

BRITISH VIRGIN ISLANDS COURT OF APPEAL

C-Mobile Service Limited -v- Huawei Technologies Co Limited BVIHCMAO 2014/0017 (October 2014)

INTERLOCUTORY APPLICATION - STAY OF EXECUTION - EXERCISE OF COURT'S DISCRETION TO GRANT STAY OF PROCEEDINGS - WHETHER STAY OF JUDGE'S ORDER IN THE LOWER COURT SHOULD BE GRANTED PENDING HEARING AND DETERMINATION OF APPEAL OF THAT JUDGE'S DECISION - WHETHER FAILURE TO GRANT STAY OF LIQUIDATION PROCEEDINGS WOULD RENDER APPEAL OF JUDGE'S DECISION NUGATORY - RULE 62.19 OF THE CIVIL PROCEDURE RULES 2000 - ARBITRATION ORDINANCE - INSOLVENCY ACT

This case concerns an Appeal against the refusal by the Learned Judge below to grant a stay of liquidation proceedings commenced by Huawei Technologies Co Limited ("Huawei") in relation to the affairs of C-Mobile Services Limited ("C-Mobile"). Granting a stay of the Judgment of the Judge in the Court below the Court of Appeal held, there was no automatic right to a stay of proceedings pending appeal and a successful Litigant should not normally be denied of the fruits of its success pending appeal except in exceptional circumstances. The Court applied the five principles identified by the Court in *NB -v- London Borough of Haringey* [2011] EWHC 3544 (Fam) namely that: (i) the Court should take into account all the circumstances of the case; (ii) stay is the exception rather than the general rule; (iii) the party seeking a stay must provide cogent evidence the appeal will be stifled or rendered nugatory unless a stay is granted; (iv) in exercising its discretion, the Court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered and (v) the Court should also take into account the prospect of the appeal succeeding, but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown.

The Court of Appeal found that C-Mobile did not need to provide any further evidence other than stating that winding up would dramatically affect the Company's operation since it was self-evident that winding up would cause serious and irreparable harm to the reputation of C-Mobile.

The Court of Appeal held that in all the circumstances, it was clear that if Huawei pursued the liquidation proceedings, the Appeal against the order of the Judge in the Court below would be rendered nugatory and that weighing the likely damage to C-Mobile's reputation, if liquidation were pursued by Huawei against keeping Huawei out of the money that it may be owed, the balance of justice favoured granting the stay of proceedings

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