

HONG KONG / JUDGMENT

## RE CHINA STEEL DEVELOPMENT CO LTD

## COURT

Court of First Instance

## DECIDED

27 July 2009

## CASE / FILE NUMBER

HCCW142/2009

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b|bj| dinance, Cap. 32

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AND HCCW 141/2009 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 141 OF 2009

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IN THE MATTER of AA INVESTMENTS COMPANY LIMITED and IN THE MATTER of the Companies Ordinance, Cap. 32

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AND HCCW 142/2009 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 142 OF 2009

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IN THE MATTER of CHINA STEEL DEVELOPMENT COMPA |vU\ gP W gP |vU\ gP W gP nted by AAHL on the basis of an inter-company debt, CSDCL is an indirect wholly owned subsidiary of AAHL. The petition regarding AAMCL was presented by an outside creditor, Public Bank (Hong Kong) Limited. These companies are in a very substantial group known as the Asia Aluminum Group, and have been engaged in the business of aluminium processing, aluminium extrusion, aluminium rolled products, design, engineering, surface-finish and fabrication services based in the PRC. AAICL is the ultimate holding company of the Asia Aluminum Group. AAHL and AAICL were incorporated in Bermuda. AAHL has a principal place of business in Hong Kong and was registered under Part XI of the Companies Ordinance, Cap. 32. It was until 23 May 2006 a listed company in Hong Kong, the listing of its shares was withdrawn as a result of a privatisation. AAICL was incorporated for the specific purpose of implementing the privatisation of AAHL. Both AAHL and AAICL have close connections with Hong Kong. In 2004, AAHL issued 8% Senior Notes due 2011 in the aggregate of US\$450 million. The principal amount outstanding on the notes as at 16 February 2009 was US\$450 million. In 2006, AAICL issued 12% Senior PIK Notes due 2012 in the aggregate value of US\$335 million and 14% Senior PIK Notes in the aggregate value of

US\$180 million. AAHL and AAICL have experienced liquidity problems since late 2008 and have been pursuing options of debt restructuring for the Group. On 16 February 2009, AAHL and AAICL issued an offer to purchase for cash whereby the noteholders were asked to accept buy-back offer of notes at a discount. The offer was not accepted by the requisite percentage of noteholders. Further, demands were made by various banks to AAHL in February and March 2009 pursuant to corporate guarantees granted by AAHL, in the aggregate sum of over US\$9.9 million. AAHL has accepted that it has no bona fide dispute to these liabilities and is unable to pay the debts as they fall due. According to the unaudited consolidated balance sheet of AAICL as at December 2008, the consolidated current liabilities of the Group amounted to over HK\$8 billion, while the consolidated current assets were about HK\$5.9 billion. The consolidated net current liabilities at that time, which did not include the amounts outstanding under the notes issued by AAHL and AAICL, were HK\$2.2 billion. According to the unaudited balance sheet of AAICL as at 28 February 2009, its current liabilities were HK\$5,832,271,652, while its current assets were only HK\$196,213. The net current liabilities were HK\$5,832,075,440. Both AAHL and AAICL are unable to pay the debts as they fall due. As for CSDCL, which was incorporated in Samoa, it is an indirect wholly owned subsidiary of AAHL with a principal place of business in Hong Kong. It is an investment holding company, holding all the shares in Asia Aluminum (China) Company Limited issued, to finance the investment in AACCL. The terms of the inter-company loans are such that if any amounts become due on the notes, CSDCL is liable for interest on the principal amount it has borrowed in an amount equal to such amounts due on the same principal amount of the notes. As at 28 February 2009, CSDCL was indebted to AAHL of US\$300 million and interest of US\$48 million odd. The presentation of the petition by AAHL against itself is an event of default under the notes. This brought about the result that the principal amount of the notes and interest accrued become immediately due and payable and this in turn accelerated the obligation of CSDCL to repay the amounts due to AAHL under the inter-company loan agreement. CSDCL accepted it has no bona fide dispute to these debts and is unable to pay them as they fall due. The last petition is in relation to AAMCL. This company was incorporated in Hong Kong. Pursuant to the facility letter granted to AAMCL by the petitioning creditor, Public Bank (Hong Kong) Limited, in May 2008, approximately US\$2.6 million was due and payable to the petitioner on 20 February 2009 and AAMCL has defaulted in payment. On 23 February 2009, the petitioner made a demand for repayment of the amount outstanding under the facility letter. AAMCL has failed to pay the outstanding sum. Further, according to the public announcement issued by AAICL and AAHL dated 4 March 2009, on a liquidation of AAMCL, the return to unsecured creditors was estimated at approximately 41 cents in the dollar. I am satisfied AAMCL is unable to pay its debts as they fall due. I make a winding-up order in respect of each of the companies in the four petitions. The costs of the petitioner are to be paid out of the assets of the company concerned. (S Kwan) Judge of the Court of First Instance High Court Miss Elizabeth Cheung, instructed by Messrs Anthony Siu & Co, for the Petitioner in HCCW Nos. 140, 141 & 142 of 2009 Mr Douglas Lam, instructed by Messrs Wilkinson & Grist, for the Provisional Liquidators in all cases Mr William Wong, instructed by Messrs Baker & McKenzie, for the Petitioner in HCCW No. 165 of 2009 Messrs Clifford Chance, for the Supporting Creditors in HCCW No. 140 of 2009, OK Spring Roll Limited Partnership & Asia Aluminum Group Limited, attendance excused

Messrs Allen & Overy, for the Joint Receivers in HCCW Nos. 140 & 141 of 2009 and PIK Holders in HCCW No. 141 of 2009, attendance excused Miss Vivian Yeung for the Official Receiver 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 ph6\_ i\$&~ hccw (for Susan Kwan only).dot Administrator Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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