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Corporate Finance & Insolvency Litigation

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■ BCCI case: The Luxembourg Court of Appeal refuses to reopen the liquidation proceedings

On 2 March 2016, the Luxembourg Court of Appeal has denied an appeal filed by Dr. Adil Elias, Faisal Islamic Bank of Egypt and a handful of other creditors of BCCI against a judgment previously rendered by the Luxembourg Commercial Court, which had refused to reopen the liquidation proceedings of Bank of Credit and Commerce International S.A. ("BCCI S.A.") and BCCI Holdings (Luxembourg) S.A. ("BCCI Holdings").

Background: Back in July 1991, the Luxembourg, English and Cayman Islands regulators undertook a joint action to close down the operations of the BCCI banking group, and in all three jurisdictions, joint liquidators were appointed to deal with one of the largest bankruptcies of a banking institution ever.

The liquidation of the BCCI group lasted for 22 years, and the ordinary creditors in the Cayman Islands, UK and Luxembourg pooling estates were finally paid back 90 cents in the Dollar (90%). The result is quite impressive if one considers the numerous obstacles which the liquidators had to overcome in their joint recovery efforts worldwide.

However, not all of the actions which were initiated by the joint liquidators of the BCCI group were successful. One of the unsuccessful actions was an enforcement action against Saudi Arabian business man Abdelraouf Hassan Khalil. In the early 90's, the liquidators had obtained a payment order against him from the US Court of the District of Columbia for an amount of 326 millions USD, which they then tried to enforce against Khalil for more than 10 years, in Saudi Arabia.

The liquidators did however never succeed in overcoming numerous political and procedural obstacles, and they finally decided to abandon the case in the Kingdom of Saudi Arabia. Such abandonment was sanctioned by the Luxembourg Commercial Court in June 2012, and subsequently, the Luxembourg liquidators took steps to close down the liquidation activities.

When the closure of the liquidations of BCCI S.A. and BCCI Holdings was finally decided by the Luxembourg Commercial Court on 5 July 2013, Dr. Adil Elias, a U.S. resident, Faisal Islamic Bank of Egypt, and a handful of other ordinary creditors of the BCCI group harshly criticised the unsuccessful conclusion of the recovery efforts against Khalil and filed a third party opposition against the liquidation closure order of the Luxembourg Commercial Court.

They asked the Commercial Court to reopen the liquidation proceedings, to appoint new liquidators and to order them to proceed with the recovery action against the heirs of Khalil (who in the meantime had passed away). They argued that the abandonment of the case against Khalil in the Kingdom of Saudi Arabia was not justified in view of recent legislative and judicial system changes in the Kingdom of Saudi Arabia. Those changes would now enormously facilitate any collection action for the benefit of all creditors of the BCCI group.

In its decision of 2 March 2016, the Luxembourg Court of Appeal decided that Dr. Adil Elias, who was a member of the Luxembourg creditors committee for BCCI during 22 years, had no standing to bring a third party opposition, because in such capacity, he was a party to the 5 July 2013 closure order. The third party opposition of Faisal Islamic Bank of Egypt and the other creditors of BCCI group was also denied. The Court of Appeal came to the conclusion that, although all of them were creditors of the BCCI group and especially of the UK pooling estate, they were not admitted as creditors in the Luxembourg liquidations of BCCI S.A. and BCCI Holdings. As a consequence, said the Court of Appeal, they have no standing to bring a third party opposition against the closure order for the Luxembourg estates.

In all likelihood, this decision from the Luxembourg Court of Appeal brings an end to an epic 25 years liquidation and the numerous judicial battles around the collapse and winding up of BCCI.

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