

HONG KONG / JUDGMENT

RE ADVANCED WIRELESS GROUP LTD

COURT

Court of First Instance

DECIDED

9 August 2007

CASE / FILE NUMBER

HCMP683/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMP 683/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 683 OF 2007

IN THE MATTER OF ADVANCED WIRELESS GROUP LIMITED and IN THE MATTER of Section
166 of the Companies Ordinance (Chapter 32)

Before: Hon Kwan J in Court Date of Hearing: 7 August 2007 Date of Judgment: 7 August 2007 Date
of Handing Down of Reasons for Judgment: 9 August 2007

REASONS FOR JUDGMENT

This is a petition presented by Advanced Wireless Group Limited (the Company) pursuant to section 166 of the Companies Ordinance, Cap. 32, seeking sanction of a scheme of arrangement dated 18 May 2007 between the Company and all creditors with unsecured claims against it. No creditor has appeared at the petition to oppose sanction of the scheme. The Company was incorporated on 22 October 2001 as a private company under its former name. Since incorporation, it has carried on the business of the design, development and sale of mobile handsets and their components. Its present authorised share capital is HK\$16 million divided into 16 million shares of HK\$1.00 each, all of which have been issued and are fully paid or credited as fully paid. The sole registered shareholder of the Company is ACE River Investments Limited (ACE River). On 17 August 2006, Somacis Korea Co. Ltd. (Somacis) presented a creditor s petition to wind up the Company in HCCW No. 441 of 2006. On 10 October 2006, the Company appointed Ferrier Hodgson Limited () to prepare an analysis of the Company s financial position and the estimated return to creditors in the event of liquidation. FH accordingly compiled an analysis dated 13 November 2006 (the Liquidation Analysis). It was shown in the Liquidation Analysis that as at 31 July 2006, the total liabilities of the Company in the sum of HK\$349 million

was more than the net book value of the total assets at HK\$327 million. The estimated realisable value of the Company's assets was HK\$7.2 million in a low case scenario and HK\$11.9 million in a high case scenario. FH assessed the rate of return to unsecured creditors in a liquidation at 1.68% in a low case scenario and 3.01% in a high case scenario. According to the list of creditors of the Company as at 18 May 2007, the total indebtedness owed to unsecured creditors amounted to HK\$356 million. To avoid liquidation, the board of directors negotiated with interested investors to work out a scheme of arrangement to salvage the Company and bring about a return to creditors more favourable than the estimated return in a liquidation scenario. In October 2006, Seechoice Investment Limited (the Investor), a company incorporated in the British Virgin Islands, entered into an agreement with ACE River, whereby the Investor in exchange for a non-controlling shareholding in ACE River agreed to inject through it HK\$20 million to finance the restructuring of the Company's debts by way of a scheme of arrangement. Between 19 October 2006 and 15 November 2006, HK\$20 million was remitted to the Company's solicitors. The Investor and ACE River agreed that the remittances were to be held by the solicitors in connection with the restructuring of the Company. With the injection of the HK\$20 million, a recovery plan was worked out to be implemented by the scheme of arrangement. It was anticipated that the stock realisation business and printed circuit board assembly business (PCBA business) of the Company to be carried out under the recovery plan could yield projected profits of HK\$25.7 million (the Projected Profits). The recovery plan involved the following:

- (1) the use of HK\$6.8 million for initial distribution to the unsecured creditors of the Company;
- (2) the use of HK\$8.2 million for the stock realisation business and PCBA business; and
- (3) the use of the remaining HK\$5 million for the payment of costs of the scheme. The essential terms of the scheme may be summarised as follows:
 - (1) all unsecured creditors including the unsecured part of the claims of preferential creditors will be bound by the scheme;
 - (2) upon the sanction and the implementation of the scheme, the debts due to the unsecured creditors will be deemed discharged and waived against the Company in exchange for their rights to participate in the distribution of the scheme funds;
 - (3) all unsecured creditors will be invited to file their notices of claim, which will be determined by the scheme administrators; any unsecured creditors dissatisfied with the decision of the scheme administrators on the admissibility of their debts are entitled to refer such matter to the adjudicator for determination and such determination shall be final, conclusive and binding on the Company and the unsecured creditors;
 - (4) the Company will procure the transfer of HK\$6.8 million to the scheme administrators as part of the scheme funds within 10 business days of the effective date of the scheme, which will as soon as practicable be distributable to the unsecured creditors on a pari passu basis in proportion to the amounts of their respective debts admitted under the scheme;

- (5) the Company will carry on the stock realisation business and PCBA business and the sum representing the profits generated therefrom between 1 November 2006 and 31 December 2007 and, as determined by the auditors of the Company, will be injected by the Company into the scheme funds. In the event that the profits so determined fall below HK\$12.85 million (i.e. 50% of the Projected Profits), the scheme administrators will procure the transfer of a sum equivalent to the difference between the profits so determined and the said sum of HK\$12.85 million from the Investor under its guarantee dated 16 January 2007 into the scheme funds;
- (6) the profits and/or sums injected into the scheme funds will be distributed by the scheme administrators to the unsecured creditors on a pari passu basis in proportion to their respective debts as admitted;
- (7) the scheme will be terminated after completion of distribution of the scheme funds in accordance with the scheme; and
- (8) in the event the scheme administrators do not receive such sums which should be injected into the scheme funds under the scheme within the stipulated time, the scheme administrators can terminate the scheme by notice, in which event the unsecured debts compromised under the scheme will be deemed to have revived and the creditors will be entitled to pursue their claims against the Company as if the scheme had never been put into effect subject to what amounts they have received under the scheme. The scheme also provides for full payment of the preferential debts, estimated to be HK\$1.4 million. They will be paid without deduction from the scheme funds. To make more funds available for distribution to scheme creditors, the Company has obtained agreement of two creditors, ACE River and a related company Always Good Investment Limited, to voluntarily waive their entitlements under the scheme to receive distributions from the scheme funds in respect of their debts upon the scheme taking effect. The indebtedness due from the Company to these two creditors is approximately HK\$153 million. Taking into account the waiver, and upon the full implementation of the scheme, the scheme creditors (other than the two creditors aforesaid) will have a return of about 9.99%, and may obtain a return up to about 16.52% or more, in the event that the business under the recovery plan manages to generate profits equivalent to or exceeding the Projected Profits. On 8 May 2007, an order was made that the Company do convene a meeting of the scheme creditors for the purpose of considering and, if thought fit, approving, with or without modification, the scheme. Save in one respect as mentioned below, the directions as to service of the notice of the court meeting and the scheme document, and advertisement of the court meeting, have been complied with. In addition, the Company and its solicitors have also notified the scheme creditors about the sending of the scheme document by way of emails and faxes, insofar as such contact details were known to the Company. At the court meeting held on 3 July 2007, the scheme was approved without modification by 63 out of 65 scheme creditors who attended and cast valid votes. The remaining two creditors voted against the scheme. The total amount of indebtedness owed to the 63 creditors represented about 95.82% of the total

indebtedness owed to the 65 creditors of HK\$341,404,507.72. Among the 63 creditors voting for the scheme, there were 13 employees whose claims were not included in the list of creditors enclosed in the scheme document, as the Company had mistakenly regarded all their claims as preferential claims. The total amount of the claims of these employee creditors so admitted for the purpose of voting was in the modest sum of HK\$21,978.25. Only one court meeting was convened for all the scheme creditors. At the court meeting, Somacis had raised the question whether ACE River should constitute a separate class from other unsecured creditors for the purpose of voting on the scheme. The test to be applied to determine the proper constitution of a class of creditors is based on similarity or dissimilarity of legal rights against the company, not on the similarity or dissimilarity of interests not derived from such legal rights (UDL Argos Engineering & Heavy Industries Co. Ltd. & Ors. v. Li Oi Lin & Ors. (2001) 4 HKCFAR 358 at 372G). It was submitted on behalf of the Company that the strict legal rights of ACE River under the scheme are the same as any other of the scheme creditors and hence it should be allowed to vote in the same meeting with all the other creditors. I agree. The fact that ACE River may hold divergent views based on its private interests not derived from its legal rights against the Company is not a ground for calling separate meetings. The class of creditors entitled to vote at the court meeting had been properly constituted. In respect of the 13 employee creditors who were allowed to vote as scheme creditors, the directions of the court were not fully complied with in that the scheme documents were not sent to them by post. Otherwise, the Company has complied with all the directions on 8 May 2007 for convening the court meeting. The 13 employee creditors were given the opportunity to read a generic copy of the scheme documents since the week starting from 21 May 2007. The court has jurisdiction to waive a non-compliance with its directions (Re Kansa General International Insurance Co. Ltd. [1999] 1 HKC 254 at 261F to 262B). I would exercise my discretion in this instance to waive the technical non-compliance with the court's directions. As mentioned earlier, the total of such claims was in the modest sum of HK\$21,978.25 and was almost negligible compared with the total unsecured debts of all the scheme creditors. The explanatory statement in the scheme document gave a sufficient explanation of the scheme and its effect to the scheme creditors, to enable them to make an informed decision how they should vote. The risks involved in the recovery plan have been adequately explained, in particular, that the actual profits from the stock realisation business and PCBA business might be less than the Projected Profits, that the guarantee provided by the Investor is only a corporate guarantee and there is a risk that the funds agreed to be injected under the guarantee might not be available. The scheme was approved and adopted by a majority in number of creditors representing more than three-fourths in value of the scheme creditors. Even if the vote of ACE River at the court meeting were to be completely discounted, the scheme would still have the support of 62 out of 64 scheme creditors voting at the court meeting and the value of indebtedness of those 62 creditors represented 93.09% of the total indebtedness of those 64 creditors. The statutory requirements for the sanction of a scheme of arrangement have all been complied with. An overwhelming majority of the scheme creditors have come to a commercial decision that adopting the scheme would offer them a better alternative than to wind up the Company. It

seems to me the proposal in the scheme is such that an intelligent and honest man, being a member of the class concerned, and acting in respect of his interest, might reasonably approve. The scheme would appear to be fair and equitable. There is nothing to suggest that the majority of creditors had not acted bona fide in voting for the scheme. The court should be slow to differ from the conclusion of the majority. It would be appropriate in the circumstances to exercise my discretion to sanction the scheme. For the above reasons, I have made an order in terms of the draft submitted. (S Kwan) Judge of the Court of First Instance High Court Mr. Anson M.K. Wong, instructed by Hammonds, for the Petitioner

PAGE - 1udk 1udk H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V XUok XUok hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 d0k/ d0k/ Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=58174

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/re-advanced-wireless-group-ltd-2007>

Prepared on 26 October 2026 · Esheria