

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 63 OF 2018

CTRIP INVESTMENT HOLDING LTD

Petitioner

-and-

EHI CAR SERVICES LIMITED

Respondent

IN CHAMBERS

Appearances:

Mr Tom Lowe QC, Mr Nicholas Hoffman and Mr Conal Keane of Harneys on behalf of the Petitioner

Mr Stephen Atherton QC, Mr Jan Golaszewski, and Mr Denis Olarou of Carey Olsen on behalf of the Respondent (“the Company”)

Before: **The Hon. Justice Kawaley**

Heard: 30-31 May, 1 June 2018

**Draft Judgment
Circulated:** 25 June 2018

**Judgment
Delivered:** 29 June 2018



HEADNOTE

Application to strike-out just and equitable contributory winding-up petition - abuse of process - unsustainable allegations of misconduct alternative remedies - collateral purpose - merger agreement - attempt by petitioner to compel company to consider alternative merger bid

JUDGMENT

Introduction and Summary

1. “*The applications now before the Court arise from the cynical and abusive presentation of a winding-up petition on the just and equitable ground*” are the opening words of the ‘*Outline Submissions on Behalf of the Company*’. These words concisely explain why the Petition must be struck-out.

2. The Petitioner does not seek to wind-up the Company but merely seeks to obtain alternative relief under section 93(5) of the Companies Law (2018 Revision). The relief sought sheds important light on the motivations underlying the Petition. The Petitioner is a supporter of a rival merger bid made by the Ocean Link Consortium shortly before the Company consummated a Merger Agreement with a Consortium which included the Company’s Chairman. The Draft Amended Petition sought, *inter alia*, the following relief:
 - (a) declarations that Board Meetings held and Resolutions passed on April 6 and 10, 2018 are void;
 - (b) the appointment of a person by the Court to solicit the highest possible bids to take over the Company; and
 - (c) an injunction restraining the Board from issuing any further shares prior to the Extraordinary General Meeting at which the merger proposals will be considered (“EGM”).

3. These crucial averments made it clear that, far from seeking to advance a class remedy on behalf of other shareholders, the Petitioner was seeking to advance its own individual commercial interests. Counsel was forced to concede that the Petitioner was primarily concerned with maintaining its investment in the Company rather than being bought out. The attack on the validity of the Board’s decision to enter into the Merger Agreement was clearly hopeless. The Petitioner was not complaining of an arguable loss of trust and confidence in the management of the Company. It had more suitable potentially available alternative remedies than a just and equitable winding-up petition, albeit that a winding-up order was not actually sought. Those alternative remedies included:
 - (a) blocking approval of the Merger Agreement at the EGM; or (assuming it was outvoted); and
 - (b) statutory dissenting shareholder rights under section 238 of the Law.



Governing legal principles

4. Mr Lowe QC advanced the intellectually attractive argument that the just and equitable winding-up jurisdiction was broader (or at least more fluid) under Cayman Islands law because there was no minority shareholder oppression remedy. However, it was common ground that the precondition for the alternative statutory remedies under section 95(3) to a winding-up order becoming available was the establishment of grounds sufficient to justify a winding-up order. Section 95 provides:

“(3) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court shall have jurisdiction to make the following orders, as an alternative to a winding-up order, namely-

- (a) an order regulating the conduct of the company’s affairs in the future;*
 - (b) an order requiring the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;*
 - (c) an order authorising civil proceedings to be brought in the name and on behalf of the company by the petitioner on such terms as the Court may direct; or*
 - (d) an order providing for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, a reduction of the company’s capital accordingly.”*
5. I find that the core legal threshold that the infinitely various factual grounds must meet are accurately stated in *Loch-v-John Blackwood* [1974] AC 783 at 788. This test has been approved before by this Court when Mangatal J held that a just and equitable shareholder petition will be dismissed where the company did, “*not cross the forbidden line so as to constitute a visible departure from the standards of fair dealing and the conditions of fair play which a shareholder is entitled to expect*”: *Re The Washington Special Opportunity Fund*, FSD No. 151 of 2015, Judgment dated March 1, 2016 (at page 59).



Strike-out principles

6. Order 1 rule 2.2 of the Grand Court rules provides as follows:

“2.2 These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.”

7. Order 18 rule 19 provides:

“(1)The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that -

- (a) it discloses no reasonable cause of action or defence, as the case may be; or*
- (b) it is scandalous, frivolous or vexatious; or*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the court,*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

- (2) No evidence shall be admissible on an application under subparagraph (1) (a).*
- (3) This rule shall, so far as applicable, apply to an originating summons and petition as if the summons or petition, as the case may be, were a pleading.”*

8. I am guided by these two interrelated rules.

Essentially undisputed facts

9. The following narrative is substantially based on the helpful summary set out in the Company’s ‘Outline Submissions’. The Company’s headquarters are in Shanghai and its main business is renting cars in the People’s Republic of China (“PRC”). Its shares were listed on the New York Stock Exchange (“NYSE”) in 2014 and it currently has a market capitalisation of roughly US\$900 million. The Petitioner (“Ctrip”) is part of a leading PRC travel conglomerate which was, prior to the present dispute, an



important business partner of the Company. As at April 9, 2018, Ctrip (through its holding of approximately 4.3 million Class A Common Shares and 15.1 million Class B Common Shares) held a roughly 21.3% voting stake in the Company. Ctrip at all material times had a representative on the Company's Board of Directors.

10. On November 26, 2017, Goliath Advisors Limited ("Goliath") submitted a non-binding offer to the Company's Board to acquire the outstanding shares of the Company. The price was US\$6.675 for ordinary shares, and US\$13.35 for shares represented by American Depositary Shares ("ADSs"). On December 11, 2017, the Board approved the creation of a Special Committee to evaluate and negotiate privatization proposals. The Committee was comprised of three independent directors, Qian Miao, Jian Sun and Xuefeng Qian. The Committee retained its own financial advisors (Duff & Phelps) and attorneys Fenwick and West LLP (USA) and Maples and Calder (Cayman Islands).
11. Later that month, a consortium was formed including the Company's Chairman, MBPK Partners Fund IV, LP ("MBKP"), and Baring Private Equity Asia Limited ("Barings") (the "Consortium"). Goliath withdrew its bid. On January 1, 2018, the Consortium submitted a preliminary non-binding bid to acquire all the Company's outstanding shares for US\$ 6.675 per ordinary share and US\$13.35 per ADS (the "Consortium Proposal"). Thereafter, Ctrip approached the Chairman about joining the Consortium but negotiations ultimately came to nothing. On the other hand The Crawford Group, Inc, another large shareholder of the Company, agreed on April 6, 2018 to join the Consortium (together with two other funds). In March and April the Special Committee negotiated with the Consortium and ultimately agreed terms which were more favourable than the Goliath offer.
12. On April 2, 2018 the Company received a preliminary opening bid from Ocean Link offering \$7.25 per ordinary share and \$14.50 per ADS. The Special Committee relayed this to the Consortium on April 3 with a view to obtaining improved terms, and the Consortium immediately responded by raising its price from US\$ 6.675 per ordinary share and US\$13.35 per ADS to \$6.75 per share and \$13.50 per ADS. It also set a deadline for accepting the offer of 11.30pm on April 4, 2018. This deadline was extended when the Special Committee explained that Company's Articles mandated two days' notice for Board meetings. The Special Committee had a first conference call with Ocean Link representatives on April 4 and discovered that Ctrip supported the Ocean Link bid. Later that day it unanimously resolved to recommend that the Board approve the Consortium Proposal.
13. In my judgment Ctrip's commercial alignment as a supporter of the Ocean Link bid is the most pivotal single consideration in the present case. It colours both how its conduct, motivations and complaints ought to be viewed. Ctrip is not simply a 'neutral' shareholder concerned only to enforce its expectations as an investor in the Company as to how the Company's affairs would be conducted. It is obvious that Ctrip's main



motive in petitioning is not simply its status as a shareholder but primarily its status as a participant in a rival bid to the one the Board has decided to accept.

14. On April 4, 2018, the Board convened a meeting for April 6, 2018 with the emailed notice indicating that two main items of business were on the agenda: (1) the Consortium Proposal and the Ocean Link bid; and (2) the Special Committee's recommendation. On April 5, 2018 Ocean Link informed the Board that, together with Ctrip, it had control of sufficient shares to block the Consortium Proposal or any other bids competing with its own. The full information pack for the April 6, 2018 Board meeting was only circulated by email approximately one hour before the meeting. The Special Committee met on April 6, 2018 prior to the Board meeting to consider the implications of the possibility that Ocean Link could block the Consortium Proposal. The Committee decided not to change its recommendation to the Board. The Board (meeting by conference call) considered the finalised Consortium Proposal, the preliminary Ocean Link bid and the Special Committee's recommendations and resolved to approve the Consortium Proposal. On April 8, 2018 a further Board meeting was convened for April 10, 2018. At the April 10, 2018 meeting (again by conference call) the Board confirmed its April 6, 2018 decision.

The draft Amended Petition

15. The Petitioner attached a draft Amended Petition to its Skeleton Argument which sought to immunise the clearly insubstantial original Petition against being struck-out. Nevertheless, Mr Lowe QC did not have the temerity to directly review with the Court even the fortified version of the Petition in oral argument. The following allegations of misconduct were made:
 - (a) the Board meeting notices and agendas were defective and misleading and the transactional documents supplied too late;
 - (b) the April 6 Resolutions were improperly passed because:
 - (i) the directors (Mr Miao, Mr Qian and Mr Myers) exercised their powers for an improper purpose (avoiding due consideration of the Ocean Link proposal),
 - (ii) the interests of the Chairman proposal were preferred over the best interests of the Company as the Consortium Proposal was not the best offer available;



- (iii) they recklessly caused loss to the Company by agreeing a termination fee of US\$14,062,642, which served to poison any rival bids;
- (c) the April 10, 2018 Resolutions were invalid to the extent that they purported to ratify the breaches of duty which occurred in relation to the April 6, 2018 Resolutions. In addition:
 - (i) the decision to investigate the CDH Transaction (through which Ocean Link acquired its vote blocking power) was motivated by the improper purpose of supporting the Chairman's Consortium Proposal,
 - (ii) inadequate notice of the proposed resolutions and agenda for the April 10, 2018 meeting was given;
- (d) the Chairman in the First Zhang Affidavit herein has threatened to issue additional shares which would dilute Ctrip's voting rights and shareholding. The proposed share issue is for the improper purpose of promoting the Consortium Proposal in which the Chairman is involved;
- (e) it was wrong to permit the Chairman to make a bid as part of the Consortium.

16. The Petition then seeks the following main relief:

- (a) an injunction permanently restraining the Company from acting on the April 6 and 10 Resolutions (however the application for interim injunctive relief was abandoned before the hearing);
- (b) the appointment by the Court of a person to solicit the highest possible bids;
- (c) that the Special Committee should be directed to use its best endeavours to fulfil its proper role;
- (d) that the Board should refrain from issuing further shares prior to an EGM at which privatization proposals are considered.

17. Mr Atherton QC rightly described the injunctive relief as "moribund" in light of the fact that interim relief was no longer being sought. The application to restrain the issuing of new shares he fairly argued was premature. This meant that the main relief



sought by Ctrip, the Petitioner, was designed to cure one central impropriety attributed to the Board. This was the alleged failure of the Special Committee and the independent directors to act in the best interests of the Company in dealing with the merger bidding process and approving the Consortium Proposal. It was complained that the Board's independent directors had preferred the interests of the Chairman over those of the Company.

18. The contrasting ways in which counsel addressed the strike-out application reflected the merits of their respective positions. Mr Atherton QC skilfully focused on the underlying factual merits of the key averments. Mr Lowe QC masterfully conjured up difficult questions of law which were too complicated to be determined at the strike-out stage.

Findings: misconduct in relation to the convening of the April 6, 2018 and April 10, 2018 Board Meetings

19. The pleas in relation to the convening of the two Board meetings were clearly hopeless and bound to fail to establish any impropriety on the Company's part. The only valid complaint was that the meeting papers were delivered unreasonably late, but this was cured by the fact that the second meeting four days later reconsidered the decisions taken at the first meeting.
20. Ctrip's nominee director on the Company's Board is Mr Gang Chen, but in each case its Investment Legal Counsel Ms Lilith Chen attended on his behalf. It was she that raised the 2 clear days' notice requirement when the Board attempted on April 3 to convene a meeting for April 4. An email was then sent on April 4, 2018 giving notice of a meeting on Friday April 6, 2018 at 7.30 pm Shanghai time "via teleconference". In addition to giving dial in details, the email most substantively stated as follows:

"In addition to standard agenda items for the Company.....,we would discuss among the full Board of Directors of the Company (1) the taking-private transaction proposed by the consortium on January 1, 2018 (and recent development) and (2) the taking private transaction proposed by Ocean Link on April 2, 2018, including any perspective or recommendation of the Special committee with respect to same..."

21. The suggestion that this notice was in any substantial way defective was clearly misconceived. The April 8, 2018 notice of the April 10 Board meeting was more cryptic as regards the agenda:



“The agenda is to discuss developments related to the taking-private transaction and any related considerations or actions of the Board.”

22. Ms Chen notified her participation as an Alternate Director the following day and criticised the agenda as being *“too broad and too vague”*. The Company’s response elaborated on the purpose of the April 10, 2018 meeting:

“...the meeting is intended to cover various developments relating to the going private transaction and has been called by the Chairman to ensure that the directors are adequately informed regarding important matters concerning the approved going private transaction and Ocean Link’s proposal. This will be an important opportunity for the full board discuss such things as Ocean Link’s proposed purchase of CDH’s shares of eHi disclosed in recent SEC filings.”

23. Article 99 merely provides as follows:

“The Chairman or at least a majority of the Directors then in office may at any time summon a meeting of the Directors, provided that every other Director and alternate Director has been provided at least 48 hours’ prior notice of the date, time, venue and the proposed agenda of the proposed meeting of the Directors.”

24. Mr Atherton QC rightly submitted that the original agenda, which I have characterised as cryptic, was *“sufficient”*. However, in light of the clarification which was provided, any suggestion that the notice was not legally valid is plainly unsustainable.

Findings: invalidity of the April 6 Resolutions

Improper purpose

25. The bare allegation that the independent directors, in approving the Company’s acceptance of the Consortium Proposal, acted for an improper purpose (supporting the Chairman and/or avoiding due consideration of the Ocean Link bid) is clearly a legally valid plea. The strike-out jurisdiction, for the reasons explained above, is not limited to cases which disclose no reasonable cause of action. It may be engaged in relation to claims which are unsustainable on their merits as well. Also, as a matter of law, it is insufficient to vitiate a board resolution to establish that the decision was to some extent infected by an improper purpose. The correct legal position is that the main or substantial purpose for which the power has been exercised must be shown to have



been improper to successfully impugn the exercise of the power. As The Judicial Committee of the Privy Council (Lord Wilberforce) opined in *Howard Smith Limited-v-Ampol Ltd.* [1974] A.C. 821 at 835:

“In their Lordships' opinion it is necessary to start with a consideration of the power whose exercise is in question, in this case a power to issue shares. Having ascertained, on a fair view, the nature of this power, and having defined as can best be done in the light of modern conditions the, or some, limits within which it may be exercised, it is then necessary for the court, if a particular exercise of it is challenged, to examine the substantial purpose for which it was exercised, and to reach a conclusion whether that purpose was proper or not. In doing so it will necessarily give credit to the bona fide opinion of the directors, if such is to be found to exist, and will respect their judgment as to matters of management; having done this, the ultimate conclusion has to be as to the side of a fairly broad line on which the case falls.”

26. I am mindful of the possibility that a more strict proper motive test might be required (as illustrated by the different judicial views expressed in *Eclairs Group Ltd-v- JKX Oil & Gas plc* [2015] UKPC 71). On the facts of the present case, the analysis is not affected if one applies a test which would invalidate the exercise of a power if it was to any extent tainted by an improper purpose.
27. The Company essentially invited this Court to conclude that, in circumstances where no evidence was adduced by the Petitioner supporting a potential finding that the *bona fides* of the independent directors was in question, the bare allegation that they were improperly motivated was bound to fail. The April 6, 2018 Resolutions were admittedly passed three months after the Consortium bid was first made, on the recommendation of a Special Committee which retained its own reputable legal and financial advisors. The whole purpose of the Special Committee's appointment was to ensure that the Chairman's involvement (or that of any other shareholder with a nominee on the Board) with any bid did not distort any assessment of the bid by the Company having regard to the interests of the shareholders generally, as distinct from those shareholders who belonged to the Consortium.
28. The Petitioner's improper motives argument appeared to me to rest on the tacit assumption, unsupported by any authority, that it was legally impermissible for the chairman of a company to be involved in a going private bid, even if the Company's decision to accept or reject the bid was substantially made by independent directors. I explain why this actual complaint is unsustainable below.
29. The transcript of the April 6 Board meeting reveals the following important undisputed facts:



- Ms Chen objected to the validity of the meeting on technical grounds and did not raise any complaints about the motives of the independent directors;
 - the main contribution on behalf of parties supportive of the Ocean Link bid was to query the validity of the meeting, to warn the meeting that Ctrip/Ocean Link had the ability to block any vote in favour of the Consortium Proposal and to call for further consideration of the Ocean Link proposal;
 - the question of conflict of interest was openly addressed. A director with connections to Crawford, part of the Consortium, recused himself. Ms Chen recused herself because Ctrip was involved in the Ocean Link bid;
 - the Consortium Proposal was on the face of it approved on the rational basis of the recommendation of the Special Committee and on the basis that ultimately final approval would be for the shareholders to decide.
30. The Petitioner adduced no direct evidence which made any particularised allegations of improper motive on the part of specific directors voting in favour of the April 6 Resolutions. The Second Geng Affirmation consists primarily of argument. Ms Chen's Affirmation criticises, in effect, the approach at the meeting and the outcome without making any specific allegations of improper motives against those who voted in favour of the Resolution. The Third Geng Affirmation mainly responds to assertions about Ctrip's motivations and advocates for the merits of the Ocean Link bid. While I accept that improper motive is an allegation which is often proved through circumstantial evidence, the party making such an allegation must at the strike-out stage at least be able to point to primary facts which might be established at trial from which the requisite inference can be drawn.
31. I find that the improper motives allegation is wholly unmeritorious and that it would be an abuse of the process of this Court for such an insubstantial allegation to be further pursued.

The interests of the Chairman were preferred

32. For essentially the same reasons, there is no credible, potential, direct, or inferential support for the allegation that the April 6, 2018 Resolution was approved not in the best interests of the Company, but because of partiality towards the Chairman. I find that this allegation is wholly unmeritorious and that it would be an abuse of the process of this Court for such an insubstantial allegation to be further pursued.



The termination fee was improper and designed to poison rival bids

33. In my judgment the termination fee was a rational and apparently standard commercial clause designed to compensate the Consortium for the risk that a subsequent better bid was accepted. Ocean Link itself had agreed by the date of the hearing to absorb the costs of paying the termination fee, which helped to prove that the clause did not recklessly inflict damage on the Company. Mr Atherton QC dubbed this plea “*counterfactual*”. This allegation was on its face clearly unsustainable.

Findings: the April 10 Resolution

34. Having found that the April 6 Resolution was not arguably invalid, it is only necessary to deal with the specific pleas made in respect of the second meeting alone.

Improper motivation for decision to investigate the CDH Transaction

35. This complaint was also unsustainable. Stepping back, I found it ironic that Ctrip asserted the right of one bidding team to acquire shares to enable it to block an opposing bid while simultaneously complaining that the Company could not validly seek to respond to such manoeuvres. However, in fairness there was a superficial appeal to this complaint. It was the Chairman himself, a member of the rival bidding team, who suggested the investigation. His motivation was very arguably wholly, substantially or at least partially to advance the Consortium Proposal, not the interests of the Company. Yet the proposed investigation into the legality of the transaction was also something that the Board charged with upholding the constitution of the Company had a duty to consider if genuine concerns were raised. The way Mr Zhang put the question to the Board was entirely consistent with the correct legal position and propriety:

“...I would like the Board to authorize officers of the Company to instruct legal counsel as they deem fit in order to further explore whether there has been a violation of the right of first offer and the Companies rights and remedies in the event of such a violation, and to initiate legal action if appropriate and necessary to protect the Company’s rights...”

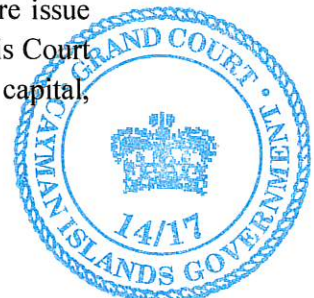
36. There is no evidential support for the proposition that the non-conflicted directors who resolved to investigate whether the Company’s rights had ben infringed by the CDH Transaction did so for the improper motive alleged. I find that this allegation is



wholly unmeritorious and that it would be an abuse of the process of this Court for such an insubstantial allegation to be further pursued.

Findings: misconduct in relation to issuing new shares

37. The complaint that the proposed issue of new shares foreshadowed in the Company's evidence is an improper attempt to dilute Ctrip's shares and its ability to block the Chairman Proposal is entirely new. The Company voluntarily disclosed in its evidence what is at this point only something under serious contemplation and it openly accepts that the indirect consequence of raising capital through a share issue would be to dilute the holdings of existing shareholders. A plausible case for the need to raise new capital to meet financial difficulties and retain key staff is made in the First Zhang Affirmation. What is more difficult to assess is why, apart from trying to gain leverage at the EGM to decide on whether shareholders wish to approve the Merger Agreement, it is essential that the proposed share issue take place before that meeting.
38. The Petitioner cannot properly use a just and equitable winding-up petition to gain leverage for its own merger bid. It can only seek relief designed to vindicate the rights of shareholders generally (or at least shareholders of its class). The sustainability of this complaint must be tested in the following way. Has the Petitioner made out an arguable case that the Company is proposing to raise capital not because the Company actually needs it but because non-conflicted directors are likely to be suborned by the Chairman into supporting the Merger Agreement.
39. This improper motive complaint, properly analysed, is parasitic upon the foundational complaint (which I have found is unsustainable) that the independent and/or non-conflicted directors failed to validly approve the Merger Agreement. If it was arguable that the Resolutions were not validly approved and that the Board's integrity and/or independence had been compromised by the Chairman, it would be arguable in light of this and without more that the Board would continue its improper course of conduct designed to support the Consortium Proposal without regard for the best interests of the Company.
40. In the result this allegation is both unsustainable and premature. This complaint cannot possibly support a finding at this stage that it is just and equitable for the Company to be wound-up, even if only as the platform for the Company to seek other relief. If, having properly approved a Merger Agreement and scheduled an EGM the Company takes steps to issue new shares to affect the vote, Ctrip can at that point issue freestanding proceedings to seek appropriate relief. The most obvious time to seek relief would be after the EGM if it was possible to demonstrate that the share issue impacted on the vote. I find that there is no arguable basis at this point for this Court concluding that the Board will act improperly in approving the raising of new capital, should any such approval be given at an uncertain date in the future.



Findings: misconduct in allowing the Chairman to make a bid

41. The final misconduct complaint makes the direct assertion that it was improper for the Chairman to be part of the Consortium whose bid the Board ultimately approved. In his oral submissions Mr Lowe QC contended that what was improper was not his involvement *simpliciter*, but rather the fact that he continued to sit on the Board and be involved in the management of the Company throughout the negotiation process. He essentially invited the Court to speculate that the Chairman had, behind the scenes, used his influence to procure favourable consideration for the Consortium proposal.
42. Having regard to the importance of the traditional corporate role played by the chairman of a board of directors, as explained by Rogers CJ in *Awa Ltd-v- Daniels* (1992) 7 ACSR 759 at 867, I agree that the continued involvement of the Chairman in Board activities concerning his own bid was at the very least unwise. But as Derek French (*Applications to Wind Up Companies*, 3rd edition, paragraph 8.305) observes in a passage upon which Mr Atherton QC relied:

“The fact that the directors are unwise, inefficient and careless in the performance of their duties may well inspire lack of confidence in them but it does not show a lack of probity and does not justify winding up.”

43. It is possible to imagine cases where the way in which a bid, in which a leading Board member was involved, was handled would excite suspicion. This is not such a case. As Mr Atherton QC pointed out, the Board meetings took place by telephone conference so there was no opportunity for the Chairman to use his force of personality to subtly impose pressure on the independent directors. There is nothing in the transcripts to suggest any actual impropriety on the Chairman’s part. There is no evidential basis for a potential finding that the Special Committee members, despite having retained reputable advisers, were in fact ‘lackeys’ of the Chairman.
44. I find that this allegation, in terms of supporting a case for a just and equitable winding-up, is wholly unmeritorious and that it would be an abuse of the process of this Court for such an insubstantial allegation to be further pursued.

Conclusion

45. The Petition is accordingly liable to be struck-out. The complaints of misconduct are unsustainable in the sense that it seems clear at this stage that they are factually incapable of proof and unmeritorious. In addition, the main purpose of the Petition is



quite obviously to advance the rival bid supported by the Petitioner, not to advance the class interests of the shareholders the Petitioner is supposed to be representing. Unless either party applies to be heard as to costs within 14 days, the Petitioner shall pay the Company's costs of its Summons to be taxed if not agreed.



IAN RC KAWALEY
JUDGE OF THE GRAND COURT

