



The Manager
Company Announcements Office
Australian Stock Exchange

Singapore Court of Appeal delivers judgement

14 February 2023 - White Energy Company Limited (ASX: WEC; OTC:WECFF) ("White Energy" or "the Company") refers to its previous announcements in relation to the proceedings brought by its subsidiaries, BCBC Singapore Pte Ltd ("BCBCS") and Binderless Coal Briquetting Company Pty Limited against PT Bayan Resources Tbk ("BR") and Bayan International Pte Ltd (collectively, "**Bayan**") in connection with the KSC joint venture.

As shareholders are aware, BCBCS filed an appeal in the Singapore Court of Appeal (the "**Court**") in order to appeal certain of the findings made by the Singapore International Commercial Court in tranche 3 of the proceedings, which was heard by the Court in October 2022.

The Court delivered its judgement on 10 February and has dismissed the appeal. The Court held that Bayan would have been able to call upon its shareholder loans as an unpaid creditor to bring the joint venture to an end, even in circumstances where it had clearly breached the agreement.

The Court noted that BCBCS was successful in the first and second tranches of the proceedings, in establishing that Bayan acted in breach of its coal supply obligations under the joint venture deed. The Court found that BCBCS was not able to prove that it suffered substantial damages as a consequence. The Court further found that this did not detract from BCBCS' success in establishing BR's liability for breach of contract and the Court awarded BCBCS S\$1,000 in nominal damages.

The Company is disappointed with the outcome of the appeal and that Bayan has not been held to account for its breaches of contract and that BCBCS has not been properly compensated for such breaches.

The coal supply contract required Bayan to supply the 35% moisture coal to the joint venture plant at US\$8.60 per tonne. The coal would then be upgraded from 4200 Kcal to 6100 Kcal / kg. Such coal was recently selling for in excess of US\$200 per tonne. BCBCS estimates that it would have made upwards of US\$88 million from its share of the joint venture.

When Bayan entered into the joint venture in 2006 it was nearly impossible to export 35% moisture coal, however by 2011 China, South Korea and India were leading the way in purchasing high moisture Indonesian coal due to the expanding demand for thermal coal.

The capital invested in the project was substantial, with BCBCS contributing over US\$100 million and Bayan contributing US\$40 million, by way of shareholder loans instead of equity from both parties, which is not uncommon and which are normally rolled over or partially rolled over if the parties are not in a position to repay them.

The market took off in 2019/20 and both parties would have enjoyed substantial returns from the project, however, the Court accepted Bayan's argument that when the shareholder loans were due to start to be repaid in June 2012,



Bayan would have called in their US\$40 million loans and exercised their right as an unpaid creditor to bring the joint venture to an end. Of course, the project didn't even get to that point in June 2012 because Bayan stopped coal supply in 2011. By breaching the contract, Bayan could then enjoy the proceeds from 100% of the 1.5 million tonne coal supply instead of 49%. The outcome has ignored the ability and willingness of BCBCS to repay Bayan's loans using the ample funds it could have earned from its share of the joint venture and the funding support from WEC in furtherance of what was an important formative BCB project.

Bayan's financial statements show that they have made substantial profit from their sales of this high moisture coal. In fact, over the last few years, they have paid down borrowings of US\$395 million and paid dividends of US\$1,424 million.

The outcome has ignored the significant sums invested by BCBCS which were rendered futile due to Bayan's breaches of the agreement. Due to the breaches, the plant and power station were stranded in a remote part of Indonesia and were vandalized. The Company considers that the damage it suffered as a result of Bayan's repudiation of the agreement was undoubtedly significant and that the award of S\$1,000 in damages clearly does not recognise the substantial losses suffered by the Company.

BCBCS' application for leave to appeal the costs order made by the SICC in relation to the costs of the trial remains to be determined by the Court. The Court has directed that BCBCS file further submissions by 17 February and for Bayan to file its response by 24 February.

The Company will provide further updates to shareholders in due course.

Announcement authorised by:

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