

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 25 OF 2015 (AJJ)

THE HON. JUSTICE ANDREW J. JONES, QC
IN CHAMBERS, 3rd and 4th August 2015



IN THE MATTER OF MNC MEDIA INVESTMENT LIMITED

AND IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

MNC MEDIA INVESTMENT LIMITED

Plaintiff

AND

ANG CHOON BENG@ANG SIONG KIAT

Defendant

Appearances:

Mr Nicholas Dunne of Walkers on behalf of the Plaintiff

Messrs. Paul Smith and Ben Hobden of Conyers Dill & Pearman on behalf of the Defendant

REASONS

1. This is the trial of an originating summons issued on 17 February 2015 by which MNC Media Investment Limited (formerly known as Linktone Ltd) ("MNC") seeks declarations that –
 - (a) the statutory demand dated 28 January 2015 ("the Statutory Demand") and served on MNC by Ang Choon Beng@ang Siong Kiat ("Mr. Ang") is invalid; and

(b) there is a genuine and substantial dispute concerning the debt of S\$1,162,229.81 owing by the MNC to Mr Ang that is the subject of the Statutory Demand,
and a consequential order that the Statutory Demand be set aside.

2. The relevant factual background is undisputed and is set out in the affidavit of Poh Shih Yin, who is MNC's chief financial officer. MNC is a holding company incorporated in the Cayman Islands which owns an electronic media products business carried on through a number of variable interest entities in the Peoples' Republic of China and various subsidiaries in Indonesia, Singapore, Malaysia and Hong Kong. Its shares are listed on the Australian Stock Exchange. It is not in dispute that MNC is solvent on a balance sheet test. The group's audited consolidated balance sheets for the year ended 31 December 2013 reflected total shareholders' equity of about US\$158 million. In his affidavit sworn on 19 February 2015, Mr Poh says that its 2014 audited consolidated financial statements will show that "the group is unquestionably solvent". However, if the Statutory Demand is valid, MNC is deemed to be insolvent on a cash flow test and therefore liable to be wound up in accordance with the provisions of the Companies Law (2013 Revision).
3. By a Put and Call Option Agreement made on 17 March 2010 between Mr. Ang on the one part and Linktone International Limited, MNC (which was then called Linktone Ltd) and PT Media Nusantara Citra TBK (collectively "the Linktone Parties") on the other part, Mr. Ang agreed to grant an option to purchase the Initial Put Option Shares and Further Put Option Shares (as defined) ("the Shares") and the Linktone parties granted Mr. Ang an option to require them to purchase the Shares. I note that the Shares are defined as shares in Innoform Media Pte Ltd ("the Company") which is a 75% indirect subsidiary of MNC and I was told by counsel that the Shares represent the 25% not already owned by MNC. The third Linktone Party, PT Media Nusantara Citra TBK, is a related party but the precise relationship between it and the other two Linktone Parties has not been explained to the Court.
4. In November 2011 Mr. Ang commenced an arbitration against the Linktone Parties in the Singapore International Arbitration Centre in which he claimed that they were in breach of their obligations under the Put and Call Option Agreement. On 5 March 2014 the Tribunal issued a partial award in Mr. Ang's favour and directed that Mr Ang (as seller) and the Linktone Parties (as buyer) complete the sale and purchase of the Shares ("the Partial Award"). The Partial Award does not deal with interest and costs but the Tribunal gave Mr. Ang liberty to make such applications, which he did.



5. The Linktone Parties failed to complete the sale and purchase of the Shares in accordance with the Partial Award with the result that Mr. Ang also made an application for consequential orders relating to the procedure for completion, including the timing and place of completion and delivery to him of a cashier's order for both the purchase price and the interest and costs.
6. Mr Ang succeeded on all three of his applications. By sub-paragraph (1) of the Final Award the Tribunal ordered the Linktone Parties to pay interest (accrued to the date of the Partial Award) in the sum of S\$367,124.98. By sub-paragraph (3) the Linktone Parties are ordered to pay legal fees and other costs in the sum of S\$795,104.83. By sub-paragraph (6) the Tribunal made what it described as "Completion Orders" in the terms proposed by Mr. Ang's counsel. The full terms of the Final Award are as follows –

(1) The Respondents shall pay to the Claimant the sum of S\$367,124.98 as simple interest calculated at the rate of 5.33% per annum, on the amounts S\$2,067,000 and S\$1,430,000 accrued from the dates of 18 October 2011 and 19 October 2012 respectively, to the date of the Partial Award, 5 March 2014;

(2) The fees and expenses and disbursements of the Tribunal and the administrative fees and expenses fixed by the Registrar of amount S\$171,256.70 shall be borne by the Respondents, with the remaining amount of S\$23,049.19 to be borne by the Claimant;

(3) The Respondents shall reimburse the Claimant the amount S\$795,104.83, being the Claimant's legal fees and other costs incurred in connection with the arbitration, with the remaining amount to be borne by the Claimant;

(4) Any enforcement of the amounts referred to in paragraph (2) above shall take into account any amounts the Claimant has paid from its Advance on Costs deposited with SIAC;

(5) The Respondents shall bear the whole of their legal fees and costs incurred in connection with the arbitration; and

(6) The Claimant and Respondents shall comply with the following in connection with completion of the Initial Put Option Shares and Further Put Option Shares;

a. Within 5 days from the date that the Arbitral Tribunal issues its decision herein, the Respondents are to:

i. Notify the Claimant in writing of the Relevant Linktone Party (as specified in Clause 3.1 of the P&C Agreement), in whose favour, the Claimant is to execute the transfers of the Initial Put Option Shares or Further Put Option Shares (as the case may be);

ii. Notify the Claimant of the Relevant Linktone Party, to whom the Claimant is to deliver the duly executed transfers of the Initial



Put Option Shares or Further Put Option Shares (as the case may be) accompanied by the share certificates in respect of the Initial Put Option Shares or Further Put Option Shares (as the case may be);

- b. Upon receiving notification from the Respondents of the Relevant Linktone Party, the Claimant will prepare and execute the transfers of the Initial Put Option Shares or the Further Put Option Shares (as the case may be) in favour of the Relevant Linktone Party;*
- c. Subject to paragraphs (a) and (b) above, completion of the sale and purchase of the Initial Put Option Shares and the Further Put Option Shares (“Completion”) is to take place within 14 days from the date that the Arbitral Tribunal issues its decision herein at the Office of the Claimant’s counsel...;*
- d. At Completion, the Relevant Linktone Party shall, and the other Linktone Parties shall procure, that such Relevant Linktone Party deliver to Ang (the Claimant) a cashier’s order for the following sums:-*
 - i. The Initial Put Option Consideration;*
 - ii. The Further Put Option Consideration;*
 - iii. All interest awarded by the Arbitral Tribunal in its decision herein;*
 - iv. All costs awarded by the Arbitral Tribunal in its decision herein; and*
- e. Subject to paragraph (d), upon receiving the cashier’s order for the sums mentioned in paragraph (d), the Claimant shall deliver duly executed transfers of the Initial Put Option Shares or Further Put Option Shares (as the case may be) in favour of the Relevant Linktone Party accompanied by the share certificates in respect of the Initial Put Option Shares or Further Put Option Shares (as the case may be); and*



Upon completion, the Claimant shall deliver to the Relevant Linktone Party, a letter of resignation duly signed by the Ang Nominee Director.”

7. The Final Award needs to be read with the Partial Award which directs the parties to complete the sale and purchase of the Shares. The Partial Award is an order for specific performance. The purpose of the Completion Orders in sub-paragraph (6) of the Final Award is to “set out a procedural mechanism by which the [Linktone Parties] are obliged to complete the sale and purchase of the [Shares]” (paragraph 157). In other words, sub-paragraph (6) does not create substantive rights and obligations. It merely sets out a procedural mechanism for performing the obligations created by the Partial Award and sub-paragraphs (1) and (3) of the Final Award.

8. The Completion Orders were made on 26 September 2014 because the Linktone Parties were in breach of the Partial Award (made on 5 March 2014) by failing to complete the sale and purchase of the Shares. They are still in breach, although counsel for MNC says that his client has done what it is required to do and that the reason completion has not taken place is that the other two Linktone Parties have failed to nominate a transferee for the Shares. MNC itself has nominated PT Media Nusantara Citra TBK.
9. By an *ex parte* originating summons (Cause No. FSD 126 of 2014) issued on 18 November 2014, Mr. Ang sought an order pursuant to section 5 of the Foreign Arbitral Awards Enforcement Law (1997 Revision) for leave to enforce the Final Award in this jurisdiction against MNC. I made an order for enforcement on 4 December 2014 and it was served on MNC at its registered office on 8 December 2014. MNC had 14 days in which to make an application to set aside the *ex parte* order, failing which it would become enforceable. On 17 December 2014 MNC's attorneys wrote to Mr. Ang's attorneys asking for an extension of time until 5 January 2015 in which to make an application to set it aside. This was agreed but MNC never in fact made any such application with the result that it is now too late to do so. The Final Award became enforceable in this jurisdiction on 6 January 2015.
10. On 28 January 2015 the Mr Ang served his Statutory Demand requiring payment of S\$1,162,229.81, being the total amount payable by MNC in respect of interest and costs under sub-paragraphs (1) and (3) of the Final Award.
11. In my view the meaning and effect of the Final Award is plain and obvious. Having regard to the unqualified language of sub-paragraphs (1) and (3) and the context in which these orders were made, it is perfectly clear that they create unconditional obligations on the part of the Linktone Parties to pay S\$367,124.98 by way of interest and S\$795,104.83 in respect of legal fees and other costs. It seems perfectly clear to me that the Tribunal must have intended the payment obligations to arise immediately, as at the date of the Final Award.
12. MNC's case is that the payment obligations under sub-paragraphs (1) and (3) are conditional upon completion of the transfer of the Shares in accordance with the Completion Orders contained in sub-paragraph (6). In my view it is inherently improbable that the Tribunal would make orders for interest and costs in favour of Mr. Ang which are intended to be conditional upon the Linktone Parties complying with the Partial Award. This is especially so bearing in mind that the Completion Orders were made because of the Linktone Parties' non-compliance



with the Partial Award. It would make no commercial sense to defer their obligation to pay interest and costs so long as they could continue to avoid compliance.

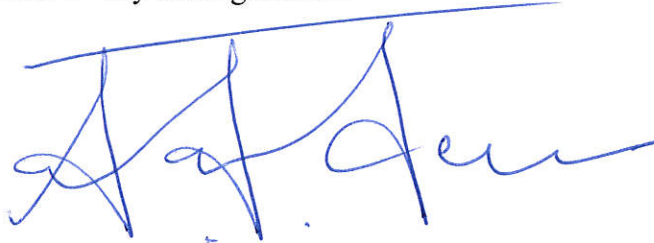
13. It is unsurprising that the procedural mechanisms for completing the sale and purchase should include provision for delivering a banker's order (draft) in respect of both the purchase consideration and the interest and costs. There is no rational reason for inferring that the obligation to pay interest and costs should arise *only if and when* the Linktone Parties comply with the Partial Award. There is no rational reason for linking the payment obligation created by sub-paragraphs (1) and (3) of the Final Award with the mechanism for payment provided for in sub-paragraph (6) in the way suggested by MNC's counsel. Nor is there anything in the language of paragraph 158 of the Final Award or the reasons for making it which suggests that the obligation to pay interest and costs is intended to be conditional upon completion of the sale and purchase in compliance with the Partial Award.
14. In my view MNC's argument is wholly untenable and it cannot be said that it gives rise to any genuine and substantial dispute concerning the existence of the debt specified in the Statutory Demand. If MNC considered that it had a genuine and legitimate argument that, on a true construction of the Final Award, the interest and costs do not become payable unless and until the Linktone Parties choose to complete the purchase and sale of the Shares or are forced to do so, it could have made an application to the Tribunal for an interpretation of the Final Award. It chose not to do so.
15. Counsel for MNC sought to persuade me that his interpretation of the Final Award is the plain and obvious one. In the event that I disagree with this proposition, as I do, his alternative argument is that I should conclude that sub-paragraphs (1) and (3) are inconsistent with sub-paragraph (6), with the result that the Final Award is uncertain and ambiguous and therefore void and unenforceable as a matter of Singaporean law. See the decision of the Singapore High Court in *Official Assignee v. Chartered Industries of Singapore Ltd* [1977-78] SLR(R) 435. In my view this argument is equally untenable. I should add that if MNC thought that it had a legitimate argument based upon uncertainty and ambiguity, it could have made an application to set aside my enforcement order on this ground. It chose not to do so.
16. In my view it is plain and obvious that the Final Award creates an unconditional obligation to pay S\$1,162,229.81 in respect of interest and costs which arose on 26 September 2014. MNC has failed to establish that there is any genuine and



substantial basis upon which it can be argued that this debt is not presently due and owing.

17. The Plaintiff's claim for declaratory relief is dismissed and judgment is entered for the Defendant, with costs to be taxed if not agreed.

Dated this 4th day of August 2015



The Hon Justice Andrew J. Jones Q.C.
JUDGE OF THE GRAND COURT

