



# In The Supreme Court of Bermuda

## COMMERCIAL COURT

### COMPANIES (WINDING UP)

2021: No. 338

**IN THE MATTER OF NEWOCEAN ENERGY HOLDINGS LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 1981**

## RULING

**Date of Hearing:** 8 July 2022

**Date of Ruling:** 8 July 2022

**Appearances:** Kevin Taylor, Walkers (Bermuda) Limited for the Petitioner  
Henry Tucker, Carey Olsen Bermuda Limited for the Company  
Lalita Vaswani, Appleby, for the Joint Provisional Liquidators (for Restructuring)

**RULING of Mussenden J**

### **Submissions**

1. This is the return date for the Petition

2. The JPLs have filed their Third Report. They report progress in the form of further document disclosure and discussion with potential investors. However they express various concerns which includes the lack of cash flow projections and the failure to provide other financial information. They indicate that if the matters remain as they are then they have concerns about their ability to assist the Company and the Court. They also express serious concerns about the lack of payment for their fees.
3. The Petitioner seeks a Winding Up Order today for the reasons already submitted previously including that the creditors remain uninterested in a restructuring of the Company. They note the issues with the continuing lack of information. Further, in respect of the potential investors (CITIC) they note that there are preconditions for creditor agreement which is most unlikely.
4. The Company seeks a two month adjournment until September 2022. Mr. Tucker updated the Court on progress referring to the affidavits of David Selvia, Managing Director of Cathay Capital and his interest in developing deal structures with the Company on the basis that it is not wound up. The Company also relies on the Ninth Shum Affidavit which provides further update on document disclosure and the interests from the potential investors.
5. The Company states that will be in a position in 2 weeks to present some firm proposals to the JPLs for onward presentation to the creditors. The Company within the hearing undertook to provide cash flow projections within 7 days.
6. The Company urges the Court to grant an adjournment based on the further progress in respect to the reasons set out in my original December Ruling and my May Ruling.

### **Decision**

7. In light of the submissions, I am prepared to grant the Adjournment until September for the following reasons:

- a. In my view there has been continual disclosure of information to the JPLs;
  - b. The Company has undertaken to provide the cash flow projections;
  - c. There is interest in potential investors to advance a restructuring.
  - d. I have noted the concerns of Mr. Taylor that the creditors are not interested in a restructuring by the Company. However, in my view, it is fair to allow the Company to present within two weeks its proposals to the JPLs with hopefully onward presentation to the creditors for their consideration.
  - e. I should state that the Court is not fettered in its discretion in this matter by the December and May reasons to adjourn. However, I am guided by those reasons in those Rulings and I am still of the view that the Company should be given the opportunity to restructure based on those reasons, and in light of the proposals promised within the next two weeks.
  - f. I direct that the proposal be submitted to the JPLS within 14 days and that the proposal be submitted to the Petitioner within 14 days thereafter.
8. I am concerned by the lack of payment of the JPL's fees and expenses. Having heard submissions that some fees and expenses are disputed, I now make the following directions:
- a. That 50% of the JPLs' fees be paid by the Company to the JPLs within 7 days and another 30% be paid to the JPL's trust account within 7 days pending resolution of the issues currently raised.
  - b. That the Company pay 90% of the expenses to the JPLs within 7 days.
9. I also make a direction that the Cash Flow Projections are filed within 7 days.
10. I grant the adjournment for 2 months to 9:30am on 2 September 2022

Dated 8 July 2022

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**HON. MR. JUSTICE LARRY MUSSENDEN  
PUISNE JUDGE OF THE SUPREME COURT**

