nTan Corporate Advisory Pte Ltd *v* TT International Ltd
[2018] SGCA 69

Case Number	: Civil Appeal No 218 of 2017
Decision Date	: 19 October 2018
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; Steven Chong JA
Counsel Name(s)	: Peh Aik Hin, Jasmine Tham and Chia Su Min, Rebecca (Allen & Gledhill LLP) for the appellant; Ong Pei Chin and Chong Wan Yee Monica (WongPartnership LLP) for the respondent.
Parties	: nTan Corporate Advisory Pte Ltd — TT International Limited

Companies – Schemes of arrangement

Companies – Receiver and manager – Remuneration

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2017] SGHC 207.]

19 October 2018

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 This appeal concerns the assessment of the professional fees of the appellant, the independent financial advisor cum scheme manager of the respondent company. We wish to state at the outset that this is a case that is very much limited to its own facts. Nothing in this case or in these remarks sets out any principle governing the remuneration of insolvency practitioners in Singapore. This case concerns only the valuation of the appellant's work in the particular circumstances that have been presented to us.

2 The respondent, TT International Limited, faced financial difficulties following the global financial crisis in 2008. It thus engaged the appellant, nTan Corporate Advisory Pte Ltd, as its independent financial advisor to help in its financial restructuring. The letters of engagement provided for the remuneration of the appellant, including in particular a value-added fee ("VAF"), which in broad terms was a percentage of the amount of the debt of the respondent that would be waived, written off or extinguished pursuant to the eventual terms of the scheme of arrangement that the respondent hoped to be placed under through the advice and assistance of the appellant. Three of the appellant's personnel were subsequently appointed as scheme managers and the scheme was in due course approved by the court.

3 However, it later turned out that at the time the scheme was voted on and agreed to by the creditors, those creditors had not been made aware of the contractually-agreed remuneration of the appellant, including, in particular, the VAF. The creditors' committee then sought relief from the court and this culminated in the decision of this court in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 4 SLR 1182 ("the VAF Decision"). In that decision, this court held that there had been material non-disclosure of the contractually-agreed remuneration of the appellant to the creditors of the respondent company. The

court considered the non-disclosure so critical that in its view, it would typically have required that the entire scheme be set aside. However, because the scheme had been implemented for more than two years at the time of the decision, the court concluded that it was "not practical to set it aside without causing more harm to the [respondent] and the creditors" (at [33]). It therefore ordered that the parties were to endeavour to agree on what would be the proper amount of professional fees to be awarded to the appellant for its efforts in reviving the respondent company, failing which the fees would be assessed by a High Court judge. It is helpful to set out the material part of the VAF Decision in full (at [34]–[35]):

> 34 Therefore, in light of the prevailing circumstances, we direct that the relevant parties to this dispute (*ie*, the SM/nTan, the Company and the MC) are to endeavour to reach an agreement as to what ought to be the proper amount of professional fees awarded for nTan's efforts in reviving the Company to date. In the event the parties are unable to reach an agreement, we order that nTan's global fees (before and after the SM's appointment) will be assessed by a High Court judge.
>
> 35 However, should this matter proceed for assessment, the court shall have regard to the principles stated in *Re Econ Corp Ltd (No 2)* ([20] *supra*) which are also applicable to scheme managers (see *Re Econ Corp Ltd (No 2)* at [48]) in arriving at the quantum of fees reasonably due to nTan in successfully reviving the Company … the court shall first and foremost consider the value (in this case the benefits, from a holistic and not mathematical standpoint, accruing to the Company and the creditors) contributed by nTan. Other factors to be taken into consideration would include, *inter alia*, the nature of the work involved, the time spent, the assistance provided by the employees working in nTan, the scope of work and reasonable disbursements incurred. It will be the duty of the court, should the parties fail to reach an agreement, to ensure that nTan will be "fairly, reasonably and adequately remunerated" (*Re Econ Corp Ltd (No 2)* at [74]).

4 The appellant then applied to set aside the VAF Decision and the matter came back before us in 2015. In our judgment, we said that although there might have been some force in the argument that the VAF Decision may have been wrong in deciding that the court had the power to make those orders, this did not afford us a basis for reopening the VAF Decision: see *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 at [194]–[195]. This is a point of critical importance, as we explain below, because as a result, the principles set out in the VAF Decision (at [34]–[35]) provide the *sole basis* for the valuation of the fees to be paid to the appellant, and it was pursuant to these principles that the High Court judge in the court below ("the Judge") carried out the assessment. The Judge ultimately awarded the appellant a total professional fee of $12,042,899.40, which was calculated on the basis that appellant's actual time costs had already included a premium over the time costs that were reasonably incurred for the work: see *nTan Corporate Advisory Pte Ltd v TT International Limited* [2017] SGHC 207 at [32].

5 Civil Appeal No 218 of 2017 is the appellant's appeal against the Judge's decision.

Our decision

6 At the outset, we reiterate that the VAF Decision is a self-contained decision and it simply does not arise for argument whether we, or any of the parties, think it may have been correctly or wrongly decided. This court in 2015 has held that the VAF Decision, whether right or wrong, is final and binding. In these circumstances, we cannot go behind what was said in the VAF Decision and it becomes purely a question of valuation in accordance with the principles set out in *Re Econ Corp Ltd*

[2004] 2 SLR(R) 264 ("*Re Econ*") that were summarised in the VAF Decision.

7 We also take this opportunity to observe that it is irrelevant today whether those principles are to be confined to assessing the remuneration in the case of a liquidation, as the appellant contended, nor whether that guidance correctly extends to scheme managers. Those are general questions which do not arise before us because this court in the VAF Decision has held that the principles set out in *Re Econ* will apply in *this* case.

8 In that context, the Judge noted as follows (at [32]):

> 32 Applying the guidance laid down by the Court of Appeal in *TTI 2012* [*ie*, the VAF Decision], I am not satisfied that the full amount claimed by the Plaintiff should be granted. In particular, the contracted VAF Formula is not shown to be fair and reasonable. Neither has sufficient evidence been adduced to support the full claim for the time costs incurred. As only a broad brush approach could be adopted here, the amount that is fair, adequate and reasonable, taking into account the value contributed by the Plaintiff in the exercise of judgment and expertise, would be the time costs claimed for the periods of 28 October 2008 to 31 May 2011 (including the value reflected in the Credit Note) and August 2011 to November 2012 (both these time costs would already carry a premium over the probable actual time costs that were reasonably incurred for the work), the outstanding disbursements as well as the Deposit of $500,000. All in all, these sums add up to a total professional fee of $12,042,899.40.

9 The Judge observed that he had considered the VAF formula but then decided that it was neither fair nor reasonable to apply it to this case. It is not entirely clear to us why he thought it necessary to examine the VAF formula at all, because in our judgment, the effect of the VAF Decision was to exclude the terms of the contract between the parties, including the VAF formula, as relevant factors in assessing the appellant's remuneration. In any event, as the Judge considered that it was ultimately irrelevant, the fact that he considered it did not affect his decision.

10 The rest of the Judge's analysis was then taken with assessing the value that the appellant had contributed to the respondent company. The appellant's arguments in this regard were advanced on various bases, all of which were rejected by the Judge. Having considered the matter, we see no basis for departing from the Judge's broad analysis.

11 While we accept that the appellant has added some value to the respondent company, in the present circumstances, for the reasons we have outlined, the original contractual arrangement could not be relied on and there was, in the final analysis, simply no other acceptable means for assessing the particular value that could be specifically attributed to the appellant. We therefore dismiss the appeal despite Mr Peh's careful submissions.

Conclusion

12 For these reasons, we dismiss the appeal.