



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

FSD CAUSE NO: 107 OF 2022 (MRHJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF SUNING SPORTS GROUP LIMITED**

Appearances: Mr. Rupert Bell and Ms Harriet Ter-Berg of Walkers for the Petitioner

Before Hon. Mrs Justice Ramsay-Hale

Heard 13 June 2022

Judgment Delivered: 15 June 2022

HEADNOTE

Companies - Winding Up - Section 92 (d) and 93(c) *Companies Act*

JUDGMENT

INTRODUCTION

1. By Petition filed on 28 April 2022, the Petitioner, IMG Media Limited, sought an order to wind up the Respondent, Suning Sports Group Limited (the "Company"), on the ground that the Company is indebted to the Petitioner pursuant to two guarantee agreements entered into by the Company in respect of the liability of two of its related companies in the wider Suning Group and is unable to pay its debt.

BACKGROUND

1. The following facts on which the Petitioner relies are set out in the supporting affidavit of Mr. Duncan Fay, a director of the Petitioner.
2. The Petitioner is part of the Endeavour Group, a global sports, events and talent management Company. Part of the Petitioner's business involves the licensing of the rights to broadcast football matches, including football matches in respect of Serie A (a professional league football competition for football clubs located at the top of the Italian football league system) and the Football Association Challenge Cup (the "FA Cup", an annual knockout football competition in men's domestic English football).



3. The Company is an exempted limited company, incorporated in the Cayman Islands on 28 September 2017. Several companies within the Suning Group licensed the rights to broadcast Serie A matches and FA Cup matches in mainland China from the Petitioner for a fee.
4. On 17 September 2018, the Company and the Petitioner entered into a Company Guarantee agreement (the "Serie A Guarantee") pursuant to which the Company guaranteed performance of certain obligations of PP Live Sports Italy Limited ("PPS Italy") under a Serie A Licence Agreement between PPS Italy and the Petitioner dated 17 September 2018.
5. Under Clause 1(a) of the Serie A Guarantee, the Company:

"...as a primary obligor, guarantees to the [Petitioner] full and punctual performance by [PPS Italy] of all of its financial and other payment obligations under the [Serie A Licence] and the full and immediate payment or discharge by it of all of its financial and other payment obligations now or in future due, owing or incurred, or expressed or intended to be due, owing or incurred, to the [Petitioner] by [PPS Italy] under the [Serie A Licence] (the "Guaranteed Obligations")."
6. Under Clause 1(b) of the Serie A Guarantee, the Company:

"...undertakes with the [Petitioner] that, if at any time and from time to time [PPS Italy] does not pay to the [Petitioner] any amount falling within the ambit of the Guaranteed Obligations, the [Company] will, within sixty days after the [Petitioner] issues a written demand, pay the unpaid amount to the [Petitioner] without any need for the [Petitioner] to obtain any court or similar order or judgment."
7. On 17 May 2019, the Company and the Petitioner entered into an FA Cup Licence Agreement (the "FA Cup Licence") with Great Mercury Limited ("GML") pursuant to which, *inter alia*, the Company guaranteed certain obligations of GML to the Petitioner.
8. Under Schedule 6, clause 1(a) of the FA Cup Licence, the Company:

"...guarantees to the [Petitioner] the full, due and punctual performance by [GML] of all of its financial and other payment obligations under the [FA Cup Licence] and the full and immediate payment or discharge by it of all of its financial and other payment obligations now or in future due, owing or incurred, or expressed and intended to be due, owing or incurred, to the [Petitioner] by [GML] under the [FA Cup Licence] (the "Guaranteed Obligations")."
9. The first licence fee under the Serie A Licence fell due within 30 days of the entry into the agreement, that is to say, by 17 October 2018. The second instalment fell due on 20 January 2019. Subsequent instalments fell due every 6 months thereafter until 20 January 2021.



10. By November 2019, it appears that the Suning Group was experiencing financial difficulties. On 9 November 2019 the Petitioner, GML, PPS Italy and a related company, PPLive Sports International Limited, entered into a Debt Assignment and Set-Off Deed (the "DASOD") pursuant to which, *inter alia*:
 - a. PPS Italy assigned to GML the obligation to pay a portion of the amount outstanding to the Petitioner under the Serie A Licence in the sum of EUR 1,317,998.77 (the "**Serie A Assignment**"); and
 - b. the Petitioner assigned to GML its own obligation to pay the same sum of EUR 1,317,998.77 to a further entity, Inter Media and Communication S.P.A., under an agreement dated 20 September 2018 (the "**Inter Media Assignment**"). In consideration for the Inter Media Assignment, the Petitioner agreed to set-off an amount equal to the value of the liability under the Inter Media Assignment against GML's newly acquired liability under the Serie A Assignment.
11. The upshot was that the amount owed by PPS Italy under the Serie A Licence was reduced by the sum of EUR 1,317,998.77.
12. The first instalment fee of the licence fee under the FA Cup Licence fell due on 1 December 2019. The second instalment fell due on 1 August 2020, with subsequent instalments falling due on the first day of December and the first day of August every year until 1 December 2023.
13. Despite multiple requests for payment by the Petitioner, both before and after the entry by the parties into the DASOD, PPS Italy and GML repeatedly failed to discharge in full their liabilities under the Serie A Licence and the FA Cup Licence respectively.

This Application

14. On 15 January 2021, the Petitioner's attorneys made written demand of the Company under the guarantees for the monies due and owing by PPS to the Petitioner under the Serie A Licence and due and owing by GML under the FA Cup Licence, seeking payment within 60 days and 30 days respectively.
15. On 17 January 2021, the Company wrote back acknowledging the debt due:

"As at the date of this letter, PPS owes IMG amounts totaling EUR 6,300,251.23 under the Series A license, with additional amounts totaling EUR 8,273,2000 due to become payable on 20 January 2021..."



“As at the date of this letter, GML owes IMG amounts totaling US \$5,000,000 under the FA Cup Licence...”

16. Some monies were subsequently paid on account of the FA Cup Licence. On 4 May 2021 a Statutory Demand dated 22 April 2021 was served on the Company for payment of for the sum of EUR 14,573,451.23 and USD 2,579,000.
17. On or about 15 June 2021, a further sum of USD 500,000 was paid on account of the FA Cup Licence, but the rest of the debt due to the Petitioner remained due and owing.
18. On 18 January 2022, attorneys for the Petitioner wrote to the Company to advise that the Petitioner would take immediate steps to present a winding up petition if the monies were not paid in full by 31 January 2022.
19. This Petition with supporting affidavits and exhibits was subsequently filed and served on the Company. Notice of the Petition in the form prescribed in the Company Winding-Up Rules was placed in newspapers here in the Cayman Islands where the Company is registered as well as the PRC where the Company principally carries on its business. For completeness, the Petitioner also placed advertisements of the Notice in Hong Kong: one in a newspaper published in Chinese and one in an English periodical.
20. The Company does not appear in opposition to the Petition.

Decision

21. The **Companies Act** provides at section 92 (d) that a company may be would up if it is unable to pay its debts. Section 93 (a) provides that a company shall be deemed to be unable to pay its debts if it neglects to pay a statutory demand made by the Petitioner in a sum exceeding \$100.
22. Although winding up is a discretionary remedy where a debt is indisputably due, a petitioning creditor is entitled to an order, *ex debito justitiae*, directing a winding up by the court. As the House of Lords said in *Bowes v. Directors of Hope Mutual Life Insurance and Guarantee Co.* [1865] 11 HL Cas 389 (HL) where there is a valid debt, “ *it is the duty of the court to direct the winding up.*”
23. This principle has been consistently applied in this jurisdiction, most recently by the Chief Justice in *Re Sun Cheong Creative Development Holdings Limited* 2020(2) CILR 942 who, at para 45, described it as the “*primary approach of the Courts*” unless special reasons can be shown that the relief should not be granted.
24. The debt in this matter has been admitted, demand has been made and the debt remains unsatisfied. The Company is unable to pay its debts as they fall due and the Court grants the Petitioner’s application for a winding up order.



Order

25. Order made in terms of the Draft Order as amended.

DATED 13 June 2022

RAMSAY-HALE J