

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 718

XP220/2022

Ex-Parte: TECHNOLOGIES LIMITED

Applicant

(Represented by Mr. Rene Durup and Mr. Govinden)

Neutral Citation: *Ex-Parte: Technologies Limited* (XP220/2022) [2022] SCSC 718

17 August 2022

Before: Judge Esparon

Summary: Application for seeking an Order from the Court to approve the proposed arrangement.

Heard: 12 August 2022

Delivered: 17 August 2022

ORDER

Application under Section 208 of the International Business Companies Act whereby the Applicant is seeking an Order from this Court for the Court to approve the proposed arrangement- Interim order is granted subject to a final Order in accordance to section 208(4) of the same Act.

RULING

ESPARON J

- [1] This is an Application under section 208 of the International Business Companies Act whereby the Applicant is seeking an order from this Court for the Court to approve the proposed arrangement as per the plan of arrangement herewith attached to the application.
- [2] The Application is supported by the Affidavit of Sudhaman Thirumugam Arumugam who alleges in his Affidavit that he is duly authorized to swear this Affidavit on behalf of Liquidity Technologies LTD.
- [3] The deponent alleges in paragraph 4 of his Affidavit that I believe that the relief sought in the Application is necessary to enable the company to operate with

minimal disruption to its business operation and constitute a critical element in successfully implementing a rescue strategy.

[4] The deponent avers in paragraphs 6 and 8 of his Affidavit that the Applicant is an International Business company incorporated in Seychelles with IBC company number 208853 and its registered Agent being AAA International Services Ltd, House of Frances , Room 303, Ile du port and that the sole director is Mark David Lamb.

[5] The Deponent has averred in paragraph 10 and 11 of the Affidavit that the company operates Coinflex which is a crypto exchange and that the Director has determined that it is in the best interest of the company to prepare a plan of arrangement containing details of the proposed arrangement in the form of a term sheet attached as annex which I hereby reproduce in this ruling below;

High Level Term Sheet — Creditors (20 July 2022)

Background	<p>A large individual customer (Roger Ver) had a written manual margin arrangement with Liquidity Technologies Ltd ("CoinFLEX"). Unlike normal users who are automatically liquidated when their margin ratio goes below our minimum requirements, users on manual margin have a grace period to send more collateral in support of their positions prior to it being liquidated. The customer's privilege came with a requirement that the customer personally indemnifies us for shortfalls in his account following the liquidation of his positions.</p> <p>Unfortunately, this customer failed to honour his obligations pursuant to this written agreement. This issue has resulted in a hole in the balance sheet resulting in the inability for CoinFLEX to meet the withdrawal requests of its clients and to pay liabilities to other creditors. This mismatch is solely as a result of this single liability owed by Roger Ver.</p> <p>We have commenced arbitration in Hong Kong International Arbitration Centre (HKIAC) for the recovery of this \$84m as the individual had a legal obligation under a written agreement to pay and has refused to do so. His liability to pay is a personal liability which means the individual is personally liable to pay the total amount.</p> <p>The arbitration process is not a quick process and we estimate that it will take approximately 12 months prior to getting a judgement in Hong Kong. Thereafter, we will be able to enforce that judgement against Mr. Ver's worldwide assets.</p>
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Reorganisation Application	<p>CoinFLEX is seeking to apply for a Company Reorganisation pursuant to the International Business Act 20016 (IBC) that allows it to reorganise its business, property and affairs in a way that provides the opportunity for the company to continue.</p> <p>During this process, creditors will be barred from enforcing any claims/judgements against the Company.</p>
Reorganisation Terms	
Board Change	<p>Three additional individuals, representing the following creditor groups, be appointed to the board of CoinFLEX Seychelles :</p> <ol style="list-style-type: none"> a. Users of funds on the Platform; b. FLEXUSD holders; and c. SmartBCH
"Haircut" to	Need to determine what amount of "haircut" will be applied to

Creditor Balances	<p>creditor balances.</p> <p>All creditors will be treated equally (Clients, FlexUSD, SmartBCH and Creditors).</p> <p>In order to determine the "haircut", the Platform will need to mandatorily "dollarise" all existing crypto positions of all clients on the platform e.g. if a client has a BTC long position then that position will need to be sold so that the client has the equivalent value in USD.</p>
Consideration in Lieu of any "Haircut"	<p>Creditors will be receiving the following assets in lieu of the haircut applied to their balances:</p> <ol style="list-style-type: none"> 1. Pro-rata rights to sums recovered from Roger Ver (Recovery Value Tokens); and 2. Pro-rata rights to equity in CoinFlex.
Recovery Value Tokens	<p>CoinFLEX will establish a separate ring fenced SPV entity which will be assigned the rights to the Claim against Roger Ver for the \$84m debt</p> <p>Such SPV will then issue tokens (rvUSD) to each creditor pro-rata to the amount of their individual "haircut".</p> <p>rvUSD holders will be able to redeem their tokens on the Platform upon successful recovery of liquid assets from Roger Ver.</p>

Pro-Rata Rights to Equity in CoinFLEX	<p>Creditors will receive equity rights in CoinFLEX pro-rata to the amount of their individual "haircut".</p> <p>It is still to be decided as to what equity the existing shareholders will retain following this re-organisation. Existing shareholders will not be eligible for any recovered funds from the RV arbitration.</p> <p>An Employee Option Pool will be created which will be earned out over 3 years.</p> <p>It is expected that large creditors will become shareholders directly on the cap table while the smaller account holders (i.e. less than \$[5m]) will hold their equity rights via interests in a trust entity.</p>
FLEX Coins	<p>CoinFLEX currently holds approximately 25m in FLEX Coin - the native token issued by the Platform.</p> <p>An amount of this will be distributed to Creditors pro-rata to the</p>

	amount of their individual "haircut",
Amendment of Corporate Documents	The Corporate Documents of Liquidity Technologies Ltd (Seychelles) as well as its current wholly owned parent entity Liquidity Technologies Holding Ltd (Cayman Islands) will need to be modified.
Approval of "ReOrganisation"	<p>Under the IBC, the proposed plan will need to be approved by 75% in value of the creditors at a meeting of creditors.</p> <p>Once this approval is obtained, CoinFLEX can apply to the courts for final approval and affirmation to come out of this "Administration".</p>
Other Solutions	The company may also pursue financing or acquisition paths during this restructuring

[6] The Applicant has also attached the Directors resolution approving the plan marked as Annex G.

THE LAW

[7] Section 208 (2) of the International Business Companies Act provides that 'If the directors of a company determine that it is in the best interest of the Company or creditors or members thereof, the directors of the company may approve a plan of arrangement under this subsection that contains the details of the proposed arrangement, notwithstanding that the proposed arrangement may be authorized or permitted by any other provision of this Act or otherwise permitted.

- [8] Section 208(3) of the IBC Act provides that upon approval of the plan of arrangement by the directors, the company shall make application to the court for approval of the proposed arrangement.'
- [9] 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.
- [10] 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.
- [11] 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.

[12] 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

[13] At the hearing of the matter Counsel for the Applicant instead of moving the Court for a final order, moved the Court for an interim order for the Court to approve the Plan of arrangement.

DETERMINATION

[14] Ex- facie the pleadings, the Affidavit and the documents attached to the Affidavit this Court is satisfied that an interim Order should be made approving the proposed arrangement subject to the final order of the Court for the reasons mentioned in the proposed plan of arrangement reproduced at paragraph 5 of this ruling and the document containing the written resolution of the Director of the said company dated the 20th July 2022.

[15] The said reasons given is that since a large individual customer (Roger Ver) had failed to meet its financial obligations to the said company and in essence resulted in a hole in the balance sheet of the company resulting in the inability for Coinflex to meet the withdrawal requests of its clients and to pay liabilities to other creditors and as such the said company has commenced arbitration procedures in Hong Kong against

Roger Ver to recover the amount owed as per its obligation in the amount of 84 million USD.

[16] The Plan of arrangement will allow the following creditor groups to be appointed to the board of CoinFlex namely users of funds on the platform, FLEUXUSD holders and SmartBCB in order to allow them to benefit from the proceeds of the recovery of the amount owed by Roger Ver of which the details are as laid out in the plan of arrangement hereby reproduced at paragraph 5 of this Ruling.

[17] 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.

Signed, dated and delivered at Ile du Port on 17th August 2022.

D. Esparon

Judge of the Supreme Court