

BERMUDA SUPREME COURT

In the matter of Titan Petrochemicals Limited [2013] SC (Bda) 74 Com (18 October 2013)

WINDING UP - APPOINTMENT OF JOINT PROVISIONAL LIQUIDATORS TO OVERSEE RESTRUCTURING PROCESS - LACK OF DISCLOSURE BY COMPANY - SECTION 164 OF THE COMPANIES ACT, 1981

The applications before the Court were for a winding up order, alternatively for the appointment of provisional liquidators to displace the management and, in the further alternative, for the appointment of joint provisional liquidators with 'soft' powers, all of which were opposed by the Company.

On hearing the Petition, it was clear that the restructuring process originally proposed for the Company had not progressed at the rate which had been hoped. In addition, for reasons that were ultimately not decisive, the composition of the informal committee, which the Company attempted to put together ended up being not representative of the general body of unsecured creditors. It was conceded that all committee members who had agreed to serve were in fact note-holders who were, to some extent at least, secured and therefore had interests which were different to those of the Petitioner and other unsecured creditors. The other matter of concern to the Court was that the Court was still very much in the dark, as was the Petitioner, about the broad financial picture.

The Company broadly opposed all of the Applications brought by the Petitioner and sought an adjournment in order to pursue the presently ill-defined restructuring process.

The Application for a winding up order was rejected. The difficulty that the Petitioner had was that there was no credible evidence before the Court that the majority of creditors sought a winding up order. As far as the application to appoint provisional liquidators to displace the management was concerned, the same considerations applied and that application was refused.

The remaining application to appoint joint provisional liquidators with 'soft' powers was based on the Court's powers under Section 164 of the *Companies Act, 1981*. Those powers allow the Court to adjourn a winding up petition to enable a restructuring to be considered. The provisions of Section 170 of the Companies Act deal with the power to appoint joint provisional liquidators or a single provisional liquidator with the power, to simply monitor the management while a restructuring takes place.

In this particular instance, the Court had formed the view that there was need for some form of independent verification by a representative creditor body of the restructuring process being carried out by the management.

The Court held that it was satisfied that the most prudent course to take in relation to a restructuring process is to make an order appointing joint provisional liquidators to monitor the restructuring process and adjourn the winding up application.

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.