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, 12, 14, 25 April, 4, 9 May 2022**
Date of Decision: **9 May 2022**
Date of Ruling: **31 May 2022**

Appearances: **Kevin Taylor, Walkers (Bermuda) Limited for the Petitioner**

Keith Robinson, Carey Olsen Bermuda Limited for the Company

Sam Riihiluoma, Appleby, for the Joint Provisional Liquidators (for Restructuring)

RULING of Mussenden J

Introduction

1. The Hong Kong Shanghai Banking Corporation ("**HSBC**") filed a Petition on 22 October 2021 (the "**Petition**") for the purposes of winding up NewOcean Energy Holdings Limited

(the "**Company**") and to appoint Kenneth Fung, Roderick Sutton (Hong Kong) and Alexander Niles Whittaker (Bermuda) as joint and several provisional liquidators ("**JPLs**") of the Company. The hearing of the Petition was listed for 19 November 2021.

2. On 14 December 2021, having heard detailed submissions, reviewed the affidavit evidence and noting that it was in effect the first return date of the Petition, I made several orders (the "**December 2021 Order**") including that:
    a. The Petition be adjourned for 4 months to 8 April 2022 at 9:30 a.m.;
    b. Joint provisional liquidators be appointed as proposed by the Petitioner, namely, Kenneth Fung and Roderick Sutton of FTI Consulting (Hong Kong) Limited and Alexander Niles Whittaker of R&H Services Limited, Bermuda with immediate effect; and
    c. The powers of the JPLs will be on the "**Soft Touch Basis**" as set out in the Company's Summons dated 17 November 2021 in the Draft Order at Annex A.

3. I provided my reasons for adjourning the Petition in a Ruling dated 4 March 2022 (the "**March 2022 Reasons**").

The March 2022 Reasons for the December 2021 Order

4. On 4 March 2022 I gave the reasons for the December 2021 Order. Those reasons were as follows.

> *"37. First, I accepted that the Company has not come to the Court at the last moment "on a wing and prayer". It had come before this Court previously for an order in reference to a scheme to restructure as it was balance sheet solvent company but with a liquidity issue. In my view, this shows that the Company has engaged in significant efforts for some time to restructure in order to address its financial position and its debts owed to its creditors. I consider the early engagement of the Court to be an exceptional reason to grant an adjournment. ("**Exceptional Circumstance 1**")*

*38. Second, I accept that there is a Current Proposal put forward by the Company which details a restructuring plan and which includes a Letter of Intent with a plan to address the current liquidity issues. In my view the Company should be granted some time to pursue the Current Proposal. To that point, I am of the view that the appointment of the JPLs amount to engaging the "restructuring troops" as envisaged by Kawaley CJ in Re Up Energy Development Group Limited as officers of the Court to assist the Company in efforts to restructure. The JPLs can assist the process by dealing with the creditors to determine if there is merit in the Current Proposal. As Mr. Robinson submitted, there is no evidence from the creditors that they have given consideration to the Current Proposal. Thus, an adjournment will allow for the JPLs to engage the creditors on the Current Proposal. I consider this to be an exceptional reason to grant an adjournment. ("**Exceptional Circumstance 2**")*

*39. Third, I am satisfied that the approach that should be taken is what Mr. Robinson submitted was the appropriate approach taken for a HKEx listed company and for the reasons he stated. The first step is to appoint JPLs at the request of the Company rather than it "dillies and dallies" and allows a creditor to petition and place the company in provisional liquidation. As stated in Agritrade Resources Limited I am bound to take into account all relevant considerations in making the decision whether or not to appoint JPLs, in particular the commercial consequences. I am satisfied by the submissions that there is the potential for value destructive consequences in making an order to wind up the Company. However, I am also satisfied that the appointment of JPLs with "soft touch" powers will assist in ensuring that the Company maintains the value of its key assets by avoiding such value destructive impacts and the negative impacts of continuing to operate in the PRC under a winding up order. I consider this to be an exceptional reason to grant an adjournment. ("**Exceptional Circumstance 3**")*

40. Fourth, I have accepted that the majority of the creditors want to have the Company wound up and I have given consideration to their position. On the one hand, HSBC and the other creditors indicate that there is no useful purpose in granting an adjournment as they do not support the appointment of JPLs with "soft touch" powers. There have

*been previous attempts to restructure and they have not been successful. Their position is: 'why put off the inevitable?' On the other hand, the Company has a Current Proposal in which they seek creditor support, the effects of a winding up has the potential of a value destructive effect and the Company is a balance sheet solvent Company with a current liquidity issue. It prays for a short adjournment to attempt a restructuring. ("**Exceptional Circumstance 4**") (together the "**Exceptional Circumstances**"*

41. I am guided by the Re Demaglass Holdings Ltd. reference to Brightman J in Re Southard & Co. Ltd. that the exercise of the Court's discretion will not be dependent on mathematical niceties or the counting of heads. Thus, in light of these several reasons set out above and having considered all the relevant circumstances in the case, including that the requested adjournment is not for a long period of time, I am satisfied that I should exercise my discretion to grant the adjournment of the Petition and appoint JPLs with "soft touch" powers for restructuring."

Present Applications

5. The Petitioner filed a letter to the Court dated 16 March 2022 in which it informed the Court that it was instructed to seek a winding up order and to proceed with the substantive hearing of the Petition on 8 April 2022. The basis of the application was that the Exceptional Circumstances no longer applied.

6. The Company filed a Summons dated 16 March 2022 to be issued to be heard 8 April 2022 seeking an amendment to paragraph 3 of the December 2021 Order to clarify that the JPLs be empowered to carry out their functions for the purposes of facilitating a restructuring of the Company's indebtedness in a manner designed to allow the Company to continue as a going concern.

7. The Company filed a Summons dated 12 April 2022 for disclosure of the JPL Report. That was dealt with and the JPL Report was later disclosed.

8. The Company is seeking an order that the Petition be adjourned for a further period of three months to allow the Company to pursue the Current Proposal.

Decision of 9 May 2022

9. Having heard the submissions of the parties my Decision issued on 9 May 2022 (the "**May 2022 Decision**") was as set out below.
    a. I declined to make an immediate winding up order;
    b. I granted the Company's application to adjourn the Petition for three months from 8 April 2022 to Friday, 8 July 2022 at 9:30am;
    c. I granted the Company's application for an amendment to the Order per the Summons dated 16 March 2022;
    d. I made orders to the effect of the Company's undertakings in the Seventh Affirmation of Shum Siu Hung dated 9 May 2022 including in respect of the following (using the defined terms in the Shum 7 Affirmation):
        i. Providing "Available Negotiation Documents" - Information and documents in respect of the sale of the Company's LPG Assets and the Zhuhai Commercial complex – waiver consent request within 24 hours and upon consent disclosure of the information within 15 days of the date of this order;
        ii. Providing "Available Corporate and Financial Documents" - Providing updated corporate and financial information to the JPLs starting within 15 days of the date of this Order;
        iii. Providing "Available Books and Records" – documents currently located in the PRC as soon as practicable;
        iv. Arranging JPL meetings with potential investors pursuant to any request of the JPLs;
    e. I ordered that the Company was to adhere strictly to the Amended Order in respect of the dissipation and/or disposition of assets.
    f. I set the matter for mention for the 10 June 2022 at 10:30am in respect of an update on the disclosure of information by the Company to the JPLs.

g. Costs in the Petition.

Company's Submissions for an Adjournment of the Petition for Three Months

10. Mr. Robinson submitted that the Company was seeking for the Petition to be adjourned for a further period of 3 months to allow for the Company to pursue the Current Proposal. He provided an update on the progress of the sale of assets and the Current Proposal. He noted that the Company is listed on the Hong Kong Stock Exchange (the "**HKEx**") and is a holding company for a broad group of companies with total key assets of approximately US$1.092 billion. However, the Company was facing a severe liquidity issue with its total assets far exceeding its total liabilities. Thus, in order to restore the Company's solvency, it had embarked upon a determined process to improve liquidity and enable the company to pay its debts as and when they fall due. He stated that the value of the Company's Core Assets including the LPG Assets, the Zhuhai Commercial Complex and the Oil Storage Terminal, if sold at or close to market value would be sufficient to repay all bank creditors of the Company.

11. Mr. Robinson updated the Court that the Company had made some developments as follows:
    a. Entered into a letter of intent for the sale of its key LPG Assets with potential net proceeds of US$270 million to US$450 million;
    b. Reached an agreement with a potential buyer for the sale of the Zhuhai Commercial Complex with potential net proceeds of around US$286 million;
    c. Formalized negotiations for the payment of existing debt in the form of an updated scheme document reflecting the Current Proposal; and
    d. Made significant progress in the sale of the Group's core assets.

12. Mr. Robinson noted that there had been significant issues with the JPLs but noted that the JPLs remained ready to assist the Company. Thus their proactive cooperation to further restructure the Company and to participate in the negotiations to realise the LPG Assets and the Zhuhai Commercial Complex should provide the creditors with significant comfort

that the Company is conducting its affairs in the interests of all stakeholders during the process of negotiating the Current Proposal and other efforts.

13. Mr. Robinson submitted that most significantly the continued application of the "soft touch" aspects of the order would ensure that the Company maintained the value of its key assets by avoiding the massively value destructive impacts of the winding up order sought by the Petitioner, including:
    a. The loss of the value of the potential sale of the LPG Assets to potential investors, including Kingkey and Cathay Capital;
    b. The loss of the value of the potential sale of the Zhuhai Commercial Complex to the potential investor;
    c. The revocation of the Group's business operation licenses for the operation of the LPG Assets, Oil Storage Terminal, and ports and licenses for handling of dangerous chemicals by the PRC government; and
    d. The departure of approximately 115 members of critical staff necessary to maintain the safety and value of the key assets of the Group.

14. Mr. Robinson disagreed with the Petitioner's statements that no substantial progress had been made with respect to any restructuring proposals. He argued that the Company has made significant progress in the sale of the Group's Core Assets, in particular its LPG Assets and the Zhuhai Commercial Complex. He submitted that it had been the JPLs who had repeatedly exercised their powers otherwise than for the 'restructuring purposes only' stated in the Order as they seemed to be acting as traditional liquidators with full powers.

15. Mr. Robinson submitted nine (9) issues in respect of the JPLs.
    a. Unknown JPL correspondence with third parties including the filing of a confidential report to the Court which the Company had not seen. During the course of the hearings, the JPLs disclosed the Confidential Report to the Company;
    b. The JPLs seizing assets of the Company;
    c. The JPLs making multiple aggressive approaches to the Company's offices and employees thereby creating major labour relations issues for the Company;

d. The JPLs refusing to meet with a potential bidder of the LPG Assets suggested by the Company;
e. The JPLs meeting with a potential new buyer of the LPG Assets but failing to provide sufficient information to the Company to pursue the opportunity;
f. The JPLs engaging Allen & Overy ("**A&O**") as its legal adviser, despite an apparent conflict of interest based on A&Os concurrent appointments to act for the Steering Committee in the debt restructuring negotiation and HSBC in the present Petition and Hang Seng Bank another creditor;
g. The JPLs refusing to adhere to contractual confidentiality obligations that the Company owes to potential bidders;
h. The JPLs making unsubstantiated representations to creditors thus undermining restructuring efforts; and
i. The JPLs focusing on substantiating the Petitioner's claim that the Company was engaging in asset dissipation while providing the Petitioner's allegations to the creditors without providing the company's corresponding explanations.

16. Mr. Robinson submitted that the successful sale of the LPG Assets and the Zhuhai Commercial Complex will generate up to US$736 million of cash, which amounts to over 95% of the Company's bank debts. He maintained that there had been significant progress in the restructuring of the Company through asset sales, there had been advancement of sale negotiations with five potential purchasers and the Company has been able to maintain ongoing operations.

17. Mr. Robinson submitted that the Petitioner had not been able to obtain any additional creditor support in favour of winding up the Company. He argued that the support of the existing creditors is tainted by multiple factually untrue, material statements about the company made by the JPLs at the creditors' meeting before the support was reconfirmed. Thus little weight should be given to the purported continued creditor support.

18. Mr. Robinson argued that the immediate winding up of the Company would result in a massive and immediate destruction of the enterprise value of the Company that is not in the interests of the stakeholders, including the shareholders and the creditor body.

19. Mr. Robinson requested that the Court exercise its discretion to continue the appointment of the JPLs in lieu of making a winding up order. Further, he requested the Court grant the application to amend the order dated 14 December 2021 and to make an order that the Petition be adjourned for further three months.

The JPL's Submissions

20. Counsel for the JPLs filed a skeleton argument for the hearing on 14 April 2022 in response to the Company's Summons dated 12 April 2022 for disclosure by the JPLs of various categories of documents. By the time of the hearing of 14 April 2022 the JPLs had agreed to provide most of the documents sought by the Company. The JPLs objected to providing all their correspondence to the Company on the basis that the request was too wide and there was no factual basis for such a request.

21. Mr. Riihiluoma submitted that the JPLs were willing to continue to work with the Company. He noted that the JPLs had provided a list of 80 items of information that the Company was presently working on to provide to the JPLs. He noted that this development was a positive start but if an adjournment was granted, there may still be requests for further documents arising out of the information provided. He was of the view that it would be beneficial to return to Court in several weeks so that the Court could be provided with an update on the provision of information by the Company to the JPLs.

The Petitioner's Submissions

22. Mr. Taylor maintained that the Company should be wound up and that the JPLs continue as JPLs with full powers. The Petitioner objected to the Company's application for a further adjournment of the Petition and sought an order to wind up the Company immediately on

various grounds. In essence, Mr. Taylor submitted that the Exceptional Circumstances no longer applied in order to continue the adjournment of the Petition.

23. First, the Company was unable to pay its debts. Mr. Taylor submitted that the Company had still failed to satisfy the statutory demand and has not paid its debts. Thus an unpaid creditor such as the Petitioner was entitled to a winding up order virtually as of right. He relied on the cases of *Re Demaglass, Re LAEP Investments Limited* [2014] Bda LR 35 and *Re Gerova Financial Group Ltd* [2012] Bda LR.

24. Second, a significant majority of the Company's creditors, including the Petitioner and the Supporting Creditors, supported and continued to support the winding up of the Company. Therefore, the Company should not be allowed to engage in any further wasting of time and costs of its creditors, in particular:
    a. The Company had failed to demonstrate that the Petitioner would be paid in full in a reasonable amount of time;
    b. The Company had had ample opportunity since 2020 to put forward a viable restructuring plan that would satisfy its creditors and had failed to do so, in particular:
        i. The Company's major creditors did not support the "Schemes" put forward by the Company at the end of 2020 and did not support the Current Proposal; and
        ii. The Schemes and the Current Proposal envisage a sale of key assets to repay the Company's creditors, which the Courts have consistently held is a liquidation rather than a restructuring. If the Company's only plan was to pursue the Current Proposal which was a disposal of assets then the Current Proposal was not a restructuring which is supposed to have an element of compromise. Further any sale of the Company's assets should be conducted by independent liquidators supervised by the Court.

25. Mr. Taylor submitted that a winding up order was the only remedy that would ensure that the interests of the Company's creditors would be safeguarded. In light of these reasons,

he argued that Exceptional Circumstance 1 and Exceptional Circumstance 2 no longer applied and the Petition should not be adjourned further.

26. Third, the Company has breached the December 2021 Order (referred to by Mr. Taylor as the "Light Touch Order") on multiple occasions such that the soft touch process has not worked. Mr. Taylor submitted that there had been a breakdown in the relationship between the Company and the JPLs and there were disagreements arising between them immediately after the December 2021 Order. Mr. Taylor submitted that there were breaches of specific paragraphs of the December 2021 Order, including:
    a. Para 3(a) – The JPLs have had no visibility over the proposed sale of the LPG Asset or the Company's management;
    b. Para 4 – The Company had failed to provide the JPLs with information they require so the JPLs can discharge their duties and functions;
    c. Para 13 and 18(b) – The Company has breached these paragraphs by entering into the New Soho Share Pledge and the Shangyang Share Pledge. Mr. Taylor made extensive references to the Company Structure Chart which showed the Group's major and key assets namely the LPG Asset which consisted of the LPG refueling stations, its LPG storage terminals, its LPG oil storage terminals, the LPG bottling stations and the Commercial Property Business. The Petitioner referred to the evidence of Tse 3 which set out what it believed was asset dissipation based on publicly available searches of the Company's Hong Kong and PRC subsidiaries, namely the Dynamic Frontier Allotment in respect of the Company's indirect interest in the Commercial Property Business, the Sky Courage Allotment in respect of the LPG Bottling Stations, and the Shangyang Share Pledge in respect of the LPG Oil Terminal. Mr. Taylor noted that in Shum 4, Mr. Shum explained why no asset dissipation had occurred as Dynamic Frontier and Sky Courage are wholly owned by Sound Hong Kong and the purported reason for setting up these two Samoan companies was to reduce stamp duty liability. He noted that while those companies may not have an impact on the Company's interest, the New Soho Share Pledge and the Shangyang Share Pledge would have an impact on the Company's interest.

27. Mr. Taylor submitted that the New Soho Share Pledge and the Shangyang Share Pledge and the associated agreements were not transactions within the "ordinary course of business". They were transactions which were in response to the abnormal financial difficulties facing the Company. He cited the case of *Banking Corporation Ltd v Dean*, where the Privy Council considered the test for determining whether a transaction is in the "ordinary course of business". They held at 349 that:

> *"Plainly the transaction must be examined in the actual setting in which it took place. That defines the circumstances in which it is to be determined whether it was in the ordinary course of business. The determination then is to be made objectively by reference to the standard of what amounts to the ordinary course of business. As was said by Fisher J. in the Modern Terrazzo Ltd. case, 10 October 1997, the transaction must be such that it would be viewed by an objective observer as having taken place in the ordinary course of business. While there is to be reference to business practices in the commercial world in general, the focus must still be the ordinary operational activities of businesses as going concerns, not responses to abnormal financial difficulties."*

28. Mr. Taylor submitted that New Soho Share Pledge and the Shangyang Share Pledge should not have taken place without the oversight or approval of the JPLs as they are clearly outside the ordinary course of business. Thus the Company has acted in breach of the December 2021 Order. He argued that in light of these reasons, it called into question whether the Company can maintain the value of its key assets when it had entered into such transactions such that Exceptional Circumstance 3 no longer applied.

29. Fourth, Mr. Taylor submitted that the Company had breached para 18(b) of the December 2021 Order by instructing its counsel Kobre & Kim ("**K&K**") of Hong Kong to send a pre-action discovery letter to the Petitioner, which is an action outside the ordinary course of business of the Company and requires the approval of the JPLs. The Petitioner took the view that the Company is engaging in deliberate tactics to waste time to obfuscate the real issues in this matter which are that the Company is unable to pay its debts, the Company

does not have a viable restructuring plan which a majority of creditors support and that there have been other events and developments that would justify the granting of a winding up order. Mr. Taylor urged the Court to disregard the Company's actions for a variety of reasons. Further, the JPLs had confirmed that they were not aware of the K&K letter. Thus, this was not in the ordinary course of business and was another example of the Company disregarding the role of the JPLs.

30. Fifth, Mr. Taylor submitted that there had been multiple resignations from the Company and there were uncertainties as to the Company's true financial status. Mr. Taylor noted that all of the directors with the exception of Mr. Shum had resigned and only 3 non-executive directors have been replaced. The company secretary had resigned and been replaced. The former auditor Crowe had resigned and replaced by Confucius. Significantly, Crowe had provided a disclaimer of opinion in the Independent Auditor's Report annexed to the 2020 Annual Report and stated it was unable "*to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these consolidated financial statements*". The disclaimer was due to multiple material uncertainties relating to whether the Group could continue as a going concern. Mr. Shum claimed that the disclaimer did not signal a problem with the Company's operations but the Company had not arranged to have the disclaimer lifted. This meant that the Company has not published audited financial results since the 2019 Annual Report which calls into question whether it is truly balance sheet insolvent. Consequently, the Company has halted trading on the HKEx as of 1 April 2022 which in turn puts the Company at risk of being delisted which will have an impact on the recovery to its creditors. However, Mr. Shum blamed these developments on Covid with other PRC companies experiencing similar delays.

31. Mr. Taylor noted that this was the basis for the Court's Exceptional Circumstance 4. He noted that this was based on unaudited financial statements for the Group rather than the Company. Mr. Shum was asking for the Company to be given until 31 July 2022 to publish its 2021 Annual Results, a request which was unacceptable. Mr. Taylor argued that due to the high turnover at the management level of the Company and the uncertainty of the Company's true financial status, the Petitioner submitted that these were additional reasons

why a winding up order was urgently required. Further, he argued that it was questionable as to whether Exceptional Circumstance 4, the Company being balance sheet solvent, continued to be applicable.

32. Sixth, Mr. Taylor referred to the reasons given in the Court's March 2022 Reasons and submitted that the Exceptional Circumstances which may have been in place at the time of the judgment no longer applied and that a winding up order should be made immediately. Mr. Taylor argued that there had been no progress on finding potential buyers and no indication as to when the Company can repay its creditors in full. He stressed that the English Courts had a strong and well established principle against granting lengthy adjournments of creditors' petitions as a winding up order, if made, dates back to the date presentation of the petition and there are myriad problems in dealing with the affairs of the company after a lengthy adjournment.

33. Mr. Taylor relied on the cases of *Maud v Aabar Block S.a.r.l.* [2016] EWHC 2175 and *Demaglass* to submit that:
    a. There is no certainty that any restructuring will occur. - He highlighted the vague terms expressing intentions used in the documents, that the company was no closer to achieving a sale of any assets, the JPLs were not in a position to conduct or oversee any of the Company's assets due to the issues between the Company and the JPLs and that the Company knows that majority of the creditors will continue to oppose the Current Proposal; and
    b. There was no reasonable prospect of the debt being repaid in full within a reasonable time; - Mr. Taylor noted that the Company owes US$845.20 million to all its creditors as at 11 November 2021 and US$770.2 million to its bank creditors including the debt owed to the Petitioner. There was no certainty that any of the potential buyers were actually going to buy the LPG Asset and/or the Commercial Property Business for the price the Company was seeking and within a short period of time and in any event the anticipated US$736 will only cover 95% of the total debt owed to the bank creditors. There was an anticipated target of October 2022

for repayment but that requires a 6 month adjournment and the there is no basis for the Company to seek such a lengthy adjournment.

34. Seventh, Mr. Taylor submitted that the purpose of the original short adjournment was to allow the Company to put forward an actual restructuring proposal to its creditors. Thus the Company had had ample time since 2020 to convince the creditors to support the Current Proposal or any other restructuring plan.

Why a winding up order should be made urgently

35. Mr. Taylor submitted that in light of the reasons as set out above, resulting in the Exceptional Circumstances no longer applying, the Court should have exercised its discretion to make a winding up order. Then the control of the Company would be taken away from the current management and the JPLs can investigate the Company's affairs, including its financial status and take any necessary actions to protect the interests of the Company's creditors.

Discussion and Analysis

36. In respect of the Court's Exceptional Circumstance 1, I am of the view that the Company has made some progress to restructure its affairs. I have considered the developments as put forward by the Company and I am satisfied that those developments are consistent with the original plans submitted by the Company at the December hearing. I have heard the submissions from the Company and the JPLs about each other as well as more recent developments that there is a willingness on both parties to work together in the efforts to address its financial position and the debts owed to the creditors. Whilst there has been the impression that the Company has barreled forward on its own without regard to the JPLs with these developments, I anticipate that the Company and the JPLs will work together in a purposeful manner to give effect to the December 2020 Order. In my view, the Exceptional Circumstance 1 still applies.

37. In respect of the Court's Exceptional Circumstance 2, I am still of the view that the Company should be allowed some time to pursue the Current Proposal with the updated information and developments since the December 2021 Order. To that point, I am of the view that the "restructuring troops" should be allowed to assist the company as originally intended. I have noted that the relationship between the Company and the JPLs started on a difficult basis with both the JPLs and the Company making complaints about each other. The latest position appears to be a significant improvement in the relationship in that the JPLs have provided a list of approximately 80 items of information that they require and the Company has undertaken to provide a vast majority of that information, with a small number of items not in existence and one matter (Hong Kong Stock Exchange credentials) likely to be in dispute. On the basis that the information will be provided, I am of the view that that JPLs should be able to consider the information and then engage the creditors on the Current Proposal to see if there is any merit to it. I am hopeful that the JPLs, as restructuring troops, are seen by the Company as friendly forces rather than an invading enemy. My expectation is that the Company will be fully participating in the provision of information to the JPLs so that they can properly assist the Company, the Creditors and the Court. In my view, the Exceptional Circumstance 2 still applies.

38. In respect of the Court's Exceptional Circumstance 3, I am still of the view that there is the potential for value destructive consequences in making a winding up order. However, I am also still of the view that the JPL's with "soft touch" powers will assist in ensuring that the Company maintains the value of its key assets by avoiding such value destructive impacts and negative impacts of continuing to operate in the PRC under a winding up order. I have considered the submissions by Mr. Taylor that the Company has been entering into various agreements and pledges for which it should have consulted the JPLs. Mr. Taylor's point is that it is doubtful whether the value of the Company or the Group for that matter has retained its value in light of the asset dissipation that has taken place. On the other hand, Mr. Robinson has pointed to evidence to show that there has not been any asset dissipation, rather the actions taken by the Company were always intended to be taken to allow the Company to restructure and address its financial obligations. However, I am focused on the main issue of this Exceptional Circumstance 3 in that a winding up order has the

potential for value destructive consequences. Therefore, it is incumbent for the Company to cooperate fully with the JPLs in order benefit from their expertise as "restructuring troops" in order to avoid the value destructive consequences. In my view, the Exceptional Circumstance 3 still applies.

39. In respect of the Court's Exceptional Circumstance 4, I have once again given serious consideration to the views of the creditors and to their position atop the hierarchy of interests that I should bear in mind. Their position remains that they are not interested in a restructuring of the Company. Mr. Robinson's submissions in essence were that the creditors have not given proper consideration to the efforts of the Company, moreover that they have been prejudiced in one way or another against the restructuring efforts. In my view, as already stated, the Company should be given the opportunity to work with the restructuring troops so that the proper information can be collated, analysed and properly put before the creditors for their full consideration.

40. I have considered the resignations of the directors and other officials of the Company. However, I note that Mr. Robinson has shown evidence that the Company has still been able to maintain its operations. I am also aware of the issues in respect of the production of the financial statements of the Company. I had previously accepted the Company's submissions that the Company was balance sheet solvent but facing a liquidity problem. The Petitioner has argued that it is now questionable whether the Company is indeed balance sheet solvent in light of the issues with the production of the financial statements as well as the disclaimer. In reply, the Company has given indications that it needs until 31 July 2022 to publish its 2021 Annual Results. Having considered these matters, I am not persuaded that I should refuse the adjournment because of the issue of the financial statements as the Company intends to issue its 2021 Annual Results by 31 July 2022. Further, the Company stands by its position that it is balance sheet solvent and I have not seen any certain evidence that it is not.

41. Additionally, in my view, on the basis that there is evidence that the Company is balance sheet solvent but with a current liquidity problem: (a) the Company should be given the full opportunity to work closely with the JPLs on the Current Proposal as progressed since

the December 2021 Order; and (b) there should be an opportunity for the JPLs to seek creditor support for the restructuring on the basis of the information to be provided. In my view, the Exceptional Circumstance 4 still applies.

Conclusion

42. In light of all the evidence and the submissions, I am of the view that the Petition should be adjourned as requested, so that the Company can have the full benefit of the JPLs' expert assistance as restructuring troops to engage with the creditors in respect of the Current Proposal for restructuring. It is the Court's expectation that there will be forward momentum and that the JPLs will be able to submit their next confidential report which should show such progress and an informative assessment of the merits of a restructuring.

Dated 31 May 2022

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