SPP Guiding Case No. 220: Case of Wu Moumou et al. for Illegally Disclosing Material Information

Dan Young Business Consultancy — www.danyoungcpa.com

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Decided at the 36th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on September 13, 2024; issued on January 3, 2025.

Keywords

Listed company / financial falsification / illegal disclosure of material information / classified handling

Holding

When handling cases of illegal disclosure of material information by a listed company, the People's Procuratorate shall ascertain the original production and operation situation of the listed company, restore the true financial data, compare it with the publicly disclosed financial data, and accurately determine the criminal facts of financial falsification and illegal disclosure of material information. Attention shall be paid to the review and use of administrative law enforcement evidence. Objective evidence such as documentary evidence and electronic data whose collection procedures and sources are lawful and whose contents are objective and truthful may serve as the basis for charging the crime. The criminal liability of the personnel involved in the financial falsification shall be accurately distinguished, and classified handling shall be carried out in a targeted manner. Where the majority shareholders, actual controllers, and senior management personnel of a listed company commit crimes, they shall be severely punished in accordance with the law.

Basic Facts

The defendant Wu Moumou was the former chairman and president of Company A Group Co., Ltd. The defendant Liang Mou was the former chief engineer and executive vice president of Company A Group Co., Ltd. The defendant Gou Mou was the former chief financial officer of Company A Group Co., Ltd. The defendants Sun Moumou and Liu Mou were, respectively, the former secretary of the board of directors and the former assistant chief financial officer of Company A Group Co., Ltd.; the defendant Zou Moumou was the former financial head of the marine ranch group of Company A Group Co., Ltd.; and the defendants Shi Moumou and Zhang Mou, as well as the non-prosecuted Yu Moumou and Zhao Mou, were staff of the proliferation branch company of Company A Group Co., Ltd.

Company A Group Co., Ltd. ("Company A") is a listed company on the Shenzhen Stock Exchange. In 2016, because Company A had already been loss-making for two consecutive years, in order to prevent the company from being suspended from listing for three consecutive years of losses, Wu Moumou directed Gou Mou to organize personnel to carry out financial falsification to inflate profits. Zou Moumou arranged for Zhang Mou and Shi Moumou, staff of the proliferation branch company responsible for bottom-sowing scallop farming, to specifically modify the "operation area coordinates" and "harvesting acreage," forming false "Monthly Bottom-Sown Scallop Harvest Records" for 2016 and 2017, so as to reduce the harvesting area of Yesso scallops from 694,100 mu to 554,800 mu and thereby reduce harvesting costs. Yu Moumou and Zhao Mou of the proliferation branch company cooperated by signing the harvest records; Liu Mou aggregated the "Monthly Bottom-Sown Scallop Harvest Records" reported by the proliferation branch company into statements and, after they were reviewed and approved level by level by Gou Mou, Sun Moumou, Liang Mou, and Wu Moumou, incorporated them into the 2016 financial report, thereby understating operating costs by more than RMB 60 million. Wu Moumou also directed the above personnel not to write off scallops in certain sea areas that no longer existed but should have been written off, thereby understating non-operating expenses by more than RMB 70 million. In sum, in Company A's publicly

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disclosed “2016 Annual Report,” profits were inflated by more than RMB 130 million, accounting for 158.11% of the total profits disclosed for that period.

From the end of 2017 to the beginning of 2018, in order to write off the profits inflated in previous years, and in order to re-sow scallop seedlings in the concealed harvesting areas where scallops had actually been harvested in 2016 but not recorded, Wu Moumou directed the above company personnel to increase the harvesting area of Yesso scallops to increase harvesting costs, with the actual harvesting area adjusted upward from 549,100 mu to 607,000 mu, inflating operating costs by more than RMB 60 million. In addition, by adding sampling points in the concealed sea areas and fabricating scallop deaths, the scallops in the already-harvested sea areas were falsely written off and impaired, inflating non-operating expenses and asset impairment losses by more than RMB 210 million. In sum, in Company A’s publicly disclosed “2017 Annual Report,” profits were understated by more than RMB 270 million, accounting for 38.57% of the total profits disclosed for that period.

Wu Moumou and others also committed the crime of fraud, the crime of bid-rigging, the crime of offering bribes to non-state functionaries, and the crime of accepting bribes as non-state functionaries.

Procuratorate Performance of Duties

(1) Review of arrest. On April 27, May 24, and July 20, 2021, the Dalian Municipal Public Security Bureau of Liaoning Province successively requested approval of arrest of Gou Mou, Wu Moumou, Zou Moumou, and other criminal suspects on suspicion of the crime of illegal disclosure of material information and other crimes. The Dalian Municipal People’s Procuratorate held that ascertaining the basis for the monthly cost carry-over of Yesso scallops, namely the “current actual harvesting area,” was the key to determining whether financial falsification existed. Upon review, the Beidou navigation positioning information of Company A’s harvesting vessels at sea retrieved by the China Securities Regulatory Commission, and the key evidence such as the true navigation trajectories and true harvesting sea areas of the harvesting vessels restored by Sinouniverse Technology Co., Ltd. and the East China Sea Fisheries Research Institute of the Chinese Academy of Fishery Sciences based on the navigation positioning information, could prove the criminal facts that Company A had fabricated and falsely disclosed the harvesting area, harvesting costs, and operating profits in 2016 and 2017. The procuratorate accordingly made decisions to approve the arrest of Wu Moumou and others on April 30, May 31, and July 26, 2021.

At the same time, the procuratorial organ found upon review that after Wu Moumou and others were brought to justice, they denied the financial falsification and refused to provide the navigation logs and sea-harvesting area records of the harvesting vessels; the data on scallop harvesting area and harvesting costs in the office system had been artificially destroyed; the WeChat chat records reflecting the process of tampering with financial data had been deleted; the sampling inventory situation on the seabed could no longer be reproduced; and the true harvesting situation was unknown, making it impossible to determine whether the costs and profits recorded in the accounts were true. The procuratorial organ required the public security organ to continue carrying out targeted investigation and evidence collection: first, to retrieve the explanation by BDStar Navigation Technology Co., Ltd. of the principle of using satellite positioning data to restore the operating status points of vessels, proving the scientificity and feasibility of using satellite data to restore the true harvesting sea areas; second, to retrieve Company A’s vessel harvesting maps, bottom-sowing maps, and fuel subsidy receipt situation, review whether they corroborated the satellite trajectory restoration maps, and ascertain the accuracy of the restoration maps; third, to conduct a comprehensive audit of Company A’s financial situation based on the satellite-restored harvesting area, restore the true financial data, and ascertain the specific amounts of falsification of costs, non-operating expenses, and profits in the publicly disclosed annual reports; and fourth, to retrieve documentary evidence such as Company A’s official document approval forms, board resolutions, and meeting records, review whether they bore the signatures of Wu Moumou and Sun Moumou, and ascertain the subjective intent of Wu and Sun.

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(2) Review for prosecution. On August 31, 2021, after collecting relevant evidence in accordance with the outline for continued investigation, the Dalian Municipal Public Security Bureau transferred Wu Moumou, Gou Mou, Liang Mou, Sun Moumou, Liu Mou, Zou Moumou, Shi Moumou, Zhang Mou, Yu Moumou, Zhao Mou, and others to the Dalian Municipal People's Procuratorate for prosecution on suspicion of the crime of illegal disclosure of material information and other crimes. On January 20, 2022, the Dalian Municipal People's Procuratorate initiated public prosecution before the Dalian Intermediate People's Court against defendants Wu Moumou, Gou Mou, Liang Mou, Sun Moumou, Liu Mou, Zou Moumou, Shi Moumou, and Zhang Mou for the crime of illegal disclosure of material information, and against Wu Moumou and others for other crimes. After review, the criminal suspects Yu Moumou and Zhao Mou, whose criminal circumstances were minor and whose social harm was not great, were lawfully not prosecuted.

(3) Charging and proving the crime. On March 31, 2022, the Dalian Intermediate People's Court held a public hearing in this case. During the trial, in response to the opinions of the defendants and defense counsel that Wu Moumou had not carried out financial falsification and illegal disclosure, that big data analysis reports could not be used as evidence, and that Liang Mou did not know before the public disclosure that the financial reports were falsified, the procuratorial organ conducted targeted presentation of evidence, cross-examination, and response.

In the evidence presentation stage, in response to Wu Moumou's defense that he had not organized or directed the financial falsification, the public prosecutor presented to the court the evidence charging and proving the criminal facts of Wu Moumou and others' illegal disclosure of material information: first, satellite navigation data, the restoration maps of Company A's true scallop harvesting area and bottom-sowing area, corroborating the satellite restoration maps with the vessel harvesting maps, bottom-sowing maps, and fuel subsidy receipt situation; second, the true bottom-sown scallop and harvesting data of Company A restored based on the restored area and the report auditing the restored production and operation data, carrying over the true costs, non-operating expenses, and profits, comparing them with Company A's disclosed data and calculating the difference; and third, the approval records of false financial reports and the official document approval records of information disclosure, the statements of criminal suspects Gou Mou, Liu Mou, Zou Moumou, and others, and the testimony of multiple company employees, proving that Wu Moumou directly arranged for company executives to fabricate false profit data on a monthly basis and, knowing that the financial data were all false, still signed for confirmation. The above evidence completely proved the criminal facts of Wu Moumou and others' financial falsification and illegal disclosure.

In the cross-examination stage, in response to the evidentiary qualification of the big data analysis reports, the public prosecutor responded: first, as to the legality of the evidence, Sinouniverse Technology was a geographic information service provider with Grade-A qualification for geographic information data processing, and the East China Sea Fisheries Research Institute was the supporting unit of the Fisheries Remote Sensing Department of the National Remote Sensing Center, possessing the qualification to issue professional opinions in big data analysis in respect of fishing vessel position data monitoring and fishery information services. The big data analysis reports issued by the two institutions were lawfully retrieved by the China Securities Regulatory Commission in the course of administrative law enforcement, and the evidence collection process was lawful; in accordance with Article 54 of the Criminal Procedure Law, they could serve as the basis for deciding the case. Second, as to the authenticity of the evidence, the two institutions restored the objective harvesting facts based on the navigation trajectories of the harvesting vessels and calculated the actual harvesting area, and the three versions of the harvesting area maps derived by different methods did not differ greatly. The financial data calculated by the China Securities Regulatory Commission based on the true harvesting area and using Company A's cost carry-over method could corroborate the audit report commissioned by the public security organ, and should be accepted.

In the court debate stage, in response to Liang Mou's subjective knowledge, the public prosecutor responded: first, as the executive vice president of Company A in charge of the marine ranch group

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business, Liang Mou was responsible for scallop harvesting, sampling, and year-end inventory in that business group, and understood the true production and operation situation in 2016 and 2017; second, Zou Moumou had reported to him on multiple occasions about organizing financial personnel to carry out financial falsification through the proliferation branch company, and he arranged for staff to fabricate a "technical analysis report" on the causes of scallop deaths for public release to conceal the false financial data, and therefore had subjective knowledge of the falsification of the financial reports; and third, under Article 82 of the Securities Law, directors and senior management personnel shall ensure that the disclosed information is true, accurate, and complete. Liang Mou, knowing that the financial reports were falsified, still signed for approval of public disclosure during review, constituting the crime of illegal disclosure of material information and should bear corresponding criminal liability.

(4) Outcome. On October 31, 2022, the Dalian Intermediate People's Court rendered a first-instance judgment, determining that Wu Moumou had committed the crime of illegal disclosure of material information and sentencing him to two years and six months of fixed-term imprisonment and a fine of RMB 200,000, which, combined with the crime of fraud and other crimes under combined punishment for multiple crimes, resulted in a decided term of fifteen years of fixed-term imprisonment and a fine of RMB 920,000; determining that defendants Gou Mou, Liang Mou, and others had committed the crime of illegal disclosure of material information and sentencing them respectively to fixed-term imprisonment ranging from one year and ten months to one year and seven months, which, combined with the crime of fraud and other crimes under combined punishment for multiple crimes, resulted in decided terms ranging from six years and six months to one year and seven months, with probation declared for some defendants and fines imposed. Defendants Wu Moumou, Liang Mou, and others appealed. On May 25, 2023, the Liaoning Higher People's Court rendered a second-instance ruling, dismissing the appeals and affirming the original judgment.

Guiding Significance

(1) Construct a corresponding charging and proof system according to the characteristics of financial falsification by different types of listed companies, and severely punish in accordance with the law various financial falsification crimes of listed companies. The means of financial falsification by listed companies are diverse. For acts of first inflating profits to create performance and then understating profits to balance the accounts, which superficially appear to be "correction" but are in fact repeated falsification, they seriously undermine the information disclosure system and the foundation of good faith of the capital market and harm the lawful interests of investors, and should be severely punished in accordance with the law. In handling such cases, the means of falsification in the source production and operation links of different types of listed companies shall be examined, the key points of proof shall be closely followed, and, on the basis of restoring the production and operation data, an audit institution shall be commissioned to restore the true financial data according to the company's financial accounting methods, compare them with the publicly disclosed financial data, calculate the difference, and accurately determine the criminal facts of financial falsification and illegal disclosure of material information. Where the original production and operation data cannot be obtained, scientific methods may be used to restore the true production and operation scenario. Where farming and planting areas are involved, calculations may be made using technological means such as geographic information analysis.

(2) Attach importance to the review and use of objective evidence materials collected by securities regulatory institutions in administrative law enforcement. Objective evidence materials such as documentary evidence and electronic data lawfully collected by securities regulatory institutions in the course of administrative law enforcement and case investigation may serve as the basis for charging and determining crimes. Other evidence shall be fully used, or the authenticity of evidence transferred by administrative organs shall be corroborated through auditing, appraisal, and other means, to ensure that the whole case reaches the proof standard of clear facts and sufficient and reliable evidence.

(3) Accurately determine the criminal liability of personnel involved in financial falsification, and handle them in a classified manner in accordance with the law based on their status and role in the crime. For controlling shareholders and actual controllers of companies and enterprises, directors and supervisors, and senior management personnel such as general managers, deputy general managers, and financial heads who organize or direct others or themselves carry out financial falsification and illegal disclosure, or who sign for confirmation on disclosure documents while knowing the disclosed information is false, criminal liability shall be severely pursued in accordance with the law; for middle-level management personnel such as department heads who organize or direct others to carry out or actively participate in financial falsification and illegal disclosure, corresponding criminal liability shall be pursued in accordance with the law; and for department heads and ordinary employees with little subjective malice who follow instructions and participate in the crime to a lesser degree, they may be handled leniently in accordance with the law.

Relevant Legal Provisions

Article 161 of the Criminal Law of the People's Republic of China (2006 Amendment) (currently Article 161 of the Criminal Law of the People's Republic of China applies).

Article 15, Article 54(2), and Article 177(2) of the Criminal Procedure Law of the People's Republic of China.

Article 82 of the Securities Law of the People's Republic of China.

Items (3) and (7) of Article 6 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing and Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II) (Gong Tong Zi [2010] No. 23) (currently items (4) and (8) of Article 6 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Standards for Filing and Prosecution of Criminal Cases under the Jurisdiction of Public Security Organs (II) (Gong Tong Zi [2022] No. 12) apply).

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