

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
MA196/2022

In the exparte of matter of:

EXPARTE LIQUIDITY TECHNOLOGIES LTD **APPLICANT**
(Represented by Mr Govinden)

and

SAINT BITTS LLC **INTERVENER**
(Represented by Mr Frank Elizabeth)

Neutral Citation: Ex- Parte Liquidity Technologies Ltd vs Saint Bitts LLC (MA196/2022)
[2022] SCSC

(09th November 2022).

Before: Judge Esparon
Summary: Application for leave to intervene
Heard: 13th October 2022
Delivered: 15th November 2022

ORDER

Application seeking leave to intervene in the matter pursuant to section 117 of the Seychelles Code of Civil Procedure and section 17 of the Courts Act- Leave to intervene is declined and the Application is dismissed with cost

RULING

ESPARON J

[1] This is an Application by way of Notice of Motion of which the Intended Intervener is seeking the following Orders from this Court:

- i) For an Order declaring that the intervener has an interest in the outcome of the pending suit before the Court.

- ii) For an order granting leave to the Applicant to intervene in this matter
- iii) For an Order ordering the Intervener to file his statement of demand within 14 days of the order granting the intervener leave to intervene.

Pleadings

- [2] The Application for intervention is supported by the Affidavit of Roger K. Ver in his capacity as sole Shareholder and Director of the intervener Saint Bitts LCC.
- [3] The deponent has averred in his Affidavit that Bitcoin.com is a major creditor of Coinflex and that Bitcoin.com now seeks leave of the Court to intervene, objects to Coinflex proposed scheme of Arrangement as being wasteful of creditors assets and motion this Court to instead wind up Coinflex and distribute its remaining assets with creditors without further waste or delay.
- [4] The deponent avers in paragraph 14 of his Affidavit that Bitcoin.com and myself are both Shareholders of Coinflex of which copy of purchase agreement is attached herewith.
- [5] The intervener avers in his Affidavit that Coinflex has not made a profit and is insolvent and that their scheme of arrangement poses undue risk to creditors and that it will waste creditors assets without a realistic prospect of being able to pay them back.
- [6] The Intervener further avers that he was the largest liquidity provider to Coinflex and that Bitcoin.com was its largest marketing partner and that the Coinflex scheme of arrangement faces additional hurdles of having to generate profits after having lost its largest customer and marketing partner.
- [7] The deponent further avers that on or about the 11th November 2021, Bitcoin and Coinflex entered into a domain license agreement whereby Bitcoin agreed to license the domain subdomain www.Exchange.bitcoin.com to Coinflex and in consideration Coinflex agreed to share a portion of the revenue generated from their crypto currency exchange.

- [8] The deponent further avers that both parties performed their obligations under the agreement until 23rd June 2022 on which date Coinflex's customer services representative began informing its customers that withdrawals were disabled due to a 'transaction backlog' while simultaneously allowing customers to make fresh deposits that would ultimately become frozen.
- [9] The deponent further avers in his Affidavit that there was never a transaction backlog. Coinflex was in fact insolvent and was misrepresenting these facts to customers in an effort to attract fresh money on the platform and avert a run of deposits.
- [10] The deponent avers in his Affidavit that on or about the following day of the 24th June 2022, Coinflex unilaterally froze withdrawals for thousands of its customers and that on or around 12th July 2022, Bitcoin.com terminated the agreement with Coinflex and disabled thereafter Coinflex access to [www.exchange .bitcoin.com](http://www.exchange.bitcoin.com) and made such announcement to the affected users of Bitcoin.com.
- [11] The deponent in his Affidavit avers that the assets currently residing in Bitcoin.com's Coinflex trading account have been frozen by Coinflex and Bitcoins.com Flex USD tokens have likewise been frozen by Coinflex.
- [12] The deponent further avers in his Affidavit that Bitcoin.com attempt to deposit flex into their Coinflex account like other users failed because Coinflex had intentionally black listed Bitcoin.com wallet address and as such Coinflex has deprived Bitcoin.Com of its right to full participation as a creditor in any vote solicited by Coinflex under section 208 of the IBC Act.
- [13] The deponent avers in his Affidavit that Coinflex's reluctance to disclose its customer's list to the Court runs the risk that a single creditor may cast multiple votes on its scheme of arrangement and as such it is concealing its AML/KYC non- compliance.
- [14] The deponent further avers that by permitting anonymous account to vote as in the present case runs the risk that Coinflex or another interested creditor may cast multiple votes to ensure desired outcome.

- [15] The deponent further avers that there are bitcoin cash which was deposited for a particular purpose which do not form part of a debt owed to Bitcoin.com which must be therefore returned to the Applicant in full under the principles of Quistclose trust of which the donor gives the assets for a specific purpose and the recipient can only use for a specific purpose and should not mix these funds with its own and such assets must be returned in full in the event of an insolvency and hence there is class of creditors who would immediately receive back 100 percent of their assets.
- [16] The deponent further avers that Bitcoin. Com is an interested party among the class of creditors with 2,395, BHC held in a wallet that have been frozen by Coinflex on the' sBCH Bridge.
- [17] The deponent further avers that Coinflex now claims they 'are legally obligated to treat all depositors (traders on the exchange, flexUSD holders sBCH) holders equally and that this is part of a restructuring mandate of which the deponent believes that Coinflex has simply misappropriated sBCH held at the Bridge to fund its scheme of arrangement.
- [18] The Applicant has objected to the Application for intervention and has filed an Affidavit in rebuttal sworn by the deponent Mark David Lamb, the sole director of the Applicant of which he denies the allegations at paragraph 9 of the Affidavit R1 and avers that it has complied to the conditions set by the Court for the granting of a final Order.
- [19] The deponent has denied the averments as set in paragraph 10 of Affidavit R1 and puts the intervener to the proof thereof and further avers that the intervener owns less than 0.5 percent of the total creditor claims.
- [20] The deponent has denied the averments in paragraph 11 of the Affidavit R1 and avers that the Company had been running successfully since its set up. However around mid-June 2022, the account of Roger Ver, being the representative of the intervener in the present matter, went into negative equity. The said Roger Ver owes the Applicant \$US 83,840,578.53 due to breaches of his contractual obligation as a result of trading losses suffered in resent market down turn.

[21] The deponent further avers in paragraph 11(g) of his affidavit that the said Roger Ver is of utter bad faith and has entered the present action in a deceitful manner by seeking to utilize his powers as the intervener's sole shareholder and director in his own interest having regard to the fact that the intervener is a different entity. The said action is therefore malicious and without reasonable ground. The sole purpose of the intervener's action under covert of Roger Ver is to frustrate the proposed compromise or arrangement with the Applicants creditors in order to avoid his contractual liability and to delay and/or distract avoid Roger Ver's liabilities in respect of Arbitration proceedings entered by the Applicant in Hong Kong.

[22] The Applicant denies paragraph 14 and 15 of the Affidavit and avers that the intervener is no longer a Shareholder by virtue of an amendment agreement entered by the intervener and Liquidity Technologies Limited and that the Intervener is in bad faith, is not coming to Court with clean hands and is seeking to mislead the Court in failing to disclose the said agreement and instead only relying on the original agreement and as of date the intervener is not a shareholder as evidenced by the register of members.

[23] The Applicant denies paragraph 36 of Affidavit R in his Affidavit and puts the intervener to strict proof thereof and avers instead that 5,505,730 Flex USD are not owned by the intervener but rather by its Director and sole shareholder, Mr. K. Ver in his own personal name.

Submissions of Counsel

[24] Counsel for the intervener submitted to the Court that Saint Bitts is interested in the Scheme of arrangement being proposed by Coinflex by virtue of Roger Ver and Saint Bitts are Shareholders in the parent company and arguably in Coinflex itself. What is more according to Counsel is that Saint Bitts is the beneficiary of funds held in Coinflex in a Quistclose trust.

[25] Counsel for the intervener submitted to the Court that any scheme of arrangement to restructure Coinflex naturally affects Ver and Saint Bitts as creditors. For one, the proposed scheme determines how much they will receive, and in what form, under the

company's new plan in comparison to what is owed if their plan were not approved. The scheme of arrangement affects the prospective intervener's interest as a shareholder because the scheme of arrangement determines whether the company successfully restructures or not. If the scheme of arrangement fails, prospective intervener's interest as a shareholder become worthless. If it succeeds, the prospective intervener's interest as a shareholder become greater.

[26] Counsel for the intervener submitted to the court that Saint Bitt's interest as a beneficiary of Quistclose trust is likewise affected since coinflex's restructuring proposal is based upon using these same Quistclose trust assets to rehabilitate Coinflex's failed business. Under the circumstances, Saint Bitts is an interested party with no recourse but to intervene. Even were Saint Bitts to participate in any vote of creditors, they will be at odds with other creditors who will want Saint Bitts and similar situated creditors to be forced to share losses in pari passu as opposed to being repaid in full out of the Quistclose trust.

[27] Counsel for the intervener submitted to the Court that Coinflex's allegations that Ver and Saint Bitts are of utter bad faith is unfounded since even if Coinflex goes into liquidation the liability Will still exist and the administrator will pursue it.

[28] Counsel for the intended intervener relied on section 117 of the Seychelles Code of Civil Procedure and section 17 of the Courts Act in order to make this Application for intervention. Counsel submits that the intervener has locus standi to bring this Application since section 117 of the Seychelles Code of Civil Procedure entitles every person interested in the event of a pending suit to bring such an action.

[29] Counsel for the intended intervener further submitted to the Court that the intervener also has locus standi to bring this action in law since section 17 of the Court's Act entitles the Supreme Court to follow the rules and procedures of the High Court, and that the High Court has previously permitted a party to intervene because their interest were being affected by legal proceedings.

- [30] In support of his submission Counsel for the intended intervenor relied on the case of *Essak V Auto Clinic (PTY) LTD (CS 312 of 1999)* which relied on the case of *Raffaut V Mauritius Insurance Co.* and the case of *karunakaran V Constitutional Appointments Authority and Anor.*
- [31] However during counsel's submissions in Court, he conceded that section 117 of the Seychelles Code of Civil Procedure may not be applicable in the present case since the definition of the word suit in the Seychelles Code of Civil Procedure and hence he laid emphasis that he was relying on section 17 of the Court's Act instead.
- [32] Counsel for the Applicant in the main Application also relied on Section 117 of the Seychelles Code of Civil Procedure and submitted to the Court that section 117 of the Seychelles Code of Civil Procedure shall be read alongside with the definition of section 2 of the same Act which defines 'suits or action' means a civil proceeding commenced by plaintiff and as such the Application for reorganization is not a suit as defined in the said Act.
- [33] Counsel for the Applicant relied on the Authority of *Houareau and Anor V Karunakaran (SCA 3 of 2017)* which held that the person seeking to intervene, according to section 117 should satisfy that he/she/it is interested in the event of the pending suit in order to maintain his/her/its rights. The right should be an existing, personal right of the intervenor which is likely to be affected if intervention is not granted. The case *Marie-Ange Houareau (Supra)*, the Court relied on the case of *Big Country Ranch Corporation V/s Court of Appeals 227 SCRA161* where it was held that in allowing or disallowing a motion to intervene, it is the function of the Court to also consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in separate proceedings.

- [34] Hence counsel for the Applicant submitted to the Court by basing his submissions on the above authorities that the intended intervener's application is an attempt to cause undue delay that will prejudice the rights of liquidity technologies Ltd in an attempt to reorganize the affairs of the company.
- [35] Counsel also relied on the case of Shapiro V/s South African recording rights Association Limited (Galeta intervening) 2008 (4) SA 145, where it was held that an intervener in an insolvency application must show legal interest (i.e direct and substantial interest) and not just a financial interest in the outcome of the proceedings.
- [36] It is submitted by counsel for the Applicant that the intended intervener does not hold a substantial interest in the company as a creditor, is not a shareholder in the company and has averred indirect interest that he may have in the company and that the intervener has ulterior agenda rather than an attempt to maintain his rights but rather as averred in his Affidavit in support that the main motive of his intervention is to object to the scheme of arrangement being proposed and move this Honorable Court to wind up the Company.

The law

- [37] Section 117 of the Seychelles Code of Civil Procedure provides that ' every person interested in the event of a pending suit shall be entitled to be made a party thereto in order to maintain his rights, provided that his Application to intervene is made before all parties have closed their case.
- [38] It follows that if one is to intervene in a matter one has to have an interest in the pending suit and he has to do so in order to maintain his rights.
- [39] Section 2 of the Seychelles Code of Civil Procedure defines the word 'suit' as meaning civil proceeding commenced by plaint.
- [40] In the Case of Morin V/S Ministry of Social Affairs 2011 SLR 201, Gaswaga J. held that 'It is now clear that the proceedings herein which Air Seychelles wants to intervene were commenced by Petition and not by Plaint and as such cannot be referred to as a pending suit envisaged by section 117 of the Seychelles Code of Civil Procedure.'

- [41] Hence it is clear that section 117 of the Seychelles Code of Civil Procedure cannot be relied upon by the intended intervener in order to intervene in the matter since an Application under the IBC Act by way of Notice of Motion as it is in the present matter cannot be referred to as a pending suit in terms of Section 117 of the Seychelles Code of Civil Procedure.
- [42] Section 17 of the Courts Act provides that ‘in civil matters whenever the law and rules of procedure applicable to the Supreme Court are silent, the procedure, rules and practice of the High Court of justice in England shall be followed as far as practicable.
- [43] In the case of *Essack V/S Auto Clinic*, the petitioner commenced proceedings before the Court upon a commandment on the Respondent. One of the Directors of the company wanted to intervene in the proceedings since another director had signed a judgment by consent leading to the execution of the Judgment. The Court held in the instant matter that since the proceedings in the present matter was commenced by a commandment under the Immoveable property (Judicial sales) Act and hence section 117 does not Apply, as these proceedings do not constitute a ‘suit’. The Court further held that what is pertinent for the present purposes is that the intervener has an interest in the present proceedings. A sale of leasehold interest in the company would affect such interest. Hence it is equitable that he be allowed to intervene to protect his interest.
- [44] The case of *Teemooljee and co. Ltd V/s Whitwright 1965 SLR* which relied on the case of *Raffaut V Mauritius Insurance Co (1886) MR 108* where the Court held that according to the procedure obtaining in Mauritius, any person whose interest can be affected by the results of law proceedings between other parties in these proceedings or as held in the case *Essack (Supra)* is that the intervener has an interest in the present proceedings.
- [45] The Court held obiter in the case of *Teemooljee (Supra)* that ‘had I therefore been of opinion that section 122 of the Civil Procedure Code was not applicable in the proceedings for validation of a provisional seizure, I would have held that our procedural law was mute on the matter and accordingly invoking section 15 of the Courts Ordinance 1964, and basing myself on the above mentioned decision of the Supreme Court of Mauritius and applying the procedure and practice of that Court, I would have

allowed the Government to intervene in the present application for validation of provisional seizure.

Determination

- [46] Since the Intended intervener is relying on section 17 of the Courts Act and in essence the Courts inherent powers as a court of equity under section 5 and 6 of the Courts Act needless to say that the intended intervener has to show as decided in the case of Temooljee and Co Ltd V/S Whitwright 1965 SLR that his interest can be affected by the results of the law proceedings between other Parties or as held in the case Essack (Supra) is that the intervener has to show that he has an interest in the present proceedings.
- [47] In the case of Shapiro V/S South African Recording Rights Association LTD 2008 (4) SA 145 the Court held that an intervener in an insolvency Application must show legal interest (i.e direct and substantial interest and not just financial interest in the outcome of the proceedings.
- [48] In the case of In Re: Mercantile Bank Limited Case no. 2020/ 19971 a high court Judgment of South Africa, of which it concerned an Application of the intervening party who was the ex-wife of the Respondent seeking leave to intervene in the main sequestration Application. The Court held;
- ‘In the context, a direct and substantial interest ‘means a legal interest in the subject matter of the action which could prejudicially affected by the Judgment of the Court. A mere financial interest is only an indirect interest in such litigation and is insufficient.’
- [49] The Court further held that ‘the allegations made should directly and adversely involve and implicate the intervening party. A failure to give her an opportunity to rebut the obviously prejudicial allegations, which require proof on a balance of probabilities on return date, would mean that her property would remain at risk based on prima-facie conclusions reached by a Judge and which, in the absence of controverting evidence , would result in conclusive proof. In that sense she has a material interest in the subject

matter of the litigation and any Judgment that the Court hearing the main Application will be asked to give.

[50] The Court in the above mentioned case relied on the case of Maritz t/a Maritz and Kie Rekenmeester V/S Walters and others 2002 (1) SA 689 (c) of which the Court held the following;

‘In these circumstances I am of the opinion that it can hardly be said that the intervening Respondent does not have an interest in the present litigation where the expressly stated purpose is to have a trustee appointed so that he can set aside the transaction which the intervening Respondent seek to protect.’

[51] The intervener has averred in his Affidavit that Bitcoin.com is a major creditor of Coinflex and that Bitcoin.com now seek leave of the Court to intervene, objects to Coinflex proposed scheme of Arrangement as being wasteful of creditors assets and motion this Court to instead wind up Coinflex and distribute its remaining assets with creditors without further waste or delay.

[52] The deponent avers in paragraph 14 of his Affidavit that Bitcoin.com and myself are both Shareholders of Coinflex of which copy of purchase agreement is attached herewith.

[53] The Applicant on the other hand denies that the intervener is a shareholder and avers that the intervener is no longer a shareholder by virtue of an amended agreement entered with the Applicant of which the Applicant produced the said document attached to their Affidavit in rebuttal.

[54] The Applicant denies paragraph 36 of Affidavit R1 in his Affidavit and puts the intervener to strict proof thereof and avers instead that 5,505,730 FleX USD are not owned by the intervener but rather by its Director and sole shareholder, Mr. Roger Ver in his own personal name and furthermore that the intervener owns 0.5 percent of the total creditor claims and that flex tokens are issued by a different legal entity and therefore such interest are not direct interest to be maintained in these proceedings. The fact that

flex tokens are issued by a different legal entity is admitted at paragraph 37 of the Affidavit of the intervener.

[55] It is not in dispute that the parties are in a litigation process whereby they are parties to an arbitration proceedings in Hong Kong of which they are alleging breach of their respective contractual obligations of which Mr. Ver has filed a claim and the Applicant has filed a counter-claim and that the proposed scheme of arrangement is totally based on the outcome of the Arbitration proceedings in order for the creditors and shareholders of the Applicant to benefit on the result of the arbitration proceedings.

[56] I have meticulously considered the pleadings filed in the present matter as well as the submissions of both counsel for the Applicant and counsel for the intended intervener in the matter. In the light that the Applicant disputes that the intervener is a shareholder in the Applicant and relies on the amended shareholder's agreement and the fact that the Applicant avers that it is Roger Ver in his own personal name that owns the 5,505,730 Flex USD and not the intervener and that Flex USD is issued by a different legal entity that is controlled by the same people that controls Coinflex a fact which is admitted by the intervener in his Affidavit. Furthermore the intervener admits in his Affidavit at paragraph 61 of his Affidavit that the assets held in Quistclose trust are to be returned in full in the event of an insolvency of which at this juncture we are not at a stage of winding up.

[57] Hence as result of the above paragraph 56 of this ruling, this Court finds that in view that both parties are in a process of arbitration in Hong Kong in respect of their alleged respective contractual liabilities of which their claims are not yet been determined by arbitration in Hong Kong and hence has not reached finality, this Court finds that as result of the aforementioned facts and in the light of the above authorities as referred to above, this Court finds that the intended intervener has not proved prima-facie to this Court that he has an interest in the matter namely a direct and substantial interest which means a legal interest in the subject matter of the action which could prejudicially be affected by the Judgment of the Court.

- [58] This Court further holds that the intended intervener has a mere financial interest which is an indirect interest in such litigation and which is an insufficient ground for this court to allow the intended intervener to intervene in the matter. Hence this Court further holds that the intended intervener has no Locus standi to intervene in the present matter.
- [59] In the case of Mari-Ange Houareau and Ors V/S Karunakaran and Ors SCA 3 of 2017, Fernando JA stated;
- ‘I’m of the view that we have to be guided by section 117 of the Seychelles Code of Civil procedure in considering whether an intervention should be permitted or not is not a matter of right but may be permitted by the Court only when the statutory conditions set out in section 117, for the right to intervene is shown.’
- [60] The Court in the afore- mentioned case relied on the Authority of Big Country Ranch Corporation V/S Court of Appeals (227 SCAR 161 (1993) where it was held that;
- ‘ in allowing or disallowing a motion to intervene it is the function of the Court to also consider whether or not the intervention will unduly delay or prejudice the adjudication of rights of the original parties , and whether or not the interveners’ rights may be fully be protected in a separate proceedings.’
- [61] In the present case, the intended intervener has averred in his Affidavit that he is a major shareholder of Coinflex and that he now seeks to intervene, object to Coinflex proposed scheme of arrangement as being wasteful of creditors assets and motion this Court to instead wind up Coinflex and distribute its remaining assets to creditors without further waste of time or delay.
- [62] As a result of the above paragraph 60 of this ruling and in the light of the above authority cited, this Court finds that the intended intervener has clearly shown that he has an ulterior motive and that the main purpose of his intervention is instead to motion this Court for winding up which is a remedy not available for the intended intervener under section 208 of the IBC Act and as such to cause undue delay or prejudice to the adjudication of rights of the original parties in view that they have a pending dispute in arbitration in Hong Kong.

[63] Furthermore this Court holds that the intended intervener's rights may be fully protected in pursuing the arbitration proceedings in Hong Kong and thereafter asking for enforcement of such arbitral award in Seychelles or by Petitioning the Court to wind up the Applicant in separate proceedings.

[64] The intended intervener has not disclosed the amended shareholders agreement to the Court of which the said document is material for the Court to make a finding. Since the intended intervener is invoking this Court's inherent powers as a Court of equity under section 17, section 5 and section 6 of the Courts act in order to intervene in the matter, it is a cardinal principle of the law of equity that those who come to equity should come with clean hands. There should not be any legal remedy available to the Applicant who seeks an equitable remedy (vide: Roman Catholic Mission V Macgaw (1980) SLR56, Lesperance V Intour (2001) SLR 28, Barbe V Belize (2004) SLR 39.

[65] This Court holds that in view that the intended intervener has not disclosed the amended Shareholder's agreement which is material for this Court to make a finding, this Court finds that the intended intervener has not come with clean hands before the Court in seeking such an equitable remedy by asking the Court leave to intervene in the matter.

[66] Lastly this Court holds that there are other legal remedies available to the intended intervener namely the arbitration proceedings which the intended intervener is already pursuing in Hong Kong or the intended intervener may Petition the Court to wind up the Applicant if so advised albeit in separate legal proceedings.

[67] This Court would cite the law relating to scheme of arrangement under the IBC Act;

Section 208 (4) of the same Act provides that 'the Court upon Application made to it under subsection (3), make an interim or final order that is not subject to an Appeal unless a question of law is involved and in which case notice of Appeal shall be given within 21 days immediately following the date of the order, and in making of the order the Court may-

(a) determine what notice, if any, of the proposed arrangement is to be given to any person;

- (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining approval;
- (c) determine whether any holders of shares or debt obligations or other securities in the company may dissent from the proposed arrangement and receive fair value of his shares, debt obligations or other securities under section 210
- (d) conduct a hearing and permit any interested person to appear; and
- (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

[68] Section 208(5) of the IBC Act provides that where the Court makes an order approving the plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the Court whether or not the Court has directed any amendments thereto.

[69] Section 208(6) of the IBC Act provides that ‘the Directors of the company, upon confirming the plan of arrangement shall-

- a) give notice to the persons to whom the Order of the Court requires notice to be given and
- b) submit the plan of Approval to these person for such approval, if any, as the Order of the Court requires.

[70] Section 208(7) of the IBC Act provides that ‘after the plan of arrangement has been approved by these person by whom the Order of the Court may require Approval, articles of arrangement shall be executed by the company and shall contain-

- (a) The plan of arrangement
- (b) The Order of the Court approving the plan of arrangement: and

- (c) The manner in which the plan of arrangement was approved, if approval was required by the Order of the Court

[71] This Court shall for the sake of Completeness also cite the pertinent part of the ruling concerning the interim Order granted by this Court in the matter delivered by Esparon J;

Based on the above, this Court shall make the following Orders;

- i) I accordingly grant an interim Order approving the proposed arrangement subject to the final Order of the Court which shall lapse after a period of 30 days from the date of the Order of this Court or unless extended by this Court or upon final Order of this Court after an Application to this Court has been made before the said Order lapses.
- ii) That after the Court has made the interim Order, the directors of the Company shall confirm the plan of arrangement as approved by the Court in its interim Order subject to a final Order of this Court of which such confirmation should be furnished to the Court upon Application for a final Order to the Court.
- iii) That after the directors have confirmed the plan of arrangement, I Order that the Applicant shall give notice of the proposed plan of arrangement to all its creditors and to all its shareholders along with a copy of the said Interim order made by this Court.
- iv) That the Approval of the proposed arrangement should be obtained from all the creditors of the Company in the form of a letter of approval and from all its shareholders in a shareholders' resolution of which a complete list of shareholders of the company and its creditors and their approval in such a manner should be furnished to the Court upon the application to the Court seeking a final Order of Approval of the proposed arrangement.
- v) All the shareholders and creditors may dissent from the proposed arrangement and receive payment of the fair value of their respective shares, debts obligations or other securities under section 210 of the International Business Companies Act.

[72] This Court after considering the above-mentioned sections of the IBC Act and the Orders made as interim order in the above matter of which this court states the following in obiter;

This Court is of the view that the above sections of the IBC Act and Orders made as interim order in the matter by this Court offers adequate protection to the intended intervener since the Applicant has to seek approval from all creditors and shareholders and the Court has also decided on the manner in which the Applicant has to seek such approval. Secondly all shareholders and creditors may dissent from the proposed arrangement and receive payment of the fair value of their respective shares, debt obligations or other securities under section 210 of the International business companies Act.

In the event that the intended intervener is successful in the pursuance of its arbitration proceedings in Hon Kong, such proceedings under section 208 of the IBC Act in the manner already dealt with by the Court in its interim Order will cause no prejudice to the intended intervener in this Court not granting leave to the intended intervener to intervene.

[73] In any case I highlight section 208(4) (d) of the IBC Act whereby the court may conduct a hearing and permit any interested person to appear in these proceedings.

[74] As a result of the above, this Court makes the following Order;

- i) I accordingly decline to grant leave to the intended intervener to intervene in the present matter and hence I dismiss the Application of the intended intervener with Cost.

Signed, dated and delivered at Ile du Port on the 15th November 2022.

Esparon J