Michaelmas Term
[2014] UKPC 35
Privy Council Appeal No 0114 of 2013

JUDGMENT

PricewaterhouseCoopers (Appellant) *v* Saad Investments Company Limited (Respondent)

From the Court of Appeal of Bermuda

before

Lord Neuberger
Lord Mance
Lord Clarke
Lord Sumption
Lord Collins

JUDGMENT GIVEN ON

10 November 2014

Heard on 29 and 30 April 2014

Appellant
David Chivers QC
Paul Smith
Scott Pearman

(Instructed by Herbert Smith Freehills LLP)

Respondent
Gabriel Moss QC
Felicity Toube QC
Stephen Robins
Rod Attride-Stirling
(Instructed by Blake Morgan LLP)

LORD NEUBERGER :

1. This appeal raises two issues. The first issue, which turns on the interpretation of two Bermudian statutes relating to companies, the Companies Act 1981 and the External Companies (Jurisdiction in Actions) Act 1885, is whether the Supreme Court of Bermuda had jurisdiction to make an order on 14 September 2012, winding up Saad Investments Company Limited ("SICL"), a company incorporated in the Cayman Islands. The second issue, which arises if there was no jurisdiction to make that order, turns on the interpretation of the 1981 Act, but it raises a point of more general application in the field of company law; it is whether SICL's auditors are entitled to challenge the winding up order in answer to an application by the liquidators under section 195 of the 1981 Act seeking the disclosure of documents in their possession.

The factual background

2. SICL was incorporated in 1990 in the Cayman Islands as an exempted limited liability company limited by shares, with its registered office in Grand Cayman. By the time of its winding up, its authorised capital was US$4bn, of which $3.15bn had been issued, almost all of it held by another company based in the Cayman Islands, Saad Group Limited, whose shares were held by a trust based in the Cayman Islands. The facts in the following four paragraphs are not in dispute at least for the purpose of the present appeal, and are taken from the winding up petition referred to in para 7 below.

3. In May 2009, the Saudi Arabian monetary authorities froze the Saudi assets of certain companies within the Saad group. Consequently, the credit ratings of companies within the group, including SICL, were downgraded. This constituted an event of default under a facility agreement which had been granted to SICL by various banks, including Barclays Capital. As a result, repayment of all sums outstanding under the facility agreement was accelerated, and SICL became liable for a sum in excess of $2.8bn. On 30 July 2009, a winding up petition was presented to the Cayman Islands Grand Court by Barclays Capital, based on SICL's default in failing to pay this sum. On 5 August 2009, the Cayman Grand Court appointed Hugh Dickson, Stephen Akers and Mark Byers, of Grant Thornton Specialist Services (Cayman) Limited ("the Respondents") as joint provisional liquidators of SICL. Six weeks later, they were appointed joint official liquidators when SICL was ordered by the Grand Court to be wound up.

4. On investigating SICL's records, the Respondents encountered what they described as "a significant amount of uncertainty due in part to the complexity of its affairs, the position of the wider Saad group, and [certain] litigation". However, they said that they were satisfied that "there is a very significant deficiency, running into billions of US dollars, as regards creditors in the winding up of SICL". They also described the liquidation as "not only large but … complex", and requiring investigations "in multiple jurisdictions including the Cayman Islands, the United Kingdom, Saudi Arabia, Bahrain, Switzerland, Bermuda" and many other countries, including the United States, France and the Channel Islands.

5. Prior to its liquidation, PricewaterhouseCoopers, ("PwC"), which is registered as exempted partnership No 7420 in Bermuda, were the auditors of SICL and of seven other companies in the Saad group, and they also provided other accountancy services to those eight companies. Following their appointment as official liquidators of SICL, the Respondents believed that PwC had in their possession, either in Bermuda or in PricewaterhouseCoopers' Dubai branch office, "information and documentation pertaining to [SICL] that ought to be turned over to [the Respondents]". Accordingly, the Respondents "made numerous attempts to obtain information and documents relating to the affairs" of SICL from PwC in Bermuda and in the Dubai Office. Eventually, in early September 2010, the Respondents obtained an order from the Cayman Grand Court for delivery up of what amounted to PwC's working files relating to every aspect of SICL's business, including its annual audited accounts, its statutory records, its tax affairs, its bank statements, and records and notes relating to all other aspects of its business.

6. To cut a long story short, the Respondents' case is that PwC complied with that order very late and only partially, and, in particular, that many of the documents which PwC provided were heavily and unjustifiably redacted. In those circumstances, the Respondents decided to apply to wind up SICL in the Supreme Court, ie in the court in the jurisdiction in which PwC was registered, with a view to invoking the power of that court to require PwC to produce the documentation sought by the Respondents, and also to provide information about SICL, under section 195 of the 1981 Act.

The proceedings in Bermuda

7. Accordingly, on 17 August 2012, attorneys acting for the Respondents presented a petition ("the Petition") to wind up SICL in the Supreme Court of Bermuda ("the Supreme Court") on the grounds that it was just and equitable to make such an order. Paragraphs 24-28 of the Petition dealt with SICL's "connection to Bermuda". This connection was said to be that SICL "holds assets in Bermuda",

consisting of shares in a company incorporated in Bermuda called Green Way, which shares were worth over $2m, and had been held by Credit Agricole, as SICL's "nominee and agent", until they were transferred to SICL in June 2011. The Petition also contended that the Respondents' desire to obtain relief against PwC under section 195 of the 1981 Act rendered it "just and equitable" to wind up SICL in Bermuda.

8. The Petition was advertised in the normal way, and, in anticipation of it being granted, the Respondents were appointed joint provisional liquidators of SICL in Bermuda on 20 August 2012. On 14 September 2012, the Petition came before the Supreme Court, which, after reading the evidence in support of the Petition and hearing from counsel for the Respondents, made the winding up order pursuant to the 1981 Act, and appointed the Respondents as joint provisional liquidators of SICL in Bermuda.

9. The Respondents then applied on 12 February 2013 to the Supreme Court for an order pursuant to section 195(1) of the 1981 Act, which provides that, "at any time after the appointment of a provisional liquidator or the making of a winding up order", the Supreme Court "may … summon before it … any person whom the Court deems capable of giving information concerning the … dealings, affairs or property of the company". Section 195(2) empowers the court to "examine such person on oath … either by word of mouth or on written interrogatories". Section 195(3) empowers the court to "require such person to produce any books or papers in his custody or power relating to the company".

10. On 4 March 2013, Kawaley CJ, sitting in the Supreme Court, granted the Respondents' section 195 application, ordering PwC to attend for examination and to produce all documents in their possession relating to the affairs of SICL. On 15 April 2013, he refused to accede to PwC's contention that his decision should be set aside on the ground that the court had had no jurisdiction to appoint the Respondents as liquidators of SICL or to make the winding up order of 14 September 2012. PwC's appeal to the Court of Appeal (Zacca P, Auld JA and Bell AJA) failed for reasons given on 18 November 2013, and they now appeal to Her Majesty.

The issues on this appeal

11. PwC contend that the Supreme Court had no jurisdiction to wind up SICL under the 1981 Act, given that it did not carry on business in Bermuda, and that, in those circumstances, the court ought not to have exercised its powers to require PwC to answer questions or to provide documents in accordance with section 195(2) and (3) of the 1981 Act.

12. The Respondents offer two answers to this contention. The first is that the Supreme Court did in fact have jurisdiction to wind up SICL, either under the 1981 Act, or, failing that, under the 1885 Act. The second answer is that, even if the Supreme Court did not have jurisdiction to wind up SICL, it is not open to PwC to challenge the winding up order, and, in particular, they cannot do so as a defence to the Respondents' application under section 195 of the 1981 Act.

13. The Board will consider those two arguments in turn.

The first issue: did the Bermuda court have jurisdiction to wind up SICL?

14. The Supreme Court's jurisdiction to wind up companies is wholly statutory in nature, and is at least primarily governed by the provisions of Part XIII of the 1981 Act, which include section 161, which provides that the court has power to wind up a "company" if one or more specified conditions is or are satisfied. Those conditions include that "the Court is of the opinion that it is just and equitable that the company should be wound up". Section 163 provides that an application to wind up "a company shall be by petition, presented either by the company or by any creditor [and/or] contributory".

15. Section 4(1) of the 1981 Act provides that the 1981 Act applies to (a) all companies registered under it or registered before 1 July 1983 under the Bermudian Companies (Incorporation by Registration) Act 1970, (b) all companies limited by shares incorporated by private Act in Bermuda at any time, except as otherwise expressly provided in the incorporating Act, (c) certain "mutual companies" (the meaning of which is irrelevant for present purposes), and (d) "any overseas company so far as any provision of this Act requires it to apply". Section 2 of the 1981 Act states that "unless the context otherwise requires", certain definitions apply throughout the Act. They include "company", which "means a company to which this Act applies by virtue of section 4(1)", and "overseas company", which "means any body corporate incorporated outside Bermuda other than a non-resident insurance undertaking" (the meaning of which is irrelevant for present purposes).

16. In these circumstances, it seems very hard to justify the Respondents' contention that the Supreme Court had jurisdiction to wind up SICL under Part XIII of the 1981 Act. SICL was an overseas company and not a mutual company or a non-resident insurance undertaking, and, as is clear from section 161, the jurisdiction only applies to "companies"; unless the context otherwise requires, that expression does not extend to overseas companies, and there is nothing in the context of Part XIII to suggest that it was intended to apply to overseas companies.

17. Far from calling this view into question, further examination of the 1981 Act confirms this view. Section 4(1A)(b) of the 1981 Act provides that Part XIII (save in relation to voluntary winding up) applies to "permit companies", which are defined in section 2 and Part XI of the 1981 Act as overseas companies which have a formal permit under section 134 to engage in trade or business in Bermuda. This provision would not have been necessary if overseas companies were included in the ambit of Part XIII, and it therefore confirms that they are not so included.

18. SICL was an overseas company which had no permit under section 134, and indeed did not trade or carry on business in Bermuda. Accordingly, it appears to the Board to follow ineluctably that the Supreme Court had no jurisdiction to wind it up, at least under the 1981 Act. It is therefore necessary to consider the Respondents' alternative contention that the court had jurisdiction to wind up SICL under the 1885 Act.

19. Section 1(1) of the 1885 Act provides that certain companies "incorporated out of Bermuda … and doing business in Bermuda by agents or branches, may be sued in the Supreme Court for any cause of action, legal or equitable, arising in whole or in part in Bermuda …". Section 1(2) deals with service of proceedings. Section 1(3) states that "All such suits may be prosecuted and carried on to judgment … as if the defendant company were … incorporated … in Bermuda, or had its principal place of business therein."

20. Two arguments are raised by PwC as to why section 1 of the 1885 Act does not assist the Respondents' contention that the Supreme Court had jurisdiction to wind up SICL. The first is that SICL did not "[do] business in Bermuda" whether "by agents or branches"; the second point is that, in any event the presentation of a winding up petition is not a "cause of action … arising … in Bermuda". The Board agrees with both arguments.

21. So far as the first argument is concerned, the only allegation in the Petition and the supporting evidence to justify the proposition that SICL "[did] business in Bermuda" was the statement that SICL "holds assets in Bermuda", namely the just over $2m's worth of shares in Green Way, a company incorporated in Bermuda – and, even now, there is no suggestion that there could have been any other evidence to support the proposition. Ownership of shares in a company incorporated in Bermuda, without more, cannot conceivably be enough to constitute the carrying on of business in Bermuda, let alone "by agents or branches". It is true that the Green Way shares may have been bought by someone acting as SICL's agent in Bermuda, that the Green Way shares may have been held by Credit Agricole as SICL's agent in Bermuda, and that the transfer of the shares into SICL's name may have been effected by Credit

Agricole as SICL's agent in Bermuda. But, even taken together, such isolated incidents in Bermuda relating to shares in one Bermuda-based company cannot possibly amount to the carrying on of business in Bermuda.

22. As to PwC's second argument, the presentation of a winding up petition against a company would not normally be regarded as involving that company "being sued … for [a] cause of action", particularly where the petition is purely based on the "just and equitable" ground. Even more telling is the point that, where the only connection between Bermuda and a winding up petition is the fact that the presenter of the petition is seeking to enforce a right under the Bermuda insolvency legislation which can only arise after the petition is granted, it is hard to see how, even assuming there is one, any cause of action could be said to "[arise] … in Bermuda". The Respondents' contention that it does so involves them pulling themselves up by their own bootstraps.

23. It follows therefore that the Board agrees with PwC on the first issue: the Supreme Court did not have jurisdiction to order that the Respondents be appointed liquidators of SICL or to order that SICL be wound up. The question which then arises is whether this fact enables PwC to avoid being required by the Supreme Court to comply with an order under section 195 of the 1981 Act, and, if so, on what ground.

The second issue: can PwC oppose the section 195 order?

24. The Respondents contend that, even if the court had no jurisdiction to make the winding up order against SICL, the order is effective, at least until it is set aside (to use a general term), and that there is no basis upon which PwC can challenge the winding up order, and therefore no basis on which it can challenge the order made against it under section 195 of the 1981 Act. This contention involves three steps, namely (i) the winding up order of 14 September 2012 was an order made by the Supreme Court, a court of unlimited jurisdiction and is therefore effective, (ii) PwC does not have *locus* either to challenge the validity, or appeal against the making, of the winding up order, and (iii) consequently there is no basis upon which PwC can properly challenge the order granting the Respondents' application under section 195 of the 1981 Act.

25. So far as step (i) in the Respondents' argument is concerned, it is well founded. The Board accepts that, even though the Supreme Court did not in fact have jurisdiction to wind up SICL, the order it made to wind SICL up and to appoint the Respondents as joint official liquidators on 14 September 2012 must, at least until it is set aside by a subsequent order, be treated as effective in law. This is because of "the short and well established ground that an order made by a court

of unlimited jurisdiction … must be obeyed unless and until it has been set aside by the court" – per Lord Diplock giving the advice of the Board in *Isaacs v Robertson* [1985] 1 AC 97, 101F. Consistently with this, there is a number of cases in which judges have held that they cannot "go behind" a winding up order, ie that it must be treated as valid and effective, albeit until it is set aside or in some way stayed – see eg *In re Dover & Deal Railway Co* (1854) 4 De GM & G 411, 420 per Knight Bruce LJ and *In re London Marine Insurance Association* (1869) LR 8 Eq 176, 193 per James V-C.

26. Step (ii) of the Respondents' argument, on the other hand, is considerably more complex. Mr Chivers QC, for PwC, contends that his client should be able to argue that the winding up order was made without jurisdiction and consequently (a) to have the winding up order set aside or stayed in some way by the Supreme Court, (b) to have the winding up order discharged on appeal by the Court of Appeal, or (c) to have the section 195 order set aside even if the winding up continues.

27. The Board is satisfied that it is and was open to PwC to argue before the Supreme Court that the winding up order of 14 September 2012 was made without jurisdiction. Further, on the unusual facts of this case, the Board is also satisfied that the Supreme Court and the Court of Appeal had the power, which they should have exercised, and which the Board can and should now exercise, to stay the winding up of SICL in Bermuda.

28. Under section 184(1) of the 1981 Act,

> "The [Supreme] Court may at any time after an order for winding up, on the application either of the liquidator or the Official Receiver or any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit."

> If such an order is made "altogether", its effect is, as Mr Moss QC for the Respondents said, effectively to rescind the winding up. Accordingly subsection (2) of section 184 empowers the Court in such a case to "make such order as it considers desirable to enable the company to be as near as practicable as it was before the winding up order was made".

29. During the course of the oral argument, five possible reasons were advanced by Mr Moss to support the proposition that it is not open to PwC to ask Her Majesty

in these proceedings to stay SICL's winding up in Bermuda altogether. The first is that it is impermissible as a matter of principle for a stranger to a liquidation, such as PwC even to raise the issue that the Supreme Court stay the winding up, or, if it was open to them to raise the point, they could only do so as an *amicus curiae*, with no right of appeal, and that consequently they cannot challenge the Supreme Court's decision of 15 April 2013. The second reason is that it is impermissible for anyone to challenge the validity of the winding up order in the winding up proceedings. The third reason is that relief in the form of a stay under section 184 was not sought in the courts below. The fourth reason is that it is inappropriate on the facts for the winding up to be stayed. The fifth reason is that, even if the first four reasons are rejected, the question of a stay should be remitted rather than decided by the Board.

30. So far as the first reason is concerned, it is perfectly true that PwC can be described as strangers to the winding up, as they are not the company itself, nor the Official Receiver, the liquidators, contributories or creditors. It is also true that there is a fair amount of authority to support the propositions that (i) a person who is not within those classes, and therefore is a stranger to the winding up, cannot be heard on a winding up petition, and (ii) a person who could not be heard on the winding up petition does not have *locus* subsequently to challenge the making or continuation of the winding up order – see eg *In re Mid East Trading Ltd* [1998] BCC 726, 731G-733H per Evans-Lombe J, and the cases which he cites.

31. As a general proposition, it is no doubt correct that a court will not normally be prepared to entertain submissions from strangers to a winding up on the issue whether a winding up order should, or should not have been, made. However, the Board can see no reason why this sensible and practical general rule should be elevated into an immutable principle, applicable in every case irrespective of its facts. In this case, two points are important and unusual. The first is that the ground of opposition to the winding up order is based purely on jurisdiction; the second is that the stranger in question is a stranger to the winding up only in the most technical sense.

32. As to the first point, a contention that a winding up order should not have been made will rarely be entertained sympathetically or at much length by a court if it is raised by a party at the receiving end of an application under a provision such as section 195, unless the contention is supported by the company, the Official Receiver, the liquidator, a creditor or a contributory. However, if, as in this case, the contention raises a well arguable point that, on the face of the court papers, there was no jurisdiction to make the order, it would have to be seriously addressed, and if the contention was made out, the court would have to consider what the interests of justice require. Indeed, that possibility seems to have been

at least left open by Chadwick LJ in his judgment upholding the decision of Evans-Lombe J in *Mid East* at p 747A-B.

33. As to PwC being strangers, they were not merely affected by the winding up order made by the Supreme Court: they were the targets, indeed the sole direct targets, of the winding up order. The only reason given in the Petition as to why it was just and equitable to wind up SICL in Bermuda was that it would enable the Respondents to invoke section 195 of the 1981 Act against PwC. In those circumstances, it seems to the Board that they certainly had sufficient standing to raise the question with the Court as to whether there had in fact been jurisdiction to make the winding up order, when they were seeking to challenge the section 195 order which had been made against them. Indeed, even in *In re Bradford Navigation Company* (1870) LR 5 Ch App 600, the earliest case cited and relied on by Evans-Lombe J in *Mid East*, James LJ at p 603 accepted that a stranger to a winding up petition could, in appropriate circumstances, be permitted to make representations on the hearing of the petition. PwC were not before the court when the winding up order was made, and they had no notice of it (other than as members of the public to whom it was advertised), and they challenged it as soon as they reasonably could have done so.

34. It is true that section 184(1) refers to the court staying the winding up on the application of certain specified people, including the liquidator but not including a party such as PwC. But the Respondents were before the court at the time that the lack of jurisdiction was raised, and they were, by virtue of having been appointed the Bermudian liquidators, officers of the Supreme Court. Accordingly, even if one limits oneself to the literal words of section 184(1) it seems to the Board that, if the court had been satisfied, as it ought to have been, that the winding up order had plainly been made without jurisdiction, and if the court had concluded that the order should, if possible, be in some way set aside or stayed, then the court could and should have effectively required the Respondents to apply for a stay of the winding up. On that basis, it must follow that the court could and should simply have made an order staying the winding up, albeit after giving the Respondent liquidators the opportunity to be heard.

35. The contention that, even if PwC had the right to draw the attention of the Supreme Court to the fact that the winding up order was made without jurisdiction, it did not have *locus* to pursue an appeal against the refusal of the Supreme Court to set aside the order, is also based on the proposition that PwC are strangers to the winding up proceedings. It is said that they therefore had, at best, no more than the right to make representations about the winding up order as *amicus curiae*, and an *amicus* has no right to appeal against an order - see *Bradford* referred to above. However, that was a case where the applicant's rights were unaffected by the winding up order, there was no attack on the jurisdiction to make the winding up order, and the application was rejected in

very general terms, which are not apposite here, namely that it would involve "extending litigation beyond all possible limits if every person who may have a right with respect to property which belongs to a company could come here and say that the winding up will interfere with his rights" – per James LJ at p 603.

36. Of course, any court asked to wind up a company should generally be very reluctant to give a person (other than the company, the liquidator or the Official Receiver), who is neither a contributory nor a creditor, the right to be a party and to be formally heard in support of, or against, the making of a winding up order. Nonetheless, the Board can see no reason why, in appropriate circumstances, a person who will be directly affected by a winding up order should not have the right to be added as a party to the proceedings. It should be emphasised that the circumstances where such a course would be appropriate will be exceptional. Given that exceptionality is not a very useful guide, it is right to add that the Board considers that the mere fact that a person rightly anticipates that his or her rights will be detrimentally affected as a result of the winding up order would normally be quite insufficient to justify that person being added as a party.

37. In this case, however, the challenge to the winding up order was based on jurisdiction, and the sole ground for making the winding up order was to obtain relief against PwC, which involved interfering with their rights. Accordingly, it would, as already mentioned, be a denial of natural justice if they were denied the opportunity of challenging the making of the order, not merely in an informal *amicus* capacity, with no right of appeal, but in a formal capacity as a party. On the very unusual facts of this case, the Board considers that PwC had the right to be added as parties to the Petition.

38. Indeed, with wisdom of hindsight, the Board considers that, in the light of those very unusual facts, PwC should have been informed of the hearing of the Petition, and been given the opportunity of making representations and being added as a party before the winding up order was made. Had that course been taken (either by the Respondents or by the Supreme Court) then the question of jurisdiction could, and presumably would, have been properly considered (if necessary on appeal) before the winding up order was made, which would have been more convenient than the course which these proceedings have taken.

39. Once it is appreciated that PwC had the right to be added as a party to the Petition, it must follow that, as they were not even given notice of its hearing, they should, at least unless there are good reasons to the contrary, not merely be entitled to raise the question whether the Supreme Court had jurisdiction to make the winding up order, but also to raise the issue on appeal. That is because they would have been entitled to pursue their challenge to the making of the order if they had been parties to the Petition.

40. The Respondents' second argument, namely that a winding up order cannot be challenged in the course of the winding up proceedings themselves is misconceived. The furthest this argument can go is to say that it is not open to a party such as PwC to contend that a winding up order is invalid without having it set aside – as explained by Chadwick LJ in *Mid East* at p 746F-H. One can see the force of the point that, so long as the winding up order remains in force, PwC should not be entitled to challenge, or to refuse to comply with, a section 195 order on the ground that the winding up order on which it is founded was made without jurisdiction. If the law were otherwise it would be inconsistent with the principle in *Isaacs.* Further, if the law were otherwise, the winding up order would apply in some circumstances and not in others, which could have impractical and unpredictable consequences.

41. However, this second argument wholly mischaracterises PwC's case, as a stay of the winding up would mean that the winding up order ceases to have effect generally. Mr Moss's contention that PwC should not be allowed to mount a "collateral attack" on the winding up order is similarly based on this mischaracterisation. PwC are not merely saying in answer to an application made in the winding up proceedings that "the winding up order ought not to have been made" (as Sir George Jessel MR put it in another case referred to by Evans-Lombe J, *In re Arthur Average Association* (1875) LR 10 Ch App 542, 545). They are suggesting that the court should make an order under section 184, which gives it the power to stay the winding up generally.

42. This second argument of the Respondents appeared to the Board, however, to go further, and to amount to a contention that there was a procedural principle that nobody can raise an argument that a winding up order was made without jurisdiction in the course of the winding up proceedings themselves. That contention must be rejected. There is no reason in principle or in practice for such an artificial rule, which appears neither to be based on any principle nor to accord with justice. The Board does not consider that Chadwick LJ's judgment in *Mid East* at pp 745D-747B supports the Respondents' contention on this point, but, to the extent that it does, it is wrong (and anyway it would not apply here, in the light of the final comment at p 747A-B).

43. The Respondents' third argument, namely that reliance was not placed on section 184 in the courts below, appears to be soundly based on fact. However, the argument that the winding up order was made without jurisdiction was plainly and unambiguously raised by PwC in the courts below, and they also argued that this should justify the winding up order being reversed on appeal, which would have represented the same outcome in practical terms as a permanent stay. The possibility of an order under section 184 was raised in argument before the Board, and the Respondents have had the opportunity to deal with it. Unless it would be unfair on the Respondents, the Board can and should recommend a

stay of the winding up if the Supreme Court should have done so, as Her Majesty has all the powers of the courts below.

44. This leads to the Respondents' fourth argument, namely that there are good reasons for not granting a stay. The Board cannot identify any good reasons. In many cases, it may be that a court could be persuaded that it was too late for a winding up to be stayed even if it was plainly granted without jurisdiction. The liquidation will very often have proceeded too far for matters to be satisfactorily capable of being restored or otherwise re-organised, as would be required if there was to be a stay, or third party rights may have been created or varied in such a way as would render it unjust to stay the winding up (or more unjust to stay than not to stay). In the present case, there is no suggestion of the Respondents (or anyone else) having done anything irrevocable pursuant to the Bermuda winding up order: indeed, the only things the Respondents could have done were to pursue PwC and get control of the Green Way shares. The pursuit of PwC cannot possibly be invoked to justify a contention that it is now too late to stay the winding up. Nor could any steps taken in relation to the Green Way shares, not least as the Respondents could have proceeded in relation to them in reliance on their appointment as liquidators of SICL in the Cayman Islands.

45. The Respondents' final reason, namely that the question of a stay should be remitted to the Supreme Court has no merit, essentially for the reasons already rehearsed, namely (i) it is clear that the winding up order was made without jurisdiction, (ii) the court has power to stay the order in those circumstances, (iii) there is no good reason not to stay the order, and (iv) it would be thoroughly unjust on PwC, the only direct target of the order, who are challenging its validity for the first time, if the court did not stay the order.

46. If for some reason section 184 was not available, the Board considers that, essentially for the reasons just given, the Court of Appeal would have had jurisdiction to add PwC as a party to the winding up proceedings, give them permission to appeal out of time against the making of the winding up order, accede to their argument that the order was made without jurisdiction, and then to set it aside. This was a point which undoubtedly was raised by PwC before the Court of Appeal. Of course, it would require very unusual circumstances before a person who was technically a stranger to the winding up (ie someone who is not the company, a liquidator, the Official Receiver, a contributory or a creditor) should be able successfully to apply to appeal against the making of a winding up order, particularly out of time. However, where the applicant's point goes to jurisdiction, where the applicant is the sole target of the liquidation, where nothing irrevocable has been done by the liquidators, and where the applicant has not sat on his hands, different considerations apply. In this case, in the Board's view, only one answer would be appropriate, namely to allow the application and set aside the winding up order.

47. Given that PwC's attack on the winding up order succeeds, it must follow that step (iii) in the Respondents' argument fails, and that the section 195 order is discharged. However, it is appropriate to consider PwC's fallback argument that, even if the winding up order remains in place, it should be entitled to have the section 195 order set aside. In a normal case, the Board would consider that this argument should fail. If a third party is unable to have a winding up order set aside, then the winding up order remains in place and is valid, as explained in paras 25 and 40 above. It would be inconsistent in principle if the winding up order was valid for some purposes and not for others, and it would also be very impractical and unpredictable in its consequences, so far as the conduct of the liquidation is concerned. For that reason, the Board would agree that in a normal case, even if the court was satisfied that the winding up order should not have been made, so long as it remains in existence, its invalidity could not justify the court refusing to make or enforce a consequential order such as one under section 195 of the 1991 Act.

48. However, if PwC were thrown back on this third argument, which they are not, the Board would have acceded to it, on the basis that, in its discretion, the Supreme Court should have discharged the order it had made under section 195 of the 1981 Act. This is only justifiable because of the very limited purpose and effect of the winding up order made by the Supreme Court. As to the limited purpose, the Petition was only issued and granted to enable the Respondents to obtain relief against PwC under section 195. In those circumstances, if it should not have been granted and, if PwC have no opportunity to challenge the winding up order, it would represent a serious breach of their rights, a breach of natural justice, if they could not at least rely on the fact that there had been no jurisdiction to make that order as a reason for denying the Respondents the relief under section 195. Such a conclusion would have an unusually limited effect, because the inability to pursue the section 195 application would not prejudice in any practical sense the liquidation in Bermuda; it might prejudice the liquidation in the Cayman Islands, but that is not a relevant consideration for present purposes.

Conclusion

49. Accordingly, the Board will humbly advise Her Majesty to allow the appeal of PwC.