

SUPREME COURT OF SINGAPORE

25 July 2017

Media Summary

Singapore International Commercial Court Suit No 1 of 2015
BCBC Singapore Pte Ltd and anor v PT Bayan Resources TBK and anor
[2017] SGHC(I) 06

1 The Singapore International Commercial Court (“SICC”) delivered its judgment in the second tranche of SICC Suit No 1 of 2015 today.

Background

2 To recapitulate, this case concerned a dispute arising out of a joint venture between Australian and Indonesian public listed companies. The joint venture sought to exploit a technology developed by the Australian parties to upgrade sub-bituminous coal from mines in Tabang, East Kalimantan, owned by the Indonesian parties. After a dispute arose, BCBC Singapore Pte Ltd (“BCBCS”) and its affiliate Australian company, Binderless Coal Briquetting Company Pty Limited, sued PT Bayan Resources TBK (“BR”) and its affiliate Singaporean company, Bayan International Pte Ltd. BR counterclaimed against BCBCS and its parent company, White Energy Company Limited (“WEC”).

3 The terms of the joint venture were set out in a joint venture deed which the parties entered into in 2006 (“the JV Deed”). The parties subsequently entered into a number of ancillary agreements, memoranda, side letters and other documents recording various agreements reached during the course of the joint venture. These included two coal supply agreements (“the 2010 CSAs”)

between the joint venture company (“KSC”) and two subsidiaries of BR which operated coal mines in Tabang (“Bara and FSP”), and a priority loan funding agreement (“PLFA”) between BR, BCBCS and KSC.

4 In the first tranche of the trial (“Tranche 1”), the parties framed nine issues for the Court’s decision, centred on the parties’ obligations under the JV Deed and the agreements which they had subsequently entered into.

5 In the second tranche (“Tranche 2”), the parties formulated a list of eleven issues for the Court to decide. The issues broadly fell into three groups: (a) coal supply issues (Issues 1 to 4); (b) repudiation issues (Issues 5 to 8); and (c) causation and loss issues (Issues 9 to 11). After a five-day trial in January 2017, the parties tendered two rounds of written submissions and made oral submissions on 20 April 2017.

Judgment

6 In relation to the coal supply issues, the Court held that BR was obliged under the PLFA and the JV Deed to ensure that Bara and FSP supplied coal to KSC for testing and commissioning of the Tabang Plant (albeit that BR’s obligation under the PLFA expired on 31 December 2011, while its obligation under the JV Deed expired when it was brought to an end on 2 March 2012). In November 2011, KSC had validly requested for coal to be supplied to the Tabang Plant and there was insufficient coal for testing and commissioning, which included ramp-up to production, of the Tabang Plant. BR’s obligations were not affected by matters pertaining to the funding of KSC, KSC’s ability to pay for coal, the shutdown of the Tabang Plant for modifications, and the placing of the Tabang Plant into care and maintenance on 15 December 2011.

7 The Court further held that BR had breached its coal supply obligations by instructing Bara and FSP to stop supplying coal to KSC, by renouncing its coal supply obligations and by conditioning its performance of its coal supply obligations on BCBCS or WEC buying out its 49% share in KSC for US\$45m.

8 In relation to the repudiation issues, the Court held that BCBCS had not repudiated the JV Deed. In particular, BCBCS had not repudiated the JV Deed by causing KSC to incur excess expenditure of approximately US\$7m and a debt of US\$6m without BR's consent. BCBCS had also not repudiated the JV Deed by unilaterally procuring KSC to place the Tabang Plant into care and maintenance. The joint venture partners had agreed to place the Tabang Plant into care and maintenance at a meeting on 6 December 2011.

9 The Court also held that BR was in repudiatory breach of the JV Deed by breaching its coal supply obligations. However, BCBCS had not accepted BR's repudiatory breach in this regard. Separately, BR had not been in repudiatory breach by its words and conduct at two meetings on 2–3 November and 6 December 2011. However, BR had repudiated the JV Deed by its letter dated 21 February 2012 to BCBCS by which it had wrongfully purported to terminate the JV Deed. BCBCS had accepted BR's repudiation of the JV Deed, and thereby brought the joint venture to an end on 2 March 2012.

10 BR's arguments that, even if it had breached its coal supply obligations or the JV Deed, it could readily be demonstrated that there could only be nominal damages, and for limited periods of time, were not persuasive. BR's contentions would not necessarily constrain the amount of damages payable. BR therefore failed to make out its submission that there was no need for a third tranche ("Tranche 3") to address the issues of causation and loss. The Court

accordingly ordered a Case Management Conference for Tranche 3 to be fixed within 28 days of today subject to the parties' availability.

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.
