BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. BVIHCV2005/0111

IN THE MATTER OF SAT STAR DISTRIBUTION LIMITED

And

IN THE MATTER OF THE INTERNATIONAL BUSINESS COMPANIES ACT, CAP. 291

And

IN THE MATTER OF THE INSOLVENCY ACT, 2003

BETWEEN

IMRAN SAEED CHAUDHRY
(in his own name and on behalf of the Shareholders of the First Defendant with the exception of the Second Defendant)

Applicant

And

SAT STAR DISTRIBUTIONS LIMITED

Respondent

Appearances:

Mr. Samuel Jackson Husbands and Ms. Julie Engwirda for the Applicant, Imran Saeed Chaudhry
Mrs. Tana'ania Small-Davis for Salman Saeed Chaudhry
Sat Star Distributions Limited ("the Company") not represented.

2005: October 27, 2006: January 20
2006: January 24

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** The key issue in this application is whether or not it is just and equitable for a liquidator to be appointed over Sat Star Distribution Company, ("the Company") pursuant to section 162 (1) (b) of the Insolvency Act 2003.

Background facts

The Company

[2] Sat Star Distribution Company ("the Company") is a Company owned by the Chaudhry family. It was incorporated under the laws of the British Virgin Islands on 31 July 2002 as an International Business Company. The Company has an authorized share capital of $50,000 divided into 50,000 shares of $1 each. Imran Saeed Chaudhry ("Imran") and his younger brother, Salman Saeed Chaudhry ("Salman") each own 42.5% of the shares, their father, Mohammed Saeed Chaudhry ("Mr. Chaudhry") owns 10% of the shares and their sister, Nabeela Amjad owns the remaining 5%. Mr. Chaudhry is the chairman and a director of the Company. His three children are also directors.

[3] The history of the Company needs recounting. It started in 1992 in the United Arab Emirates ("UAE") to provide sales and service of satellite TV equipment, consumer electronics and related communication products. The initial corporate vehicle for the Company was Distar Distributions Limited, which was incorporated in Cyprus. The domicile and name of the Company was changed in 2002 when it moved to this Territory.

[4] Over the years a number of service companies have been utilized to conduct the business but at all times, all assets have been held by the Company and all expenses, including maintenance of the service companies have been paid by the Company.

The Operating Agreement

[5] On 27 June 1992, Imran and Salman agreed to establish a business partnership. It was reduced into a written document called the Operating Agreement. They signed the Agreement on 27 July 1992 at the commencement of the business. Clause 4 of the Agreement states " no profits will be drawn by either party at any stage without prior mutual consent of the two of them."

[6] Clause 8 provides for Imran to have equal right and authority in the management of the companies although Salman will be responsible for conducting their day- to-day affairs. All investments above US$100,000 had to be undertaken with their mutual consultation.

Subsequent events

[7] Prior to 2001 and in pursuant to the Operating Agreement, the business partnership and associated companies were managed jointly by Salman and Imran. Unhappy differences between these two brothers began to surface and their relationship gradually deteriorated. It became more apparent when Salman refused and/or failed to demit office even after he had tendered a letter of resignation. Imran says that in 2001, the shareholders decided that the management of the Company would be on a three-year rotational basis. Salman denied being a party to any such agreement. Imran says that as a result of that decision, Salman took over the management of the Company in 2001 to terminate at the end of the financial year on 30 September 2004. On 23 August 2003, Salman gave notice in writing of his intention to resign from management effective 30 September 2004. The Chairman accepted his resignation. On 5 August 2004, the Chairman issued a letter rejecting Salman's resignation. At the end of August 2004, Salman agreed to continue the management of the Company and has remained in that position.

[8] On 1 December 2004, the Directors including Mr. Mohammed Chaudhry requested in writing that Salman hand over control of the Company to Imran.[1] Salman has failed and/or refused to abide by the request of the Directors of the Company.

[9] By this time, it appeared to the Directors that Salman may have misappropriated or dissipated the Company's assets. The Directors and Shareholders of the Company (Salman excluded), retained the services of KPMG to conduct a detailed audit of the Company and the dealings with its assets.[2]

[10] On 7 January 2005, the Directors of the Company and other family members signed a declaration setting out the results of their personal investigations into the actions of Salman.[3] On 9 January 2005, Imran, by his legal advisor in Dubai, Galadari & Associates

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[1] See Page 20 of exhibits attached to Imran Saeed Chaudhry's first affidavit of 2 May 2005.
[2] See Copy of Report from KPMG at page 23.
[3] See page 51 of the Exhibits attached to Imran Saeed Chaudhry's first affidavit.

sent a demand to Salman requiring him to return the assets illegally removed and to compensate the Company for any damages and loss suffered as a result of his actions.[4]

[11] In February 2005, Imran with the authority of Nabeela and Mr. Chaudhry, retained forensic accountants KPMG to conduct an investigation into the affairs of the Company. KPMG produced a Report on 21 February 2005 [the "Imran Report"] which supported the suspicions that Salman has misappropriated the assets of the Company effectively leaving the Company a shell.

[12] There is no doubt that the Imran Report was prepared against the backdrop of limited documentation. This is evident from the Report itself. At page 21, the Reporter states (at 7.1):

> "In undertaking the above work, we have relied on the information and copy documentation provided to us by Mr. Imran and other members of his staff. For the avoidance of doubt, we have not audited or otherwise verified that information."

[13] It is a fact that the Imran Report made very pejorative "findings" of impropriety and financial wrongdoings against Salman. It estimated that the identifiable loss and damage to the Company was US$4.9 million. However, in my judgment, the Imran Report appears to be deficient and hence, unreliable because the Reporter admits: "upon commencement of our fieldwork it became apparent that we would not be able to carry out the work in its entirety due to lack of available documentation at the offices of Star Vision and Sat Star."[5]

[14] Salman did not accept the findings in the Imran Report. So, he commissioned his own Report utilizing the services of an expert who has been approved by the UAE courts [the "Salman Report"]. This Report reveals detailed examination of the Company's accounts and records included the audited accounts by AGN Mac (Chartered Accountants). The Salman Report concludes that "there has not been any wrongdoing by Salman and that the companies were a family business and were being run as one from a practical

[4] See Copy of demand –page 21 of the exhibits.
[5] See page 2 of the Report.

perspective; that the transfers between companies had long precedence and that no damage has been inflicted upon any of the companies."

[15] During the last week of February 2005, Imran lodged a criminal complaint against Salman to the Prosecuting Authorities in Dubai. As a result, the Prosecuting Authorities of the Rulers Court, Government of Dubai opened an investigation into Salman's handling of the Company's affairs. The Prosecuting Authorities engaged a Court-Approved Accounting Expert, Mr. Ashn Abdul Hameed Ahmad. The expert was appointed by the H.H. Ruler's Court on 14 June 2005 **"to find out whether Salman Chaudhry had embezzled or devastated the Company's properties and assets or not and the way he did that, to report on such amounts and the accounting policies of the company and the in specie transfers made and the impact they had on the partners' positions."** (Emphasis added).

[16] After conducting approximately ten meetings with Imran and/or his representative and Salman and/or his representative and having reviewed numerous documents, the Court-Appointed Expert concluded as follows:

> "In the light of the foregoing, I find that the Respondent [Salman Saeed Chaudhry] has neither embezzled nor devastated any of Sat Star's funds and assets and that he had done nothing to impact upon the partners' standing or rights."

[17] The Court-Appointed Expert's findings and opinion is the same as the court-approved expert's Report commissioned by Salman and is in stark contrast with the KPMG's findings and opinion.

[18] The Chief Prosecutor gave Imran until September 2005 to submit any new evidence or comments to refute the Report. Salman says that Imran has offered no new evidence against him to support his allegations of financial impropriety and misfeasance and as a consequence, he considers that he has been completely vindicated. Imran does not think so. He says that he has appealed the police proceedings in Dubai which should have been heard on 17 December 2005. The outcome of the appeal has not been communicated to this Court.

[19] In the midst of these investigations, Salman, now enjoying his father's support, and by a majority, passed two resolutions on 2 April 2005 removing Imran as a director and stripping him of all his management powers.

[20] As the rancor between these two brothers continues, a once happy and intimate family is estranged with the aging Mr. Chaudhry, now supporting Salman and Nabeela supporting Imran. Their mother unequivocally refused to become involved in this power struggle.

The application to appoint liquidator

[21] On 4 July 2005, Imran launched the present application to appoint a liquidator on the just and equitable ground. Two weeks later, Salman also filed an application to appoint a liquidator. His application seems to oppose Imran's application and seeks a dismissal of it on the basis that Imran cannot justify his application for winding up on the just and equitable ground.

[22] On the day of the hearing on 27 October 2005, Salman withdrew his application but maintained his opposition to the appointment of a liquidator over the Company. Prior to the hearing, Salman had made what appears to be some concerted efforts to buy out Imran's shares or alternatively, for Imran to buy out his shares. His efforts failed because Imran felt that the offer by Salman was a sham and /or an attempt to delay these proceedings. This was evident in the compendium of e-mail messages ("Exhibit JPE1") which accompany the application to adduce further evidence which was heard on 20 January 2006.

[23] Salman asserts that the Court should not appoint a liquidator over the Company which is solvent and functioning. Instead, an audit should be carried out. Nonetheless, should the Court determine that it is in the best interest that a liquidator be appointed over the Company, whether on his or Imran's application, he seeks the appointment of joint liquidators.

The basic legal principles

[24] I have before me a case of a classic shareholders' dispute. The key question is whether that is a dispute that makes it just and equitable for the Court to appoint a liquidator over a solvent and healthy company.

(a) The Statutory bases

[25] Section 162 (1) of the Insolvency Act 2003 ("the Act"), gives the Court a discretionary power to appoint a liquidator on a member's application. Section 167 sets out the extent of the Court's discretion. The Court on hearing an application may dismiss the application even if a ground upon which the Court could appoint a liquidator has been proved.[6] The Act expressly deals with the Court's powers on hearing a member's application. Section 167 (3) provides that the Court can only make an order appointing a liquidator if:

> a) "It is satisfied that the applicant is entitled to relief by the appointment of a liquidator or by some other means and
>
> b) In the absence of any other remedy it would be just and equitable to appoint a liquidator
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> unless it is also of the opinion that some other remedy is available to the applicant and that he is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy."

[26] It is axiomatic that the Court will only exercise its discretionary powers to wind up a company on the just and equitable ground only as a matter of last resort. The Court must be convinced that there is no other remedy or relief available to the applicant.

(b) The just and equitable ground

[27] Section 162 (1) (b) of the Insolvency Act 2003 states that the Court may appoint a liquidator of a company if the Court "is of the opinion that it is just and equitable that a liquidator should be appointed."

[6] Section 167(1) (b).

[28] There is no dispute that the principles enunciated in **Ebrahimi v Westbourne Galleries Ltd**[7] is the locus classicus of the acceptation of the term "just and equitable" in the jurisprudence of company winding up. Lord Wilberforce explained the rationale of the "just and equitable ground" for winding up a company at the suit of a minority shareholder. He said at page 379:

> "The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Company's Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, …entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."[8]

[29] The broad principle to emerge from **Re Westbourne Galleries** is that in certain types of private company, where the rights of the parties cannot be said to be exhaustively laid down in the articles, the courts will subject to equitable considerations the conduct of the members, even conduct carried out in strict reliance on a legal right and which is bona fide. Lord Wilberforce, while stressing that it would be "impossible and wholly undesirable" to define the circumstances which might give rise to such equitable considerations, nonetheless, went on to suggest that a company, subject to a petition, might display one or more of the following characteristics: (i) as association formed or continued on the basis of personal relationship, involving mutual confidence; (ii) an agreement or understanding that shareholders are to participate in the conduct of the business; (iii) a restriction on the transfer of shares.

[30] It appears that many of the earlier cases which involved successful petitions to wind up a company on the just and equitable ground can now be brought under the umbrella of the

[7] [1973] A.C. 360.
[8] See also the case of Choon v Tahansan Sdn. Bhd. (Privy Council Appeal No. 8 of 1985

Re Westbourne Galleries principle. This is certainly true of those cases where mutual confidence of members had been lost in companies which were essentially quasi-partnerships, resulting in management deadlock or arising from management exclusion,[9] or where confidence in management had been lost due to alleged lack of probity in the conduct of the company's affairs.[10]

The bases for the application

[31] Imran contends that it is just and equitable for a liquidator to be appointed over the Company on the grounds that (i) there has been misappropriation of the Company's assets; (ii) confidence in management has been lost due to lack of probity in the conduct of the Company's affairs (iii) there is management deadlock and (iv) his exclusion from management.

(i) Misappropriation of Company's assets

[32] Mr. Husbands appearing as Counsel for Imran Chaudhry submitted that Salman has without consideration and without authority of the directors or shareholders, transferred substantial funds and assets and equipment from the Company to himself, to his company Echo Technologies Limited (100% owned by Salman) and to Astrovox LCC ("Astrovox"). Astrovox is a family company in which Imran has only 4% shares.

[33] Salman has admitted that he made transfers but he says, not in the baseless manner as suggested by Imran. Salman says that the specious allegations raised by Imran are calculated to force him out of the management of the Company. Salman says that the actions which he took were consented to by the majority of the shareholders and it was always in the best interest of the Company. He says that he has never personally benefited from any action at the expense of the Company or any of its shareholders. In particular,

[9] Re Lundie Brothers Ltd [1965] 1 W.L.R. 1051.
[10] See Loch v John Blackwood [1924] A.C. 783; In the Matter of Fifth Avenue Capital Inc v Julian Lee et al (Claim No. BVIHCV2004/175)[unreported].

a) No money was transferred to the account of Echo Technologies Limited (a service company). He did not benefit from the transfer of cash to his personal bank account. All of it was used to pay off company loans owed to Standard Chartered Bank and Habib Bank A.G. Zurich and other liabilities.

b) The stock transferred to Echo Technologies Limited was done in transit and for temporary storage. As was the usual practice, the stock was accounted for within two to three weeks by either returns to the Company, selling on behalf of the Company and deposit of the proceeds in the Company's account or by further transfer to an affiliated service company owned, operated and employed by the Company to handle sale and distribution of its stock. Such transfers are routine and have been the practice of the Company since inception and Imran is fully aware.

c) No misappropriation took place. Any and all the stock movements were handled legitimately and there are documentary records to prove this.

[34] Mere suspicion that Salman misappropriated the Company's assets is not enough. There must be cogent evidence to prove that he did so. And how do we know whether or not he misappropriated the Company's assets? The answer is rather simple. It lies in the Reports. The "Imran Report" supported the suspicions that Salman has misappropriated the assets of the Company effectively leaving the Company a shell.

[35] The Salman Report tells another story. The Report concludes that "there has not been any wrongdoing by Salman and that the companies were a family business and were being run as one from a practical perspective; that the transfers between companies had long precedence and that no damage has been inflicted upon any of the companies."

[36] The Prosecuting Authorities Report [the "Independent Report"] concludes that "Salman Saeed Chaudhry has neither embezzled nor devastated any of Sat Star's funds and assets."

[37] As far as I am aware, there have been no further Reports since the Independent Report. Two of the three Reports say that Salman did nothing wrong to impact on the partners' standing rights. Therefore, the Court is forced to come to the ineluctable conclusion that Salman did not misappropriate the Company's assets.

(b) Deadlock in the Company

[38] It has been suggested by Mr. Husbands, Learned Counsel for Imran that the Company is in deadlock and cannot manage the business. Mrs. Small-Davis submitted that this is far from the truth as the Company has held both shareholders and directors meetings and resolutions have been passed by both for the proper management of the Company. In his third affidavit filed on 18 July 2005, Salman deposed that "the Board is still able to meet and make management decisions with regard to the Company's business. The most recent meeting was held on 5 July 2005." [11] I wish to interpolate that Imran had sought an injunction against Salman restraining him from dealing with the assets and business of the Company. At the core of that application were the resolutions that had been passed on 2 April 2005 removing Imran as director and manager of the Company. Salman conceded that the proper procedure had not been followed for that meeting at which the resolutions were passed thus rendering them invalid. Imran had been unsuccessful in obtaining an injunction against Salman in the terms that he sought. Instead, Rawlins J, [as he then was] noting a "power struggle" between the parties determined that it would be best to grant an injunction against both Imran and Salman from taking any management decisions in relation to the Company except with the consent or resolutions of the Board of Directors.

[39] By Shareholders resolution held on 24 May 2005, Imran was removed as a director and manager and his power of attorney revoked. The resolution was validly passed in accordance with the Company's articles of association and it appears that its validity cannot be impugned. The directors and shareholders held meetings on 5 and 9 July 2005 respectively to consider the terms of the Court's Order. Simultaneously, resolutions were passed to ratify the 24 May 2005 resolutions and to make decisions on the way forward.

[11] See paragraphs 10 and 11 of Salman Chaudhry's third affidavit. A copy of the minutes is also exhibited as "SSC22".

Thus in accordance with the mandate of Rawlins J's Order of 27 June 2005, management decisions have been successfully made by and with the consent of the Board of Directors.

[40] It is well-established that a Court will wind up a Company if there is management deadlock: **Re Yenidje Tobacco Co. Ltd.**[12] On the facts of the case, there appears to be no management deadlock as resolutions continue to be passed. The Company continues to carry out its business as a fully functional, solvent and robust Company.

(c) Loss of confidence in the management of the Company

[41] It has long been recognized as a ground for making a winding up order that the applicant can demonstrate that he has a "justifiable lack of confidence in the conduct and management of the company's affairs." The classic statement of this principle is to be found in **Loch v John Blackwood Ltd**[13].

> "It is undoubtedly true that at the foundation of applications for winding up on the 'just and equitable rule' there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, whenever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter and it is, under the statute, just and equitable that the company be wound up."

[42] In **Loch v Blackwood,** the controllers of the company had failed to hold general meetings, to submit accounts or to recommend a dividend. Instead the majority shareholder treated the business as if it was his own business and ran it down with a view to forcing the minority shareholder to sell out at an undervalue. The court ordered that the company be wound up.

[43] In **Fifth Avenue Capital Inc v Julian Lee et al** [14], this Court held that an important basis for winding up on the just and equitable ground is where the company in question is a

[12] [1916] 2 Ch. 426.
[13] [1924] AC 783.
[14] Claim No. BVIHCV2004/175 [unreported].

quasi-partnership (in the instant case, a business partnership) and the personal relationship between the parties had broken down irretrievably making continuation of the business impossible.

[44] There is no question that the personal relationship between these two brothers has broken down irretrievably making the continuation of any business between them impossible and as such, this is a good ground for the winding up of the Company.

(d) Removal from management

[45] On 2 April 2005, Salman attempted to remove Imran as director and manager of the Company. He has conceded that the proper procedure had not been followed for that meeting at which the resolutions were passed thus rendering them invalid. However, on 24 May 2005, by shareholders' resolution, Imran was removed as a director and manager. Mr. Husbands forcefully argued that the instant case is not dissimilar to the **Re Westbourne Galleries** case. In that case, the successful petitioner's understanding was that he would continue in the management position of the Company. His removal as a director constituted good cause for winding up. Similarly, it has been held that where the petitioner joined in a company on the understanding that he would be appointed a director, his non-appointment was one of the factors which justified the making of a winding up order.[15]

[46] Analyzing the evidence of the instant case, there appears to be some truth about the "three-year rotational basis" agreement alleged to have been made in 2001. While the court is unable to make positive findings of facts in the absence of cross--examination of deponents, when one looks at the evidence, there appears to be some sort of power struggle. At the heart of this dispute is Salman's retention of the management control of the Company even after he resigned. Had he stepped down, Imran would have been at the helm of the Company and there would have been no "power struggle."

[15] Re Zinotty Properties Ltd [1984] 3 All E.R. 754.

[47] Now, benefiting from his father's support, (a father who has vacillated time and again in favour of one son over the other) Salman set about at the right time to remove Imran from office. In my respectful view, such removal constituted good cause for winding up of the Company.[16]

Alternative remedies:

[48] Before 1 January 2006, the only remedy that was available to a minority shareholder in this Territory appeared to be for the Court to appoint a liquidator over the Company since there was no statutory equivalent to section 459 of the Companies Act 1985 [U.K.]. On 1 January 2006, the BVI Business Companies (Amendment) Act, No. 26 of 2005 came into operation subject to the transitional provisions. Section 184 I of the Act states as follows:

> "(1) A member of a company who considers that the affairs of the company have been, are being or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, likely to be oppressive, unfairly discriminatory, or unfairly prejudicial to him in that capacity, may apply to the Court for an order under this section."
>
> (2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit, including, without limiting the generality of this subsection, one or more of the following orders:
>
> a) in the case of a shareholder, requiring the company or any other person to acquire the shareholder's shares;
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> b) requiring the company or any other person to pay compensation to the member;
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> c) regulating the future conduct of the company's affairs;
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> d) amending the memorandum or articles of the company;
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> e) appointing a receiver of the company;
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> f) appointing a liquidator of the company under section 159(1) of the Insolvency Act on the grounds specified in section 162(1)(b) of that Act;
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> g) directing the rectification of the records of the company;

[16] See O'Neill and another v Phillips and others, Re a Company (No. 00709 of 1992).

h) setting aside any decision made or action taken by the company or its directors in breach of this Act or the memorandum or articles of the company."

[49] This recent amendment to the Business Companies Act has radically reformed the state of the law. The Court now has wider powers on an application under the "prejudiced members" provision as the Act makes provision for other remedies other than the draconian order of the appointment of a liquidator. While this Company is not yet registered under the amended Companies Act, Salman, by his Counsel, has undertaken to take steps to have the Company re-register under the New Act. This will enable the Court to grant the remedies available under section 184 I.

Conclusion

[50] This unhappy case should not have reached the Court if good sense, sound judgment and brotherly love had prevailed. This Company is a family business and any internal strife should have been resolved internally. The Company is solvent and healthy. Its last audited report shows gross sales of almost US$22 million.[17] The Court will be very loath to appoint liquidator over a solvent company. In a vast majority of cases, applications to appoint liquidators are brought in respect of insolvent or prospectively insolvent companies, to protect the company's assets and preserve them for the benefit of its members or creditors. Such appointment of a liquidator is protective rather than destructive. To appoint a liquidator over a solvent and robust company is tantamount to killing the goose that is laying the golden egg. In the exercise of my discretionary powers to appoint a liquidator over the Company, I should do so judicially and judiciously; not whimsically or capriciously. In doing so, I will make the following order.

Order

[51] Pursuant to the undertaking by Salman to have the Company re-registered under the Business Companies Act as soon as possible, it is hereby ordered as follows:

1. By 28 February 2006, Imran Saeed Chaudhry and Salman Saeed Chaudhry ("the parties") with the assistance of their respective Counsel in the BVI and United Arab

[17] Third affidavit of Mohammed Saeed Chaudhry, paragraph 3.

Emirates shall jointly appoint a reputable auditor or firm of auditors (the "Independent Auditors") to conduct a valuation of the Company as at (a) 30 September 2005 and (b) an interim audit as at 31 December 2005. The Independent Auditors shall be neutral, and neither KPMG nor MAK & Associates shall be selected to serve as Independent Auditors. If the parties cannot agree on the Independent Auditors by 28 February 2006, the matter shall be referred to the United Arab Emirates State Audit Institution and that institution shall select a firm of Independent Auditors and whose selection shall be binding.

2. The fees and costs of the Independent Auditors shall be paid by the Company.

3. The Independent Auditors shall submit their written report to each party and the Chairman of the Company as soon as possible but not later than ninety (90) days from the date of such firm's appointment.

4. Upon issuance of the Report of the Independent Auditors, a maximum period of ninety (90) days shall ensue during which the parties shall negotiate in good faith towards achieving one of the following:
    i. Salman will offer to purchase all of Imran's interest in the Company.
    ii. Imran will offer to purchase all of Salman's interest in the Company.
    iii. Imran and/or Salman will sell all of their respective interests in the Company to a third party.

   Provided that the party offering to purchase must also offer to purchase the shares of the other shareholders on no less favourable terms.

5. If the parties fail to reach an agreement pursuant to paragraph 4 of this Order, Mr. Andrew Bickerton, a licensed insolvency practitioner of BDO, British Virgin Islands and Mr. E.M. Menon Rajagopalan, a licensed insolvency practitioner in the United Arab Emirates be appointed as joint liquidators of the Company ("the Liquidators") pursuant to sections 159(1) and 162 of the Insolvency Act, 2003.

6. That the Liquidators shall without prejudice to section 186 (1) of the Insolvency Act 2003 have all the powers contained in Schedule 2 of the Insolvency Act 2003.

7. That the Liquidators shall be at liberty to employ such agents including solicitors in the British Virgin Islands and elsewhere to assist them with their duties as Liquidators at such hourly rates as may be agreed from time to time by them and such agents.

8. That the Liquidators shall be at liberty to charge for their services and also the services of their employees in accordance with the provisions of the Insolvency Act 2003.

9. That the Liquidators shall provide to the Court every two months reports on the progress of the liquidation of the Company.

10. That each party will bear his own Costs in this application.

Postcript

[52] There is one further observation that I feel impelled to make. I would hope that the bitterness of the conflict which still endures between Imran and Salman will be speedily forgotten; so that the lives of their aging parents, if no-one else, could return to a state of normalcy. It is hoped that these two brothers will put all differences aside and proceed with an audit of the Company and the eventual buy-out option. The appointment of joint liquidators; if undertaken, would be a pricey and an embarrassing exercise for this respectable and affluent family.

[53] Last but not least, I am indebted to Mr. Husbands as well as Ms. Julie Engwirda and Mrs. Small-Davis for their immeasurable assistance to this Court.

Indra Hariprashad-Charles

High Court Judge