix the price for the full 1500t of copper for delivery in March and the price was duly fixed in accordance with the mechanism set out in the Second Contract as recorded in a formal Pricing Confirmation issued by the Petitioner on 13 February 2013.
- 9.4 The copper was in fact ready to be delivered in Warehouse Rotterdam in March 2013. Accordingly, on 25 March 2013, the Petitioner sent to the Partnership an invoice for 1513.588t of copper, at the contractual price, in the total sum of US\$12,615,377.58 together with a conditional release instruction to the warehouse whereby the Partnership was entitled to take delivery of the copper from the warehouse on payment of the sum set out in the invoice.
- 9.5 In breach of the Second Contract, the Partnership refused to make payment against the Petitioner's invoice and to accept delivery of the copper either in accordance with the delivery schedule or at all.
- 9.6 In the circumstances, the Petitioner has a right to damages, calculated in accordance with section 50 of the United Kingdom's Sale of Goods Act 1979, as set out in Paragraph 8.10 above.
- 9.7 There is an available market for the copper, and accordingly, the Petitioner has suffered a loss of not less than US\$1,226,384.67 as a result of the Partnership's refusal to accept delivery of the cargo, calculated as follows:
- | | | |
|-----|--|----------------------|
| (a) | Contract Price per Pricing Confirmation and invoice | US\$12,615,377.58 |
| (b) | No. of t | 1513.588 |
| (c) | LME Copper cash settlement for 2 April 2013 ² per t | US\$7,434.50 |
| (d) | Maximum Market Premium per t | US\$90 |
| (e) | Market Price = (b) x [(c)+(d)] | US\$11,388,992.91 |
| | Total | US\$1,226,385 |
- 9.8 There is no defence to the Petitioner's claim for damages and the Partnership is therefore justly and truly indebted to the Petitioner.

² 31 March and 1 April 2013 were public holidays and no prices were published.

- 10 Since receiving the invoices referred to in Paragraphs 8.9, 8.13 and 9.4 above, the Partnership has failed to pay any amounts to the Petitioner.
- 11 Further, on 11 April 2013, the Petitioner delivered invoices for the sums set out in Paragraphs 8.12 and 9.7 above to the Partnership. Since receiving those invoices, the Partnership has failed to pay any amounts to the Petitioner.
- 12 The Partnership's failure to pay any of the amounts which are presently due and owing to the Petitioner demonstrates that the Partnership is unable to pay its debts and that it should be wound up pursuant to section 92(d) of the Companies Law (2012 Revision)(the "Law").
- 13 In addition, the Petitioner has further good reason to believe that the Partnership is unable to pay its debts for the following reason. When the Partnership requested that the 4000t of copper to be delivered in February under the First Contract should be postponed to March, the Petitioner was willing to agree on condition that the Partnership provided a margin payment in the sum of US\$1.8 million. The Partnership was only able to offer shares in another Ebullio group entity as collateral and refused to make any cash payment.
- 14 Further, and in any event, in an email dated 22 April 2012 from Mr. Lars H. Steffenson, the Executive Managing Director of the investment manager of the Partnership, on behalf of the Partnership, to *inter alia* Mr. Andrew Reid of the Petitioner (copied to, *inter alia*, Mr. René van der Kam), the Partnership represented that it would be unable to perform its obligations under the First and Second Contracts in any manner which would be satisfactory to Noble and that any attempt to do so would likely lead to the closure of the Partnership in the following terms:

After meeting with our counterparty and having exhaustive discussions as to how they would be able to allow the Ebullio Commodity Master Fund to perform on the a/m copper contracts and based on the information received and deduced from our counterparty, we have come to the conclusion, that it is highly unlikely that they and as a result Ebullio, will be able to perform in a manner timely enough or sufficiently satisfactory for Noble.

The resulting loss and/or subsequent potential arbitration/litigation costs with our counterparty and/or Noble would make a huge dent in the balance sheet of the Ebullio Commodity Master Fund and most likely lead to its closure.

... as explained above, it is highly unlikely that the Ebullio Master Fund would be able to pay out any award that Noble might get in arbitration thus leaving Noble having spent money and time in a futile exercise.

- 15 In a further email on 22 April 2012, Mr. Steffenson said:

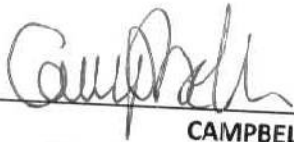
We cannot offer a cash element.... as such... what cash [the Ebullio Group] does have is used [for another project].

- 16 In the circumstances, the Partnership is unable to pay its debts as they fall due since it is clear that the Partnership is only able to satisfy the Petitioner's debts as a result of the performance of an unnamed third party, which is not likely to occur.

THE PETITIONER THEREFORE PRAYS THAT:

- (1) The Partnership be wound up by the Court under the provisions of the Law and the Exempted Limited Partnerships Law (2012 Revision).
- (2) Matthew Wright of RHSV (Cayman) Limited, PO Box 897, Windward1, Regatta Office Park, Grand Cayman KY1-1103, and Finbarr O'Connell of Smith & Williamson LLP, 25 Moorgate, London EC2R 6AY, United Kingdom be appointed as Joint Official Liquidators of the Partnership with power to act jointly and severally (the "Official Liquidators").
- (3) The Official Liquidators shall not be required to give security for their appointment.
- (4) In addition to their powers prescribed in Part II of the Third Schedule to the Companies Law which are exercisable without sanction of this Court, the Official Liquidators may also without further sanction or intervention from this Court:
 - (a) exercise the powers set out in Part I of the Third Schedule to the Companies Law; and
 - (b) take any such action as may be necessary or desirable to obtain the recognition of their appointment in any other relevant jurisdictions and to make applications to the courts of such jurisdictions for that purpose,and, for the avoidance of doubt, the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.
- (5) The costs of the Petitioners of and incidental to the Petition be paid forthwith from the assets of the Partnership, to be taxed on the indemnity basis if not agreed.
- (6) Such other orders and/or directions may be made as the Court thinks fit.

Dated this *24* April 2013



CAMPBELLS
Attorneys-at-Law for the Petitioners

Note: It is intended to serve this Petition on (i) the Partnership and (ii) the Cayman Islands Monetary Authority

INDORSEMENT

Notice of Hearing

This Petition having been presented to the Court on April 2013 will be heard at the Law Courts, George Town, Grand Cayman on 27 May 2013 at 10:00 a.m./p.m. or as soon thereafter as the Petition can be heard.

THIS PETITION was filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, PO Box 884, George Town, Grand Cayman KY1-1103, Cayman Islands (Ref: JRM/KAH/12907-20598)