



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2015: 411

**UPRISE CORPORATION LIMITED
WISE SPIRIT INTERNATIONAL LIMITED
TAISHAN CAPITAL MANAGEMENT LIMITED
GREATER ACHIEVE LIMITED**

Applicants

-v-

MINGYUAN MEDICARE DEVELOPMENT COMPANY LIMITED

Respondent

EX TEMPORE RULING

(in Chambers)

Date of hearing: May 13, 2016

Mr Delroy Duncan and Ms Lauren Sadler-Best, Trott & Duncan Limited, for the Applicants

Introductory

1. In this matter the Applicants, being Uprise Corporation Limited, Wise Spirit International Limited, Taishan Capital Management Limited, and Greater Achieve Limited (“Greater Achieve”), apply by Summons dated 9th May 2016 to obtain relief supplementary to previous Orders of this Court directing the conduct of an Annual General Meeting of Mingyuan Medicare Development Company Limited (“the Company”).

2. The application is supported by two Affidavits filed by Lam Ping Cheung, otherwise known as Andrew Lam, a Hong Kong solicitor who has filed his Sixth and Seventh Affidavits in support of the present Summons. I should deal firstly with the fact that this Summons is an ex parte one. But the position is, as I understand it, that notice of the present application was given to the Company at its registered office in Bermuda in the same manner and at the same place as previous documents in this matter have been served.

Procedural history

3. The history of this matter is helpfully set out in the skeleton argument provided by Mr Duncan and it is in summary as follows. On the 1st March 2015, following an *inter partes* hearing, this Court made an order requiring the Company to convene an annual general meeting for a date between the 16th and 20th of May and to include on the agenda resolutions proposed by Greater Achieve and circulate any statement provided by Greater Achieve (the “AGM”).
4. That Order was in my view a final Order although liberty to apply to enforce it was given because the applicants very wisely anticipated that it might not be fully complied with.
5. The 1st March 2015 order was not complied with in various respects. The most significant respect that the present application complains of is that the resolutions proposed by Greater Achieve, in particular the resolution for the removal of the current Chairman (who is registered as a dishonest person in the Peoples Republic of China). The Company also made the unilateral decision to convene the meeting for the first time in the Company’s history in Shanghai, an inconvenient location it was asserted in evidence subsequently put before me.
6. On the 14th April, in response to that first stage of non-compliance, I made Orders which were designed to reinforce the Order made on 1st March. In particular I ordered the Company again to circulate to the Company’s shareholders a copy of the statement of Greater Achieve. The Company was further required to convene the AGM in Hong Kong.
7. The response to that Order, which I should say was obtained after the Company’s former attorneys (the reputable and well known global firm of Conyers Dill & Pearman Limited) had sought leave to come off the record, was in effect to:
 - (a) ignore the proceedings before this Court; and
 - (b) to assume the right to take the law into its own hands.

8. Evidence placed before me subsequently showed that the order of the 14th April was brought to the attention of the Company, the terms of the Order was notified to the Hong Kong solicitors in addition to the formal service of the sealed copies of the order on the company registered office in Bermuda. That Order was studiously ignored resulting in a further application by the Applicants to this Court and a further order made on the 28th April. The 28th April order granted declaratory relief in the following substantive terms:

- (1) If the company purports to hold an annual general meeting in Shang High that meeting would not be a valid meeting of the company and no resolution passed at the meeting would be binding on the company; and
- (2) Greater Achieve is authorized to convene and AGM on the 20th May; and
- (3) it was further directed that Greater Achieve was entitled to give instructions in the name of the Company to the Company's branch register in Hong Kong (Computer Share) and also the Hong Kong Securities Clearing Company Limited and, finally, the Hong Kong Stock Exchange requesting the circulation of the amended Circular or Notice to Shareholders.

The present application

9. That Order did have some effect, in that evidence before the Court now shows beyond any doubt that the Company has sought to comply with one aspect of the Order. And that is to acknowledge that the meeting should take place in Hong Kong. However, the Company has, acting by its board of directors has in the most important way defied this Court's previous Order because the effect of the 28th April Order was to authorize Greater Achieve to convene the AGM, on behalf of the Company and in the name of the Company, because the Company could not be trusted to convene a meeting that fully complied with the previous orders of the Court.

10. The Company has not instructed new attorneys to come back before this Court and to seek to vary the 28th April, 2015 Order with a view to re-assuming the right to convene a meeting by itself. It has instead decided unilaterally to convene its own meeting at a different location competing with the meeting authorized by this Court, claiming that the 28th April Order has effectively fallen away because it is now agreeing to hold a meeting in Hong Kong.

11. It is difficult to imagine, in a commercial context, a more flagrant disregard for Court Orders, or indeed the rule of law, on the part of a listed company. One of the

difficulties with cross-border commerce when one has companies incorporated in one jurisdiction (such as Bermuda) and listed in another jurisdiction (here Hong Kong) is that orders made in Bermuda are not, without more, effective in Hong Kong. In terms of the inability to take enforcement action, reputable commercial actors will generally be concerned not to do anything in breach of an order of a foreign court; because reputable corporate actors simply do not breach foreign court orders. But the present situation demonstrates the difficulties when a company is in the control of management that has little regard for the rule of law.

12. In these circumstances it is understandable that the Hong Kong Stock Exchange has been anxious about taking a position in this dispute. And in the course of the present hearing, Mr. Duncan read out to the Court a recent communication from the Hong Kong Stock Exchange on today's date to Mr. Lam. This indicates that the Hong Kong Stock Exchange is considering its position and is concerned about the effect of the Orders that this Court has made and, in particular, their effectiveness under Hong Kong law.
13. It is understandable that from several thousand miles away it is difficult to gain a clear and ready view of the nature of these proceedings. But it is clear on the material available to me that this Court has in substance assumed control over the AGM by, following an *inter partes* hearing in which the Company was legally represented a proceeding which ended in an order being made which the Company objected to and so although the orders made after 1st March in aid of implementation of the 1st March 2016 Order made at hearings in which the Company did not participate. Those hearings were not hearings taking place on an *ex parte* basis in the traditional sense, in that they were all proceedings of which the Company had notice. Proceedings which the Company could have participated in but proceedings which the Company deliberately elected not to participate in. And so against that background the Court is presented today with a very clear picture indeed of a company under the control of management which can only be described as a rogue management seeking to convene a meeting in clear violation of the Orders of this Court competing with the AGM which has been authorized by this Court.
14. This has the necessary effect that the meeting convened by the Board, if it takes place and is attended by Shareholders, can only result in either Shareholders being confused as to which meeting is valid, or, alternatively and perhaps more significantly, the meeting being held on terms that do not include the most important resolutions directed by this Court to be tabled. Resolutions which were designed to give shareholders an opportunity to remove the present management, in particular the current Chair of the Board.
15. I should add that I have a very clear recollection of saying ,when counsel for the Company stood up to respond to Mr. Duncan in the course of the original *inter partes* hearing, that the information before the Court about the way in which the

management had taken steps to avoid the convening of an AGM suggested to me that if the Court were faced with a petition to wind up the company and to appoint independent management, there was at that sufficient information before the Court to justify that course. The position is getting very close to one where the Court itself might feel obliged to notify the Official Receiver of the way in which this Company's affairs are being conducted with a view to him considering whether he needs to intervene. But it does seem to me that the shareholders who are seeking to ensure through proper legal means that the Company's constitution is honoured and that an AGM takes place so that they can attract the necessary voting support to remove the present management and investigate the serious financial concerns which have been euphemistically referred to as the 'unresolved matter'.

Disposition of application

16. It is right and proper that they should be able to pursue these less intrusive remedial steps rather than having to rely upon a more draconian weapon. And so against this unusual and disturbing background I am compelled in these circumstances to make yet another order in aid of implementing the 1st March 2016 order in relation to an AGM for this troubled company and the order that I am asked to make and which I do make is in the following terms:

(1)The annual general meeting which the company has purported to convene for 20 May 2016 to be held at Lily Room of Best Weston Plus Hotel, 308, Des Voeux Road West, Hong Kong is not a valid Annual General Meeting of the company;

(2)The Company be restrained from purporting to hold or to transact any business at the meeting referred to in paragraph 1 above;

(3)Until May 2016 the company be restrained from purporting to convene or hold any general meeting of the company and save that this paragraph shall not interfere with the Greater Achieve Limited right to convene and hold a general meeting of the Company pursuant to the Order dated 28th April 2016;

(3)If the Company purports to hold convene or transact any business of any meeting in breach of paragraphs 1 through 3 above no resolution passed at that meeting shall have any legal effect;

(4)Greater Achieve Limited is entitled forthwith to circulate to the Company's shareholders a Circular in substantially the form annexed hereto as Appendix A. For that purpose it shall be entitled to give instructions in the name of the Company to (1) the Company's branch share register in Hong Kong, Computer Share Hong Kong, Investor

Services Limited, Computer Share and (2) Hong Kong Securities Clearing Company HKSC, and the Hong Kong Stock Exchange Limited Hong Kong exchange to circulate the Circular and to upload the same onto the Hong Kong Exchange website www.hkxnews.hk in relation to the Company;

- (4) Computer Share HKSC and Hong Kong exchange shall be entitled to act upon the basis of any instruction given by Greater Achieve Limited pursuant to this order without first making any enquiry of the company. The company shall forthwith upload the circular to (1) the investor relations page of its own website www.mingyuan-hk.com and (2) the company's page on the website www.hkxnews.hk;
- (5) The Hong Kong exchange shall forthwith upload the circular to the company's page on the website www.hkxnews.hk;
- (6) Computer Share, Hong Kong Securities Clearing Company HKSC and Hong Kong Exchange shall be indemnified by the Company for any expenses incurred in circulating this Circular;
- (7) The general meeting convened by Greater Achieve pursuant to paragraph 2 of the Order dated 28th May 2016 will be valid notwithstanding (1) any failure by the company or HKSC to comply with the orders of paragraph 8 and 9 above or (2) any failure by the HKSE to comply with any instructions given to them under paragraph 2 of the order dated 28th April 2016;
- (8) The Company shall pay the Applicants' cost of the application to be assessed if not agreed.

Dated this 13th day of May, 2016 _____

IAN RC KAWALEY CJ