

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

Claim No. 2022/COM/bnk/00031

IN THE MATTER of the International Business Companies Act, Ch. 309 (as amended by the International Business companies (Winding Up Amendment) Act, 2011

AND

IN THE MATTER of the Petition of **WIN BUSINESS ENERGY CAOFEIDIAN LIMITED (FORMERLY KNOWN AS KERR-MCGEE CHINA PETROLEUM LTD)**

AND

IN THE MATTER of a Statutory Demand under Section 188 of the Companies Act (O. 2, r. 2) The Companies Act, Ch. 308

B E T W E E N

WIN BUSINESS ENERGY CAOFEIDIAN LIMITED

(formerly known as KERR-MCGEE CHINA PETROLEUM LTD.)

Petitioner

AND

ANADARKO PETROLEUM CORPORATION

First Respondent

AND

ANADARKO CHINA HOLDINGS 2 COMPANY

Second Respondent

Before Hon. Madam Justice Simone I Fitzcharles

Appearances: Mr. Rhyan Elliott for the Petitioner

Mr. Sean Moree KC with Ms. Vanessa Smith for the First and Second Respondent

Mrs. Sophia Rolle-Kapasouzoglou with Ms. Keath Smith and Mr. Takeio Frazer for the Interim Receivers

Hearing: 10-13 June 2024

DECISION

FITZCHARLES, J.

1. This is my brief decision on the Summons filed 21 May 2024, by the 1st Respondent (Anadarko Petroleum Corporation) and the 2nd Respondent (Anadarko China Holdings 2 Company), (collectively the “Respondents”). The Respondents seek an Order that the Petitioner be debarred from being heard, making representations in, or otherwise participating in these proceedings before the Court unless the Petitioner (through Mr Tang Bo, sole director of the Petitioner) purges its contempt (the “Debarring Order”). The application is made pursuant to Order 31A, Rule 18(2)(s) of the Rules of the Supreme Court (“RSC”) and/or the Court’s inherent jurisdiction.
2. This action was commenced by the Petitioner to set aside a statutory demand served on it by the Respondents. The Respondents seek to pursue certain sums of money adjudged to be owed to them by the Petitioner by virtue of Arbitral Awards of the London Court of International Arbitration of 12 March 2019 and 13 October 2021.
3. The Petitioner’s Amended Petition is scheduled to be heard on 25 and 26 June 2024. Given the brevity time until the hearing, the Court communicates this very brief decision herein. The Court reserves the right to produce a written ruling giving full reasons for the Court’s decision.
4. On 12 December 2023, the Court granted an application made by the Respondents for an order that interim receivers be appointed over the Petitioner (the “Receivership Order”), after considering the evidence before it and the submissions of Counsel for the parties. The Court formed the view that in all the circumstances it is just and convenient that the interim relief sought should be granted so as to preserve the assets of the Petitioner pending the determination of the Amended Petition of the Petitioner or further order. On the evidence there was a clear concern that the Petitioner was dissipating its assets. Suitable undertakings were given in the Receivership Order by the Respondents to the effect that they would compensate the Petitioner or any third party owner of assets received by the Interim Receivers for any loss caused by the Interim Receivers to the Petitioner or such third party should the Court later find that the Petitioner and/or such third party should be compensated.
5. Currently, there are ongoing Committal Proceedings pursuant to CPR 51 of the Supreme Court Civil Procedure Rules 2022, brought by the Interim Receivers of the Petitioner against the sole director of the Petitioner. There the Interim Receivers contend that Mr Tang Bo ought to be committed to prison for breaches of the Receivership Order.
6. The Petitioner contends that the Court should not grant the Debarring Order because:
 - (1) the conduct alleged by the Respondents to be contempt has not been proven, determined or otherwise established by the Court;

- (2) a Debarring Order is not warranted, just or desirable; and
 - (3) such Debarring Order would “arbitrarily bar the Court’s determination of the substantive bona fide issues raised in this action” and cause injustice.
7. In this application for a debarring order, the Court has considered the evidence put before it, the terms of the Receivership Order made on 12 December 2024, the submissions of the Respondents in support of the prayer for the Debarring Order, the submissions of the Petitioner in opposition to the grant of the Debarring Order and the submissions of the Respondents in answer to those opposing the Debarring Order. Having regard to these, and to the circumstances of the case, the Court finds the reasoning of the Respondents and the weight of the evidence of which the Court is thus far aware, to be in favour of issuing the Debarring Order (or ‘Hadkinson Order’) sought.
 8. The Court considers that in relation to such case management orders, on the authorities, simple disobedience with an Order is sufficient to find contempt. Further, the civil standard of proof is applied to establish contempt of the kind necessary to support an order debarring a contemnor from being heard in proceedings, pursuant to the Court’s case management powers. (This is, of course, separate and apart from the Committal proceedings in which there has not as yet been a determination whether the sole director of the Petitioner is in contempt of court and ought to be committed to prison for any breach of the Receivership Order, and in which a higher standard of proof is required).
 9. The Respondents state that the Petitioner has “brazenly defied and continues to defy the Court’s Order of 12 December 2023”. The Petitioner states that the conduct alleged by the Respondents to amount to contempt has not been proven, determined or otherwise established in or by this Court, and that the Committal Proceedings is the forum for that determination. The Court has put in place a Receivership Order based upon its concern as to the Petitioner’s dissipation of its assets. The Petitioner and Mr Tang have known of the terms of the Receivership Order since late December of last year. To date, there has been no demonstration by the Petitioner that it has (or others authorized by it have), pursuant to the Receivership Order:
 - (1) delivered up to the Receivers the Petitioner’s chop and/or common seal to enable them to perform their functions as interim receivers;
 - (2) remitted any sums or monies identified in the Receivership Order to an account designated by the Interim Receivers or any one of them;
 - (3) provided the Interim Receivers with all authorities necessary to exercise control over any bank account held by the Petitioner, including signatory authority; or

(4) complied with the instructions of, or provided all reasonable assistance to the Interim Receivers in the exercise of their powers.

10. The Court considers the lack of compliance of the Petitioner to be an impediment to the course of justice, and in the circumstances where Mr Tang Bo is the director with sole management and control of the Petitioner but presently outside of the jurisdiction, employing a debarring order seems a necessary last resort in the Court's case management toolkit to secure compliance. An appropriate condition sought by the Respondents is that until the sole director of the Petitioner purges his contempt of the Receivership Order, the Petitioner should be debarred from being heard in these proceedings.

11. Amongst others cited by the parties, the Court has considered the following authorities: **Hadkinson v Hadkinson** [1952] P. 285; **William Thompson and Anor. v United Sanitation and Ors** (2017/CLE/gen/00407); **Assoun v Assoun** [2017] EWCA Civ 21; **MA v MI (Mubarak v Mubarak)** [2004] EWHC 1158 (Fam); **Mubarak v Mubarak** [2006] EWHC 1260 (Fam); **Bank Mellat v Her Majesty's Treasury** [2019] EWCA Civ 449; **Cecil and others v Bayat and others** [2011] 1 WLR 3086 and **Meridian Global Funds Management Asia Ltd v Securities Commission** [1995] 2 AC 500.

12. Given the foregoing, I make the following Order:

- (1) The Petitioner is debarred from being heard, making representations in, or otherwise participating in the proceedings before this Court unless and until the Petitioner (acting by its sole director, Mr Tang Bo, or any other person it authorizes), purges its contempt of the Interim Receivership Order dated 12 December 2023 to the satisfaction of this Court.
- (2) That the costs of and occasioned by this application be paid by the Petitioner to be taxed if not agreed.
- (3) That the parties shall have liberty to apply.

Postscript

13. This brief ruling and order were initially pronounced and delivered on 19 June 2024. It was thereafter adjusted to give effect to certain corrections, which are herein reflected, and perfected on 31 July 2024.

Dated 31 July 2024


Simone I Fitzcharles

Justice