

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2011-404-001315

UNDER the Insolvency (Cross-Border) Act 2006

IN THE MATTER OF recognition of an Order dated 15 February
2011 of the Seoul Central District Court as
a foreign main proceeding

BETWEEN JIN BANG LEE AND BYUNG NAM
CHOI
Applicants

AND KOREA LINE CORPORATION
Respondent

Hearing: on papers

Counsel: O Collette-Moxon/N Beadle for applicants and respondent

Judgment: 14 March 2011 on 14 March 2011 at 5:00pm

JUDGMENT OF ASSOCIATE JUDGE ABBOTT

*This judgment was delivered by me on 14 March 2011 at 5:00pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Solicitors:
DLA Phillips Fox, PO Box 160, Auckland 1140 for applicants and respondent

[1] The applicants are the joint receivers of the respondent, Korea Line Corporation (the debtor). They have applied by originating application without notice, for orders under the Insolvency (Cross Border) Act 2006.

[2] The debtor is incorporated in Korea, which is the centre of its main interests. It is engaged in the business of marine shipping, and transportation and various related activities. It has encountered financial difficulties, which resulted in it applying to the Seoul Central District Court for rehabilitation in Korea under that country's Debtor Rehabilitation & Bankruptcy Act (the Korean proceeding). The Seoul Central District Court, Fourth Bankruptcy Division (the Bankruptcy Court), has between 26 January 2011 and 15 February 2011 issued three decisions in that proceeding. In the last of them, the applicants were appointed to act as joint receivers in the proceeding, with power to conduct all of the company's business and manage all of its property, subject to the Bankruptcy Court's supervision.

[3] The applicants apply under Article 9, Schedule 1 of the Insolvency (Cross Border) Act 2006 (the Act) for orders that:

- (a) the application proceed without formal service on the debtor or a New Zealand agent or representative of the debtor;
- (b) the Korean proceeding be recognised as a foreign proceeding (in terms of Article 17, Schedule 1 of the Act); and
- (c) the Korean proceeding be recognised as a foreign main proceeding (with the consequences set out in Article 20(1), Schedule 1 of the Act) subject to the applicants' right to continue to conduct the debtor's business under the supervision of the Bankruptcy Court; and
- (d) leave be reserved to creditors to apply to set aside or vary the orders sought.

[4] The applicants and the respondent are jointly represented by solicitors, DLA Phillips Fox. Although the application is expressed as one by the applicants, the respondent debtor also requests that the application proceed without any requirement for formal service on it.

[5] The application is supported by a notarised declaration of an attorney practising in bankruptcy and corporate restructuring in Korea, Tae Soo Jung. He has produced copies of the three decisions of the Bankruptcy Court, and notarised translations of those decisions. His evidence establishes that:

- (a) The applicants are foreign representatives in terms of Article 2(d) Schedule 1 of the Act (being persons authorised in the Korean proceeding to administer the reorganisation of the debtor's assets or affairs);
- (b) The Korean proceeding has been duly commenced, and the applicants have been duly appointed in that proceeding to administer the reorganisation of the debtor's assets or affairs;
- (c) The Korean proceeding is taking place in the Republic of Korea, where the debtor has its centre of main interest.

[6] The attorney, Mr Jung, has also stated the reasons for the debtor's rehabilitation filing and the consequences of the Korean proceeding under Korean law, and has identified all foreign proceedings relating to the debtor that are known to the applicants. He has commented on the significance of the New Zealand proceeding. The salient points of this evidence are:

- (a) The Bankruptcy Court made a stay order on 26 January 2011, pending commencement of the rehabilitation proceeding on 15 February 2011;
- (b) The effect of the commencement order issued by the Bankruptcy Court on 15 February 2011 is to grant the same relief which follows

automatically from recognition of the Korean proceeding as a “foreign main proceeding” under Article 2(1), Schedule 1 of the Act, namely:

- (i) commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations, or liabilities is stayed;
- (ii) execution against the debtor’s assets is stayed; and
- (iii) the right to transfer, encumber or otherwise dispose of any asset of the debtor is suspended;

although these effects are subject to the applicants’ right to conduct all of the debtor’s business and manage all of its property under supervision of the Bankruptcy Court;

- (c) There are currently no claims against the debtor in New Zealand, but both the applicants and the debtor wish to ensure that no proceedings are commenced against the debtor now that the Korean proceeding has commenced;
- (d) There are a number of disputes involving the debtor that are subject to arbitrations in London and the United States, and although none of the claimants is based in New Zealand it is conceivable that proceedings *in rem* could be issued in New Zealand if a vessel in which the respondent has a qualifying interest was to visit this jurisdiction (the likely purpose of such *in rem* action being to obtain security for claims in arbitration); and
- (e) Quite apart from the merits of a particular proceeding, under Korean Insolvency Law commencement of any new proceeding *in rem* against a ship, which is founded upon a rehabilitation claim or rehabilitation security right, is prohibited.

[7] The applicants have anticipated the possibility of creditor interest in the debtor in New Zealand, by seeking leave to be reserved to any creditor to set aside or vary the orders sought, within a limited time frame.

Decision

[8] I am satisfied on the evidence before the court that:

- (a) It is appropriate to dispense with formal service on the debtor given its consent to this application;
- (b) The applicants are foreign representatives in terms of Article 2(d), Schedule 1 of the Act, and are entitled to bring this application pursuant to Article 15(1), Schedule 1 of the Act;
- (c) The application is accompanied by a certified copy of the decision commencing the foreign proceeding and appointing the applicants as foreign representative (in terms of Article 15(2)(a)), and by a statement identifying all foreign proceedings in respect of the debtor known to the foreign representatives (in accordance with Article 15(3));
- (d) The interests of creditors are protected appropriately, having regard to Article 22(1), Schedule 1 of the Act by the leave reserved to apply to set aside or vary these orders within a limited period. There is no evidence that there could be any other interested persons.

[9] I make orders as sought, being:

- (a) The application may in all the circumstances proceed without service on the debtor or a New Zealand agent or representative of the debtor.

- (b) The proceeding in the Seoul Central District Court, Fourth Bankruptcy Division, Case 2011 Hoe-Hap 14 Rehabilitation is recognised as a foreign proceeding.
- (c) The Korean Proceeding is recognised as a foreign main proceeding such that:
 - (i) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities is stayed;
 - (ii) execution against the debtor's assets is stayed;
 - (iii) the right to transfer, encumber, or otherwise dispose of any assets of the debtor is suspended;

subject to the Applicants' right to conduct all of the debtor's business and manage all of its property under the supervision of the Seoul Central District Court.

- (d) Leave is reserved to any creditors to set aside or vary or modify or terminate the orders sought, provided that such application is made within three working days of the date of the sealed orders being served on the creditor.

Associate Judge Abbott