In The Supreme Court of Bermuda

COMMERCIAL COURT

2011: No 67

IN THE MATTER OF CONTEL CORPORATION LIMITED

RULING (ex tempore)
(In Chambers)

Date of Hearing: 7th March, 2011

Mr. Christian Luthi, Conyers Dill & Pearman, for the Company

Introductory

1. In this case the Company applies for recognition of a scheme of arrangement entered into between the Company and its creditors in Singapore. The Company, although incorporated in Bermuda, has its shares listed on the Singapore Stock Exchange and carries out a substantial part of its manufacturing business in the Peoples Republic of China.

2. This appears to be the first occasion on which this Court has been asked to recognise a scheme of arrangement approved by a foreign court in respect of a local company in circumstances in which a parallel scheme has not been implemented in Bermuda. The background to this case is as follows.

Singapore law position

3. As far as the Singapore law position is concerned, I am satisfied based on the Affidavit of Roland Tong Beng Teck that the Singapore law provisions relating to schemes of arrangement are substantially similar to those under Bermuda law. It is true that Singapore law provides for an automatic stay of proceedings once an application in

relation to a scheme is filed, but in my judgment that has no impact on the broad similarities of the substantive regimes.

4. The Scheme in the present case was approved by over 88% of the creditors present and voting. Although one significant creditor voted against, the Scheme was approved by the requisite statutory majorities which, significantly, are the same under Singaporean and Bermudian law. In fact, although this has not yet been documented in formal evidence[1], the creditors who attended and voted represented 91.8% of the total Company debt. That is an extraordinarily high level of creditor participation in the present Scheme.

5. It also appears from the evidence that a parallel scheme was not implemented in part because of haste and in part because of other logistical considerations. There appears to be no deliberate attempt to avoid any consequences of Bermuda law which might be more favourable to the creditors concerned.

Applicable legal principles

6. The law in relation to the common law discretionary power to recognise foreign restructuring orders made in relation to a local company is authoritatively set out in the Judicial Committee of the Privy Council decision in *Cambridge Gas Transport Corporation-v-The Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2007] 1 AC 508. Mr. Luthi in his written and oral submissions referred the Court to the following passage in what is now a very famous Judgment of Lord Hoffman:

> "***25*** *The jurisdiction is extremely wide. All that is necessary is that the proposed scheme should be a "compromise or arrangement" and that it should be approved by the appropriate majority. Why, therefore, should the Manx court not provide assistance by giving effect to the plan without requiring the creditors to go to the trouble of parallel insolvency proceedings in the Isle of Man?...*"

Application of principles to facts of present case

7. The essence of the Scheme in the present case is a simple "debt for equity swap", as Mr. Luthi concisely put it. This type of scheme is routinely approved by this Court in local and cross-border schemes of arrangement. There is no question but that under Bermuda law creditors can agree through a scheme to extinguish their debts in return for equity in the insolvent company.

8. The only practical issue which gave rise to any concern was the question of whether or not the Order sought was appropriate having regard to the fact that no formal notice had been given of the present application. It is true, as counsel points out, that some oblique notice of the present application was given in paragraph (D) of the recitals to the Scheme, which provides as follows:

[1] Counsel undertook to file a supplementary affidavit in this regard.

> "*(D)This Scheme of Arrangement is entered into between the Company and its respective Scheme Creditors and is proposed under section 210 of the Companies Act, Chapter 50. If and when necessary, as the Company is incorporated in Bermuda, the Company will also make the necessary applications and filings in Bermuda.*"

9. This recital did, in a very general sense, put any creditors interested in this matter on notice that some form of application would be made in Bermuda. No doubt if they had asked, they would have been told that an application for recognition would be made. In my judgment, drafters of future schemes in relation to Bermuda companies[2] ought to consider explicit reference to the fact that it is proposed to obtain recognition of any overseas sanction order from the Bermuda Court. That would avoid the need for any consideration of notice to be given to creditors of the application for recognition in Bermuda.

10. In the present case, in my judgment, the most appropriate way to deal with the notice concerns is to direct that the Order recognising the Singapore Scheme should be served on all creditors. They should be at liberty to apply to be heard within 28 days from the date of service of the Order upon them. In using the word "service", I do not intend to suggest that formal or personal service is required; merely that appropriate and convenient steps should be taken to bring the order to the notice of the parties concerned.

Conclusion

11. For these reasons, I grant the Order sought by the Company recognising the Order made in Singapore (High Court of Singapore, February 1, 2011, Justice Quentin Loh) sanctioning the Scheme of Arrangement between the Company and its creditors.

Dated this 7th day of March, 2011

KAWALEY J

[2] That is to say, overseas schemes implemented without a parallel local scheme.