

BVI Court grants follow up relief protecting its earlier decision in Nam Tai

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The BVI Commercial Court granted further relief on 28 May in the Nam Tai litigation to stop rival arbitration proceedings commenced in Hong Kong.

On 3 March 2021, following an expedited trial, Justice Jack ordered that a placement of shares in Nam Tai Property Inc in favour of Greater Sail Limited and West Ridge Investment Company Limited should be set aside as having been effected for an improper purpose and in breach of the directors' duty to act in good faith in the interests of all shareholders. He ordered that a shareholders' meeting should take place to consider resolutions to change the board of Nam Tai.

Greater Sail asked during the trial that in the event that the placement was set aside there should be an order for the return of the money paid for the shares allotted to it. Justice Jack concluded in his judgment that "these are all matters which should be determined by the board which is in place after the meeting is held" and granted an injunction prohibiting the current board of Nam Tai reimbursing Greater Sail pending the shareholders' meeting. Greater Sail filed a Notice of Appeal challenging the Judge's refusal to deal with the return of these funds.

As revealed in an SEC filing by Nam Tai, Greater Sail commenced arbitration proceedings in Hong Kong following the BVI judgment and Justice Jack's refusal to order the immediate return of the money paid for the shares allotted to it. In these Hong Kong proceedings, Nam Tai reported that Greater Sail was seeking "a refund of ... the payment for the ... shares placed to Greater Sail ... on the ground that the placement has been declared void and set aside".

IsZo applied to the BVI Court for an order restraining Greater Sail and Nam Tai from taking any further steps in, or in relation to, the arbitration and requiring them to take all steps to stay those proceedings. IsZo contended that the arbitration was an attempt to obtain an accelerated binding determination as to the return of the price for the shares allotted to Greater Sail, which in itself amounted to a covert collateral attack on the intended effect of the BVI Court's order and thus an abuse of the process of the BVI Court.

On 28 May, the BVI Court made an order on signed terms of order that accepted undertakings to the court from Nam Tai and Greater Sail in the terms of the order sought restraining them from taking further steps in, or in relation to, the Hong Kong arbitration and requiring them to take all steps to stay the arbitration.

The Nam Tai litigation has therefore produced a further example of the BVI Court's willingness to protect the interests of US investors who bought shares on NYSE in Nam Tai, a BVI company.

Nicholas Burkill and Rosamund Baker represented IsZo Capital LP, led by Richard Morgan QC.

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