

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN  
3 FINANCIAL SERVICES DIVISION  
4

Cause No: FSD 18/2012

5  
6 IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)  
7 AND IN THE MATTER OF TRIKONA ADVISORS LIMITED  
8



9 BETWEEN:

ARC CAPITAL LLC  
&  
HAIDA INVESTMENTS LIMITED

PETITIONERS

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15 AND:

TRIKONA ADVISORS LTD.

RESPONDENT

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21 Appearances:

Mr. Guy Cowan of Campbells on behalf of  
the Petitioners

Ms. Sarah Dobbyn of Stuarts on behalf of  
the Company, Trikona Advisors Ltd.

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27 Before:

The Hon. Mr. Justice Charles Quin

28 Heard:

17<sup>th</sup> July 2012

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**EXTEMPORE RULING**

32 1. Counsel on behalf of the Company applies for an adjournment of the hearing date  
33 of the 22<sup>nd</sup> and 23<sup>rd</sup> of August 2012. These are also the dates set for the hearing of  
34 the Petitioners' application for Joint Provisional Liquidators, as well as the hearing  
35 of the Company's application dated the 23<sup>rd</sup> March 2012 for a stay of these

1 proceedings, and its application dated the 13<sup>th</sup> April 2012 for an Order dismissing  
2 the Petition.

3 2. Counsel for the Company argues that there is a hearing in the United States on the  
4 17<sup>th</sup> September 2012 and it has been extremely difficult for the Company to be in a  
5 position to participate in parallel proceedings in two jurisdictions, and, accordingly,  
6 applies for an adjournment of the hearing set for the 22<sup>nd</sup> and 23<sup>rd</sup> of August 2012.

7 3. In addition, counsel for the Company submits that those instructing her have  
8 informed her that the Company is currently in advanced stages of a possible buyout  
9 of the Petitioner's shares. Accordingly, an adjournment would give the Company  
10 sufficient time to explore, and hopefully put together, an acceptable buyout offer to  
11 the Petitioners.

12 4. In response to these grounds, I begin by noting that it was the Company's former  
13 attorneys, Harneys, that formally requested that the hearing of the Company's  
14 applications be set for the 22<sup>nd</sup> and 23<sup>rd</sup> of August 2012.

15 5. As a result of the representations of the Company's former attorneys, the Listing  
16 Officer for the Grand Court set the Company's Summons down for the hearing on  
17 the 22<sup>nd</sup> August 2012.

18 6. Paragraph 38(ix) of my Judgment dated the 9<sup>th</sup> March 2012 directed that the stay  
19 application and the Company's application be listed for hearing on the first  
20 available date after the 19<sup>th</sup> April 2012. Accordingly, the Company has had five  
21 months to make an acceptable buyout offer to the Petitioners and still has five  
22 weeks before the hearing to consider its position regarding a possible buyout.

1       7.     Having heard from both counsel, I can find no prejudice to the Company, should  
2             the hearing go ahead on the 22<sup>nd</sup> August 2012.

3       8.     I have some sympathy for counsel for the Company, as she has candidly admitted  
4             that her client's US attorneys had not provided her with a supporting affidavit. In  
5             this regard, it is disappointing that the Company's US attorneys have been unable to  
6             provide the necessary material to ground the Company's application for the  
7             adjournment.

8       9.     Taking all the foregoing facts into consideration, I can find no good reason for the  
9             hearing, set for the 22<sup>nd</sup> August 2012, not to go ahead. I re-state that the dates of the  
10            22<sup>nd</sup> August 2012 and the 23<sup>rd</sup> August 2012 have been set down for almost three (3)  
11            months. In all the circumstances of this case, I consider that this is a matter that  
12            should be heard expeditiously.

13      10.    For these reasons, I reject the Company's application for an adjournment of the  
14            hearing on the 22<sup>nd</sup> August 2012 and make the following directions:

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16                    i. That by no later than 4:00 p.m. on the 31<sup>st</sup> July 2012 the Company  
17                    and/or APL must file and serve evidence in support of:

18                            a) APL's Summons dated the 23<sup>rd</sup> March 2012 seeking a stay of  
19                            the Petition ("the Stay Application");

20                            b) APL's Amended Summons dated the 17<sup>th</sup> July 2012 seeking a  
21                            dismissal of the Petition or, in the alternative, an order to strike

1 out the Petition as an abuse of the process of the Court, or in  
2 the alternative, an order providing for the purchase of the  
3 Petitioners' shares in the Company pursuant to s.95(3)(d) of the  
4 Companies Law (2011 Revision) ("the Strike Out  
5 Application"); and

6 c) The Company's Summons dated the 2<sup>nd</sup> April 2012 seeking a  
7 validation order ("the Validation Application").

8 ii. That by no later than 4:00 p.m. on the 31<sup>st</sup> July 2012 the Petitioners  
9 must file and serve any evidence in support of their Summons dated the  
10 28<sup>th</sup> March 2012 seeking the appointment of Joint Provisional  
11 Liquidators ("the PL Application").

12 iii. That the Petitioners must file and serve any evidence in response to the  
13 Stay Application, to the Strike Out Application, and to the Validation  
14 Application by 4:00 p.m. on the 10<sup>th</sup> August 2012.

15 iv. That APL must file and serve any evidence in response to the PL  
16 Application by 4:00 p.m. on the 10<sup>th</sup> August 2012.

17 v. That skeleton arguments are to be filed and exchanged by 4:00 p.m. on  
18 the 17<sup>th</sup> August 2012.

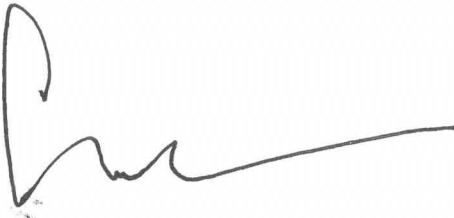
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vi. That the hearing of the Stay Application, the Strike Out Application, the Validation Application and the PL Application, shall take place on the 22<sup>nd</sup> and 23<sup>rd</sup> August 2012.

vii. Costs in the Petition.

**Dated this the 17<sup>th</sup> July 2012**



**Honourable Mr. Justice Charles Quin  
Judge of the Grand Court**