IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 192 of 2022 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF SHINSUN HOLDINGS (GROUP) CO., LTD.

Appearances:	**Barnaby Gowrie and Brett Basdeo of Walkers (Cayman) LLP for Shenwan Hongyuan Strategic Investments (H.K.) Ltd. (the Petitioner)** **Ulrich Payne and Andrew Jackson of Appleby (Cayman) Ltd for Shinsun Holdings (Group) Co., Ltd (the Company).**
Before:	**The Hon. Justice David Doyle**
Heard:	**25 January 2023**
Ex-Tempore Judgment Delivered:	**25 January 2023**
Draft Transcript of Ex-Tempore Judgment Circulated:	**25 January 2023**
Transcript of Ex-Tempore Judgment Approved:	**27 January 2022**

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HEADNOTE

Determinations of applications for the adjournment of a winding up petition

JUDGMENT

1. There is an application by the Company for an adjournment of the winding up petition (the "Petition") of about a month in view of the conflict in the expert evidence. The application is not in a proper format but I consider it nevertheless. Both sides have had an adequate opportunity of considering the application and making written and oral submissions in respect of it.

2. I am going to grant a short adjournment to enable the experts to further assist the court. I am not persuaded by the Petitioner's arguments that an adjournment is not necessary and that the court can determine the relevant issues on the basis of the expert evidence as it presently stands.

3. The Consent Order made on 19 October 2022 reads as follows:

> "2. Any evidence in relation to the Petition, including expert evidence of New York law on the issues agreed between the Petitioner and the Company as specified in the letter from Appleby to Walkers dated 11 October 2022, shall be filed and exchanged by noon no later than 14 days before the Adjourned Date." [namely today]

4. The issues that were specified in the Appleby letter were as follows:

> "1. Whether or not the principal of, and accrued and unpaid interest on, the relevant 2023 Notes (the "Notes") is immediately due and payable.
>
> 2. Whether under the terms of the Indenture and/or the Notes, a holder of the ultimate beneficial interest in the Notes is entitled to initiate winding up proceedings against the issuer of the Notes.
>
> 3. Whether a holder of the ultimate beneficial interest in the Notes is entitled to initiate winding up proceedings against the issuer of the Notes and, if so, whether there are requirements under the Indenture with which they would have to comply before they would be entitled to initiate winding up proceedings.
>
> 4. Whether the Petitioner is a creditor of the Company."

5. Mr Glosband, the Company's expert, loyally set out these issues at paragraph 4 of his report dated 5 January 2023. For some reason Mr Kane, the Petitioner's expert, did not. The issues specified at paragraph 2 (a) to (f) of his report dated 10 January 2023 are not identical to the issues specified in the Appleby letter.

6. The directions I make are as follows:

(1) the experts shall meet (whether in person, by video or teleconference) within the next 7 days to discuss the differences between them on the expert issues identified in their

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respective reports with a view to narrowing the issues between them and producing a joint memorandum;

(2) the joint memorandum shall not exceed 25 pages and shall record the fact that the experts have met, when and where and that they discussed the expert issues in dispute, it should list the issues on which they agree and disagree and briefly summarise the reasons for their disagreement on any issue, and shall be completed, signed and issued to the parties within 14 days;

(3) I do not see any necessity in addition to the joint memorandum for the experts to provide supplemental reports. In respect of any issues which one expert covered but the other did not, this can be covered in the joint memorandum;

(4) the experts should make themselves available for cross-examination at the resumed hearing of the Petition;

(5) further concise skeleton arguments shall be exchanged and filed by 3pm 7 days before the resumed hearing of the Petition and

(6) the resumed hearing for the Petition is listed for 10am, 28 February 2023 (with max of 2 days allocated).

7. The Company also seeks an adjournment of the hearing for "*three months on the basis that its bona fide efforts to pursue a restructuring are well advanced, and that course is plainly in the best interests of its creditors as a whole*." The Company adds that notwithstanding the position taken by the Petitioner and certain other creditors it is anticipated that all creditors will be very substantially better off with a restructuring than a liquidation. I have considered all the written and oral submissions put before the court.

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8. I remind myself that the Petition was presented as long ago as 16 September 2022 and the evidence indicates that a restructuring plan was in the pipeline as long ago as March 2022, nearly a year ago (Second Affirmation of Kong Ziangming dated 11 January 2023). The Company has already had plenty of time to finalise any proposed restructuring. Moreover commercial creditors are normally better judges of their commercial interests than the debtor or the court.

9. The Company accepts that it is cash-flow insolvent.

10. I have considered the relevant authorities referred to including *ACL Asean Tower Holdco* (FSD unreported judgment 8 March 2019 (IKJ)), my relatively recent judgment in *Re MV Cayman Ltd* (FSD unreported judgment 28 September 2022) and the judgment of the Court of Appeal of Bermuda in *Re Newocean Energy Holdings Limited* [2021] CA (Bda) 16 Civ.

11. I have also considered the evidence. I have considered the position of the creditors insofar as it is known to the court. It appears common ground that 35.6% of creditors are in support of a winding up order and 16.6% are against a winding up order. I do not accept that there is a real prospect of the debt being paid within a reasonable time. I do not accept that the Company has demonstrated a serious commitment to bringing forward credible restructuring proposals for the benefit of all creditors in the near future. I do not accept there is a good reason, let alone special reasons for a further adjournment of some three months, for potential restructuring purposes and that is why I dismiss the Company's application for the three-month adjournment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT