Deutsche Bank AG and Another v Asia Pulp & Paper Co Ltd
[2003] SGCA 19

Case Number : CA 95/2002, OP 2/2002/d

Decision Date : 29 April 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Alvin Yeo SC and Nish Shetty (Wong Partnership) for appellants; Davinder Singh SC, Julian Kwek, Hri Kumar and Tan Boon Khai (Drew and Napier LLC) for respondent

Parties : Deutsche Bank AG; BNP Paribas — Asia Pulp & Paper Co Ltd

Civil Procedure – Appeals – Discretion exercised by trial judge – Interference by appellate court

Companies – Receiver and manager – Judicial management order – Factors to be considered before making judicial management order – Whether real prospect that one or more of statutory purposes would be achieved – Companies Act (Cap 50, 1994 Rev Ed) ss 227A, 227B

Delivered by Tan Lee Meng J

1 The first appellant, Deutsche Bank AG ("DB"), a foreign bank incorporated in Germany, and the second appellant, BNP Paribas ("BNP"), a foreign bank incorporated in France, have branches in Singapore and are creditors of the respondent, Asia Pulp & Paper Company Ltd ("APP"). DB and BNP claimed that APP owed them around US$193m and US$20m respectively. They jointly petitioned to have APP placed under judicial management pursuant to section 227B of the Companies Act (Cap 50). The petition was dismissed by Lai Siu Chiu J on 22 August 2002 and the appellants have appealed against her decision.

[A] Background

2 APP, which was incorporated on 12 October 1994, is a Singapore holding company for around 150 subsidiary companies in China, Indonesia, Mauritius and the United States (the "APP group"). Its main source of income is the fee it charges for management services provided to its operating subsidiaries around the world. The Widjaja family of Indonesia (the "controlling shareholders") has a majority shareholding in the company through another company, APP Global Limited.

3 The APP group is one of the world's largest producers of pulp and paper products. Its business in Indonesia, its main market, is conducted through a holding company, PT Purinusa Ekapesada ("Purinusa"), which has 4 major subsidiaries, namely:

(i) PT Indah Kiat ("Indah Kiat");

(ii) PT Pabrik Kertas Tjiwi Kimia Tbk ("Tjiwi Kimia");

(iii) PT Pindo Deli Pulp & Paper Mills ("Pindo Deli"); and

(iv) PT Lontar Papyrus Pulp & Paper Industry ("Lontar Papyrus").

4 The APP group's China operations are also conducted through a holding company, APP China Group

Limited. The China operations involve 6 paper and packaging mills.

5 The APP group is part of the Sinar Mas group, which is also controlled by the Widjaja family. The Sinar Mas group, which is one of Indonesia's largest conglomerates, has diversified interests in palm oil, timber, paper and financial services. Two Sinar Mas companies, namely PT Arara Abadi ("Abadi") and PT Wirakaya Sakti ("Sakti"), own timber concessions in Sumatra and the Riau Islands and they supply wood to the APP group's Indonesian subsidiaries.

6 The APP group is presently insolvent. The total consolidated debt of its Indonesian subsidiaries is US$6.5 billion while that of its Chinese subsidiaries is US$3 billion. APP's own debts amount to around US$7 billion. There are a number of reasons why the APP group found itself in this position. Apart from the fact that the price for pulp and paper has fallen dramatically in recent times, the group's largest market, Indonesia, was badly affected by the Asian economic crisis in 1997. As the Indonesian rupiah declined in value, the group found it increasingly difficult to service its foreign currency debt.

7 On 12 March 2001, APP announced that it and its subsidiaries would cease to pay their debts ("debt repayment standstill") and would arrange for consensual debt restructuring. The press statement was in the following terms:

> On the advice of our financial advisors, Credit Suisse First Boston …, we intend to immediately cease payment of interest and principal on all holding company debt and on debt issued by our subsidiaries and affiliates, the obligations of which are funded by such subsidiaries. In order to allow our operating subsidiaries to continue normal operations, we will be giving priority to servicing our suppliers and trade creditors….
>
> [W]e believe it is in the best long-term interest of the Company and its creditors and we plan to seek a consensual arrangement with our creditors.

8 APP appointed a number of financial and legal advisors to work on various aspects of the restructuring exercise with its creditors. These include Credit Suisse First Boston, who are its advisors on a debt restructuring plan, and JP Morgan, who are its advisors on the disposal of assets. The creditors also formed a number of committees to represent their interests. These include a Bondholders Steering Committee for public bondholders and a Combined Steering Committee for banks, trading companies and export credit agencies.

9 In China, the consensual restructuring of the APP group's debts appears to have made some progress. However, the pace of the promised restructuring of debts in other places was rather slow and the company's restructuring proposal in February 2002 was rejected by creditors, including DB. Thereafter, negotiations between the two sides did not yield results that satisfied the appellants.

10 A discussion of APP's efforts to restructure its debts must take into account the position of its Indonesian subsidiaries and the role of the Indonesian Bank Restructuring Agency ("IBRA"), a state agency, in the unravelling of the APP group's financial problems. IBRA is in the thick of things because APP's Indonesian subsidiaries borrowed money in the 1990s from PT Bank Internasional Indonesia Tbk ("BII"), a bank owned by the Sinar Mas group. This bank, which faced a liquidity crisis during the recent Indonesian economic crisis, was placed under the control of IBRA, which has the task of

recovering BII's assets as well as state funds disbursed to this bank. By taking control of BII, IBRA became the largest single creditor of Purinusa, the majority shareholder of APP's Indonesian subsidiaries. In early 2001, BII granted IBRA security over the assets of APP's Indonesian subsidiaries under the terms of a settlement agreement. Notwithstanding the debt repayment standstill, some payments had been made to IBRA, prompting the appellants to complain about the preferential treatment afforded to this state agency. IBRA, which has now taken the lead in restructuring efforts in Indonesia, has opposed the petition for a judicial management order.

11 In Singapore, some creditors commenced legal proceedings against APP. As at 20 June 2002, APP's creditors had instituted more than 20 separate actions against the company. These included two winding-up petitions, which have been stayed pending the proposed restructuring of the company. As for the appellants, they filed their petition for a judicial management order on 23 June 2002. Their grounds for such an order are that the company and its management had:

(i) seriously delayed the restructuring process and failed to agree on the fundamental principles on which a restructuring could progress;

(ii) not drawn up a restructuring plan that merits serious consideration by creditors;

(iii) failed to co-operate with professional advisors and thereby hindered their review of the APP group's financial position;

(iv) engaged in transactions that suggested that substantial amounts of money were being siphoned from the company into companies or organisations related to the Widjaja family;

(v) wilfully breached various undertakings in facility agreements and preferred some creditors over others; and

(vi) failed to establish any satisfactory mechanism to control the operating cash-flow of the APP group and direct that towards meeting obligations.

12 The appellants also complained that KPMG, which had been appointed by creditors to conduct an independent audit of the company, was unable to meet the deadline and revised deadlines for its report because of APP's unwillingness to provide access to information relating to, inter alia, the company's operations in China and inter-related company transactions. The appellants said that without this report, the company's debt restructuring proposals cannot be properly evaluated.

[B] The Trial Judge's Decision

13 After a hearing that lasted 7 days, Lai J, who thought that the filing of the petition for a judicial management order prompted APP to hasten the pace of restructuring to stave off judicial management, accepted that many of the appellants' complaints against APP did not lack substance. However, she noted that there was no overwhelming support for or against the making of a judicial management order and thought that "it would be a pity to scuttle IBRA's efforts (albeit at the last minute) to restructure the group's debts by consensus". She saw no harm in allowing the Widjaja family one last chance to show its sincerity in restructuring the group's debts. She added that "whatever misdeeds the Widjaja family had committed in the past were not going to be unravelled

retrospectively by an order for judicial management" and appointing judicial managers at this stage would only add another layer to the costs to be borne by APP and its subsidiaries. Such expenditure could be saved for payment to creditors. She thus dismissed the petition with costs.

[C] The Appeal

14 At the outset, it must be emphasized that the appeal before us concerns Lai J's decision in August 2002 and is not a fresh hearing as to whether or not a judicial management order ought to be made in the light of events which have occurred after the petition was dismissed by her. As such, the attempt by both parties to furnish evidence as to whether or not the management of APP has done enough with respect to the restructuring of the company's debts since August 2002 was quite unnecessary.

15 A discussion of whether or not an order for judicial management should have been made ought to begin with a consideration of sections 227(A) and 227(B) of the Companies Act, which provide as follows:

> Section 227(A)
>
> Where a company or where a creditor or creditors of a company consider that –
>
> > (a) the company is or will be unable to pay its debts; and
> >
> > (b) there is a reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern or that otherwise the interests of creditors would be better served than by resorting to a winding up,
>
> an application may be made to the Court under section 227B for an order that the company should be placed under the judicial management of a judicial manager.
>
> Section 227B
>
> (1) Where a company or its directors (pursuant to a resolution of its members or the board of directors) or a creditor or creditors …, pursuant to section 227(A), makes an application, by way of petition, for an order that the company should be placed under the judicial management of a judicial manager, the Court may make a judicial management order in relation to the company if, and only if, –
>
> > (a) it is satisfied that the company is or will be unable to pay its debts; and
> >
> > (b) it considers that the making of the order would be likely to achieve one or more of the following purposes, namely:-
> >
> > > (i) the survival of the company, or the whole or part of its undertaking as a going concern;
> > >
> > > (ii) the approval under section 210 of a compromise or arrangement between the company and any such persons as are mentioned in that section;
> > >
> > > (iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

16 What is noteworthy about the present case is that while judicial management is usually a remedy sought by an insolvent company to stave off actions by creditors where there is still hope for the rehabilitation of the company, APP's creditors are the ones who are seeking a judicial management order while the company is trying to fend off the appointment of judicial managers. As such, the choice is not, as is usually the case, between judicial management and the winding-up of a company. Instead, the choice relates to whether independent judicial managers or the present management of APP should oversee the restructuring process.

17 As APP is clearly insolvent, the only question which arises is whether or not there is a real prospect that the appointment of judicial managers will achieve one or more of the purposes stated in section 227(B) of the Companies Act. In *Re Harris Simons Construction Ltd* [1989] BCLC 202, 204, Hoffmann J, as he then was, referred to the corresponding English statutory provision and propounded the following useful test:

> For my part, therefore, I would hold that the requirements … are satisfied if the court considers that there is a real prospect that one or more of the stated purposes may be achieved. It may be said that phrases like 'real prospect' lack precision compared with 0.5 on the scale of probability. But the courts are used to dealing in other contexts with such indications of the degree of persuasion …. 'Prima facie case' and 'good arguable case' are well-known examples. Such phrases are like tempo markings in music; although there is inevitably a degree of subjectivity in the way they are interpreted, they are nevertheless meaningful and useful.

Appellants' case for a judicial management order

18 In essence, the appellants asserted that based on her own findings regarding the machinations of the Widjaja family since the debt repayment standstill, the trial judge erred when she held that the objectives of section 227B of the Companies Act would not be achieved by placing APP under judicial management. They submitted that there were ample reasons for creditors to be concerned that APP and its controlling shareholders were not carrying out the promised restructuring in a timely, fair and transparent manner. It was also alleged that funds were siphoned to other companies controlled by the Widjaja family and that some creditors were preferred over others. To support their contentions, the appellants referred to the KPMG report, which contained criticisms of the company. However, the trial judge, who noted that this report had been rendered on a confidential basis, only dealt with the extracts in the report that had already been reported by the press.

19 As far as delayed restructuring is concerned, APP promised that a debt restructuring proposal would be drawn up within one month of the announcement of the debt repayment standstill in March 2001. This deadline was not met and the appellants complained that as at June 2002, APP had failed to come up with a proposal that merited serious consideration by the company's creditors. This was denied by APP. Its witness, Mr Andrew Reibe, an American expert on restructuring, asserted that much of the blame for the lack of progress in restructuring lay with the creditors, who lacked leadership and presented a flawed proposed negotiating structure.

20 Whether or not the appellants were also to be blamed for the delayed restructuring, their allegations regarding the lack of transparency in the restructuring process, the siphoning of funds to other companies controlled by the Widjaja family and the preferential treatment accorded to some

creditors merited attention. The appellants said that instances of lack of transparency included the following:

(i) the non-disclosure of swap contracts of US$220m with Deutsche Bank in the company's audited accounts for 1997 to 2000;

(ii) the failure to satisfactorily explain in the audited accounts for 2000 a deposit of US$199.3m in BII Cook Islands, a bank owned by the Widjaja family;

(iii) the failure to explain the qualifications placed by Authur Andersen on the audited accounts for 2000 of Indah Kiat and Tjiwi Kimia on a number of transactions;

(iv) the failure to explain why Arthur Andersen resigned as the company's auditors in November 2001; and

(v) the failure to explain why Deloitte, Touche & Tomatsu, who had been appointed to investigate the company's failure to disclose swap contracts with Deutsche Bank, resigned in September 2001.

21 As for the siphoning of funds from the APP group, the appellants asserted that such fears had been fuelled by, inter alia, the following:

(i) On 17 July 2001, BII Cook Islands announced that it was unable to pay APP the US$80.3m deposited with it. The bank added that it would fulfil its obligation to pay over a period of five years.

(ii) Five British Virgin Islands companies owed APP's Indonesian subsidiaries some US$1 billion on the basis of fictitious trades.

(iii) US$540m was lent by the APP group by way of an advance to Sinar Mas' wood companies.

22 The trial judge had much to say about two of the above three allegations of siphoning of funds. In regard to the debt of US$1 billion owed by five British Virgin Islands ("BVI") companies to APP's Indonesian subsidiaries, she noted that although the company informed the Asian Wall Street Journal that these BVI companies were not related companies, the officers and agents of the BVI companies contacted by the newspaper were APP's employees. What was surprising was that although the Indonesian subsidiaries filed 10 suits in the Jakarta Central Courts to claim more than US$1 billion, five of the suits were discontinued after one of the subsidiaries, Indah Kiat, had obtained judgments for about US$242m. The trial judge, who was dissatisfied with the explanation that the claims were discontinued because of "the drain on the management and manpower resources of the subsidiaries", added as follows:

[The explanation was] no answer to the creditors/petitioners' concerns which were well founded; the questionable nature of the 5 BVI companies and their apparent connection with the Widjaja family cried out for explanations which were not at all forthcoming. I found it hard to believe that the cost of manpower and other resources to be expended by APP were not commensurate with the huge sums to be recovered from the 5 BVI companies. What was even more puzzling was, why the company's subsidiaries chose to commence proceedings in the Jakarta courts instead of in the companies' place of incorporation. What is the use if the judgments obtained cannot be

enforced in the British Virgin Islands and the monies thereunder recovered? Obtaining paper judgments without more, is not enough.

23 As for money advanced to the Sinar Mas wood companies, the trial judge noted that APP's Indah Kiat had advanced US$540m to Abadi, a company in the Sinar Mas group, mainly in the fourth quarter of 2000, while another of APP's subsidiaries, Lontar Papyrus, had advanced US$75m to Sakti, another company in the Sinar Mas group. In addition APP's Indonesian holding company, Purinusa, had advanced US$153m to both Abadi and Sakti. She said that when creditors wanted to study the accounts of Abadi and Sakti, their request was denied on the ground that these companies were outside the APP group, a legal nicety "which did not stop the Widjaja family from lending out the monies in the first place". Understandably, the appellants alleged that these transactions were a conduit by which funds were siphoned from the APP group to the Widjaja family.

24 As for the appellants' complaint about the preferential treatment accorded to some creditors, namely IBRA, the Indonesia Rupiah-denominated bondholders and state-owned banks in China, after the debt repayment standstill, APP explained that payments to rupiah-denominated bondholders were necessary for political reasons because relatively small Indonesian banks and Indonesian pension funds had invested heavily in those bonds and some of the bondholders are associated with provincial governments that are important to the APP group's business prospects. However, this explanation did not satisfy the trial judge.

25 Mention must also be made of press reports on the purchase by APP's subsidiary, Pindo Deli, of 1,759 hectares of land from a Sinar Mas company for US$170m. The KPMG report stated that Pindo Deli and another APP subsidiary, Lontar Papyrus, had paid US$181.6m to the controlling shareholders to purchase additional land between January and September 2001. Both these companies were then already in financial trouble. The trial judge found that there was no reason for the acquisition of the land and noted that APP did not disclose the purchase until August 2001, after the debt repayment standstill.

26 In our view, the trial judge had referred to sufficient instances of misdeeds which, without more, might have called for the supervisory function of judicial managers to ensure fairness and transparency in the restructuring of APP's debts. As such, we will next consider APP's arguments against the making of a judicial management order.

APP's arguments against a judicial management order

27 APP contended before the trial judge and before us that even if the Widjaja family has committed misdeeds in the past, there is no real prospect that one or more of the purposes referred to in section 227B of the Companies Act will be achieved by the granting of a judicial management order. It said that instead of ensuring the survival of the company as a going concern, the making of a judicial management order would cause irreparable harm to the company and sound its death knell because the consensual restructuring process under the current leadership of IBRA would be derailed. APP does not have independent sources of income and its survival depends on money upstreamed from its subsidiaries. The main creditors of APP's subsidiaries, namely IBRA and the Chinese banks, who have voiced their opposition to the appellants' petition, are secured creditors of the said subsidiaries. If they "ring-fence" their security to stop any payments upstream to APP, the company would be forced to wind-up and its creditors would be worse off. It was pointed out that IBRA also holds personal guarantees of the Widjaja family which can only be enforceable if the family continues to control the

APP group. APP contended that without these guarantees, "IBRA would be left with no choice but to exercise its security rights over [APP and its subsidiaries], and this would inevitably throw the whole restructuring process into turmoil, and destroy whatever hopes creditors have of repayment of their debts by the Group". It added that in the face of strong opposition to a judicial management order from, among others, IBRA and the Chinese creditors, judicial managers have no hope of achieving any compromise between the company and its creditors and they cannot achieve a more advantageous realisation of the company's assets as compared to a winding up of the company. In short, according to APP, none of the objectives referred to in section 227B of the Companies Act can be achieved by the making of a judicial management order.

28 APP also stressed that if the cheap supply of wood from the Sinar Mas companies is cut off as a result of the appointment of judicial managers, APP's Indonesian subsidiaries will not be able to operate. Mr Ferry Djongianto, a member of APP's restructuring team, said that "the lifeblood of the group is the continuous (and guaranteed) supply of low cost wood from the wood companies". The company added that it ought not be overlooked that the Indonesian subsidiaries' workers' unions had made it plain that they would not work with judicial managers.

29 Some of APP's arguments against the making of a judicial management order were unsupportable. For a start, the trial judge was not convinced that APP's Indonesian subsidiaries had benefited from discounts on the wood supplied by the Sinar Mas companies. In fact, she said that new pulpwood purchase agreements entered into in January 2001 by APP's Indah Kiat and PT Lontar Papyrus with the Sinar Mas companies, Abadi and Sakti, contained unduly onerous terms to be fulfilled by the APP subsidiaries. She added that these new agreements were unnecessary as earlier contracts containing more favourable terms for APP's subsidiaries, which were concluded on 23 May 1994 and 27 January 1995, were valid for 15 years.

30 As for APP's contention that the Indonesian operations would come to a standstill because the Indonesian subsidiaries' workers' unions would not co-operate with judicial managers, the right of creditors to a fair and transparent restructuring of debts cannot be affected by such threats. Indeed, such and other threats lent a measure of support to the appellants' assertion that many of the difficulties referred to by APP would come into play only if the controlling shareholders choose to be obstructive.

Decision of the court

31 Although some of APP's arguments against the making of a judicial management order lacked substance, the fact that the trial judge had carefully considered the pros and cons of making such an order cannot be overlooked. We are mindful of the fact that we ought not interfere with the exercise of the trial judge's exercise of her discretion with respect to the appointment of a judicial manager unless there are compelling reasons for us to do so. In accordance with the principles enunciated by this court in *The Vishva Apurva* [1992] 2 SLR 175, an appellate court will interfere with a trial judge's exercise of discretion only on the following three grounds:

(i) if she has misdirected herself with regard to the principles in accordance with which her discretion has to be exercised;

(ii) if she, in exercising her discretion, has taken into account matters which she ought not to

have done or failed to take into account matters which she ought to have done; or

(iii) where her decision is plainly wrong.

32 The judge bore in mind many factors before dismissing the petition. To begin with, she thought that IBRA, which has now placed its financial controllers in APP's Indonesian subsidiaries to avoid the unwarranted diversion of funds from these companies, should be given a chance to spearhead the efforts for the consensual restructuring of APP's debts. She was fully aware of the appellants' argument that IBRA faced conflicts of interest and should not be foisted with the unenviable task of managing the restructuring process, which has to take into account the interest of all creditors. All the same, she accepted that there appears to have been some movement ahead in the restructuring exercise. In fact, a major creditor, Centre Solutions (Bermuda) Ltd, an insurance company, which claimed more than US$220m from APP, withdrew its support for the petition in the midst of the hearing of the petition because there was some progress in the restructuring exercise after the filing of the petition for a judicial management order. The trial judge also noted that APP's "more vigorous approach to restructuring since the filing of the petition was corroborated by none other than one of the petitioners". The managing director of DB's Asia Pacific head office, Mr Wolfgang Helmut Topp, had stated in his affidavit as follows:

In the six weeks since the petition was filed, the following events have taken place:

(i) the long-awaited KPMG Phase I due diligence report (the KPMG report) on the company and its subsidiaries has been released ….

(ii) The company had apparently 'committed' to 'finalising' a restructuring plan (of the Indonesian operations) by September 30, 2002 and … IBRA has agreed to take leading role in the process;

(iii) The company has apparently agreed to opening an escrow account(s) to set aside cash for the benefit of creditors and to make regular contributions to the account(s), but the 'details are being worked out' and the company is still haggling about the amount; and

(iv) The company has apparently agreed to augmentation of management but again the details are being worked out.

The petitioners are gratified at these developments but suspect that the company's newly stated willingness to accede (partially) to creditors' requests is due … to their attempt to resist the appointment of judicial managers.

33 The trial judge saw a silver lining in the Memorandum of Understanding ("MOU") between IBRA and the export credit agencies of Germany, Japan and the United States although she cautioned that the undertakings in question were not binding until the relevant Indonesian authorities had approved them. An important point in the MOU is the following concession by IBRA regarding the sharing of the benefits of its securities:

The restructuring plan shall further provide that IBRA shall share the benefits of all fiduciary transfers, security rights, pledges and guarantees that IBRA may have or may have the right to have, under the Settlement Agreement (collectively, the 'Security') with the other unaffiliated

creditors of the APP group. In sharing such benefits, IBRA may retain the Security, but may enforce such security only for the benefit of creditors generally as shall be provided under the restructuring plan….

34 Apart from wanting to give IBRA an opportunity to move things along, the trial judge also took into account the opposition of IBRA and the Chinese creditors to the petition. She was aware that the appellants had said that judicial managers, if appointed, would take a non-confrontational attitude in their dealings with IBRA and the Chinese banks, who would, as rational and sensible entities, offer their co-operation to achieve optimum recovery of debts for all parties. After considering both sides of the coin, she concluded as follows:

> Counsel for the Petitioners had repeatedly stressed that, the judicial managers to be appointed fully intended to work in tandem with IBRA and with the Chinese creditors to rehabilitate APP and to better realise its assets…. That may well be the noble intention but the more pertinent question to ask is, would IBRA and the Chinese creditors want to work/co-operate with the judicial managers? I think not, judging from the indications given so far by both IBRA and by the Chinese creditor banks … Without the co-operation of IBRA and the [Chinese banks], the judicial managers would not be able to make any headway in the discharge of their duties outside Singapore.

35 The trial judge also took into account the views of a number of persons whom she acknowledged as experts in the field of corporate restructuring. They were Mr Nicky Tan, who reviewed the group's financial position, Mr Raymond Davies of Credit Suisse First Boston, APP's advisor on the restructuring programme, and Mr Andrew Reibe, an independent American expert. She said that "some credence must be given to their views". All of them did not favour the appointment of judicial maangers.

36 Mr Nicky Tan opined that the appointment of judicial managers would result in APP being irreversibly cut off from the restructuring process of the whole group because it is not in the interest of APP's subsidiaries to upstream funds to APP. He also pointed out that the judicial managers would have to understand the massive and complex operations of the APP group and mobilise a large enough team to take control. Similar views were echoed by Raymond Davies.

37 Mr Andrew Riebe also thought that a judicial management order would harm those who hope to be protected by it. His conclusion was based on the following premises:

> (a) There would be litigation when judicial managers try to take control of entities in different jurisdictions.
>
> (b) The appointment of judicial managers would destroy the value of the group as there was a possibility of IBRA exercising its security rights over the assets of the Indonesian subsidiaries.
>
> (c) The local knowledge of parties controlling APP's subsidiaries is vital and will be lost if judicial managers are appointed. In any case, the APP group's business is linked to forestry products, which are heavily regulated in Indonesia. A judicial manager from Singapore could face grave difficulty managing such a political battle.

38 Thus far, attention has been focussed on the Indonesian subsidiaries. As for APP's Chinese subsidiaries, the trial judge accepted that "the consensual restructuring of the group's Chinese debts

was progressing well". Chinese domestic banks had agreed to roll over loans on condition that the assets in China were not made available to other creditors. Such measures had allowed the company to construct a pulp and paper plant in Hainan. In the meantime, a restructuring proposal has been presented to the Chinese banks, and the parties are still negotiating the terms of the proposed restructuring. The appellants pointed out that the appointment of judicial managers would not lead to any change in the status of APP's Chinese subsidiaries and the restructuring process with the Chinese creditors would continue without interference. APP retorted that if this is the case, a judicial management order would add no value to the restructuring effort in China. The status of restructuring efforts in China obviously played a part in the trial judge's decision not to make a judicial management order.

39 After taking into account all the circumstances at the date of the hearing of the petition in August 2002 and the judge's reasons for refusing to make a judicial management order, we have come to the conclusion that whatever may be our own views on the matter, the appeal should be dismissed with costs because the trial judge's decision cannot be faulted on any of the grounds referred to in *The Vishva Apurva.* Before concluding, we would like to point out that if consensual restructuring of APP's debts remains stalled or questionable transactions continue to be entered into by the APP group, the difficulties facing potential judicial managers, as outlined by APP, cannot be a permanent barrier preventing the making of a judicial management order in the future.