

13.1.95

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 284/91 AND OTHERS

IN THE MATTER OF
BANK OF CREDIT AND COMMERCE
INTERNATIONAL (OVERSEAS) LTD.
(IN LIQUIDATION)
AND OTHERS

JUDGMENT delivered by Chief Justice G. Harre,
on Friday, January 13, 1995 in George Town,
Grand Cayman.

APPEARANCES:

- Mr. Richard Sheldon - For BCCI (Overseas) and CFC
- Mr. Timothy Shea
- Mr. Ian Paget-Brown - For ICIC Apex, ICIC Holdings, ICIC
- Mr. Stephen Hellman - Investments, ICIC (Overseas)
- Mr. Angus Foster - For Abu Dhabi Majority Shareholders
- Ms. Sheridan Brooks - For BCCI (Overseas) Committee of
Creditors

1 COURT COMMENCED ON FRIDAY,

2 13TH JANUARY 1995:

3

4 JUDGMENT

5

6 THE COURT: Liquidators of Bank of Credit and Commerce
7 International (Overseas) Ltd. and Credit and Finance
8 Corporation, "CFC", were appointed by Orders of this Court on
9 the 14th of January, 1992. Liquidators of other BCCI-related
10 companies were appointed in England and Luxembourg.
11 Liquidators of yet other companies, which I will refer to as
12 the ICIC Group, were appointed by this Court on various
13 dates.

14 The BCCI and ICIC Liquidators in Cayman have prepared
15 their own reports, for reasons which will become apparent, in
16 support of their separate but closely related applications
17 for directions and orders approving in both cases a proposed
18 agreement with the Majority Shareholders of BCCI Holdings
19 (Luxembourg) SA, and a proposed Pooling Agreement between the
20 BCCI and ICIC interests.

21 As background to this, I need to refer to the earlier
22 history which has led to these applications being before me
23 now.

24 In February 1992, the BCCI Liquidators initialled
25 Agreements, subject to court approval, with the Majority
26 Shareholders under which the Government of Abu Dhabi would
27 make funds available subject to conditions for distribution
28 to certain unsecured creditors of the Principal BCCI

1 Companies, and I will be calling that the "Original
2 Agreement".

3 At the same time, the Liquidators initialled a Pooling
4 Agreement whereby the assets of BCCI Holdings and its
5 subsidiaries BCCI SA, BCCI Overseas and CFC, including any
6 branches of BCCI SA and BCCI Overseas which participated,
7 would be pooled and distributed rateably among the creditors,
8 and I shall call that "the Pooling Agreement". The Original
9 Agreement and the Pooling Agreement were approved by the
10 Court in England and by this Court.

11 In Luxembourg, the District Court approved the Original
12 Agreement and, subject to certain changes in the form which
13 the English and Cayman Courts had approved, the Pooling
14 Agreement. However, the Court of Appeal in Luxembourg
15 allowed an appeal against the approval of the Original
16 Agreement. The approval of the Pooling Agreement stood and
17 it has been signed.

18 The disapproval of the Original Agreement in Luxembourg
19 made reopening of the negotiations with the Majority
20 Shareholders necessary. ICIC and BCCI Liquidators
21 accompanied -- and this is important -- by an observer from
22 the Luxembourg and English Creditors Committee conducted
23 these. A draft agreement, which I will call, as do the
24 authors of the Liquidators' Reports, "the Revised Agreement"
25 has been agreed.

26 The Government of Abu Dhabi has stated that the Revised
27 Agreement will not be executed unless a number of conditions
28 are met. These conditions are that the Liquidators obtain

1 requisite court approvals and authorizations, among which are
2 the orders now sought here; the Government of Abu Dhabi
3 obtain requisite approvals and authorizations; the Pooling
4 Agreement and a proposed ICIC Pooling Agreement, which is
5 also subject to today's applications, are executed; and
6 certain claims and debts arising in the ordinary course of
7 banking business owed to the Majority Shareholders and
8 various related entities are admitted in the relevant
9 liquidations to a value of at least \$1250 million as ordinary
10 unsubordinated claims before or at the time of the execution
11 of the Revised Agreement.

12 The admitted claims to which the last of these
13 conditions applies still falls short of the 1.25 billion
14 target by some \$20 million and it is entirely in the
15 discretion of the Majority Shareholders whether or not to
16 execute the Agreement in spite of any shortfall.

17 It will be seen that the Revised Agreement and the
18 Pooling Agreements stand or fall together.

19 So, the Proposed Agreements on which I'm asked to give
20 directions now are the Revised Agreement under which the
21 Government of Abu Dhabi will make funds available to the
22 Luxembourg, English and Cayman Liquidators for distribution
23 to creditors of the Principal BCCI and ICIC Companies and the
24 ICIC Pooling Agreement, whereby the Principal ICIC Companies
25 will participate in the Pooling Agreement with the result
26 that the assets of the Principal ICIC Companies will be
27 pooled with the assets of the Principal BCCI Companies and
28 distributed rateably amongst the creditors of those

1 companies, and there will be mutual covenants not to sue.

2 The Revised Agreement, as its name implies, retains many
3 features of the Original Agreement which was approved by this
4 court in June 1992. Its principal features are set out in
5 both Liquidators' Reports, and I shall do no more at this
6 point than make reference to the conclusion in which the
7 Liquidators have arrived on the basis of comparison which
8 they have made between the Original and the Revised
9 Agreements. It is this:

10 "Although it is not possible to make an exact
11 comparison of the monetary return to eligible
12 creditors under the Original Agreement and of the
13 monetary return to creditors under the Revised
14 Agreement the Liquidators are satisfied that the
15 terms of the Revised Agreement are at least as
16 favourable as the terms of the Original Agreement.

17 Further the terms of the Revised Agreement are less
18 complex than the terms of the Original Agreement."
19 I shall need, however, to mention later in this judgment
20 the present position with regard to the mutual releases which
21 are contained, as they were in the Original Agreement, in the
22 Revised Agreement.

23 The reports also deal with the justification put forward
24 for the proposed ICIC Pooling Agreement which would provide
25 that proceeds recovered by the Principal ICIC and BCCI
26 Companies would be transmitted to a central pool in the same
27 way as is now envisaged for the BCCI Companies for
28 distribution at the same rate to the unsecured creditors of

1 those companies.

2 The thrust of the two reports is the same. It is that
3 the ICIC Pooling Agreement avoids, so far as possible,
4 difficulties, disputes, delays and expense arising from the
5 commingling of the affairs of the BCCI and ICIC Groups. In
6 particular, the ICIC and BCCI Groups will benefit from the
7 release of potential claims against one another which
8 otherwise may result from any attempt to separate the assets
9 of one from the other. It also promotes fairness by
10 providing for all admitted creditors of the BCCI and ICIC
11 Groups to receive the same rate of dividend on their admitted
12 claims and will assist in recovering assets common to the
13 BCCI and ICIC Groups.

14 The ICIC Liquidators consider that the effect of the
15 ICIC Group joining the pool will have no effect adversely on
16 the return to creditors of the BCCI and ICIC Groups. On the
17 contrary, they consider that the overall effect will be
18 beneficial to all creditors.

19 They go on to say that in their view, the ICIC Pooling
20 Agreement represents the most and possibly the only
21 practicable and efficient way in which the liquidations of
22 the BCCI and ICIC Groups can be carried out in light of the
23 way the affairs of the Groups are conducted, and that the
24 affairs of the BCCI and ICIC Group were so commingled that it
25 would be impracticable without a significant investment in
26 time along with an enormous expense, and might well be
27 impossible, to determine as between each group of companies
28 and as between companies within those groups what property is

1 the property of one rather than the other, and to determine
2 what amounts, if any, are due from one company to another as
3 a result of acts and omissions in relation to transactions
4 which have taken place or should have taken place between
5 them.

6 Significant claims and counterclaims are likely to exist
7 between and amongst the BCCI and ICIC Groups arising from the
8 commingling of their affairs. A main objective of the ICIC
9 Pooling Agreement is to avoid the difficulties, delay and
10 expense of separating the affairs and property of the BCCI
11 and ICIC Groups and to avoid litigation between them.

12 The grounds on which these views are based include the
13 following. The ICIC Group, and in particular ICIC Overseas,
14 functioned as a bookkeeping centre for transactions initiated
15 and coordinated by BCCI Group Management. Many of the
16 transactions between the BCCI and ICIC Groups were part of
17 arrangements designed to falsely manipulate the financial
18 position of the BCCI and ICIC Groups. The ICIC Group
19 received substantial funds from the BCCI Group, and in
20 particular, BCCI Overseas.

21 Examples of transactions of this nature and others of an
22 irregular kind are given and the conclusion reached is that
23 the BCCI and ICIC Groups conducted their affairs without in
24 many instances clearly identifying which company in the Group
25 was concerned with or responsible for any particular
26 transaction.

27 These grounds are very similar to those which were
28 before the Court in 1992 when the BCCI Pooling Agreement was

1 approved. Since that time, in consequence of observations
2 made by this Court, the ICIC Liquidators have taken
3 independent legal advice. That advice is that the Proposed
4 Pooling Agreement is in the best interest of the ICIC as well
5 as the BCCI parties.

6 The ICIC Liquidators have consequently submitted their
7 separate report supporting the Proposed Agreement and adopted
8 through their counsel the submissions made on behalf of the
9 BCCI Liquidators.

10 The reports of both groups of Liquidators end with a
11 financial evaluation of the Agreements. They analyse factors
12 affecting creditors' claims and the amount of realizations
13 available to creditors. The conclusions and recommendations
14 of the BCCI Liquidators and the ICIC Liquidators are that in
15 all the circumstances the Agreements represent the best
16 options available to creditors and they recommend them to the
17 Court and to creditors.

18 I shall read out in full the conclusions of both groups
19 of Liquidators, which have led them to recommend the Revised
20 Agreement and the ICIC Pooling Agreement. They are in
21 similar vein, but not identical. The BCCI Liquidators say
22 this:

23 "If the Revised Agreement is not implemented, the
24 Liquidators are advised that there will be no
25 option but to pursue the Majority Shareholders
26 through litigation. Such litigation would be
27 prolonged. It could well require a minimum of five
28 to seven and probably more realistically ten years

1 to bring to a conclusion. It would be complicated
2 and expensive. It is likely that such litigation
3 will involve proceedings in a number of
4 jurisdictions. Its outcome would be uncertain.
5 The Revised Agreement and the ICIC Pooling
6 Agreement remove the uncertainties and delay which
7 would arise from litigation with Majority
8 Shareholders and as between the Principal BCCI and
9 ICIC Companies."

10 The ICIC Liquidators say this:

11 "If the Revised Agreement is not implemented, the
12 ICIC Liquidators are advised that there is a
13 serious risk that the Majority Shareholders would
14 initiate proprietary or other claims against the
15 ICIC Group in order to recover an alleged loss in
16 an amount many times greater than the current
17 estimated value of the assets of the ICIC Group.
18 Further, if the ICIC Pooling Agreement cannot be
19 achieved, it is possible that, for the reasons
20 previously noted, various claims and counterclaims
21 will arise between the ICIC and BCCI Groups
22 resulting in additional expense and delay. Such
23 litigation would be prolonged, complicated and
24 expensive likely involving a number of
25 jurisdictions and at the very least will result in
26 a material diminution of the assets otherwise
27 available for distribution to the creditors of the
28 ICIC Group. In the absence of the Revised

1 Agreement and the ICIC Pooling Agreement, it is
2 unlikely that a dividend would be paid to the
3 creditors of the ICIC Group for many years if at
4 all. The Revised Agreement and the ICIC Pooling
5 Agreement remove the uncertainties and delay which
6 would arise from litigation with the Majority
7 Shareholders and as between and amongst the BCCI
8 and ICIC Group Companies."

9 Both Groups of Liquidators conclude that the Agreements
10 offer creditors the prospect of a materially enhanced and
11 accelerated return and the English and Luxembourg Liquidators
12 are of the same view. They recommend them to the Court and
13 to the creditors, noting that this has the unanimous and
14 strong support of the legal advisors to the respective
15 Liquidators.

16 There is one aspect of the legal advice to which I must
17 refer. The Revised Agreement provides that the Principal
18 BCCI and ICIC Companies must release or covenant not to sue
19 in relation to all claims of whatever nature they may have
20 against the Government of Abu Dhabi, the Majority
21 Shareholders and the related persons except for claims to
22 recover any debts arising in the ordinary course of business
23 as shown in the books of the Principal BCCI and ICIC
24 Companies. A similar provision appeared in the Original
25 Agreement and I made the following observation about it in my
26 judgment of the 19th of June, 1992 where I said:

27 "I have seen on a confidential basis the legal
28 advice given to the Liquidators and it would be

1 quite wrong to canvass in public the strength or
2 weaknesses of the claims which it is proposed to be
3 released. These releases have not yet been
4 achieved and to do that would put the Company and
5 the Liquidators at a disadvantage in any future
6 negotiations or litigation. But anyone who reads
7 the Liquidators' Report can see that court
8 proceedings in respect to these mutual claims would
9 be likely to be protracted (five to ten years as
10 estimated), enormously expensive and with an
11 uncertain outcome both as to liability and to
12 enforceability of recovery."

13 I have now also seen, on the basis as before of an
14 undertaking by the Abu Dhabi parties represented by
15 Mr. Foster that this would not give rise to any claim that
16 legal privilege had been waived, the current legal advice on
17 this same matter, and I am satisfied that the position
18 remains substantially the same now.

19 The matter of provisions is another to which I must make
20 specific reference. Both reports contain the following
21 passage:

22 "Not all assets realised by the Liquidators will be
23 available for immediate distribution. Provision
24 may have to be made for a number of matters,
25 including provision for disputed claims (including
26 set off and claims of a proprietary nature), the
27 future costs of the liquidation and of litigation.
28 The level of provisions which would be required

1 before making an interim distribution is uncertain
2 at this stage, but is likely to be substantial."

3 An aspect of this matter was canvassed before and at the
4 hearing before the Vice-Chancellor in England at which he
5 approved the Agreements. It arose in relation to the ICIC
6 Staff Benefit Fund and my attention was drawn to
7 correspondence from two firms of English lawyers representing
8 in one case an entity known as a "ECCI Campaign Committee"
9 and a number of former employees of BCCI; and in the other
10 case, 26 ex-employees who claim to be beneficiaries of the
11 Staff Benefit Fund Trust.

12 Both these groups were represented at the English
13 hearing by counsel. Neither sought to oppose the approval of
14 the Agreements. Their concern was to seek a direction to the
15 Liquidators to ensure the sufficient retention of funds by
16 the Liquidators to provide for satisfaction of claims arising
17 from the alleged breach of trust. So far as can be foreseen
18 at present, the forum at which these matters will be
19 addressed will be England.

20 The Vice-Chancellor dealt with the matter in the
21 following way. He said:

22 "I am quite clear that the orders mentioned do not
23 arise directly or indeed indirectly out of the
24 relief sought by the Liquidators that is to say
25 approval of the two agreements...I do not believe
26 that this is a matter with which I should be
27 dealing today."

28 I respectfully adopt the same approach. The Pooling

1 Agreement already provides for periodic review of prospective
2 proprietary claims by the Liquidators and it is clear from
3 the passage in their report to which I have referred in this
4 connection that they are well aware of the likelihood of
5 substantial provisions and of their duty to make them. There
6 is nothing more which I need impose upon them.

7 Surprisingly, in view of the stance adopted by their
8 counsel at the hearing only last month before the
9 Vice-Chancellor in London, the BCCI Campaign Committee has
10 written a letter to me which I received the day before the
11 hearing yesterday in which they urged me, among other things,
12 to reject the Revised Agreement as not achieving the best
13 possible result for the ordinary creditors as well as for the
14 former employees of BCCI, while giving greater benefit to
15 Abu Dhabi and the bank branches in the United Arab Emirates;
16 and to reject the Pooling Agreement with ICIC, as it is
17 likely to reduce the rate of dividend from the BCCI pool for
18 the ordinary creditors of BCCI.

19 I felt it right to make copies of this letter and its
20 enclosures available to the parties appearing before me, and
21 I was greatly helped by the submissions of Mr. Sheldon on the
22 points made. I will not recite these in detail. Suffice it
23 to say that I overwhelmingly prefer and accept the
24 conclusions and recommendations of the Liquidators supported
25 as they are by the Liquidation Committee of creditors in
26 England, an elected body on which the BCCI Campaign Committee
27 is not represented, the Luxembourg Creditors Committee and
28 the Consultative Committee of Creditors here, and indeed by

1 the Abu Dhabi parties represented by Mr. Foster.

2 The Court has to weigh the alternatives. I am satisfied
3 that the choice must fall for the reasons which they have
4 given in their reports on the recommendations by the
5 Liquidators, and that I should give them the directions
6 relating to the Revised Agreement and the ICIC Pooling
7 Agreement as set out in paragraphs 47 and 52 of their
8 respective reports.

9 The ICIC Cost and Recovery Sharing Agreement and Paying
10 Agency Agreement remain for consideration in chambers this
11 afternoon. I will hold that chambers hearing in
12 Grand Court I where we are now.

13 By way of postscript, I should perhaps mention that a
14 contretemps which has arisen before the Luxembourg Court and
15 which has caused the decision of that Court, which was
16 expected yesterday, to be adjourned for a week was rightly
17 brought to my attention. Apparently, the original computer
18 disks containing versions of a diary maintained by one Iqbal
19 were deleted by lawyers in London after duplicate disks were
20 made, but before the originals were delivered to the
21 authorities in the United States. It is clear from the terms
22 of the order for the adjournment of the Luxembourg hearing
23 that there are matters before that Court which are not before
24 me today; and in relation to those matters which are, I saw
25 no reason not to proceed or to attach weight to this
26 particular matter.

27

28

1 Costs of the Liquidators and of the Cayman Creditors
2 Committee to be expenses in the liquidation.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

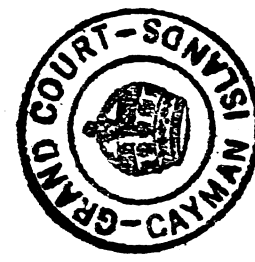
25

26

27

28

* * *



G. E. Harre

G.E. Harre
Chief Justice

13th January 1995.