



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 329 of 2021 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF SILVER BASE GROUP HOLDINGS LIMITED

Appearances: Mr. Jonathon Milne of Conyers Dill & Pearman LLP for Silver Base Group Holdings Limited (in provisional liquidation) (the “Company”)

Mr Guy Manning of Campbells LLP for the Joint Provisional Liquidators (the “JPLs”)

Before: The Hon. Justice David Doyle

Heard: 5 May 2022

**Ex Tempore Judgment
Delivered:** 5 May 2022

HEADNOTE

Adjournment refused and winding up order made



JUDGMENT

Introduction

1. There is presently before the court a winding up petition and another application for an adjournment. I refer to my judgment delivered in these proceedings on 11 February 2022. At paragraph 7, I referred to the first report of the JPLs and their considered view that the restructuring proposal appeared to be feasible and likely to be in the best interests of the Company's creditors subject to certain provisos. The provisos specified at paragraph 7 of that judgment have not been satisfied. The provisos were stated as follows:

- “i) the Purchase Agents are able to supply stocks to the Group by 31 March 2022 to generate sales and cash;
- ii) the Company's indirect investment in Wuliangye can be redeemed or alternatively assigned for adequate value to an external party; and
- iii) cash can be repatriated from the People's Republic of China to Hong Kong by way of dividend distribution or other methods.”

2. At paragraph 11 of that judgment I stated:

“I am willing to provide one further adjournment but, as indicated during my exchanges with counsel this morning, this matter cannot drag on indefinitely and minds need to be focused as to future progress.”



The second report of the JPLs

3. The second report of the JPLs of the Company dated 29 April 2022 has recently been filed (with Appendix E, a letter dated 8 April 2022 in respect of a revised restructuring plan, being made available to the court on 3 May 2022). The second report does not make good reading for the Company.
4. The JPLs say that on 19 April 2022 the Company provided certain details to the JPLs namely:
 - (1) The Group has not received any delivery from the Purchase Agents or from Wuliangye;
 - (2) Guotai Junas has not made any payment to the Group in respect of the requested redemption and the Group is still waiting a response regarding the redemption request;
 - (3) An indirect subsidiary of the Company has received payment of approximately RMB 20 million (approximately US\$3,052,600) in respect of the refund of a pledged deposit from a bank and a further RMB 4 million was due to be returned in April.
5. From my reading of the communications from the JPLs to the Company it appears that the Company has failed to engage promptly or constructively. It has been slow in its responses to the reasonable enquiries from the JPLs and the responses from the Company have been less than comprehensive. The Company was required to provide the JPLs with such information as the JPLs may reasonably require in order to enable the JPLs to properly discharge their functions under the Order of 8 December 2021 and as officers of this court.
6. The JPLs at paragraph 5.1 of their second report state that “while some material has been provided, a significant number of the JPLs’ requests remain unanswered.” At paragraph 5.2 of their second report the JPLs state:



“Accordingly, and despite their best efforts, the JPLs currently do not have sufficient information to assess the feasibility of the Revised Plan.”

That is a very unsatisfactory state of affairs and it is unfortunate that the Company has chosen not to cooperate fully.

7. The conclusion of the second report is as follows:

- “8.1 The JPLs are currently unable to assess the feasibility of the Revised Plan in the absence of some critical information from the Company. Despite their best efforts, the JPLs have been unable to obtain this information from the Company.
- 8.2 In view of these uncertainties, the JPLs have concerns about whether the Group is able to continue as a going concern and its ability to repay its creditors according to the terms of the Revised Plan were it to be implemented.
- 8.3 The JPLs also note that it remains uncertain whether a scheme of arrangement incorporating the terms of the Revised Plan would receive the support of sufficient creditors by value and number (or the sanction of the applicable court(s)).
- 8.4 The JPLs do not have standing to seek or oppose the making of a winding up order against the Company. Any creditor of the Company wishing to appear by counsel either to seek or oppose the making of a winding up order at the next hearing before the Grand Court on 5 May 2022 should give at least 3 days’ notice of their intention to the Company (and the JPLs) in accordance with CWR O.3, r.20.”



The lack of engagement by the Company and the late provision of a letter to the Court from the Company

8. The Company appears to have ignored emails from the JPLs dated 24 January 2022, 1, 2, 8, and 23 March 2022.
9. The JPLs, no doubt justifiably frustrated with the lack of progress on the part of the Company, made the following clear to the Company by email dated 25 March 2022 at 9:53 AM:

“On the last occasion the matter was before the Cayman Court (11 February) Mr Justice Doyle made clear that the restructuring needed to be significantly advanced by the time the matter next came before him, absent which the Company would be wound up ...”
10. The JPLs sent a further chaser on 1 April 2022 and complained about lack of notice of the change of auditors. Yet a further detailed chaser was sent on 12 April 2022.
11. By email dated 19 April 2022 the Company provided some very brief limited information.
12. By email dated 22 April 2022 the JPLs reminded the Company of the need to provide the court with an update by 29 April 2022 and urged the Company to provide the outstanding information by no later than 25 April 2022.
13. I note also the letter dated 8 April 2022 to the creditors.
14. It should have been clear to the Company that as expressly provided for in the Order I made as long ago as 11 February 2022 that the court required to be provided with any updates in respect of the restructuring proposals and the Hong Kong proceedings before 3pm on Friday 29 April 2022.



15. On Monday 2 May 2022 11:25 AM Mr Milne emailed my PA indicating that “the Company proposes to deliver a hard copy of the Second Report of the Joint Provisional Liquidators (together with Appendices A-E)”. Mr Milne added:

“Regrettably, we are still waiting on final instructions from the Company, which may lead to the filing of further documents tomorrow in advance of Thursday’s hearing”.

No “further documents” were brought to my attention on Tuesday 3 May 2022.

16. At 7.45 AM this morning, Thursday 5 May 2022, Mr Milne of Conyers sent my PA an email attaching various documents including a summons dated 5 May 2022 pursuant to Order 67, rule 6 of the Grand Court Rules seeking a declaration that Conyers may cease to act for the Company in these proceedings.

17. The Company by an email this morning at 6:37 AM to my PA attached what they described as “our submission.” The attachment was a 4 page unsigned letter stated to be from the Chairman of the Company. It was dated 5 May 2022. I have read it. The Company refers to its failure to promptly pay Conyers, although it says recent significant payments have been made. In fairness, Mr Milne has confirmed that no amounts presently remain outstanding but it is clear that Conyers have been placed in a difficult position with the lack of proper instructions from the Company. The Company refers to the adjournment of Hong Kong proceedings to 27 July 2022 “for the Company to seek further support from the creditors on, and for the Company to implement, the Revised Plan.” I have read the decision of Harris J, date of hearing 25 April 2022, date of decision 5 May 2022. Harris J states:

“5. It was not until 12 April 2022 that the Company issued a summons seeking leave to file evidence out of time and in opposition (seeking to adjourn the Petition). No



explanation has been given for the delay, although I assume that it is connected with the progress of the proceedings in the Cayman Islands. The Company also takes the point for the first time in counsel's skeleton that the second requirement is not satisfied in the present case.

6. It is unsatisfactory that the Company has waited until shortly before the Petition is fixed to be heard by a judge before descending to produce evidence explaining that it is attempting a restructuring and raising an objection to the Petition. The matter is not helped by the fact that, I think it reasonable to assume, the Petitioner was not advised of the complications that arise if a winding up order is sought of a foreign incorporated company and has filed no substantive evidence that shows how the second requirement is satisfied. I will adjourn the Petition for substantive argument until 27 July 2022 at 10am.

7. The Company has leave to file evidence in opposition and updating the court on progress of the restructuring by 4:30pm 6 July 2022 and the Petitioner has leave to file evidence in reply by 4:30pm on 15 July 2022. The Petitioner is to file a proposed draft directions and written submissions by 4:30pm on 19 July 2022 and the Company is to file a proposed draft directions and written submissions by 4:30pm on 22 July 2022. I will reserve costs."

18. In desperation the Company at page 3 of its letter states:

"1. Time is required for the Company to locate and engage another Cayman Counsel and to allow those newly engaged legal representatives to study the case and advise the Company;



2. Based on the reply slips returned to the JPLs, the feedbacks from the Company's revised restructuring plan are positive and the Company believes that if more time is allowed for the Company and/or JPLs to negotiate with the creditors who have yet to return his/her/its reply slips, the Company will receive more feedbacks from the creditors to understand their views.

Our understanding from the JPLs is that they will not reject our proposals for adjournment.

We sincerely apologize for our failure to attend today's Hearing and for any inconvenience caused. We also humbly pray that this Honourable Court would exercise its discretion to adjourn the captioned Petition."

19. Frankly it appears to me that the Company has been dragging its heels in the vain and disrespectful hope that it could bounce this court into granting a further adjournment. By its letter it has improperly tried to present the court with a fait accompli.

Submissions

20. Mr Milne has again appeared on behalf of the Company this morning.
21. Upon the court indicating that it was minded to refuse an adjournment and to make a winding up order Mr Milne made it clear that he was not in a position to oppose the making of a winding up order. The Company has placed Mr Milne and Conyers in a difficult position.
22. Mr Manning for the JPLs confirmed that it was not correct for the Company to suggest that the JPLs would not "reject" the Company's proposal for an adjournment. The JPLs do not have standing to seek a winding up order but they do not think that an adjournment would be a sensible



course of action or that an adjournment would serve any useful purpose in all the circumstances of this case.

23. I note all that Mr Milne and Mr Manning have said and I am very grateful to them for their assistance to the court.
24. I note all that has been written in the Company's letter dated 5 May 2022 and the request for an adjournment and the reasons for such request.

Determination

25. I am not willing to grant a further adjournment. The Company has had plenty of time to progress matters in respect of a restructuring. It should have been clear to the Company from paragraph 11 of my judgment delivered on 11 February 2022 that a request for yet another adjournment on 5 May 2022, absent significant progress with the restructuring proposals and confirmation from the JPLs that such were feasible, would likely be denied. I expressly added:

“... this matter cannot drag on indefinitely and minds need to be focused as to future progress.”

In light of the lack of significant progress it cannot come as any real surprise to the Company that I am unwilling to grant a further adjournment. The Company has failed in its misconceived and belated efforts to obtain another adjournment.

26. The JPLs refer to two outstanding winding up petitions pending hearing in Hong Kong:
 - (1) HCCW 328 of 2021 (petitioner Techian International Development Limited) is listed to be heard on 6 May 2022. It is stated that Silver Base International Development Co Limited, an



indirect subsidiary of the Company, “is applying for an injunction to restrain the prosecution of the petition” and “No hearing date is fixed.”;

(2) HCCW 385 of 2021 (petitioner Wang Jianfei). It is stated that the winding up petition in this case is “adjourned to 27 July 2022 for substantive argument on the Hong Kong Court’s jurisdiction.” There was a hearing in respect of that petition on 25 April 2022 before Harris J in Hong Kong. It is stated that at the hearing Harris J mentioned that he needed some time to consider whether the petitioner could satisfy the requirement that “There is a reasonable possibility that the winding-up order would benefit those applying for it.” It is stated that Harris J “mentioned that he is aware of the upcoming winding up petition before the Cayman Court on 5 May 2022.”

27. Further detail as to the background and progression of the proceedings in the Cayman Islands may be gleaned from my judgments delivered on 22 November 2021, 8 December 2021 and 11 February 2022.
28. I have considered the Company’s winding up petition dated 11 November 2021. A copy of a draft winding up order was requested by my P.A. at 10:15 AM yesterday 4 May 2022 and provided by Conyers by email received at 2:22 PM yesterday. A further updated amended draft was handed up this morning by Mr Manning.
29. In the Petition the Company seeks an order that the Company be wound up by the court pursuant to section 92(d) of the Companies Act, namely the company is unable to pay its debts. The Company seeks the appointment of joint official liquidators with the power for them to act jointly and severally. Further provisions are requested.

30. Based on the information presented to the court I have concluded that the Company has chosen not to constructively engage with the JPLs and the restructuring proposals have not been meaningfully progressed. The consequence of that is that a feasible restructuring proposal is not before the court and the Company must be wound up to protect its creditors.
31. I am satisfied that the Company is unable to pay its debts. In the exercise of my discretion, I made an order that the Company be wound up.
32. The Order will be in terms of the draft helpfully handed up by counsel this morning such draft to include the amendments specified during my exchanges with counsel.
33. It will of course be a matter for the Hong Kong Court as to whether it makes a winding up order on 27 July 2022 but if it does it may save time and costs and avoid duplication and be in the best interests of the creditors if the liquidators appointed in Hong Kong are the joint liquidators appointed by this court, in the place of incorporation of the Company. I again take into account comity concerns and having expressed my wishes leave the Hong Kong Court to deal with proceedings in Hong Kong as it sees fit but I hope that my observations will be of some assistance.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT