In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION
2019 No: 441

IN THE MATTER OF NORTH MINING SHARES COMPANY LIMITED

IN THE MATTER OF THE COMPANIES ACT 1981

RULING
(REASONS)

Dates of Hearing:	Friday 1 November 2019
Date of Decision:	Friday 1 November 2019
Date of Reasons:	Monday 27 January 2020
North Mining Shares Company Limited:	Mr. Benjamin McCosker / Ms. Nicole Tovey (Walkers (Bermuda) Limited)
Natu Investment 1 Company Limited (The Petitioner in the Hong Kong Proceedings):	Mr. Keith Robinson (Carey Olsen (Bermuda) Limited

Cross-Border Insolvency proceedings between Bermuda and Hong Kong High Court - Petition to Wind-Up Bermuda Exempted Company – Comity - Application by the Company for the Appointment of 'Light Touch' Joint Provisional Liquidators - Application for issuance of Letter of Request / Letters Rogatory to Hong Kong High Court for Recognition Order - Objections by Petitioner in Winding up Proceedings before the Hong Kong High Court

RULING of Shade Subair Williams J

Introduction and Background Summary

1. This Court is concerned with a voluntary winding-up petition ("the Petition") and an *ex parte* summons application by North Mining Shares Limited ("the Company") seeking the appointment of joint provisional liquidators ("JPLs") on a light touch basis filed on 28 October 2019. The application for the appointment of JPLs is supported by the affidavit evidence of Mr. Zhao Jian, a director of the Company. Each of these documents were made and filed on 28 October 2019.

2. The Company is a publicly trading holding company which continues to be listed on the Main Board of the Hong Kong Stock Exchange. The Company and its subsidiaries (collectively "the Group") carry on business in Hong Kong in the field of molybdenum mining and property management operations and in the manufacture and sale of chemical and security technology products. The Company acts as an investment company and a policy and administrative coordinator of its subsidiaries.

3. On 10 April 1995 the Company was incorporated in Bermuda. The authorized share capital of the Company is HK$400,500,000 which is made up of 30,000,000,000 ordinary shares and 15,000,000,000 preference shares. The Company's principal assets are its shares in its subsidiaries, valued at HK$999,876,839 (approximately US$128,000,000).

4. The Petition for the winding up of the Company is grounded on the Company's insolvency pursuant to section 161(e) of the Companies Act 1981. It is stated in the Petition that the Company is indebted to (i) Natu Investment 1 Company Limited ("Natu") pursuant to a note valued at HK$115,902,134 (approximately US$14,700,000); (ii) SFund International Investment Fund Management Limited ("SFund") under a corporate bond valued at HK$292,992,456.37 (approximately US$37,600,000) and (iii) Huatune Corporation Company Limited on the terms of a loan agreement for the unpaid sum of HK$336, 731,179 (approximately US$43,200,000).

5. In respect of the Natu debt, Mr. Zhao, at paragraphs 13 and 53 of his first affirmation, describes the undisputed outstanding sum to be HK$115,906,552.46 (approximately US$14,700,000-US$14,800,000[1]). Prior to the presentation of a petition in this Court, on 27 May 2019 Natu petitioned for the Company to be wound up in the High Court of Hong Kong Special Administrative Region Court of First Instance ("the HK High Court") ("the HK Petition").

6. At the time of the hearing of this application, the proceedings on the HK Petition were live and active. A return hearing date for Monday 4 November 2019 before the learned Hon. Mr. Justice Harris sitting in the HK High Court was near pending. Mr. McCosker explained that the

[1] The stated US conversions at paragraphs 13 and 53 of Mr. Zhao's affirmation differ.

Company endeavoured for the HK petition to be further adjourned on the prospect of a creditor majority agreement to a structure for the refinancing of the Company's debts.

7. In addition to the application before me for the appointment of soft touch JPLs, the Company sought for this Court to issue a letter of request to the HK High Court for recognition of the proposed appointment of JPLs.

8. Having heard oral arguments from both sides and having considered the evidence and other documents placed before me, I granted the Company's applications for the appointment of JPLs on a light touch basis and for the letter of request for recognition of that appointment in limited terms. I informed the parties that I would later provide them with these written reasons for my decision.

The Application for the Appointment of JPLs and Supporting Evidence

Outline of the Company's 2018/2019 profits and loss

9. The application for the appointment of JPLs was mostly supported by the evidence contained in the first affirmation of Mr. Zhao who offered some insight on the recorded profit for the Group's mining and property management businesses and the current losses of the Group's chemical sales and manufacturing and security businesses.

10. Mr. Zhao reported that the mining business operated at a year-end loss of HK$26,000,000 (approximately US$3,330,000) in 2017 before it regained its annual profit of HK$67,132,000 (approximately US$8,600,000) in 2018 and a profit of HK$55,600,000 (approximately US$7,100,000) for the first half of 2019.

11. Similarly, the property management business, which is a smaller component of the Group's business services, saw an annual profit in 2018 of HK$7,607,000 (approximately US$975,000) from a recorded loss for 2017 of HK$7,400,000 (approximately US$940,000). The profit for the first half of 2019 was reported to be HK$3,200,000 (approximately US$410,000).

12. Due to a four-month closure of the chemical trading operations, the Group suffered loss for the 2018 financial year in the approximate sum of HK$49,805,000 (approximately US$6,400,000) with a continued loss for the first half of 2019 to the extent of HK$24,000,000[2].
13. The security business recorded a 2018 loss of HK$4,883,000 (approximately US$626,000) and a further loss of HK$37,427,000 (approximately US$4,800,000) for the first half of 2019. This led to a management decision to sell the security business.

[2] The converted sum into US dollars is misstated at paragraph 34 of Mr. Zhao's first affirmation.

14. While the Group is balance-sheet solvent, the Group's net-asset deficiency is made clear by Mr. Zhao where he speaks to the consolidated financial position for 2018. At paragraphs 63 and 64 of his affirmation he states:

"63. As at 31 December 2018 the Group's current assets of the Company were valued at HK$1,256,594,000 (approximately US$161.1 million) and the current liabilities of the Company and its subsidiaries are valued at HK$1,466,482,000 (roughly $188 million USD). Whilst the Group has substantial non-current assets (HK$5,117,736,000, or approximately US$656.1 million) which far exceed its non-current liabilities (HK$1,012,543,000, or approximately US$129.8 million) the Company is presently facing a liquidity problem that current assets are insufficient to immediately cover all current liabilities that are due within one year.

64. As of 30 June 2019, the Group had total outstanding borrowings of approximately HK$1,427,971,000 (approximately US$183 million) comprising…"

Outline of the Company's Refinancing Efforts

The Gold Pearl Sale

15. In an attempt to financially re-stabilise by disposing of its security business, on 28 March 2019 the Company publicly announced its agreement to conditionally sell its interest in Gold Pearl Investment Limited ("Gold Pearl") to Mr. Zhu Wei Min for the sum of HK$430,000,000 (approximately US$54,800,000). The expected sum of the net proceeds is HK$429,000,000. This was confirmed by a Sales and Purchase Agreement dated 28 March 2019 between the Company and Mr. Zhu ("the Gold Pearl Sale"). At a special general meeting of its members held on 18 September 2019 the Company resolved by 99.71% of its voting shareholders that it would proceed with the Gold Pearl Sale.

16. In April 2019, the Company received an initial deposit of approximately HK$22,000,000 from Mr. Zhu. The remainder sum owed is expected to come by way of three further installments by 28 March 2021. Mr. McCosker highlighted the evidence of Mr. Zhu's commitment to proceed with the Gold Pearl sale notwithstanding a termination clause that would have allowed Mr. Zhu to step away from the sale in the event of insolvency proceedings.

Renegotiating the Debt Owed to SFund

17. SFund is the Company's sole corporate bondholder for the principal sum of HK$250,000,000 (approximately US$32,000,000). It is also the second largest creditor occupying 33.21% of the Company's total debt pool.

18. On Mr. Zhao's evidence, Mr. Qian Yi Dong, the Deputy Chairman of the Company, entered into a non-legally binding Memorandum of Understanding with SFund for what he referred to as a 'Potential Share Subscription' which is an arrangement for a share subscription in the amount of HK$400,000,000. Such an arrangement would allow for the settlement of the outstanding HK$250,000,000 sum. Further, by this arrangement the Company would also have access to an additional HK$150,000,000 in cash.

The Hong Kong Proceedings

19. On 27 May 2019 Natu, holding 12.44% of the Company's overall debt sum, served the HK Petition for the Company to be wound up on the ground that it is unable to pay its debts. Under a re-amended petition (to which I shall also refer to as "the HK Petition") the Company is alleged to owe an outstanding aggregate sum of HK$170,492,494.31 (approximately US$21,860,000). Mr. Zhao states the undisputed outstanding sum to be HK$115,906,552.46 (approximately US$14,700,000- US$14,800,000[3]) ("the undisputed debt").

20. The Company proposed a schedule of three installments of payment to fully settle the undisputed debt over a five month period. It is undisputed evidence that partial payment in the sum of HK$15,000,000 was paid. However, in respect of the further payments owed, Mr. Zhao explained at paragraphs 60 and 61 of his affirmation that the Company's other creditors object to the repayment of Natu on the grounds of fraudulent preferential payment:

"60. The Company is in a difficult position. A significant body of its creditors are claiming that payments made to Natu will be fraudulent preferences and are actively opposing the Hong Kong Petition on this ground. At the same time, I understand that the Hong Kong Court expects that a payment of the Second Tranche of HK$18 million to Natu will be made on 28 October 2019 (being the balance of the first installment under the Company's payment proposal), and if the Company does not transfer such amounts to Natu there is a considerable risk that the Company will be wound up by the Hong Kong Court.

61. The likely consequence of such compulsory winding-up will be the termination of the Gold Pearl Sale, the end of negotiations with SFund for the recapitalization of the Group in the circumstances, and the end of friendly relations with the Group's creditors. All of these consequences will be value destructive, adverse to the interests of the Company's general body of creditors (as opposed to the interests of Natu) and will likely lead to the de-listing and demise of the Company and the Group."

[3] The stated US conversions at paragraphs 13 and 53 of Mr. Zhao's affirmation differ.

21. Mr. McCosker referred the Court to a chart of the Company's seven different creditors. In respect of the largest creditor, Huatune Corporation Company Limited ("Huatune") who represents 40.51% of the total debt being HK$358,200,846.19 (approximately US$45,920,000), the Court was shown the third affirmation of its Assistant President, Mr. Kong Ling. Mr. Kong deposed that Huatune opposes the HK Petition and supports the Company's debt restructuring plan. At paragraph 3(c) of his affirmation he also stated Huatune's objection to the payment of Natu:

    "Since North Mining is engaging in the Debt Restructuring Plan, Huatune objects (to) any repayment by the Company, including HK$18,000,000 to the Petitioner, to any creditors of North Mining because it will constitute a preferential payment."

22. A similar position was taken by the other creditors, namely Gao Shan, Chau Yiu Ting and SFund. This Court was made to understand that Cayman Islands International Investment Limited took a neutral position.

The Relevant Law and Legal Principles

The Court's Power to Appoint 'Light-Touch' JPLs for Restructuring Purposes

23. Section 161(e) of the Companies Act 1981 provides the statutory basis for a petition being presented on the grounds that a company is unable to pay its debts. Section 170(2) grants the Court wide and unfettered discretionary powers to appoint a provisional liquidator at or after the presentation of a petition but before the first appointment of a liquidator. Pursuant to Rule 23(1) of the Companies (Winding-Up) Rules 1982, an application for the appointment of a provisional liquidator must be supported by affidavit evidence setting out sufficient grounds for the appointment of a provisional liquidator. In England and Wales, the Court has similar powers of appointment under section 135 of the Insolvency Act 1986. Under both legal systems, the Court may only appoint a provisional liquidator once a petition to wind up the company has been presented.

24. The appointment of a provisional liquidator can sometimes be described as a draconian measure employed by the Court to paralyse the directors of a company from their ability to deal with and dispose of the company's assets. In such cases, the appointment of a provisional liquidator is ordinarily ordered on an urgent *ex parte* basis to enable swift and unforeseeable seizure of the control of the company's assets by the provisional liquidators. The underlying purpose here is to protect the interest of the company's creditors who are at risk of not being repaid their debts due to the likely dissipation of the company's assets.

25. However, where a 'light touch' appointment is made, the powers of a provisional liquidator are significantly restricted. In the present case before me, it is the Company who is making the application for the appointment of JPLs and so it is incumbent on the Company to demonstrate a useful purpose or good reason for the Court to sanction the expense of JPLs.

26. In this case, the Petitioner, i.e. the Company, does not truly wish or intend for the Company to be wound up, albeit that it has presented a petition for the Company to be wound up. The Petition was filed strategically and necessarily to checkbox the procedural requirements for the appointment of JPLs. In *Re Up Energy Development Group Ltd* [2016] Bda LR 94 [paras 20-21], the then learned Hon. Chief Justice, Mr. Ian Kawaley, stated:

"The main basic criterion for the appointment is that a prima facie case be made out for a winding-up. As Ground J observed in Re CTRAK Ltd et al [1994] Bda LR 37:

'…I am most acutely aware that I am only considering whether or not there is at least a 'good prima facie case' for the winding up of the respective companies, and not deciding whether or not they should be wound up…'

This demonstrates that in the restructuring context, the JPL applicant need only show that a good prima facie case for potentially winding-up the company exists, a burden which the Petitioner in the present case has clearly discharged…"

27. This Court has previously considered 'light touch' appointments to be appropriate in cross-border insolvency cases where there are parallel liquidation proceedings in a foreign insolvency court. 'Light touch' appointments are particularly useful where the ultimate aim is to rescue a company by restructuring its affairs rather than winding up the company altogether.

28. Mr. McCosker reminded this Court of the Bermuda common law origins of the Court's exercise of its discretionary powers to appoint a provisional liquidator without displacing the directors of the company. He referred to the *ratio decidendi* of LA Ward CJ in the landmark judgment from *Re ICO Global Communications (Holdings) Ltd* [1999] Bda LR 69:

"I am satisfied that the Court is given a wide discretion and had jurisdiction under section 170 of the Companies Act and Rule 23 of the Companies (Winding-Up) Rules 1982 to make such an Order. Under it the directors of the Company remained in office with continuing management powers subject to the supervision of the joint provisional liquidators and of the Bermuda Court."

29. The Court's appointment of JPLs serves to protect a company against legal action by its creditors while it is undergoing its restructuring efforts. This was spelled out by Kawaley J (as

he then was) in *Discover Reinsurance Co v PEG Reinsurance Co Ltd* [2006] Bda LR 88 [paras 19-20]:

"19. The use of provisional liquidation to facilitate a restructuring has not always occurred in clear cases of insolvency. It has often been utilized when companies are in what has been referred to as the "zone of insolvency". Be that as it may, the Bermuda model of restructuring provisional liquidation has often kept the pre-existing management in place, and merely given the provisional liquidators "soft" monitoring powers. In theory, these monitoring powers are designed to reassure both creditors and the Court that assets are not dissipated, on the implicit assumption that the management that has run the company into difficulties can hardly be trusted to have the creditors' best interests at heart.

20. In practice, however, in circumstances where no suspicions about the integrity of the directors really exist, the provisional liquidator is appointed as part of legal quid pro quo for receiving the benefit of the stay on proceedings that the appointment guarantees, Bermuda law presently lacking a formal equivalent of the US Chapter 11 regime or the English administration proceedings. It will be anomalous if a Bermuda company files for Chapter 11 protection and cannot be sued by creditors in the US, but is still vulnerable to suit in its own place of incorporation. Proceedings against a company will not be stayed merely by the filing of a winding-up petition, but only if either (a) a provisional liquidator is appointed, or (b) a winding-up order is made. Section 167(4) of the Companies Act 1981 provides as follows:

'(4) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.'"

30. In *Re Up Energy* Kawaley CJ offered another clear explanation of the advantages of the involvement of JPLs in a restructuring as follows:

"It is the involvement of the JPLs, embedded with the restructuring troops, which relieves this Court of the burden shouldered by US Bankruptcy Court judges of resolving a myriad of disputes between the restructuring protagonists… All conflicts are typically resolved before the scheme document is finalized, out of court, with the JPLs playing a generally unheralded but crucial mediating role. They bring a high degree of efficiency and economy to Bermudian restructuring proceedings which would likely be lost in a proceeding without the usual appointment."

31. In a further jurisprudential contribution, Kawaley CJ held the following in *Re Z-Obee Holdings Limited* [2017] Bda LR 19 [paras 12-13]:

"12. When a winding-up petition presented by the company or a creditor on grounds of insolvency is heard, the Court will generally decide whether or not the petition should be granted, dismissed or adjourned having regard to the best interests of the creditors. The adjournment power conferred on this Court may be exercised either conditionally or unconditionally with no express statutory fetters. The power to appoint provisional liquidators is expressed in correspondingly broad terms. It was (and is) difficult to identify any principled reason why this unfettered adjournment power may only be exercised to enable a decision to be made on whether the petition should be granted or dismissed without attempts being made in the interim to implement a restructuring.

13. After all, some restructurings might result in a winding-up order being made in any event (e.g. after a sale of the business), others might not. Adjourning the petition for a restructuring to be attempted as an alternative to a 'full-blown' liquidation merely postpones an ultimate decision as to whether the winding-up relief should be granted or not. Even if a petition is presented by the company with the specific purpose of pursuing a restructuring which if successful will result in the petition being dismissed, it will rarely if ever be the case that there is no possibility at all that the plan will fail and that a winding-up order will still result. In such circumstances the winding-up jurisdiction is still being used to fulfil the primary purpose of the winding-up jurisdiction: protecting the best interests of the general body of unsecured creditors."

The Court's Powers to Issue a Letter of Request

32. While there is a statutory framework in place governing the Court's procedural approach to answering a letter of request issued by a foreign Court (see *D. Kelly v S. Stevanovich et al.* [2018] Bda LR 89 per Subair Williams J), no such legislation addresses the Court's powers or approach to issuing a letter of request.

33. This observation was made by Kawaley CJ in *In the matter of Sea Containers Ltd (in liquidation)* [2012] Bda LR 33:

"13. The concept of issuing letters of request to foreign courts to facilitate task of the liquidator who seeks assistance from a foreign court appears to be a creature of the common law. Letters of request are a private international law response to ancient public international law notions of territorial sovereignty, according to which the jurisdiction of the courts of one sovereign does not run beyond that sovereign's own territorial limits.

14. So-called letters rogatory in relation to obtaining evidence from foreign courts for use in local proceedings are provided for under Order 39 rule 3 of the Rules of the Supreme Court. No equivalent statutory rules exist in the insolvency law context."

34. On the subject of conflict of laws I need only say this: although the recognition of foreign winding up proceedings over a Bermuda incorporated company is not automatic, recognition of those proceedings will most often by given by the Bermuda Court in cases where the members of the Company have submitted to the personal jurisdiction of the foreign Court (See *Re Dickinson Group Holdings Limited* [2008] Bda LR 34 [p.3]). However, in this case, the HK High Court ruled in favour of its jurisdictional governance and no further challenge on jurisdiction has been made before me.

Consideration of the Views of the Majority of Unsecured Creditors

35. The Courts have long recognized the powerful force of an objection from the majority of unsecured creditors against a winding-up order.

36. In Re Up Energy, the then Hon. Chief Justice, Mr. Ian Kawaley held at paragraph 10 in his ruling of 20 September 2016:

"*10. …It was well settled that the views of the majority of unsecured creditors would ordinarily be given considerable weight, if not hold sway, when deciding whether or not to adjourn for restructuring purposes rather than immediately winding-up…*"

37. In the English Court of Appeal case *In re P. & J. Macrae Ltd [1961] 1 WLR 229 at 235* Wilmer L.J. held:

"*Where the majority of creditors do for good reason oppose a petition… then prima facie they are reasonably entitled to expect that their wishes will prevail, in the absence of proof by the petitioning creditor of special circumstances rendering a winding-up order desirable in spite of their opposition*."

38. Likewise, Lord Diplock held in *In re J D Swain Ltd [1965] 1 WLR 909 CA*:

"*…for the wishes of the petitioner to overrule those of the majority of the creditors there must be some special reason why the wishes of the majority should be overridden*."

39. At paragraph 13 of the Petitioner's written submissions, however, it is argued:

"13. *A petition cannot properly be adjourned on the basis of a speculative assertion that a restructuring will occur which would make a winding up unnecessary (Re Argenco Ltd [2014] Bda LR 94 [AB/6/38]). Further, when considering whether to adjourn a petition, the court should consider whether there is a "reasonable prospect of the petition debt being paid in full within a reasonable time" (Maud v Aabar Block Sarl [2016] EWHC 2175 (Ch) at pa. 99 [AB/7/68])*."

Analysis and Decision

40. The Company's application for the appointment of JPLs is made in support of its efforts to secure more time for its recapitalization as a means to returning to a point of general solvency. The Company would argue that such efforts are realistic and of good prospects since the two pillars of the restructuring plan, namely the Gold Pearl sale and the SFund debt renegotiation are well underway. I should also keep in mind that the overall reality is that the Company is cash poor as opposed to generally insolvent.

41. Mr. McCosker confirmed that the various creditors of the Company were served with notice of the applications before me. He highlighted that 58% of the Company's creditors confirmed their support for the Court's appointment of the proposed JPLs on a light touch basis to support the restructuring of the Company's debt and that only 9.49% (by value) of the Creditors remained neutral in their stance. Only Natu opposed this application.

42. Mr. Robinson, on behalf of Natu, spoke about the Company's arrangement to repay Natu in installments ordered and sanctioned by the HK High Court and the prejudice to Natu in its last minute attempts to renege and breach the HK High Court Order. I will shortly address the issue of comity. On the point about prejudice, I say this: the possible prejudice to one creditor must be balanced with the overall position of the creditors at large. As this Court's jurisdiction has been invoked on a petition, albeit the Company's petition, it will monitor the progress of the restructuring at regular intervals. More so, the HK Petition could plausibly be restored under the exercise of the HK High Court's authority, if the restructuring scheme proves to be fruitless.

43. In exercise of my judicial discretion, I gave due regard to the wishes of the majority of the unsecured creditors. In *Re Up Energy Development Group Ltd* [2018] Bda LR 100 per Subair Williams J, I considered numerous previous decisions of this Court and the English High Court which were supportive of the considerable weight to be given to the desire of the majority of creditors. In that ruling, there was an application to adjourn a petition which was aimed to enable an eventual scheme of arrangement. This was supported by a non-statutory majority of unsecured creditors. In this case, the expressed preference of the majority creditors in value should be treated with similar importance and priority since they are, of course, always the real stakeholders.

44. During the course of Mr. Robinson's objections, he carefully took this Court through the chronology of proceedings before the HK High Court and the HK Court documents exhibited to the affirmation of Mr. Henry James Tucker, Counsel at Carey Olsen (Hong Kong) LLP. Mr. Robinson referred to the jurisdictional challenges made to the HK High Court and its previous ruling approving its own jurisdictional governance. Mr. Robinson argued that these proceedings before me offended the principles of comity given that HK High Court was already seized of the liquidation proceedings. Mr. Robinson, accepting that the Bermuda Courts have historically worked alongside the HK High Courts in previous cross-border insolvency cases calling for common law judicial cooperation, insisted that the present case did not so qualify. He also pointed out the belated nature of the application in that this hearing was made on short notice and only one business day prior to the return date in the HK proceedings.

45. However, I accepted Mr. McCosker's submission that the appointment of JPLs on a light touch basis was consistent and even furthered the spirit of comity. Following the principles set by both the English and Bermuda common law, this Court recognized that the HK High Court has been seized of liquidation proceedings of the Company. The Court was taken to a previous ruling of Harris J where he held that the HK High Court did not have the power or authority to appoint JPLs on a light touch basis. It was suggested that the HK Court could nevertheless recognize an order of such an appointment pursuant to a letter of request from a common law jurisdiction so empowered.

46. So not to offend the principles of comity, the Letter of Request issued by this Court necessarily limited the invitation for recognition only to the extent that the laws of Hong Kong allowed. Ultimately, what the Company wanted was for an adjournment or stay of the HK proceedings (with liberty to restore the HK Petition) to avoid the final destruction of the Company. During the hoped-for stay of the HK proceedings, the Company, together with its majority of creditors, sought the opportunity to restructure under the framework of the Bermuda proceedings. Herein lays the common good which is generally protective of the stakeholders as a whole. Since the HK Court does not have the powers to appoint soft touch JPLs, this Court agreed to assist in a creative but judicially known way. That is consistent, in my judgment, with the principles of comity.

47. On the subject of the proposed provisional liquidators, I satisfied myself on the filed Consents to Act and curricula vitarum of both Ms. Hou Chung Man (aka Anita Hou) and Mr. Kan Lap Kee (aka Terry Kan) that both of these persons were suitable for selection by this Court in the role of JPLs. As there is no statutory requirement for a liquidator to have any particular professional designation or to be resident in Bermuda, I approved this selection in exercise of my discretion. In so doing, it was at the forefront of my mind that liquidators (whether

provisional or not) are expected to maintain an even and impartial hand between all individuals whose interests are entangled in the liquidation proceedings. (See *In re Contract Corporation (Gooch's Case (1871)* 7 Ch. App. 207 at 211).

Conclusion

48. The Petitioner's application for the appointment of light touch JPLs was approved.

49. The Petitioner's application for the issuance of a letter of request was approved.

50. The terms of my Order were approved and signed at the close of the hearing on Friday 1 November 2019.

Dated this 27th day of January 2020

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THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT