



In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION

2019: No. 016

**IN THE MATTER OF HSIN CHONG GROUP HOLDINGS LIMITED
(IN PROVISIONAL LIQUIDATION FOR RESTRUCTURING PURPOSES)**

AND IN THE MATTER OF THE COMPANIES ACT 1981

Before: Hon. Chief Justice Hargun

Appearances: Mr Keith Robinson, Carey Olsen Bermuda, for the
Petitioner, VMS Investment Group Limited
Ms Kehinde George, ASW Law Limited, for the
Supporting Creditor, Beijing Xinyuanhua Investment
Management Company Limited
Ms Lilla Zuill, Zuill & Co, for the Opposing Creditor,
Deloitte Touche Tohmatsu
Mr Kevin Taylor and Mr Benjamin McCosker,
Walkers (Bermuda) Limited, for the Board of Directors
of the Company, Opposing the Petition

Date of Hearing: 20 January 2020

Date of Ruling: 3 February 2020

RULING

REASONS FOR RULING

1. At the hearing of the Petition on 20 January 2020 I made an order that:
 - a) HSIN CHONG GROUP HOLDINGS LIMITED (“the Company”) be wound up by the Court under the provisions of the Companies act 1981;
 - b) Lai Wing Lun and Osman Mohammed Arab (both of RSM Corporate Advisory (Hong Kong) Limited and Mathew Conner Clingerman of KRyS & Associates (Bermuda) Ltd be appointed as joint and several liquidators of the Company;
 - c) The period for convening the first meeting of creditors and contributories be extended for six months; and
 - d) The costs of the petitioner be paid out of the assets of the Company.
2. I now set out my reasons for making that Order.
3. This Petition was presented by VMS Investment Group Limited (“the Petitioner”) on 17 January 2019. The Petitioner claimed that it was a creditor of the Company under a Loan Agreement dated 2 June 2017 in the amount of HK\$75,000,000 and asserted that pursuant to the terms of this Agreement, the full amount fell due and has remained outstanding since 1 August 2017. The Plaintiff also claimed that it was a creditor in respect of default interest from 1 August 2017 to 9 March 2017 in the amount of HK\$16,347,945.21.
4. This Petition presented by the Petitioner was followed by a Petition presented by the Company itself on the following day, 18 January 2019. In the Company’s Petition, the Company asserted that the Court should make a winding up order on

- the ground that the Company was insolvent in that it was unable to pay its debts as they fall due.
5. The Company is a holding company for its subsidiaries. The Company, together with its operating subsidiaries and associated companies (collectively, the “Group”) is involved in the business of construction, property development and property investment, primarily targeting the People’s Republic of China and Hong Kong markets. The Group was established 80 years ago, and is one of the longest standing construction consortiums.
 6. As explained by Dr Joseph (Kin Hung) Choi in his First Affirmation dated 18 January 2019, the property market in the key jurisdictions in which the Company and the Group operate has historically been strong. However, difficult prevailing market conditions coupled with an aggressive expansion programme have had a significant and detrimental impact on the Group’s revenue and liquidity position, with its Construction Business revenue in the period to 30 June 2018 declining to approximately US \$306.4 million, compared to approximately US \$434 in the period to 30 June 2017 (a 28% decrease). Despite best efforts of management, the Group has been unable to halt the decline in the performance of the Construction Business, and the Construction Business in Hong Kong has effectively been put into run off by management, with the operating subsidiaries which formally conducted the Construction Business being subject to various insolvency proceedings in Hong Kong.
 7. The Company has approximately US \$450 million of outstanding senior notes. The Group’s bank borrowings as of December 2018 include approximately US \$8.94 million to HSBC, approximately US \$9.47 million to Hsin Chong Construction (Asia) Ltd, approximately US \$1.23 million to Banco Well Link SA, approximately US \$3.67 million to East West Bank, Hong Kong Branch, and approximately US \$46.8 million to Commercial Bank of China (Asia) Ltd. In addition, the Petitioner is a creditor of the Company pursuant to a loan agreement

- dated 4 August 2017 and as at 31 December 2018 approximately US \$89 million was outstanding under this agreement.
8. After a number of hearings the Company withdrew its Petition so as to allow the current Petition to proceed in this Court.
 9. On 19 February 2019, this Court appointed Lai Wing Lun, Osman Mohammed Arab and Mathew Conner Clingerman as the Joint Provisional Liquidators of the Company with “light-touch” powers (“the JPLs”). The Board of Directors of the Company retained certain management powers and the JPLs’ primary role was to supervise and/or provide advice as regards to restructuring efforts of the Company as led by the Directors. The primary purpose of appointing JPLs with “light-touch” powers was to evaluate the feasibility of any genuine restructuring proposal and the resumption of the Company’s listing status with the Hong Kong Securities Exchange (“the HKSE”).
 10. On 29 April 2019 this Court made an Order, on the application made by the JPLs, granting the JPLs additional management powers in relation to the Company.
 11. On 23 October 2019, the JPLs made a further application to this Court seeking an order that the Court grant full powers of management to the provisional liquidators and cessation of all powers which had resided with the Board of Directors under the “light- touch” regime. On 1 November 2019, the Court made such an Order granting the JPLs full powers of management. The JPLs have advised all the existing Directors of the terms of the Order dated 1 November 2019.

The Listing Status

12. The JPLs have advised the Court in the past that the most valuable asset of the Company is its listing status on the HKSE. It was recognised that a winding up

- order will substantially affect the value of the Company as it would no longer be possible for the Company to resume its listed status on the HKSE.
13. The JPLs had been working with the Company to promote a restructuring aimed at preventing the Company from being delisted by the HKSE. The Company submitted a proposal to the HKSE in July 2019 which was rejected by the listing department of the HKSE in August 2019.
 14. Following the rejection, the JPLs have worked with the Company's legal counsel and financial adviser and applied to the Listing Review Committee for a review of the listing department's decision. However, on 17 December 2019, the Listing Review Committee, after a review hearing, decided to uphold the listing department's decision of 2 August 2019. The JPLs have been advised by legal counsel that the Listing Review Committee's decision is essentially final and conclusive.
 15. As a consequence of this decision by the Listing Review Committee, the key benefit for the restructuring efforts in the provisional liquidation, the preservation of the listing status, no longer exists.
 16. The first hearing of the Petition was on 15 February 2019 and at that hearing the Petition was adjourned to 19 February 2019. It was further adjourned to 3 May 2019 and at that hearing was adjourned 26 July 2019. At the hearing on the 26 July 2019 it was adjourned to 25 October 2019. At the hearing on 25 October 2019 the Petition was adjourned to 17 January 2020. At the hearing on the 17 January 2020, the Petitioner no longer requested an adjournment and argued that the Court should now make a winding up order. The Petition was adjourned to 20 January 2020 for full argument.
 17. The current position is that the Company is clearly insolvent. The Company's main asset, its listing status on the HKSE, can no longer be salvaged. In those

circumstances, the Petitioner argues that there is no compelling commercial reason why the Company should remain in the provisional liquidation status. The JPLs do not dissent from this position.

18. The Petitioning Creditor is not only the largest creditor of the Company but a significant creditor of the main subsidiaries of the Company. In the First Affirmation of Chong Tin Lung Benny sworn on 24 January 2019 on behalf of the Petitioner, it is stated at paragraph 24 that the total amount due and owing to the Petitioner (the VMS Group) under the Loan Agreements is in excess of HK\$700,000,000 (US\$89,220,250). The Petitioner is supported at the hearing by Beijing Xinyuanhua Investment Management Company Limited, a creditor of the Company, in the amount of RMB \$206.6 million (approximately US\$30 million).
19. The winding up petition is opposed by Deloitte & Touche, a post- petition creditor in the approximate amount of \$1 million in respect of professional services rendered to the Company. Deloitte and Touche's only concern is that the Company should pay the judgement it has obtained in respect of its fees and fears that it may become more difficult to recover the amount due if a winding up order is made.
20. The winding up order is also opposed by the Board of the Company, represented by Mr Taylor. In this regard, the Court notes that all independent directors of the Company have resigned. The remaining directors' main concern is to set aside the Order of the Court dated 1 November 2019, granting full powers of management to the provisional liquidators and the cessation of all powers which had resided with the Board of Directors.
21. It is common ground that the Company is insolvent. Indeed, the Company itself presented a petition for its winding up on 18 January 2019 on the ground that it was unable to pay its debts as they fall due. Given that the company has irretrievably lost its listing status with the HKSE the Petitioner, as noted above,

urges the Court that a winding up order should now be made as there are no compelling commercial reasons, in the current circumstances, to continue with the restructuring.

22. In the present circumstances, the Court is bound to consider the wishes of the body of creditors appearing at the hearing of the Petition. The application for a winding up order is supported by two creditors of the Company in the approximate amount of US\$120 million. The only creditor who has appeared at the hearing to oppose the petition is Deloitte & Touche in the approximate amount of \$1 million. The wishes of the creditors in the case of an insolvent company must take priority over the wishes of the Board of Directors of Company.

23. It was for these reasons that the Court made an Order winding up the Company on 20 January 2020.

Dated 3 February 2020

NARINDER K HARGUN
CHIEF JUSTICE