

BAKER TECHNOLOGY

NEWS FLASH

**Sembcorp Marine loses fight for remaining 15% stake in PPL Shipyard.**

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Sembcorp Marine Ltd. (“SembMarine”) has lost its legal fight with PPL Holdings (“PPLH”) for a 15% stake in PPL Shipyard. High Court Judge Tay Yong Kwang had dismissed Sembcorp Marine Ltd. claims in their entirety. Justice Tay also allowed some of the counterclaims of the defendants – PPLH and its subsidiary E-Interface Holding; ruling that Mr. Anthony Aurol – was not validly removed as a director of PPL Shipyard.

PPLH is owned by Baker Technology Limited (“Baker Technology”) and in turn, PPLH owns a 15% stake in PPL Shipyard, which was at the heart of this dispute.

The above legal battle began in 2010 after Baker Technology agreed to sell PPLH to a consortium which included a Chinese firm Yangzijiang Shipbuilding (“YZJ”) for US\$155 million. The result of the sale would make the consortium the owner of the remaining 15% stake in PPL Shipyard. Industry watchers had previously observed that SembMarine might have been nervous of being in a partnership controlled by external parties and not by its own choosing.

In response to the offer made by the consortium, SembMarine which owns an 85% stake in PPL Shipyard, made a counter-offer of S\$59.4 million, which was one-third of the consortium’s offer. Following the rejection of this counter-offer, SembMarine contested the sale in court, claiming first right of refusal over the remaining 15% stake.

Due to the pending legal tussle, the US\$155 million which the consortium had agreed to pay slumped to US\$116.25 million. Baker Tech deferred the gain of S\$58.2 million and will only recognize its gain on the disposal if the court’s ruling is not appealed against or is upheld on appeal.

SembMarine added that the joint venture agreement it had with PPLH meant that it had the right of refusal before PPLH could offer its shares to anyone else. Conversely, the sale of PPLH had been conducted between its then parent company- Baker Tech and the consortium.

Justice Tay dismissed SembMarine's claim and noted in his judgement that "there was a gap in the joint venture agreement in that it did not provide for the situation where one of the principals of the parties lost control of that party". SembMarine further argued that when notified by PPLH's lawyers that Baker Tech had accepted YZJ's offer, this triggered a put option that allowed it to buy over the 15% stake. However, Justice Tay ruled that the put option was not, in fact, triggered and the S\$59 million tendered "is of no consequence."

SembMarine also claimed to be allowed to end its joint venture agreement with PPLH as there was a breach of confidentiality when Mr. Anthony Aurol disclosed PPL Shipyard's accounts to YZL. However, Justice Tay ruled that even if the accounts had lost their confidentiality, it was not enough to justify the "extreme remedy of termination of the joint venture agreement."

For the defendants' counterclaims, Justice Tay ruled that the letter written by six SembMarine nominated directors, which removed Mr. Aurol from his directorship of PPL Shipyard was "written without a directors' meeting with the requisite quorum" and therefore did not constitute as a valid request for Mr. Aurol to vacate his position as director of PPL Shipyard.

However, Justice Tay did reject the defendants request for relief for minority shareholders on the grounds of oppression.

SembMarine was ordered to pay the defendants' costs for the lawsuit and also for the counterclaims with "appropriate deductions" for the counterclaims in which the defendants failed.

Following the good news, Mr. Anthony Aurol has been reinstated as director and executive director of PPL Shipyard, where he will resume his involvement in the day-to-day operations of PPL Shipyard.