15. 1. 2004

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Civil

CAUSE NO: 692 of 2002
CAUSE NO: 473 of 2003
CAUSE NO: 704 of 2003

IN THE MATTER OF THE COMPANIES LAW (2003 REVISION)

AND IN THE MATTER OF SEAPOWER RESOURCES INTERNATIONAL LIMITED (IN PROVISIONAL LIQUIDATION)

AND IN THE MATTER OF THE REDUCTION OF SHARE CAPIATAL OF SEA POWER RESOURCES INTERNATIONAL LIMITED (IN PROVISIONAL LIQUIDATION) (FORMARELY KNOWN AS THL INTERANAIONAL LTD.)

Before: Hon. Madame Justice Priya Levers

Appearances:
Counsels for the Petitioner: Ms. S. Corbett & Mr. M. Holligon of Walkers

Date of hearing: 14th November, 2003

GRAND COURT CAYMAN ISLANDS

RULING

Levers J.

The applications before the Court at this hearing concern Seapower Resources International Limited (In provisional liquidation) ("the Company").

Three petitions were presented to this Court by the Company. The petition in Cause No. 473 of 2003 was presented by the Joint Provisional Liquidators of the Company seeking an Order sanctioning a scheme of arrangements pursuant to section 86 of the Companies Law (2003 Revision).

LEGAL DEPARTMENT JAN 2 1 2004 CAYMAN ISLANDS GOVERNMENT

The petition in Cause No. 704 of 2003 sought an order sanctioning a reduction in the capital of the Company. The order seeking the sanctioning of a reduction in the capital is part of a proposed restructuring of the Company to be accomplished pursuant to the Scheme. This application was made pursuant to section 15 of the Companies Law.

The petition in Cause No. 692 of 2000 was presented by Central Finance Limited, a creditor of the Company and the Joint provisional liquidators were appointed for the purposes of allowing the Company an opportunity to undertake a restructuring by means of a scheme of arrangements to facilitate the survival of the Company and the whole or any part of its undertaking as a going concern.

The Company is an investment holding company which was incorporated in the Cayman Islands on 4 April, 1989, and listed on the Hong Kong Stock Exchange in March 1990. On 28 December, 2001, trading of the Company's Shares on the Stock Exchange was suspended. The Company and its operating subsidiaries were originally engaged in the cold storage warehouse business from 1992 to 1995 and then diversified into financial services, food-related businesses, logistics management services and property. If the Court were to approve the approved Scheme and the Creditors' claims are thereby compromised, the company would be solvent.

The return of the Company to solvency is the primary aim of the scheme in order to enable supervision of the company's listing on the Hong Kong Stock Exchange to be lifted. The Company and its Creditors are proposing to enter into an arrangement pursuant to which

the creditors will compromise their Claims other than preferential claims which will be paid in full) against the Company in consideration of the Investor making available to creditors funds by means of its subscription for a controlling interest in the share capital of the Company and the company providing a number of other benefits, including the allotment of new shares to the creditors.

It was submitted that the Court should in its discretion sanction the scheme because:

(a) it enabled the company to survive as a growing concern;

(b) the Scheme was supported by the JPL and the Creditors' Committee and had been approved by 100% of the Scheme Creditors; and

(c) the alternative to this restructuring was liquidation, which was likely to provide little return to the Scheme Creditors.

It was further submitted that the proposals were *bona fide* and that the JPL's had worked together on putting together a viable restructuring proposal.

The three requirements for sanction had been satisfied. The Hong Kong Scheme was also approved by the creditors at the meeting held on the 25 August 2003.

In the case of the Second Petition, however (the capital reduction petition) at the extraordinary general meeting held on the 14 November, 2003, when the shareholders were asked to vote on a resolution for the reduction of the capital of the Company. A problem

arose on the second petition. It is in connection with that problem that I have now being asked to give this ruling.

At the EGM held in Hong Kong on the 14 November 2003, the shareholders did not pass the special resolution for the reduction of the capital of the Company as required by the companies Law. One shareholder dissented. ON this application, evidence was provided to the court explaining what had happened at the EGM and why it was considered by the company and the provisional liquidators that the shareholder who had voted against a special resolution for the reduction of the capital of the company had voted in bad faith. Evidence was lead as to why the shareholder is alleged to have acted in bad faith and the Court was asked to approve the capital reduction setting aside the shareholders objection.

In the case of Re Holders Investment Trust Ltd. Ch.d [1970] MeGarry J in his judgment held –

> "a reduction of capital which was not in accordance with class rights was nevertheless regular if it had been effectually sanctioned in accordance with the regulations of the company; there was no effectual sanction, however, unless those holding a sufficient majority of the shares of that class voted in favour of the reduction in the *bona fide* belief that they were acting in the interests of the general body of the members of that class; if there were such a sanction, the court would confirm the reduction unless the opposition proved it to be unfair; if there were no sanction the court would only confirm the reduction if it were proved to be fair."

The burden of proof is on those supporting the reduction to show that it was fair.

On the evidence before me it is my view that powers must be exercise subject to a general principal which is applicable to all authorities conferred on majorities of classes enabling them to bind minorities. The power given must be exercised for the purpose of benefiting the class as a whole and not merely individual members only. The capital reduction in this case would benefit the entire company and the shareholders as a whole. The evidence is that a telephone conversation between the dissenting shareholder and the Joint Provisional Liquidators confirms that the shareholder was not acting in good faith and that the conduct of the shareholder was manifestly injurious to the interest of the Company. In those circumstances the Court chose to interfere and did interfere setting aside the objection and allowing the petition seeking the capital reduction. To my mind whatever motive inspired the conversation between the shareholder and the Joint Provisional Liquidators, the subsequent objection cannot be said to benefit the company, the shareholders or the creditors. In those circumstances I ruled that the objection should be set aside and the Capital reduced.

Dated this 15th day of January, 2004

Madame Justice Priya Levers
Judge of the Grand Court