IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 108 OF 2022 (IKJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF GLOBAL CORD BLOOD CORPORATION

Appearances:	Mr. David Chivers QC instructed by Ms Joanne Verbiesen, Mr. Jamie McGee and Mr. Jonathan Stroud of Bedell Cristin, on behalf of Blue Ocean Structure Investment Company Limited (the "**Petitioner**")
	The Company did not appear.
Before:	The Hon. Justice Kawaley
Heard:	In Chambers
Date of hearing:	22 September 2022
Judgment Delivered:	22 September 2022

HEADNOTE

Ex parte on notice application to appoint joint provisional liquidators-need to prevent mismanagement or misconduct or dissipation or misuse of assets-allegation of forgery-Companies Act (2022 Revision) section 104(1)-(2)

EX TEMPORE RULING

Introductory

1. The Petition in this matter was originally presented on 3 May 2022- at least that was the date it bore. In fact I think it was formally filed shortly after that[1]. It was amended on 22 September 2022 and the Petitioner seeks a just and equitable winding-up on grounds that are summarised as follows:

> "*69.1 The Petitioner has justifiably lost all trust and confidence that the assets and affairs of the Company are being properly managed. The mutual trust and confidence between the Petitioner and the Company has irretrievably broken down.*
>
> *69.2The Petitioner believes that there is an urgent need to investigate the Company's affairs and the conduct outlined above, in particular the circumstances of the Transaction, the Board's conduct in relation to the transaction, the forgery of the bank statement and the Unlawful Payments.*
>
> *69.3The Company and the Board are acting in a manner designed to cause oppression and prejudice to the petitioner and to all of the existing shareholders of the Company including, inter alia, by excessively diluting the shareholders' interest in the Company.*
>
> *69.4 The Board has acted in breach of its fiduciary duties and the NYSE rules in approving the Transaction and failing to put the Transaction to an EGM.*"

2. The Petitioner primarily seeks alternative relief pursuant to section 95(3) of the Companies Act and only in the alternative seeks a winding-up order pursuant to section 92(e) of the Companies Act and, consequential upon that, or ancillary to that, seeks the appointment of joint provisional liquidators.

3. The background to the dispute is summarised in my Judgment of 29 July 2022 herein. And, most significantly, I discharged an injunction which restrained the Company from completing what is known as the 'Cellenkos Transaction', I refused the Company's application for a Validation Order which would have permitted stages two and three of the three-part transaction to be completed, notwithstanding the presentation of the Petition, and I refused the Company's application for a declaration that the extraordinary general meeting ("EGM"), purportedly convened by 75% of the shareholders of the Company, had been invalidly convened. I summarised the practical result of the decision that I rendered as "*a bit of a mess*"

[1] It was in fact formally filed on 5 May 2022.

The 22 August 2022 Summons

4. The present application has confirmed the accuracy of that assessment because, rather than proceeding to draw up the Order to give effect to that Judgment, what happened was that, on 22 August of this year, the Petitioner issued a Summons seeking to appoint joint provisional liquidators and that Summons was supported by (a) evidence which the Company had an opportunity to respond to (the "Old Evidence"), and it was supplemented by (b) "New Evidence" which I perhaps generously concluded the Company should be given a further opportunity to respond to.

5. I accordingly directed[2] that the Petitioner should have an opportunity to persuade me that it was appropriate to appoint joint provisional liquidators on an ex parte on notice basis, on the foundation of the Old Evidence. I also expressed the provisional view that in fact the case for such an urgent appointment was not made out because it seemed to me, as the Company had argued in correspondence, the fact that the discharged injunction was still in place pending the perfecting of the Order gave the Petitioner adequate protection. And so it is against that background that Mr Chivers KC appeared before me today to seek to urge me to grant the application supported by the 22 August Summons.

The evidence

6. Pivotal to that application was two Affidavits which for present purposes I can deal with fairly shortly because in material terms they are not overly complicated to describe. The First Affirmation of Siqi Wang was provided by an employee of Nanjing Ying Peng Asset Management Company Limited which I understand to be a company above the Petitioner in the petitioner's corporate structure. He critically deposes as follows in his First Affirmation:

> "*7. At around 9.30 am on the morning of August 9, 2022, Beijing time, with the assistance and arrangement of the Nanjing Municipal Government, accompanied by the staff from Nanjing Local Financial Supervision and Administration (or 'Nanjing FSFM') and Jiangsu Branch of the State Administration of Foreign Exchange (or 'Jiangsu SAFE'), my colleagues from Ying Peng Asset and I went to the Nanjing branch of China Guangfa Bank Company and met with the staff of Guangfa Nanjing...*"

7. The long and the short of it is that he presented a copy of the bank statement exhibited to the Fourth Albert Affidavit, which was purportedly a bank statement issued by China Guangfa Bank, and was told by bank employees that the bank statement produced in Fourth Albert was not an authentic document issued by the bank.

8. The relevant document which was exhibited in the Fourth Albert was referred to in the course of argument during the present hearing. And it is very difficult to avoid the

conclusion that this document which was placed before me in the course of the hearing which resulted in my 29 July 2022 Judgment was in fact a forged document. It is not

[2] This direction was given on 15 September 2022, when I was overseas on annual leave.

strictly necessary for me to make a positive finding to that effect but it is, on the face of it, difficult to see how that document can possibly be anything other than a forgery, particularly because Mr Albert himself has, despite having an opportunity to explain the various discrepancies, merely denied the forgery allegation and said nothing more than that about it.

9. The next Affidavit which was heavily relied on by the Petitioner is the Sixth Affirmation of Xiaoyang Chen. His evidence fortifies the Wang Affirmation by giving further illustrated explanations as to why the document exhibited in Fourth Albert is clearly not authentic. A very straightforward analysis of the true bank statement produced by the bank in question demonstrates that not only is the 'concocted' document inconsistent with what appears to be standard banking practice in the People's Republic of China ("PRC"), whereby identification numbers are assigned to bank statements so that their veracity can be easily confirmed; the document exhibited to Fourth Albert had no authentication code. But also, most significantly (and Mr Chivers KC relies very heavily on this), the key amounts that were relied on by the Company as having been paid on or about 29 April 2022 to consummate this Transaction simply were not in the relevant bank account, let alone paid out of it, at the time that the Company's deponent swore those monies were there and were paid.

10. This evidence of payment of some US$664 million on 29 April 2022 to consummate stage one of the Cellenkos Transaction was pivotal to the conclusions that I reached on 29 July of this year. They were pivotal because they were used as the platform for justifying the issuance of new shares which were said to deprive the Petitioner and supporting shareholders of the majority that they required to validly convene an extraordinary general meeting and, as they thought they had validly done, remove the existing management. This was primarily because the convenors contended that they should have been consulted before such a dramatic share dilution transaction was entered into involving, by their account, related parties to the management of the Company which, unusually, is not a management representative of the shareholder majority. Instead, one might cynically view the management as an unelected dictatorship[3].

11. Be that as it may, the position in practical terms is that the Company has had an opportunity to respond to this Old Evidence but has not availed itself of responding other than in very token terms. The Sixth Affidavit of Chen Bing Chuen Albert was the most significant response offered by the Company and in section A of that Affidavit the deponent says this:

> "*7. Chen 6 claims that the bank statement which I exhibited at pages 1203 to 1204 of exhibit AC4 to Albert 4, bank statement, is a forgery and that the US$ 664 million stage one payment was not made on 29 April 2022. These claims are false. The bank statement is not a forgery. The stage one payment was made on*

[3] This was the purport of some of the Petitioner's submissions on this point at the July hearing.

29 April 2022. However, the Company is not in the position to disclose further materials based on advice by the Company's PRC legal counsel and potential investigations in the PRC."

12. As I observed in the course of argument, the Petitioner's evidence that local government officials accompanied them to the bank to verify the bank statement relied upon in Albert 4 does in fact suggest that there are potential investigations in the PRC which might perhaps have generated some anxiety on the part of Mr Albert, and others linked to the management of the Company, about self-incrimination. The response, or the way in which that matter is dealt with, is expressed in very Delphic terms. It is not necessary for me to conclude anything other than that there is in fact no cogent or convincing response to as serious an allegation as could ever be made against the Chief Financial Officer of a listed company.

The law

13. The Petitioner has addressed the Court on the legal requirements for the appointment of provisional liquidators and has summarised the legal position in its Skeleton Argument as follows, at paragraph 20:

"*20. Section 104(1) and (2) of the Act states:*

'(1) Subject to this section and any rules made under section 155, the Court may, at any time after the presentation of the winding-up petition but before the making of a winding-up order, appoint a liquidator provisionally.

(2) An application for the appointment of a provisional liquidator may be made under subsection 1 by a creditor or contributory of the company… on the grounds that-

(a) there is a prima facie case for making a winding-up order and

(b) the appointment of a provisional liquidator is necessary in order to -

(i) prevent the oppression of minority shareholders;
(ii) ….; or
(iii) *prevent mismanagement or misconduct on the part of the company's directors'* ."

14. In this case, reliance is placed on subsection (2)(b)(i) and (iii), which grounds for appointing a provisional liquidator are essentially the same grounds that the Court deals with more commonly in the context of insolvent companies. And so it seems to me that the Court has to make a practical appraisal, assuming that the *prima facie* case requirement is met, as to whether there is a risk of at least a misuse of the Company's assets (section 104(2) (b) (i)) or whether there is a need to prevent mismanagement or misconduct on the part of the Company's directors (section 104(2) (b) (iii).

15. The Skeleton goes on:

> "*21. The preconditions for the appointment of provisional liquidators pursuant to section 104(2) of the Act are:*
>
> *a. The Petitioner has presented a winding-up petition.*
>
> *b. The Petitioner has standing as a contributory of the Company to make an application for the appointment of provisional liquidators.*
>
> *c. The Petitioner has at the very least made out in the Petition a prima facie case for a winding-up order to be made. Parker J in Grand State Investments Limited quoted the following passage from the judgment of Segal J in re Asia Strategic Capital Fund LP [2015] (1) CILR Note 4:*
>
> *'It is not necessary to demonstrate that a winding-up order will be granted. A prima facie case is established if the allegations made in the petition for the appointment of provisional liquidators are supported by the evidence and have not been disproved, with any conflicts of evidence to be resolved at a substantive hearing.'*
>
> *d. The appointment of provisional liquidators must be necessary to prevent one or more of the risks identified in the statute. In this case, the appointment of provisional liquidators is necessary:*
>
> *i. to prevent dissipation or misuse of the company's assets; or*
> *ii. To prevent dissipation or misuse of the company's assets*
>
> *22. If the Court finds these four preconditions are satisfied, the Court is then required to exercise its discretion in accordance with the overriding principle that the Court should take the course that seems likely to cause the least irremediable prejudice to one party or the other.*"

16. The Skeleton then goes on to elaborate on how and why it is said that these various requirements are met.

Findings

Standing

17. On the question of the Petitioner's standing, I previously expressed concern[4] - it seems to me today wrongly - about the standing of the Petitioner having regard to the fact that a share charge had allegedly been created over the Petitioner's shares. The validity of that share charge, which the Petitioner says is a forgery, is subject to litigation in the British Virgin Islands courts. However, that litigation is expressly proceeding on the basis that the putative mortgagee is not entitled to challenge the ability of the Petitioner to proceed with this Petition.

18. Mr Chivers KC further argued, very persuasively, that as a matter of legal principle the fact that the legal registered shareholder may owe certain contractual obligations to a third party is neither here nor there when it comes to standing; I accept those submissions. And so the concerns that I previously expressed about the standing of the Petitioner in light of this alleged charge fall away and I am satisfied that in fact the Petitioner, as an admittedly registered shareholder, has standing to pursue the Petition and to seek the appointment of joint provisional liquidators.

Prima facie case for winding-up

19. Has a *prima facie* case been made out for the grant of a winding-up order? It seems to me to be clear that a *prima facie* case has been made out. The position, based on the material before me today, is somewhat more favourable to the Petitioner on the merits in light of the new forgery evidence, which has, one might think somewhat surprisingly, not been contested in any substantive or serious way. Mr Chivers KC would invite me to infer that if there was some straightforward answer to the allegations it should have been easy to proffer such an answer without the need to produce any documents, assuming it is correct that advice has been received that no documents relating to this matter should be disclosed in these proceedings.

Grounds for appointing provisional liquidators: preventing misconduct and/or mismanagement

20. Coming on to the question as to the grounds for appointing provisional liquidators, the main ground that is relied upon is to prevent mismanagement or misconduct by the Company's directors. In this respect, there are two important considerations which the court is bound to take into account. First of all, it is presently the case that the Petitioner has a seriously arguable case -- and at this point it is almost an irresistible case -- for

[4] Judgment dated 29 July 2022, paragraph 76(c).

setting aside the Order that I made, albeit not perfected yet, on the grounds that it was procured by fraud. The evidence about the payment of the consideration for stage one of the Cellenkos Transaction was pivotal to the Order that I made, not just:

(a) that the injunction restraining the completion of the transaction should be discharged on balance of convenience grounds, but more importantly was also pivotal to

(b) my decision that the Petitioner, and by implication other shareholders, should not be permitted to proceed with implementing the EGM resolution, the validity of which was challenged by the Company.

21. I was persuaded that there were serious doubts about the validity of the Resolutions by the evidence of Albert 4 to the effect that, in fact, new shares had been issued on or about 4 May 2022 pursuant to the monies being paid on 29 April 2022, which now seems to be very doubtful indeed. Mr Chivers KC very fairly pointed out that there could possibly be advanced various explanations, for instance, that in fact the money was indeed paid on 29 April 2022 but it was in fact paid from another account. That sort of explanation, if true, could have been advanced but has not been advanced and Courts can only make decisions based on the material before them at any point in time.

22. So there clearly is a risk of mismanagement flowing from the fact that the best available evidence strongly suggests that the Chief Financial Officer[5] of the Company has misled the Court and put before the Court a false bank statement pivotal to the matters that the Court was adjudicating at the 13-15 July 2022 hearing.

23. The other aspect of the mismanagement risk which was also addressed by counsel for the Petitioner and that is the seeming silence, or paralysis, on the part of the independent directors in the face of these shocking allegations about forgery. One might have thought that if the independent directors were in fact capable of exercising control, that they would have taken steps by now to demonstrate very decisively that they were in fact putting the ship in order; that they were marginalising the crew who appeared to be guilty of misconduct and that the Court need have no concern that the Company's affairs going forward would be conducted in an orderly manner.

24. Nothing of that sort has happened as far as the material before the Court is concerned, although I do not discount the possibility that, behind the scenes, efforts may be being made to take such steps and that this may perhaps in part explain the reluctance of the Company to actively participate in the hearing today. Be that as it may, I am bound to find that there is a serious risk of mismanagement and misconduct by the Company's directors based on the material that is presently before the Court.

[5] He is also an executive director.

Grounds for appointing provisional liquidators: preventing dissipation and/or misuse of assets

25. A slightly more nuanced consideration is the risk of dissipation or misuse of the company's assets. But it is impossible to look at that ground wholly detached from the forgery allegation. The overlap arises in this way. Concerns do arise about the misuse of the Company's assets having regard to the fact that money that Albert 4 said was in a particular account has now been shown not to have been there.

26. There is further evidence, which I do not propose to consider for the purposes of this present application, which suggests that in fact the reason for the Cellenkos Transaction might be 'filling a gap' because, looking at historic documents, it appears that legitimate or published related party payments are in fact less than payments which were actually made, as revealed by bank account records.

Conclusion

27. It seems to me that, looking at the Old Evidence as a whole in a very straightforward and realistic way, it is difficult to imagine a stronger case for appointing provisional liquidators than the present situation. This is, in addition, a Company where the management is not representing the majority shareholders and criticised for oppressing the minority. This is a case where the Petitioner is a majority shareholder, and certainly was a majority shareholder before the disputed dilution occurred. I believe the position is that the Petitioner is still technically a majority shareholder but simply the majority has been shrunk rather than eliminated altogether[6]. But the interests that the Court has to have regard to are the interests of the shareholders as a whole and, to this extent, the position is in a general way analogous to the Court in an insolvent situation having regard to the interests of the creditors as a whole. And so the Petitioner has clearly made out a case for the appointment of provisional liquidators.

[6] According to the Amended Petition the Petitioner's initial stake in the Company was 65.4%. I could not clearly recall the precise extent to which the controversial Cellenkos Transaction share issuance reduced that stake. However it was clear and not in dispute that the Petitioner and the supporting shareholders constituted a combined majority, even if the impugned 4 May 2022 allotment was assumed to be valid.

28. There was one aspect of the proposed Order which Mr Chivers KC properly drew to my attention as being inconsistent with the subsisting injunction restraining the Petitioner from convening another shareholder meeting. And, subject to hearing counsel, it seems to me that that paragraph should be modified to require leave of the Court to actually convene such meetings as the Joint Provisional Liquidators consider it necessary to convene.

THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT