

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 007615

Royal Courts of Justice.
Monday, 2nd December 1991

Before
The Vice-Chancellor
(Sir Donald Nicholls)

IN THE MATTER OF

THE BANK OF CREDIT AND COMMERCE INTERNATIONAL SA

AND IN THE MATTER OF

THE BANKING ACT 1987

AND IN THE MATTER OF

THE INSOLVENCY ACT 1986

(Transcribed from the shorthand notes of Marten Walsh Cherer
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MR G. LANGLEY, Q.C., MR G. MOSS, Q.C. and MR M. PHILLIPS
(instructed by Messrs Freshfields) appeared
on behalf of the Bank of England.

MR M CRYSTAL QC, and MR R SHELDON, Q.C. (instructed
by Lovell White Durrant) appeared on behalf of The
Provisional Liquidators.

MR PETER SCOTT QC and MR RICHARD HACKER (instructed by Messrs
Simmons & Simmons) appeared on behalf of the majority
shareholders, the Royal Family and Government of Abu Dhabi

MR DAVID ALEXANDER (instructed by Messrs Turner Kenneth Brown)
appeared on behalf of the Board of Directors of the
Company.

MR J. WADSWORTH, Q.C. and MR J PICTON (instructed by
Messrs Richards Butler) appeared on behalf of the Deposit
Protection Association.

MR JOHN JARVIS, Q.C. (instructed by Messrs Clifford Chance)
appeared on behalf of Deposit Protection Board.

MR JOHN COOPER (instructed by Messrs Stephens Innocent)
appeared on behalf of the Employees Campaign Committee.

J U D G M E N T
(As Approved)

THE VICE-CHANCELLOR: BCCI is now a household name.

A Unfortunately it is in a most unhappy context. BCCI and the
group of which it is part are insolvent. Worldwide the
group owes money to about 800,000 depositors with about
1.2 million accounts in over 70 countries. The group has or
had many employees. On the 5th July the Bank of England
B presented to this Court a petition seeking an order that
BCCI, or the Bank of Credit and Commerce International
S.A., to give it its full and correct name, should be wound
up. The petition is based on two grounds: that BCCI is
C unable to pay its debts, and that BCCI has been the victim
of substantial frauds perpetrated by some of its officials
and that it would be just and equitable in the public
interest that the company be wound up. On the same day
D three partners in the firm of Touche Ross were appointed
provisional liquidators.

E The petition came before the Court on the 22nd July. It
was adjourned for eight days primarily on the application
of the Ruler of Abu Dhabi and the government of Abu Dhabi.
In various forms they constitute the majority shareholders
of the parent company BCCI Holdings Luxembourg S.A. This
F company, like BCCI, is registered in Luxembourg.

G At the adjourned hearing on the 30th July the majority
shareholders sought a further and much longer adjournment
to enable the whole complicated position within BCCI and
its associates to be investigated and to see if proposals
could be put forward for a partial or total restructuring
and refinancing of BCCI. Against opposition from the
Petitioner and from two small depositors, Sir Nicolas
H Browne-Wilkinson granted a four month adjournment, that is

A to say, until today. He observed that as a matter of law
the assets of BCCI worldwide would be applicable for the
creditors of BCCI worldwide. He said this: "The truth of
the matter as far as I can see is that if any substantial
recovery is to be made by the creditors of BCCI as a whole
worldwide, the best and possibly the only hope is the
B restructuring proposals which may be put forward by the
government of Abu Dhabi in the long run. To stand in the
way of that possibility is not to serve the interests of
the depositors of this company viewed as a whole, but to
C approach the matter on an insular basis." Meanwhile there
could be no question of the continuation of the fraudulent
dealings alleged by the Bank of England, the provisional
liquidators were in charge of BCCI's affairs. Steps were
D being taken to see that the small depositors in the United
Kingdom would not suffer hardship by an adjournment of the
petition. In that event, as distinct from the making of a
winding up order, compensation would not fall to be paid at
E once under the Deposit Protection Scheme established by the
Banking Act, 1987. Sir Nicolas described as "generous" the
proposals put forward in that regard by the government of
F Abu Dhabi. On the 7th August the majority shareholders paid
£42 million to trustees of a United Kingdom Depositors'
Protection Fund.

G Since then much water has flowed under the bridge.
I need mention only three matters today. First, the
majority shareholders commissioned a report from J. Henry
Schroeder Wagg & Co. on the possibility of restructuring
BCCI in the United Kingdom. At the end of September the
H majority shareholders informed the provisional liquidators

A that on the basis of the Schroder's report, a restructuring
of the United Kingdom branch network was not possible. The
B bank was not going to be able to resume its business in
this country. Steps were then taken to vacate and dispose
of most BCCI branch premises in the United Kingdom. Most
employees were made redundant. A UK Employees' Dismissal
Fund was established by the majority shareholders to which
they paid £3 million.

C Secondly, the provisional liquidators of BCCI have been
engaged in the truly gargantuan task of preserving and
realising assets of BCCI worldwide in conjunction with
D Mr. Smouha, the commissaire of BCCI appointed by the
District Court of Luxembourg, and in conjunction with the
provisional liquidators of Overseas (by which I mean the
E Bank of Credit and Commerce International (Overseas)
Limited) who have been appointed by the Grand Court of the
Cayman Islands, and in conjunction also with other court
appointed officers in other jurisdictions.

F One has only to read the provisional liquidators'
report to the Court dated the 29th November to see what a
mammoth and difficult task this is. The BCCI group operated
through branches or representative offices in 75 countries,
each has its own legal system and some have exchange
control restrictions. Further, the affairs of BCCI and
G Overseas are inextricably intermingled. Plainly, worldwide
cooperation is essential if the assets in the different
jurisdictions are to be realised to the best advantage of
the creditors. Otherwise and all too obviously there is
likely to be long drawn out litigation in many
H jurisdictions between the different parts of the BCCI

group.

A At this stage figures can only be put forward very
tentatively. On the information presently available the
estimated realisable value of assets on the liquidation of
BCCI and Overseas has been assessed at US \$1.159 billion
and the estimated liabilities at US \$10.641 billion. In
B other words the likely yield for creditors on those figures
is less than 10 per cent. Indeed in his submissions to the
Court this morning on behalf of the provisional
liquidators, Mr. Crystal has painted an even gloomier
C picture, saying that the current view of the commissaire
and the provisional liquidators is that if no agreement is
reached there is little prospect of a worthwhile dividend
being paid this century or at all.

D The third feature I should mention is this.
Discussions have been taking place in Abu Dhabi between
representatives of the majority shareholders and the
E commissaire acting also on behalf of the provisional
liquidators of BCCI and others. Of those discussions all I
need say is that if they can be successfully concluded they
would materially enhance and accelerate any return to
F creditors. As matters now stand the return could be in the
region (it is estimated) of 30 to 40 per cent. That would
be possible only because of very substantial payments which
would be made by the majority shareholders. The provisional
G liquidators' hope is that by the end of 1992 a dividend of
10 per cent would be paid to admitted creditors, on the
assumption that admitted claims, do not exceed US \$10
billion. This is not the moment for me to enlarge or
H comment further on these negotiations beyond noting that it

A is evident that the majority shareholders are displaying much goodwill and understanding of the problems confronting the BCCI group and its depositors and employees throughout the world.

B Today, although liquidation is now inevitable, the provisional liquidators seek a further short adjournment, for two principal reasons: to enable discussions with the majority shareholders to continue with a view to finalising the proposed arrangements, and to enable the date of winding up orders in respect of BCCI and Overseas to be C synchronised as far as possible in this country and Luxembourg and in the Cayman Islands. The application is not opposed by anyone represented before me.

D In these circumstances I have no hesitation in granting the adjournment. In doing so I have in mind that the effect of this, of course, will be to delay the coming into operation of the Deposit Protection Scheme under the E Banking Act, 1987. But payments from the Government of Abu Dhabi BCCI UK Depositors' Protection Fund are already being made, and of the claimants who have received payments F three-quarters have been paid amounts corresponding to those they would have been entitled to under the statutory scheme.

I shall, therefore, adjourn the further hearing of this petition until Tuesday, 14th January, 1992 as asked.

G I add two points. First, concern has been expressed on behalf of creditors, including employees, that it was not until the last moment before this hearing today that they received information on what is the up-to-date position.

H I understand this concern. In fairness to the provisional

A liquidators and their advisers, it must be recognised that they have an exceedingly difficult task, the position is complex and constantly changing and the discussions taking place in Abu Dhabi are taking place in confidence. But matters have reached a stage when it is important that arrangements be made for creditors to have such information as is practicable from time to time and in any event sufficiently in advance of the next hearing of this petition to enable the creditors to consider the proposals put forward fully, and to take advice thereon. It is right and important that creditors should have the necessary information as soon as possible, given the complexities in this case.

D Concern has also been expressed on behalf of the creditors that the tight timetable envisaged from mid-January onwards is such that consultation processes should be formally in place by the middle of January. I see force in this submission also. The provisional liquidators I do not doubt, will take note of this and will see what can be done, if necessary with the assistance of the Court, to set the appropriate steps in motion at an early date with a view to ensuring that when the time comes for consents and responses from creditors on the proposed plan any necessary machinery will already be in place.

G Concern has also been expressed on behalf of employees who have, indeed, lost so much in this unhappy situation. They are concerned at the absence of a formal consultation procedure through which other schemes can be, and can be seen to be, considered and discussed. Here also, although I shall not at this stage give any formal directions, I will

say that the provisional liquidators should be, and I am
sure they will be, receptive to requests for consultation
by present and past employees so that their views on
possible schemes are fully known and considered before it
is too late. If necessary, further applications can be made
to me before the end of these Sittings. But, for the moment
all that I shall do is to adjourn the hearing of this
petition as I have said until 14th of January, 1992 and
direct that the costs of all parties of today's hearing be
reserved until the next occasion.
