



In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION

2025 No. 195

**IN THE MATTER OF THE AGREEMENT AND PLAN OF MERGER
DATED AS OF 28 MAY 2025 AMONG CMB TECH BERMUDA LTD AND
GOLDEN OCEAN GROUP LIMITED**

**AND IN THE MATTER OF A PROPOSED STATUTORY MERGER
AMONG CMB TECH NV, CMB. TECH BERMUDA LTD., AND GOLDEN
OCEAN GROUP LIMITED**

AND IN THE MATTER OF SECTION 106 OF THE COMPANIES ACT 1981

BETWEEN:

ALPINE PARTNERS (BVI) L.P.

Plaintiffs

And

**CMB. TECH BERMUDA LIMITED
(AS SUCCESSOR TO GOLDEN OCEAN GROUP LIMITED)**

Defendant

RULING (REASONS FOR REFUSAL)

Dates of Hearing: Tuesday 12 August 2025

Date of Ruling: Monday 17 November 2025

Plaintiff: Ms. Hannah Tildesley and Ms. Kiara Wilkinson
(Walkers (Bermuda) Limited)

Defendant (Appearing)
Golden Ocean Group Limited: Mr. Alex Potts KC of Counsel and Ms. Fozeia Rana-Fahy
(MJM Limited)

Defendant (Post-Merger Successor)
CMB. Tech Bermuda Ltd
(Successor to Golden Ocean Group Limited) Mr. Rhys Williams Conyers Dill & Pearman Limited

Application for expedited trial: Claim that a dissenting shareholder is entitled to be paid in cash at the fair share value – Section 106(2)(b) of the Companies Act 1981- Applying Case Management principles (Overriding Objective) to trial directions

RULING of Shade Subair Williams J

Introduction

1. When the Plaintiff commenced these proceedings, it was a shareholder of the then Defendant, Golden Ocean Group Limited (“Golden Ocean”). Incorporated as a Bermuda exempted company, Golden Ocean was a public drybulk shipping company which operated internationally through its subsidiaries in Bermuda, Norway and Singapore. Its vessels transported a broad range of major and minor bulk commodities, including ores, coal, grains and fertilizers, using worldwide shipping routes. Golden Ocean also traded its common shares

on Nasdaq Global Select Market (“Nasdaq”) and Euronext Oslo Stock Exchange (“Euronext Oslo”).

2. The claim for payment in the Originating Summons filed on 8 August 2025 is for a net sum of US\$119,904,750. The claim is grounded on the Plaintiff’s case that it has a legal right to be paid in cash at the rate of US\$14.49 for each of the 8,275,000 common shares it owned in Golden Ocean prior to what was then a proposed merger between (i) Golden Ocean, (ii) CMB Tech NV, a company organized under the laws of Belgium, and (iii) CMB. Tech Bermuda Ltd., a Bermuda exempted company.
3. The Plaintiff brought its case under section 106(2)(b) of the Companies Act 1981 and pursuant to the Court’s inherent jurisdiction. While the vote on the merger had not yet been held when this matter was first brought before this Court, the Plaintiff’s clearly expressed position was that it would indeed dissent on the then pending merger.
4. The application with which I was concerned was made by way of an *ex parte* summons (with notice) for an expedited trial to be listed on or prior to 15 August 2025. At the request of the Plaintiff’s Counsel, the application was heard prior to the date on which the merger was to take effect. This was driven by the Plaintiff’s efforts to avoid the cancellation of its shares and the share swap arrangement proposed by Golden Ocean by which all shareholders would be given new holdings in CMB. TECH, the parent company of CMB. TECH Bermuda Ltd (the “surviving company”). The share swap arrangement is what the Company proposed for the merger consideration for all Golden Ocean shareholders. The Plaintiff’s case is that the proposed merger consideration constitutes a wrongful conversion of its shares in Golden Ocean and that payment of the fair share value under section 106(2)(b) requires payment to be made in cash currency.
5. Counsel for Golden Ocean objected to the application for an expedited trial primarily on the basis that the Plaintiff’s underlying claim would be fully defended and that the proposed expedition would deprive it of sufficient opportunity to formally enter an appearance and present its case.
6. At the close of the hearing before me, I refused the application and informed Counsel that I would later provide these written reasons.

Background

7. Ms. Hannah Tildesley, Counsel for the Plaintiff, filed affidavit evidence in her own name sworn on 8 August 2025 in support of the Plaintiff’s application for an expedited trial. Exhibited to her evidence is an upload of an electronic record of the Plaintiff’s share ownership

information. Affidavit evidence was also sworn by Mr. Zvi Berko, the Chief Legal Officer of Alpine Global Management LLC, the General Partner of the Plaintiff.

8. The evidence before this Court was that prior to acquiring any shares in Golden Ocean, on 18 July 2025 the Plaintiff received notice of the Special General Meeting (the “SGM”) which was fixed to be held in Bermuda at Hamilton Princess on 19 August 2025. The 18 July 2025 notice (the “SGM Notice”) signalled the holding of a vote for the approval of Bye-Law 77A which would allow for the merger to be approved by a simple majority vote of the shareholders. Of course, the principal purpose for the SGM was for the approval of the merger itself.
9. In the SGM Notice, Golden Ocean advised the shareholders that it considered the merger consideration to be fair and in the best interests of Golden Ocean and its shareholders. Golden Ocean also informed the shareholders that it had taken this decision upon the unanimous recommendation of a special transaction committee comprised solely of disinterested directors with no financial interest in the transactions contemplated by the merger.
10. Golden Ocean also sought to assure its shareholders that for each of them who owned common shares which were tradeable on Nasdaq, their converted shares would also be tradeable on Nasdaq. The same applied to the shares which were traded on Euronext Oslo. Further, Golden Ocean advised that the CMB.TECH ordinary shares to be issued as merger consideration were also approved for listing on the New York Stock Exchange. In what might be described as a standard warning statement; however, Golden Ocean also cautioned the shareholders through the SGM Notice that the market value of the CMB. TECH ordinary shares may decline as a result of the merger. It stated at para [41]:

“The market value of CMB.TECH ordinary shares may decline as a result of the Merger if, among other things, the Combined Company is unable to achieve the expected growth in earnings, or if the transaction costs related to the Merger are greater than expected. The market value also may decline if the Combined Company does not achieve the perceived benefits of the Merger as rapidly or to the extent anticipated by the market or if the effect of the Merger on the Combined Company’s financial position, results of operations or cash flows is not consistent with the expectations of financial or industry analysts.”

11. As for the position taken on the fair share value of each Golden Ocean common share and the rights of any dissenter to seek an appraisal from the Court, Golden Ocean made the following statement in the SGM Notice:

“For the purposes of Section 106(2)(b)(i) of the BCA, the Golden Ocean board of directors has determined the fair value for each Golden Ocean common share to be \$14.49 subject to adjustment, pursuant to the terms of the Merger Agreement) and pursuant to the automatic

conversion in the Merger Agreement to be equal to the Merger Consideration. Golden Ocean's shareholders who are not satisfied that they have been offered fair value for their shares and who do not vote in favour of the Merger may exercise their appraisal rights under the BCA to have their application for appraisal of the fair value of their shares appraised by the Supreme Court of Bermuda (the "Bermuda Court"). Golden Ocean's shareholders intending to exercise appraisal rights MUST file their application for appraisal of the fair value of their shares with the Bermuda Court within ONE MONTH of the notice convening the Special General Meeting and otherwise fully comply with the requirements for seeking appraisal under the BCA.

12. On 1 August 2025, after the issuance of the SGM Notice, 8,275,000 of Golden Ocean's common shares were transferred and registered in the Plaintiff's name, at which point the price per share cost \$8.37, totalling \$69,261,750.00.

13. Mr. Berko deposed that upon having acquired the Golden Ocean shares, the Plaintiff took immediate steps to obtain legal advice and assistance. By a letter dated 4 August 2025, the Plaintiff's Counsel wrote to Golden Ocean advising of its intention to dissent to the proposed merger. The 4 August letter also asserted that the Bermuda law position would require dissenters to be paid the company's stated fair value in cash on completion of the merger. Law firm Walkers stated at paras [13]-[14] of the letter:

"The purpose behind Bermuda's legislation is equivalent, hence the requirement under section 106(2)(b) to state and pay a cash fair value to dissenters. This provides an opt out mechanism for those who are not in agreement with a proposed merger or amalgamation.

In short, the Dissenters cannot be forced to remain in an enterprise with which they do not agree and in which they did not invest."

14. In its 4 August letter, Walkers also pointed to section 106(6B) which provides:

"Where the Court has appraised any shares under subsection (6) and the amalgamation or merger has proceeded prior to the appraisal then, within one month of the Court appraising the value of the shares, if the amount paid to the dissenting shareholder for his shares is less than that appraised by the Court the amalgamated or surviving company shall pay to such shareholder the difference between the amount paid to him and the value appraised by the Court."

15. Speaking to what the Plaintiff contends is the effect of section 106(6B), Walkers argued:

"If merging companies were entitled to pay fair value to dissenters by way of the transfer of the in kind merger consideration itself, it would greatly complicate fair value proceedings and

the Court's assessment of fair value under section 106(6B). This is because the Court will have to value, not only the fair value of the company's shares, but also "the amount paid to the dissenting shareholder". This raises a whole range of complex questions about how the Court should approach this second valuation exercise. In this matter, on the face of it, it would appear to necessitate an examination not only of the Company value, but also of the value of MergedCo [the surviving company], with all the complications that would arise from the second valuation exercise, including discovery from CMB and two valuation reports (from both the Dissenters and the Company) on two companies. Essentially, it will double the size and complexity of the proceedings and raise any number of unanswered legal questions because, in any ordinary fair value claim, the court would be wholly unconcerned with the value of, or documents relating to, the acquiring entity. Clearly, this increase in complexity was not the intention of the statute."

16. By letter dated 6 August 2025, Walkers followed up on its 4 August letter and on 8 August 2025, law firm MJM Limited responded stating the fact of its disagreement that the merger agreement was non-compliant with Bermuda law.

The Application for an Expedited Trial

17. Mr. Berko, in his evidence stated his concerns that the Plaintiff would become victim to a wrongful conversion of its Golden Ocean shares without an urgent trial listing. On his evidence, that prejudice was compounded by the absence of any guarantee as to the value of the shares of the surviving company.
18. Ms. Tildesley argued that the Plaintiff stood to suffer irrevocable prejudice upon the close of the 20 August 2025 merger as its shares would be cancelled, forcing it to deal with its new shares in the newly merged company. Setting out three points of prejudice in her written submissions, she argued:
- (i) If the Plaintiff takes steps to obtain its new shares from the Exchange Agent, it will likely be said that it has waived its right to a total fair value payment of \$14.49. At para [30] she submitted; *"Thus, in arguing that the application is not urgent, the Company positions itself to contend that Alpine has relinquished its statutory right to an immediate cash fair value payment."*
 - (ii) If the Plaintiffs sells the new shares at a price below \$14.49, it will likely be confronted with the argument that it ought to have held on to the shares for a longer period in order to attain the higher pricing.

- (iii) If the Plaintiffs holds on to the new shares in hope of selling them at a later point when the shares might be sold during improved market conditions, it will nevertheless be said that the Plaintiff has waived its statutory appraisal rights.

Reasons for Refusing an Expedited Trial

- 19. The application before this Court was for an order listing the Originating Summons for trial by no later than 15 August, the Originating Summons having been filed on 8 August 2025 and issued three days later on 11 August. The Plaintiff's *ex parte* summons for the present application was also filed and issued on those same dates which brought these proceedings to the hearing before me on 12 August 2025.
- 20. Effectively, the Plaintiff was inviting this Court to list this matter for trial within one week of the commencement of proceedings. Such a timetable would not have permitted the Defendant to file evidence on the summons application for an *inter partes* hearing or to make use of the ordinary 14-day period for the filing of a Memorandum of Appearance and subsequent responsive evidence on the Originating Summons. Indeed, as pointed out by Mr. Potts KC, the Defendant had not yet even been formally served with the Originating Summons when the application was heard before me.
- 21. Clearly the application falls to be decided on the case management principles governed by the Overriding Objective under RSC Order 1A which provides:

1A/1 The Overriding Objective

(1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable-

(a) ensuring that the parties are on equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate-

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases

1A/2 Application by the Court of the Overriding Objective

2 The court must seek to give effect to the overriding objective when it-

- (a) exercises any power given to it by the Rules; or*
- (b) interprets any rule.*

1A/3 Duties of the Parties

3 The parties are required to help the court further the overriding objective.

1A/4 Court's Duty to Manage Cases

4 (1) the court must further the overriding objective by actively managing cases.

(2) Active case management includes-

- a) encouraging the parties to co-operate with each other in the conduct of the proceedings;*
- b) identifying the issues at an early stage;*
- c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;*
- d) deciding the order in which issues are to be resolved;*
- e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;*
- f) helping the parties to settle the whole or part of the case;*
- g) fixing timetables or otherwise controlling the progress of the case;*
- h) considering whether the likely benefits of taking a particular step justify the cost of taking it;*
- i) dealing with as many aspects of the case as it can on the same occasion;*
- j) dealing with the case without the parties needing to attend at court;*
- k) making use of technology; and*
- l) giving directions to ensure that the trial of a case proceeds quickly and efficiently*

22. Any trial directions issued by this Court must comply with the Court's duty to "deal with the case justly" and to ensure that the parties are, as much is reasonably practicable, placed on "equal footing" in the conduct of the litigation. That simply means that no one party should be given an unfair advantage over the other in the opportunity to prosecute or defend the claim.

23. In this case, I was concerned with the question of urgency. To my mind, that raised the following two primary questions:

- (i) Would the Plaintiff have been unfairly prejudiced or disadvantaged in prosecuting the claim if the trial was not listed prior to 15 August 2025? And
- (ii) Would the Defendant have been unfairly prejudiced or disadvantaged in defending the claim if the trial was listed prior to 15 August 2025?

24. As Warren J put it in *Eli Lilly & Company v Human Genome Sciences Inc* [2012] EWHC 2857, the question is whether a refusal of the requested expedition would cause “*real and strong detriment*”.
25. I accepted Mr. Potts KC’s submission that the question of urgency is an objective one when the Court is considering a request for an expedited trial. In *Validus Holdings Ltd v IPC Holdings Ltd* [2009] SC Bda Ground CJ’s consideration of the question of expedition at para [18] stating:
- “...whether an expedited trial is necessary to avoid injustice, and that seems to me to import a balancing of the rights and interests of the parties...”
26. The English Court of Appeal in *W. L. Gore & Associates GmbH v Geox SPA* [2008] EWCA Civ 622) recognized that the question of good administration of justice is relevant to the Court’s decision, which is a discretionary one.
27. Mr. Potts KC also relied on Vos LJ’s remarks in *Petter v EMC Europe Ltd & Anor* [2015] EWCA Civ 480 [22]: “*two large corporations cannot normally ask the court for an expedited hearing merely to determine how much one has to pay the other*”.
28. The burden of establishing the need for urgency is on the party seeking the expedition. In this case, the evidence was more relevant to the grounds for prosecuting the claim; it fell short of establishing any real unfairness or prejudice if the trial were to proceed expeditiously in the normal timeframes of commercial litigation of this nature. While I accepted that it is in the interests of justice that this case proceeds efficiently and expeditiously, I did not accept that a trial listing after 15 August would leave the Plaintiff deprived of the opportunity to recover what is ultimately claimed in the Originating Summons.
29. In practical terms, the Plaintiff never had any realistic or real prospect of obtaining a final judgment of the Court prior to the merger date, even if a trial would have commenced during the requested expedited period.
30. As the Originating Summons is pleaded, the question for trial is whether section 106(2) of the CA 1981 is to be construed as requiring a company to pay dissenting shareholders the fair value of their shares in cash. I accepted that if the Court was to find in favour of the Plaintiff’s position, that being in the affirmative, then the proceedings will likely have met a prompter conclusion. Of course, the pace of the trial proceedings on that outcome would still be dependent on whether a further dispute arises on the Plaintiff’s claim that the fair value per share is indeed \$14.49.00 as appeared in the Golden Ocean prospectus. However, if the Court finds that the Plaintiff was not deprived of payment within the meaning of section 106(2) on

account of the share swap arrangement, then the trial issues would likely broaden to engage expert and more complex questions as to the valuation of the newly merged and surviving company. In neither case would the Plaintiff have been opportune to a final judgment prior to the merger date.

31. As is most often the position in commercial litigation involving litigants claiming particularly large sums of money, the plaintiff feels a strong sense of urgency to prosecute the claim. Dissenting shareholders in share valuation cases will generally feel unappeased by the prospect of a statutory award of pre-judgment interest at 3.5%, contrasting the commercially available returns to which they might otherwise be privy (See *Corbin Erisa Opportunity Fund et al v Argo Group International Inc* [2024] SC (Bda) 69 Civ (3 December 2024), per Subair Williams J). However, the question of trial urgency is not measured by these factors and the evidence before me did not address the subject of loss of interest opportunity.
32. Notwithstanding, I accept that there is real need for an efficient trial timetable. At the time of writing, the parties requested a trial date listing for 21-23 January 2026, which is to be confirmed by the Registrar under the direction of this Court. In my judgment, that listing provides ample opportunity for a timely disposal of this case.
33. Of final note, I did find that the Defendant would have surely suffered undue prejudice in defending the claim had the Court ordered the trial to take place within the narrow timeframe requested by the Plaintiff. That timeframe would have allowed only for a slither of opportunity for the Defendant to file a full response to the Plaintiff's pleaded case. In my judgment, that would have been excessively unfair.
34. For all of these reasons I refused the Plaintiff's *ex-parte* summons application for an expedited trial.

Costs

35. Unless either party requests to be heard on the issue of costs by filing a Form 31TC within 21 days of the date of this Ruling, costs is to follow the event and is awarded to the Defendant on a standard basis, to be taxed if not agreed.

Dated this 17th day of November 2025



HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT