



The Eastern Caribbean Court of Appeal continues protection for Nam Tai shareholders

Insights - 12/11/2021

Decisions

The Eastern Caribbean Court of Appeal has delivered two decisions that have continued the protection afforded by the BVI Commercial Court to shareholders in Nam Tai Property Inc, a BVI company whose shares are listed on the New York Stock Exchange.

On 4 October 2021 the Court of Appeal (the Chief Justice and Webster and Farara JJA) dismissed appeals by Nam Tai and Greater Sail Limited (a subsidiary of Kaisa Group Holdings Limited) against the decision of Justice Jack of 3 March 2021 declaring a private placement void as having been effected for the improper purpose of entrenching directors favourable to Kaisa. The Court of Appeal ordered that the shareholder meeting first ordered by Jack J should take place on 30 November 2021.

On 10 November 2021 the same Court of Appeal dismissed applications by Nam Tai and Greater Sail for a stay of the meeting ordered for 30 November pending appeals to the Privy Council and alternatively to change the record date for the meeting from 15 March 2021 as set by Jack J to a date in November. Only shareholders holding shares on the record date may vote at the meeting, and the importance of this is that shareholders rightly relied upon the previously announced record date in accordance with NYSE market practices and the majority of shareholders as at 15 March 2021 have already registered proxies in favour of changing the board to remove the Kaisa affiliated directors and replace them with fresh candidates.

The proceedings

The proceedings were started in the BVI Commercial Court in October 2020 by IsZo Capital LP, a shareholder in Nam Tai, seeking orders that a private placement of \$170m, almost all of which was to Greater Sail, should be declared void as having been effected in response to a requisition calling for a shareholder meeting to consider replacing the board that had been served on 11 September 2020 and for the improper purpose of defeating those resolutions.

Jack J directed highly expedited proceedings that led to the trial starting on 29 January 2021 and judgment on 3 March, days after the conclusion of the trial.

The Court of Appeal similarly expedited appeals by Nam Tai and Greater Sail and heard one appeal in June, giving judgment on that appeal on 4 October. A second appeal by Greater Sail alone has been postponed until after appeals to the Privy Council have been determined.

The NYSE Market

Shareholder protection is key for investors in BVI companies listed in the US.

The Court of Appeal has not yet handed down its reasons for dismissing the applications for a stay of the 30 November meeting or for the change of the record date for that meeting. However, IsZo filed evidence from a number of Nam Tai shareholders who had invested through the NYSE market that made clear their reliance on the BVI courts to protect their interests and on the importance of retaining the 15 March record date for the meeting.

The speed with which the Commercial Court and Court of Appeal have dealt with the proceedings and the decisions of those courts, provide important reassurance for investors that their shareholdings in BVI companies will be protected effectively, and that is important for the BVI.

Ogier acted for IsZo Capital LP in the Commercial Court and the Court of Appeal with a team comprising Nick Burkill, Ewelina Clyde-Smith, James McDermott and Sulman Iqbal, in coordination with IsZo's US counsel, Ryan Nebel of Olshan Frome Wolosky LLP.

Martin Moore QC led Edward Davies QC, Ben Griffiths and Nick Burkill for IsZo Capital LP in the appeal; Edward Davies QC led Ben Griffiths and Nick Burkill on the stay applications.

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