

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 284 of 1991



26-Feb-10
(CJ)

IN THE MATTER OF **BCCI (OVERSEAS) LIMITED ("BCCI")**
(IN LIQUIDATION)

AND IN THE MATTER OF THE BANK AND TRUST COMPANIES LAW 1989

AND IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)

IN CHAMBERS
THE 9TH SEPTEMBER 2009
BEFORE THE HON. ANTHONY SMELLIE, C.J.

APPEARANCES:

Mr. Nigel Clifford Q.C. instructed by Mr. Robin McMillan of Appleby for the Joint Official Liquidators ("the JOLs")

Ms. Sheridan Brooks of Brooks and Brooks for the Committee of Creditors

RULING

1. On the 9th September, 2009, I reserved my decision on this, the JOLs' application for approval of their fees and expenses, pending "further written submissions on the matter only of what rate of increase should be given the JOLs retroactive and going forward, the basis being that that rate is expected to take them to the end of the assignment".
2. Those further submissions having been received from the JOLs and the Committee of Creditors, this is my ruling.

3. The increased rates would be retroactive insofar as the JOLs seek an upward adjustment to the fees charged to the Estate for work done in the calendar years 2007 and 2008. The JOLs also sought revised rates which would be applied for the calendar years 2009 and 2010. This latter aspect of their application was however, and as I understand it clarified as set out above; subject to the JOLs having the right to come before the Court to address unforeseen material changes in inflation in the period up to 2011, or if the closure process is later subject to significant delay.

4. Having considered the affidavits of Mr. Pilling (on behalf of the JOLs) and of Mr. Joy on behalf of the COC) as well as the arguments of counsel on both sides, I have decided that it is reasonable, fair and appropriate to conclude as follows:

(i) While the COL indices show an increase of 7% for the period 2007/08, after offsetting the threshold of 2.5% (identified in my rulings of 19 July 2007 and 16 November 2007); the JOLs shall be entitled to a retroactive increase in their fees of 4.5% by reference to the net fees billed for the 2007/08 period. For that two-year period the amount thus authorised, having regard to paragraph 17 of Mr. Pillings' affidavit (sworn on 13 July 2009), shall be USD381,928.

(ii) I accept the proposal set out in paragraph 24 of that affidavit for adjusting future rates going forward beginning 1st January 2009 to the end of the assignment.

That approach would apply an across-the-board increase based on inflation experienced in the past period, which is the principle established in the Ruling of July 19 2007.

In the particular circumstances, an increase of 7% across-the-board to the rates which applied as at end of 2007/08 is authorised.

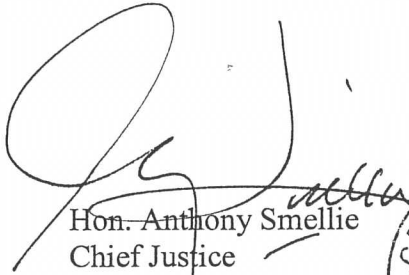
I regard this approach as achieving two things in particular.

First, it protects the JOLs from the impact which will be felt as the result of inflation that has already been registered by the COL indices for 2007/08.

Second, and at the same time, it avoids the concern which the COC has expressed about adopting the JOLs' alternative proposal, which would mean changing the individual charge out rates by different amounts. This would involve increasing rates at the highest levels of staff by up to 16.8%. The concern is that this could result in costs being weighted towards the higher charge out rates as more work is delegated to the higher levels of staff, which is what the JOLs anticipate as likely to occur towards the end of the closure process. While Mr. Pilling's affidavit goes on further, helpfully, to explain why a large overall increase in fees would not necessarily be the outcome, no assurance can or has been given in that regard.

5. Accordingly, the directions are as follows:
 - (i) The JOLs are entitled to a retroactive increase for the period 2007/08 in the amount of USD 381,928.
 - (ii) A revised scale of rates, reflecting an across-the-board increase of 7% shall apply to the 2009/10 period and absent further order of the Court, to all subsequent periods.

- (ii) Liberty to apply to the Court for further relief in the event of material inflation (that is: above the threshold of 2.5%) in the period after 2010 or a significant further delay in the closure process.


Hon. Anthony Smellie
Chief Justice

February 26 2010

