

SUPREME COURT OF SINGAPORE

9 January 2019

Case summary

Singapore International Commercial Court Suit No 1 of 2015

BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another

Decision of Quentin Loh J, Vivian Ramsey IJ and Anselmo Reyes IJ

Outcome: SICC holds that the first plaintiff had the ability to fund a joint venture company.

Background

1 This case arose out of a dispute between BCBC Singapore Pte Ltd (“BCBCS”) and Binderless Coal Briquetting Company Pty Limited (“the Plaintiffs”) and PT Bayan Resources TBK and Bayan International Pte Ltd (“the Defendants”) regarding their joint venture to upgrade and sell the Defendants’ coal.

2 The parties had agreed to have the dispute resolved in tranches. There was no appeal against the decision of the Singapore International Commercial Court (“SICC”) on the issues in the first tranche. The Defendants appealed against the SICC’s decision on the second tranche.

3 The Court of Appeal dismissed the Defendants’ appeal except on the issue of whether BCBCS could fund PT Kaltim Supacoal (“KSC”), a joint venture company incorporated by the parties, on its own until the completion of the commissioning and testing of a coal briquette processing plant in Indonesia or until June 2012. While the SICC had expressly reserved this issue to the third tranche, the Court of Appeal held that this issue had been squarely and properly before the SICC in the second tranche, and remitted this issue to the SICC for determination.

The Court’s decision

4 In deciding whether BCBCS had the ability to fund KSC, the SICC first considered the precise scope of what the Court of Appeal had remitted to it to decide. The SICC rejected the Defendants’ contention that the Court of Appeal had limited it to determining whether, in the light of an insufficiency of evidence on BCBCS’s ability to fund KSC, one or the other party had discharged its burden of proof (at [7]). This contention was supported by neither the Court of Appeal’s judgment when read as a whole nor the SICC’s judgment in the second tranche (at [8]–[9]). The SICC concluded that there was no constraint on it considering the available evidence during the second tranche with a view to determining BCBCS’s ability to fund KSC (at [12]).

5 The SICC then considered whether the evidence in the second tranche established BCBCS’s ability to fund KSC. The SICC decided in the affirmative, having regard to the financial reports of BCBCS’s parent company and the evidence of Mr Brian Flannery (“Mr Flannery”), the Managing Director and Chief Executive Officer of BCBCS’s parent company.

6 The SICC rejected the Defendants’ contention that the financial reports were not in evidence. The reports were in the hearing bundles and one of the reports had been referred

to in Mr Flannery's AEIC (at **[18]**). Further, it was incumbent on a party to put the important points of its case to at least one witness. As the Defendants had not put the point to Mr Flannery during cross-examination, they could not now argue that BCBCS would not have been able to fund KSC despite the apparent size of BCBCS's parent company's cash reserves (at **[18]**). The SICC therefore found that BCBCS had the ability to fund KSC (at **[21]**).

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.