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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

SERGEY PETROVICH POYMANOV,

Chapter 15

Debtor in a Foreign Proceeding.

Case No. 17-10516 (mkv)

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DECLARATION OF SERGEY S. SOKOLOV

I. INTRODUCTION

I, Sergey S. Sokolov, hereby declare as follows:

1. I am the managing partner of the Moscow office of Marks & Sokolov law firm and I am a duly qualified jurist, having the right, according to Russian law, to practice law in Russia.

2. I am over the age of eighteen and competent to testify.

3. I am fluent in both Russian and English.

4. Upon the request of Blank Rome LLP, attorneys for the Petitioner and Foreign Representative, I have prepared this explanation pertaining to the *Ruling on Declaring the*

Debtor's Transactions Invalid and(or) Applying the Consequences of the Invalidity of a Void Transaction.

II. QUALIFICATIONS

5. I graduated *summa cum laude* from Law School of St. Petersburg State University in 1993. I also received a bachelor's degree from the School of Economics at St. Petersburg State University. I have over 20 years of experience in legal practice. I prepared the following expert opinions on Russian law to be used in courts of the United States for the case *Belikov v. Huhs* heard in the Superior Court of the State of Washington, for the case 14-MC-31 (LAP) 14-MC-57 (LAP) in re the application of Natalia Potanina for an Order to Take Discovery Pursuant to 28 U.S.C. § 1782(a) in the United States District Court of the Southern district of New York, and for the case 16-13534(MKV) in re Foreign Industrial Bank Ltd. in the United States Bankruptcy Court Southern District of New York.

III. DOCUMENTS REVIEWED

6. The following documents were provided to me for review by Blank Rome LLP:
- a Declaration of Kirill Zhukov filed on October 9, 2017 [ECF 84] (the "Zhukov Declaration");
 - b PPF Management LLC's ("PPF") Opposition to Motion of the Foreign Representative seeking to enforce the automatic stay filed on October 9, 2017 [ECF 83] (the "Opposition");
 - c Decision and Order Partially Granting Petition for Recognition of Foreign Main Proceeding dated July 31, 2017 (the "Recognition Order");
 - d Motion of the Foreign Representative for Entry of an Order Recognizing the Russian Order and Enforcing the Automatic Stay filed on September 6, 2017 [ECF 76], with exhibit B [ECF 76-3] (the "Motion");
 - e *The Ruling on Declaring the Debtor's Transactions Invalid and(or) Applying the Consequences of the Invalidity of a Void Transaction.* in case A41-78484/15 dated July 31, 2017 (the "31 July Decision").

IV. GENERAL OVERVIEW

7. Russia is a civil law country. Generally, the sources of law are the Russian Constitution, codes and laws adopted by the legislature. Resolutions issued by the Russian Supreme Court are binding for commercial (arbitrazh) courts and courts of general jurisdiction and resolutions issued by the Russian Constitutional Court are binding for all the courts.

8. The Russian Civil Code is the main source of civil law for the Russian Federation setting forth basic legal principles of the civil law. The Civil Code is composed of four parts: Part I of the Civil Code which deals with general provisions of Russian civil law; Part II dealing with the obligations; Part III dealing with succession and international private law and Part IV dealing with intellectual property.

9. Paragraph 2 of Chapter 9 of Part I of the Civil Code contains Articles 166 through 181 dealing with invalidity of transactions, various grounds for invalidation of transactions, consequences of such invalidation and statute of limitations for invalidations of transactions.

10. The Commercial (Arbitrazh) Procedure Code of the RF dated July 24, 2002 (“APC”) is the main source of procedural rules pertaining to the disputes in the area of business and other economic activities. Russian commercial (“arbitrazh”) courts settle economic disputes and other cases referred to the competence thereof by the APC and other federal laws in compliance with the rules established by the APC.

11. According to Part 1 of Article 15 of the APC the commercial (arbitrazh) court renders court acts in the form of court order (“sudebny prikaz”), judgment (“resheniye”), decree (“postanovleniye”) and decision (“opredeleniye”).

12. Part 4 of Article 15 of the APC provides that the court orders, judgments, decrees and decisions rendered by the commercial (arbitrazh) courts shall be lawful, grounded and reasoned. Pursuant to Part 1 of Article 170 of the APC judgment of commercial (arbitrazh) court shall consist of the introductory, descriptive, reasoning (declaration) and resolute parts.

13. According to Part 4 of Article 170 of the APC reasoning (declaration) part of the judgment shall specify *inter alia*:

factual and other circumstances of the case ascertained by the commercial (arbitrazh) court;

reasoning of decisions made by the court.

14. According to Section 6 of Part 1 of Article 185 of the APC commercial (arbitrazh) court decision shall contain reasons why the commercial (arbitrazh) court came to its conclusions.

15. According to Section 6 of Article 61.8 of the Federal Law of October 26, 2002 No 127 “On insolvency (bankruptcy)” (“Bankruptcy Law”) where claims are filed on invalidation of insolvent debtor’s transactions under the Bankruptcy Law, the commercial (arbitrazh) courts render their acts in the form of court decisions.

16. Russian courts established that an application for invalidation of a transaction made within bankruptcy proceedings is substantially a lawsuit between a debtor and its counterparties; and the court decision in such dispute shall comply not only with the requirements of Article 185 of the Arbitrazh Procedure Code of the Russian Federation applicable to court decision but also to the requirements of Article 170 of the Arbitrazh Procedure Code of the Russian Federation applicable to judgments (the decree of Commercial (arbitrazh) court of Moscow circuit dated November 17, 2015 No Φ 05-15521/2015 in case No A40-40185/2012; decree of the Commercial (arbitrazh) court of Moscow circuit dated April 11, 2016 No Φ 05-11351/2012 in case No A40-7155/11-124-16).

V. SUMMARY OF CONCLUSIONS

17. 31 July Decision clearly granted the application by the Financial Manager Mr. Bazarnov to invalidate the transaction of assignment of the SDNY Claims (as defined in the Motion) and found the transaction of assignment of the SDNY Claims from Mr. Poymanov to

PPF void. I understand this is not disputed by either party to this case. The issue appears to be the part of 31 July Decision denying the application by the Financial Manager Mr. Bazarnov in part seeking restitution.

18. 31 July Decision was appealed by Mr. Poymanov and on October 11, 2017 the 10th Commercial (arbitrazh) court of appeal upheld the 31 July Decision.

19. Contrary to what is said in Zhukov Declaration at para 4, the law does not provide that “the Court can oblige each of the parties to return” property (emphasis added). Zhukov Declaration ¶ 4. Restitution (return) of what has been received under invalid (void) transaction is not a discretion of the court but is a mandatory legal consequence of determining that a transaction is invalid (unless other consequences are set forth by the law).

20. In particular, Item 2 of Article 167 of the Civil Code referred in ¶ 4 of Zhukov Declaration reads as follows:

"2. In the event a transaction has been declared invalid, each of the parties is obliged to return to the other party all that it has received under the transaction, and in the event such return is not possible in kind (including when the transaction involved use of the property, works performed or services rendered) the party shall reimburse the cost of the received, unless other consequences of invalidity of the transaction are stipulated by law."

21. The law explicitly obliges a party to return what was received. Naturally, the party may not be obliged to return something it did not receive.¹

22. As explained in paragraphs 12 to 16 above, it is necessary to study the reasoning part of 31 July Decision as an integral part of the court ruling.

23. 31 July Decision found that:

¹ Article 167 of the Civil Code also provides for monetary compensation in the event restitution in kind is not possible (including but not limited to instances where a service was rendered under void transaction). The rule about monetary compensation is not applicable to Mr. Poymanov's alleged assignment of the SDNY Claims because a claim (a right to claim) by its nature can perfectly be transferred and returned under Russian law.

- a. *“In view of above, the actions on the sale of the shares in OJCS “Pavlovskgranit” and CJSC “Pavlovskgranit- INVEST” through auctions cannot be considered as violating the rights and interests of S. P. Poymanov and giving rise to the right to claim pecuniary damages and moral harm” [ECF 76-3, 31 July Decision p 17].*
- b. *“Having analyzed the abovementioned events and documents, the commercial (arbitrazh) court concludes that the circumstances which, according to PPF Management’s position stated in the complaint filed with the Southern [sic] District Court of the United States for the Southern District of New York, could give rise to S. P. Poymanov’s, O. P. Poymanov’s, P. A. Poymanov’s and I. Yu. Podgornaya’s rights to claim pecuniary damages and moral harm, did not occur and, therefore, the rights of claim in question have never existed and could not have been transferred either to PPF Management or to any third parties” [ECF 76-3, 31 July Decision p 19].*
- c. *“Taking into account the above, the court declares the transaction or several related transactions for the transfer of the rights to claim pecuniary damages and moral harm made by S. P. Poymanov as a single transaction for transfer of the said property by the Debtor to PPF Management made without the financial administrator’s consent, void on the basis of Article 213.25 (5) of the Bankruptcy Law².*

That said, the court notes that due to the already established fact that S. P. Poymanov’s, O. P. Poymanov’s, P. A. Poymanov’s and I. Yu. Podgornaya’s rights to claim pecuniary damages and moral harm related to the unlawful actions with the shares in OJSC “Pavlovskgranit” and CJSC “Pavlovskgranit- INVEST” do not exist, the commercial (arbitrazh) court concludes that there are no grounds to apply the consequences of invalidity of the void transaction in the form of bilateral restitution in accordance with Article 167 of the Civil Code of the Russian Federation” [ECF 76-3, 31 July Decision p 22].

24. So, it is only because the Court found in 31 July Decision that the SDNY Claims never existed and could not have been assigned to PPF in the first place the Court did not order

² 31 July Decision noted that Mr. Poymanov ignored requests by the court to provide evidence of purported transaction on assignment of the SDNY Claims to PPF, acting in bad faith aiming at obstruction of disputing of the transaction. The court qualified the assignment of the SDNY Claims to PPF as void irrespective of whether such assignment was made in a single transaction or several related transactions.

restitution of the SDNY Claims and therefore denied the Financial Manager's motion in the part demanding restitution.

25. The interpretation of this part of 31 July Decision suggested in paragraph 7 of Zhukov Declaration is incorrect and contrary to the law for the following reasons.

26. The SDNY Claims are deemed a property under Russian law. Article 128 of the Civil Code provides (emphasis added):

“Choses, including cash and securities, other property including non-cash funds, uncertificated securities, property rights, results of works performed and services rendered; protected intellectual property and equivalent means of individualization (intellectual property), non-material values shall be classified as objects of civil law rights.”

27. Title to property such as the SDNY Claims may be obtained by various lawful means including through a transaction with the holder of title to the SDNY Claims.

Item 1 of Article 382 of the Civil code in its relevant part provides:

“1. Right (claim) belonging to a creditor under an obligation, may be transferred to another person under a transaction (assignment of claim) or may pass to another person based on the law.”

28. Part 1 of Article 167 of the Civil Code reads as follows:

“1. An invalid transaction does not entail any legal consequences excluding those connected with its invalidation, and is invalid from the moment it was made. Once a transaction has been invalidated, a person who was or should have been aware of the grounds for invalidation of a voidable transaction, shall not be deemed to have acted in good faith.”

29. The purported assignment of the SDNY Claims by Mr. Poymanov to PPF is a transaction through which PPF could have obtained title to the SDNY Claims. But since that transaction was found by the Russian Court to be void, that purported assignment did not entail

any legal consequences including transfer of title to the SDNY Claims from Mr. Poymanov to PPF pursuant to Item 1 of Article 167 of the Civil Code.

30. Interpretation of 31 July Decision suggested in paragraph 7 of Zhukov Declaration would mean that the Russian Court did find the assignment of SDNY Claims void but retained the title to the SDNY Claims with assignee. That would be contrary to Articles 167 and 382 of the Civil Code because PPF, as a matter of Russian law, may not obtain title to property such as the SDNY Claims through a void transaction that does not entail any legal consequences including transfer of title.

31. Such interpretation is also contrary to the 31 July Decision itself because the Russian Court explained that it denied claim for restitution because the SDNY Claims could not have been assigned. If the Russian Court was of the opinion that the SDNY Claims were *de facto* transferred to PPF, it would have to order its restitution as a proper legal consequence of finding the transaction of assignment of the SDNY Claims void pursuant to Item 2 of Article 167 of the Civil Code.

32. The application by the Financial Manager Mr. Bazarnov to invalidate the transaction of assignment of the SDNY Claims dealt with respective rights and obligations of Mr. Poymanov and PPF in relation to purported assignment of the SDNY Claims and 31 July Decision clearly determined that transaction of assignment of the SDNY Claims was void and the assignment did not take place. Had the Russian Court concluded that the SDNY Claims existed, it would have ruled that they are part of Mr. Poymanov's bankruptcy estate. Therefore, the SDNY Claims, to the extent (if any) it exists, remains part of Poymanov's bankruptcy estate because the SDNY Claims were his property on the date Mr. Poymanov was declared bankrupt.

33. Paragraph 9 of Zhukov Declaration interprets "the fact that the state levy was ordered to be paid by the financial administrator Mr. A.V. Bazarnov" as "entirely consistent

with the judgment of the Moscow Oblast Arbitrazh Court of July 31, 2017, which denied the claim of the financial administrator to return the rights of claim to the bankruptcy estate of Mr. S.P. Poymanov.” This interpretation is wrong for the following reasons.

34. According to Subsection 2 of Section 1 of Article 333.21 of the Russian Tax Code state levy for consideration of disputes on invalidation of transactions shall be 6,000 Rubles³. The application by the Financial Manager Mr. Bazarnov contained two claims: (i) on invalidation of the transaction on the purported assignment of the SDNY Claims by Mr. Poymanov to PPF, and (ii) on invalidation of the transaction on the purported assignment of the claims by Ms. Podgornaya to PPF. For that reason, Mr. Bazarnov paid the state levy of 12,000 Rubles.

35. With regard to the first claim, 31 July Decision the court satisfied Mr. Bazarnov’s claim to invalidate the purported assignment of the SDNY Claims by Mr. Poymanov but refused to apply consequences of such invalidation. Therefore, the state levy of 6,000 Rubles should have been either ordered against PPF or split between Mr. Bazarnov and PPF.

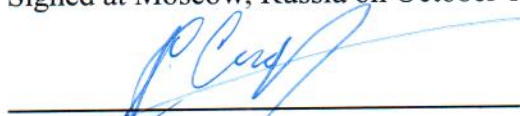
36. With regard to the second claim, 31 July 2017 Decision discontinued (dismissed) the case in respect of the Financial Manager Mr. Bazarnov’s claim on invalidation of the purported assignment by Ms. Podgornaya under Section 1 of Part 1 of Article 150 of the APC. Pursuant to Subsection 3 of Section 1 of Article 333.40 of the Russian Tax Code the state levy shall be returned in the event the case is discontinued (dismissed) by the commercial (arbitrazh) court. Under the interpretation given in Section 11 of the Decree of the Plenum of the Supreme Commercial (Arbitrazh) Court dated July 11, 2014 No 46 in accordance with Subsection 3 of Section 1 of Article 333.40 of the Russian Tax Code the state levy paid shall be returned where the case is discontinued (dismissed) or left without consideration on the

³ Around 100 US dollars.

grounds provided for in Articles 148 and 150 of the APC. Therefore, the state levy of 6,000 paid by Mr. Bazarnov in respect of this claim should have been returned to the applicant.

I declare under penalty of perjury of the laws of the state of New York that the foregoing is true and correct and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the Jurisdiction of the United States.

Signed at Moscow, Russia on October 13th, 2017.



Sergey S. Sokolov