Neutral Citation Number: [2025] CIGC (FSD) 3

CAUSE NO: FSD 2021-0128 (RPJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)
AND IN THE MATTER OF SINA CORPORATION

Before: The Hon. Justice Parker

Appearances: Mr Thomas Grant KC of counsel instructed by Zachary Hoskin, Ronan O'Doherty and Matthew Harders of Collas Crill LLP, Farrah Sbaiti of Ogier (Cayman) LLP, Simon Dickson and Adam Barrie of Mourant Ozannes (Cayman) LLP and Nigel Smith and Tom Stuart of Carey Olsen, attorneys for the Dissenters

Mr Stephen Atherton KC of counsel instructed by Gráinne King, Aline Mooney and Catie Wang of Harney Westwood & Riegels, attorneys for the Company

Heard: **25-26 November 2024**

Draft judgment circulated: **10 January 2025**

Judgment delivered: **16 January 2025**

Section 238 Companies Act proceedings-applications for further disclosure from Company-application for further expert evidence by Company-application for further disclosure from Dissenters by Company-application for indemnity costs to replace previous costs orders because of alleged material misrepresentations-trial in February 2025.

INTRODUCTION

1. The trial of these s.238 proceedings is due to commence shortly - on 17 February 2025 - and is listed for four weeks. The Court's overarching approach to the determination of the applications which were heard on 25-26 November 2024 is to ensure that the parties receive a fair trial and that the Court, assisted by the experts in this case, is placed in the best position to determine the fair value of the Dissenters' shares, with all necessary information with which to do so.

2. There are three summonses before the Court.

3. The first is an application by the Dissenters for what may be termed further and better discovery. It has been a feature of this case that the Dissenters have consistently and repeatedly complained about what they say has been the Company's dilatory conduct in this regard. It is not necessary to repeat the extensive procedural history in relation to this issue. Much of it is set out in the Court's Judgment earlier this year.[1]

4. Discovery has progressed in fits and starts. In the result, the Company has given, as it must, a very large amount of relevant material. Many of the heads of relief sought on this summons have been resolved during the course of the hearing or subsequently. As has made been made clear in the Court's Judgment last year, not all of the difficulties in bringing the Company to where it is today with regard to discovery are to be laid at its door. It has faced serious regulatory challenges in the PRC in complying with its obligations in these proceedings. The inability of those outside the PRC to review the Company's PRC documents was an issue before the Court on several occasions between December 2022 and December 2023. There are only a few matters outstanding which require the Court's written determination.

5. The second is an application by the Company for leave to appoint a further expert in a new discipline to give evidence at the upcoming trial. This application has been made very late in the day.

6. The third is an application by the Company seeking further discovery and information from the Dissenters. The circumstances in which this may be ordered are limited by the consistent previous jurisprudence in s.238 cases.

7. Thomas Grant KC appeared for the Dissenters. Stephen Atherton KC appeared for the Company. They each provided helpful assistance to the Court in support of their applications and in opposition to each other's.

8. There were also numerous affidavits before the Court at the hearing comprising: Stuart 2 and 3, Lord 8 and 9 in relation to the Dissenters' discovery summons; Wang 7 and 9 and Hoskin 3 in relation to the Company's expert summons; and Wang 8 and 10 and Barrie 1 in relation to the Company's Dissenter discovery summons. The Court has reviewed all the written material in detail. It has only referred to particular passages, when necessary, in the interests of brevity.

The Dissenters' Discovery Summons

9. The parties have recently informed the Court that only certain paragraphs of the summons require its determination. These are dealt with below.

Para 3 - PRC Documents and List of Remaining Documents

10. The Court said at § 226 of its 6 February 2024 judgment that the Company should provide discovery so that the Dissenters and the Court have the best possible

[1] See Judgment of 6 February 2024.

understanding (allowing for PRC law issues) of the documents withheld in the PRC. That information should include certain basic information about the documents withheld.[2] It was important that the Company only applied redactions where absolutely necessary on solid grounds and good evidence.

11. Since the hearing, the Company has provided a further affidavit, Gao 2, in relation to the redactions applied. The Dissenters maintain that it is not appropriate to introduce further evidence after the hearing has concluded and were it to be admitted the Dissenters would wish to respond to it both by evidence and submission.

12. The Dissenters maintain that the Company has applied excessive and unjustified redactions of PRC documents and concerning the list of Remaining Documents.

13. In those circumstances, if the Dissenters wish to press the matter, the Court will grant the Dissenters' wish to respond to the Company's further evidence as it is minded to admit the explanatory affidavit of Tianyi Gao. The parties are to agree a short timetable given the imminence of the trial date and if the matter cannot be compromised, the Court is prepared to make a ruling 'on the papers'.

Para 5 - confirmations concerning 'WeChat'

14. Mr Grant KC submitted that it was unsatisfactory that the review of WeChat and other instant messages was conducted in the way described at Lord 8 §§34 to 37. That is because the relevance review was undertaken by individuals who were not admitted to practise in the Cayman Islands and the review concerns not only relevance but privilege.

15. He submitted that the Company could and should have made an application for limited admission of the relevant foreign attorneys so that the Court could supervise the extent to which the work was to be done by foreign attorneys. Instead, the Company had taken on itself the decision to instruct individuals who were not qualified in this jurisdiction to supervise this important work. He relied on the decision of Justice Segal in *Jafar v Abraaj (Unreported 2 May 2023) § 25* where the learned judge stressed the need for a senior Cayman qualified and admitted attorney, either alone or with a similar senior English qualified solicitor or barrister, to carefully supervise the discovery process.

Decision

16. The Dissenters apply for an order that the Company instructs a Cayman Islands qualified attorney to review all instant messages that have been withheld and if the attorney considers any to be relevant, they should be disclosed.

17. There is no doubt that such instant messages can often be highly relevant and probative. However, in relation to the Company's review there is no evidence to suggest that anything has gone wrong or been missed or that it was not otherwise conducted appropriately.

[2] The title of each document, its date, the sender and recipient, the type of document and from where it originates and is currently located. If it was possible to provide redacted copies for inspection in the PRC that should be done.

18. The Court has reviewed in particular §§ 32 and 33 of Lord 8 concerning the detail of the review. It is not persuaded that such a 're- review' by a Cayman Islands attorney is necessary.

19. The Court is content with the qualifications of the individuals who reviewed the relevant messages, which include Harneys Shanghai legal team under the supervision of Ms Lord, together with Ms Vivian Ma, both of whom have experience of disputes in common law jurisdictions[3]. The legal team in the PRC are qualified lawyers in common law jurisdictions (Hong Kong, England or New York) or are paralegals. All except Ms Lord speak and read Chinese.

20. Since many of the documents are written in Chinese and since it is likely that there are few Cayman qualified lawyers who speak and read Chinese, an order to have a 're review' is not only in the Court's estimation unnecessary, but quite impractical.

21. It is also unnecessary in the Court's view for the Company's Cayman Islands legal team (only one of whom apparently speaks and reads the Chinese language) to travel to the PRC to 're review' the documents.

22. The Court has not been persuaded that the Dissenters' application should be granted in respect of messages that have already been reviewed and marked as irrelevant or privileged as part of the discovery process conducted under the supervision of qualified common law lawyers, albeit lawyers not specifically admitted to practise in the Cayman Islands.

Para 8-9 - costs of previous summonses

23. The Dissenters seek a variation of the Court's order as to the costs of three summonses determined at the 6 to 8 December 2023 hearing (**the December hearing**).

24. Two of those orders provided for costs to be reserved and one ordered the Company to pay the Dissenters costs on the standard basis. The Dissenters now invite the Court to vary those orders and to order the Company to pay the Dissenters' costs of all three summonses on the indemnity basis on the ground that the Company approached the hearing and obtained the orders made on a materially false basis.

25. Mr Grant KC reminded the Court that at the December hearing attention was focused on the distinction between the Remaining Documents, which comprised 666 items which the JAEC had refused to permit the Company to transfer cross-border, and the other 45,199 documents which had been permitted (**the Approved Documents**).

26. He pointed to the evidence of Mr. Stuart[4] which explained that the Company had consistently represented that the Approved and Remaining Documents were presented as a single submission with no distinction drawn by the Company between them and that it was the JAEC itself which had chosen to treat the Remaining Documents separately. He submitted that the clear impression given to the Court and to the

[3] §§35-36 Lord 8.
[4] Stuart 2 § 90.

Dissenters by the Company[5] was that it did not know on what basis the JAEC had come to its decision.

27. In fact, Mr Grant KC submitted, the Company had itself separated out the Remaining Documents from the Approved Documents in advance of providing them to the JAEC. It did so on the same day under a single self-assessment report, with two separate covering letters supported by separate opinions from Fangda[6]. Mr Grant KC submitted that it was the Company itself that had determined that the documents in the two categories had different sensitivity levels. That, he submitted, had not been revealed by the Company at the December hearing.

28. It is important to note that the Dissenters do not complain about the reasons given by the Company for treating the two categories differently[7] and whether they were justified at the time. They complain that this sequence of events was not revealed and that it should have been.

29. They allege deliberate non-disclosure and misrepresentation of the true position to the Court and to the Dissenters. Mr Grant KC fairly and properly exonerated Mr Chivers KC (who appeared for the Company at the December hearing) and Harneys (for the Company) in relation to this serious allegation but maintained it against the Company.

30. He argued that the Company should never have presented the position in the way that it did and should have corrected it before or at the hearing, or at the very latest before the Court gave its judgment.

31. The Dissenters also relied on the fact that the way the Company had proceeded by way of separate treatment of the two categories must have materially influenced the JAEC's approach and it can be seen that it did so because certain of the Remaining Documents are duplicates of the Approved Documents[8]. They also argued that it had an effect on the Dissenters' approach to the hearing, the hearing itself and consequently the judgment of the Court.

Decision

32. There is no doubt that if the Court were to conclude that it had been materially misled by the Company (and so too the Dissenters) the Court has jurisdiction to vary the orders made[9] and punitive costs orders would naturally be 'in play'.

33. However, having regard in particular to the affidavit evidence presented and the relevant correspondence[10], the Court is not persuaded that there has been any intentional non-disclosure or misrepresentation on the part of the Company. The Court

[5] See summary in letter from Dissenters dated 23 August 2023 exhibit TS-2 pp 1395-1401.
[6] Stuart 2 § 92.
[7] See explanation in Lord 8 §56.
[8] CIE report §23.
[9] *ArcelorMittal v Essar [2021 (2) CILR 673].*
[10] In February 2023 and May 2023, and the Dissenters' letter dated 23 August 2024 and Harneys' response of 3 September 2024.

has also revisited its judgment and the written material from the December hearing in its assessment of the matter [11].

34. The Court is not persuaded that there is anything in the 'single submission' point. It was not unreasonable to describe the submission as a single application because in fact the documents had been provided on the same day under a single self-assessment report, albeit with two separate covering letters supported by separate opinions.

35. Harneys explained in their letter of 3 September 2024 that the documents had to be categorised by the applicant Company as part of the self-assessment process because the Company would have been required to identify which documents (with the assistance of CERT[12]) had been assessed as having a relevant level of sensitivity.

36. Harneys also said that the self-assessment process, including the involvement of CERT by the Company, was made clear to the Dissenters throughout the proceedings. Harneys' letter further states that it was not the Company that had made a distinction between the two categories. They say that the PRC regulatory authorities were free to make whatever determination they thought should apply.

37. Although the Dissenters challenge Harneys' statements given the self-assessment the Company had made, the Court has no reason to doubt Harneys' view that it was the JAEC which was the decision-making body that retained the ability to make the relevant decision. The Court accepts that it was the JAEC's decision which ultimately mattered in relation to the categorisation.

38. The Court therefore accepts that it was likely not to have been the Company's categorisation which determined the matter, but the regulator's. The Court is of the view that whilst the JAEC is bound to have considered the Company's categorisation, it is likely that it would then have reached its own determination.

39. There is no evidence as to the JAEC's decision making process in this regard. The Court is not willing in the absence of evidence to the contrary to infer that the regulator simply would have 'rubber stamped' the Company's self-assessment, or that it did not make the decision on an independent basis and according to PRC law.

40. Harneys' letter also points out that the Company sought approval for the cross-border transfer of the Remaining Documents (which were not approved), as well as the documents which were approved. That suggests that there was no pre-determined outcome. It was seeking approval for both categories.

41. The JAEC, on 1st of February 2023, approved the transfer of the Approved Documents but did not approve the cross-border transfer of the Remaining Documents (with the final decision in relation to the Remaining Documents made in May 2023).

42. This, it seems to the Court, is consistent with the Company's chronology prepared by it for the December hearing which notes that on 1 February 2023 *"First JAEC Review complete. Division between Approved and Remaining Documents created."*

[11] Including transcript excerpts.
[12] A quasi-governmental authority.

43. The Court was later informed of the distinction between the two categories in Harneys' 10 May 2023 regulatory update letter where it was said (without any detailed explanation) that the cross-border transfer of the Remaining Documents was prohibited on the basis that the material was '*highly sensitive and lacks authorisation from the relevant personal information subjects and data subjects'*.

44. Whatever the Dissenters' state of knowledge and understanding of the self-assessment process and the involvement of CERT as alleged in Harneys' letter of 3 September 2024, the Court is prepared to accept that Mr Grant KC and his instructing attorneys (and no doubt Mr Dhillon KC and his instructing attorneys)[13] were under the impression that the process undertaken by the Company was not what they had been led to believe.

45. The Court accepts the Dissenters' argument that the Company did not spell out the details of the process with regard to self-certification at the December hearing. It did not explain that it had identified the documents which (with the assistance of CERT) had been assessed as having a relevant level of sensitivity and submitted them under a single self-assessment report, with two separate covering letters supported by separate opinions.

46. However, in assessing this omission, if it can be called that, the Court is satisfied that it was not a deliberate omission with an intention to mislead, such as to justify the relief claimed by the Dissenters.

47. Up until Judgment on 6 February 2024 the Court had not ordered disclosure of the Company's communications with the JAEC. It did so in order that the Dissenters and the Court were able to understand the decisions made in their proper context-see §§234-240 of the February Judgment. The process was not sufficiently transparent.

48. Prior to that, as set out above, the Court is not persuaded that there was a false representation in the Company's presentation that it was the JAEC itself which had chosen to treat the Remaining Documents separately. That decision was likely to have been the result of its own consideration of the matter having considered no doubt, *inter alia*, the Company's submission.

49. Although quite fairly exonerated from blame by Mr Grant KC, the Court also understood at the December hearing that Mr Chivers KC and the Company's Cayman Islands legal team (who operate outside the PRC and are not Chinese nationals) would themselves have been unaware of the content of the Remaining Documents or the detail of any PRC 'sensitivity' issues.[14]

50. This does not, of course, excuse the Company from any material and deliberate omission.

51. However, in all the circumstances, the Court is not persuaded on the evidence that the Company made a false presentation in that it knew and deliberately did not disclose the basis on which the JAEC distinguished between the two categories of documents, and

[13] For certain of the Dissenters at the December 2023 hearing.
[14] As can be seen in the exchange on 8 December 2023, transcript page 72 lines 8 to 12.

that this had decisively influenced the categorisation by the JAEC into denying permission.

52. The Court is not persuaded that it was materially misled or that its judgment was affected by the 'omission' as explained above. The Court did not make its determination in reliance upon matters which have now been explained relating to the self-certification process and the JAEC decision. Nor does the Court conclude that the Dissenters were unfairly prejudiced by what they were led to believe and by any misunderstanding of the process.

53. It follows that the Company's conduct in relation to the December hearing does not meet the threshold so as to justify a reappraisal of the costs outcomes, still less to consider awarding indemnity costs as applied for.

The Company's Expert Summons

54. Mr Atherton KC submitted that the need for an expert in the field of PRC regulatory law arose from the Management Meeting which took place on 22 July 2024. In particular, the impact of regulatory changes and the environment in the PRC for the prospects of the Company were apparently discussed and were the subject of questions from Professor Yilmaz, the Dissenters' valuation expert.

55. Professor Yilmaz apparently posed a number of questions to the Company's management team relating to the nature and impact of the PRC regulatory environment on the Company, other similar companies, new entrants to the market in which the Company and Weibo operated, and potential regulatory issues concerning a hypothetical sale of Weibo shares.

56. According to Mr Atherton KC, Professor Yilmaz appears to be somewhat sceptical of the importance and relevance that was placed on the PRC regulatory environment by the Company's management team.[15]

57. As an example, Professor Yilmaz refers to the Company not having conducted any market checks or a 'go- shop' process and says that:

> "*[I]t was important for the Special Committee to canvas the market to determine whether there were any other potential buyers who may have been interested in acquiring the Company and/ or whether there may have been any other alternative transactions more beneficial to shareholders than the Management Buyout".*

58. The management of the Company said at the Management Meeting that there was no point in such a process because the Company would not have obtained approval for any alternative transactions, specifically by reference to PRC antitrust and foreign ownership regulations and change of control provisions.

59. The Company's evidence is likely to be that there were regulatory pressures under which it was operating which had an adverse effect on performance and costs. This also

[15] §§117-152 of Prof. Yilmaz's First Report.

had an effect on the manner in which the special committee approached the approval process for the merger transaction.

60. The Company now wishes to put in expert evidence in support of its case, in relation to the regulatory landscape in the PRC as it was, how it developed, and how that might have impacted the Company and Weibo and the merger approval process.

61. Mr Atherton KC relies on the evidence submitted on behalf of the Company suggesting that an expert in PRC regulatory law is required to be able to assist the Court[16].

62. Mr Atherton KC submitted that this new discipline would be important evidence because of Professor Yilmaz' views. Neither valuation expert will be an expert in the specific Chinese regulatory environment that pertained.

Decision

63. The Court accepts the submissions of Mr Grant KC relating to lateness, impracticality, and prejudice which of themselves present insurmountable hurdles to the granting of the Company's application at this late stage of the proceedings.

64. Such late evidence would have to be accommodated into a practicable timetable. The Court would not grant such an application unless it was absolutely necessary to the fair resolution of this matter given how close the trial date is.[17]

65. Even if the Court had concluded that this was an appropriate discipline which was necessary to assist it to fairly resolve the central issue in this trial, namely the fair value of the Dissenters' shares, it would have weighed these matters in the balance and decided not to accept the Company's application.

66. One of the real difficulties which would weigh against it would be how to properly coordinate any further expert evidence with the existing valuation evidence to secure fairness and efficiency.[18] Its admission at this late stage would likely cause disruption to preparations for the trial which would not be proportionate and would not further the Overriding Objective. The Court accepts in this regard the evidence given in the third affidavit of Mr Hoskin §§9-12.

67. It has not been necessary to weigh these matters in the balance because the Court is not persuaded that this is an appropriate discipline that is necessary to assist it to determine the matters that are likely to be in dispute surrounding the central issue.

68. Whilst this is essentially a matter for the Court, it notes that importantly neither valuation expert[19] has raised the need for such additional expert evidence.

69. The nature and extent of the relevant regulatory landscape can be adduced fairly and objectively from contemporaneous commentary and materials and indeed ought to be

[16] See Wang 7 §10 and Wang 9 §17.
[17] See *51Job Inc* (2 December 2022 per Doyle J at §§22 and 28) and *Kong Zhong* (2 February 2018 at § 23 per Parker J).
[18] See *Re Trina Solar* (per Segal J 23 September 2020 § 8(e).
[19] Professor Yilmaz and Mr Jaishankar.

uncontentious. If necessary, it can be explained by fact witnesses with relevant experience who can be cross examined. The Court is not persuaded that it would be assisted by a further expert discipline in PRC law and regulation in this regard.

The Company's Disclosure Summons

70. The Cayman Islands Court of Appeal (**CICA**) observed in relation to the appeal as to the correct Valuation Date in this case that the disclosure order made should be varied so that the period covered is extended to the Completion Date in order to cover the period of the Weibo increase.[20]

71. This Court then further determined in its judgment of 3 June 2024, accepting the Dissenters' case, that there should be disclosure by the Company of any additional documents which were created or prepared between the Valuation and Completion Date that were related to price sensitive events, which were foreseeable, that may have had an impact on the value of the Company as at the Valuation Date and which were relevant to the determination of value of the Dissenters' shares in the Company as at the Valuation Date.

72. The Company submitted that it had complied with its obligation in this regard, and that as the discovery obligation was mutual, it was not acceptable for the Dissenters to simply refuse to give discovery of documents concerning the share price of the Company which were also relevant to price sensitive events.

73. Mr Atherton KC submitted that the Court is to determine an issue where potential or actual price-sensitive events may have had an impact on valuation, when they occurred, what the causes were and whether those causes were known or ascertainable at the Valuation Date. The Dissenters should not be exempt from that enquiry if they had relevant information.

74. The Company was now interested in discovery of documents relating to any trading in shares of the Company's subsidiary, Weibo, and gave the example of trading records the Dissenters may have in relation to any dealings in Weibo shares or in other financial products related to Weibo shares which:

    a) have or may have given rise to the increase in the volume of trading in Weibo shares, or an increase in the trading price of Weibo shares, as was seen on 28 December 2020 and 27 January 2021; or

    b) as might have arisen on any other day in the period between the announcement of the merger (6 July 2020) and the Company's EGM (23 December 2020[21]).

75. The Company submitted that if the Dissenters had documents which could inform and assist the Court as regards the causes of allegedly relevant price sensitive events (even though the relevant price increase was after the Valuation Date) as they relate to Weibo and TuSimple, they should disclose them.

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[20] §89 CICA Judgment, per Birt JA.
[21] Which is the Valuation Date.

Decision

76. Dealing first with the CICA decision, it is clear from paragraphs 86, 87 and 89 that the CICA was dealing with Company disclosure. That was also the basis of the Dissenters' application to this Court which succeeded - see §§ 16-18 of this Court's Judgment in June 2024.[22]

77. That is however not the end of the enquiry, as if there were a good reason to impose such an obligation on the Dissenters the Court would consider it. The main reason given by the Company is that there was a significant increase in the value of the Weibo shares after the EGM.

78. However, the Court is not persuaded that this is a sufficient reason to impose this obligation on the Dissenters now.

79. This Court did not intend to impose such an obligation on the Dissenters by its judgment on 3 June 2024.[23] That question was not before the Court.

80. The Directions Order in this case provided for the Dissenters to provide discovery in accordance with the limited *Qunar*[24] categories. That is to say documents, including those relevant to valuations of the Company, communications between the Dissenters and the Company in relation to the value of the shares, confirmation of the dates on which the Dissenters purchased their shares in the Company and a schedule of the Dissenters' trades in such shares. The Court understands that the Dissenters have complied with this obligation.

81. The application now made seeks to substantially expand the *Qunar*[25] categories to go well beyond valuations or similar analyses.

82. As the jurisprudence in this jurisdiction in s.238 cases have made clear, there is no general discovery obligation on dissenting shareholders. It is limited to certain categories of documents.

83. Mr Atherton KC submitted that this was not an application for specific discovery, but it was "…*an application to reflect upon the discovery that the Company was asked to give and whether or not that type of information is in the possession of the Dissenters."* The Company points out that it responded to a similar general enquiry and is simply seeking to ensure the Court has all the relevant material to inform it as to the causes of price sensitive events.

84. Dissenter discovery is generally limited and specific to material which is clearly defined and necessary for disposing fairly of the fair value issue, which is proportionate and likely to be sufficiently probative at trial.

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[22] See also §61.
[23] Contrary to Wang 8 §12.
[24] *Qunar* [2018 (1) CILR 199 CICA] §§21 and 79-80.
[25] As applied in *Nord Anglia* per Kawaley J, 1 June 2018; *JA Solar* per Chief Justice Smellie, 18 July 2019, *Ehi Car Services* per Parker J, 24 February 2020; *FGL Holdings* per Parker J, 18 December 2020; and *58.com* per Ramsay-Hale CJ, 8 March 2022.

85. There is no evidential basis for believing the Dissenters have responsive documents in the categories sought in the Company's summons, so the exercise looks to the Court like somewhat of a "fishing expedition".

86. The Court is not persuaded that any of the categories sought by the Company are necessary for disposing fairly of this matter or likely to be of probative value to the Court in assisting it to come to its fair value decision. The Court is confident that the experts will assist it in their evidence at trial to properly assess the Weibo component of the Company's share value.

87. It is therefore not necessary to consider the lateness of the application (only brought on 30 October 2024), but even had the Court been minded to order disclosure of the categories sought or any of them, it would in its discretion have decided not to do so because of the prejudice and disruption this would have caused to the Dissenters' preparations so close to trial.

88. It is also not necessary for the Court to deal with the speculation at paragraphs 23 to 26 of Wang 8 in relation to the spikes in volume of trading in Weibo shares on 28 December 2020 and 27 January 2021 (trading said to drive up value in Weibo shares to support the argument that the fair value of the Company's shares as at the Valuation Date ought to have been higher).

89. The Court notes that Ms Wang says (at Wang 10, paragraph 10) that there was no allegation of market manipulation by the Dissenters, simply that all relevant evidence as regards causes of upwards movements in Weibo shares which may affect the assessment of fair value of the Company's shares should be available to the Court.

90. Mr Grant KC submitted that the allegation was made and was taken very seriously by the Dissenters as an allegation of intentional market manipulation. As such it was vehemently refuted.

91. Whether or not the allegation was made by Ms Wang, it is clear that the Company, through Mr Atherton KC, was no longer maintaining it. Mr Atherton KC made the point that market participants would understand that if they trade in a share, it may affect the price of that share upwards and the increase in the market value of Weibo may have had an upward effect on the price of the Company's shares. That is true, but it does not lead to an order for disclosure of any trading by the Dissenters in the shares of Weibo or in other financial products related to Weibo shares.

92. Finally, the Company's summons applied for discovery from the Dissenters of documents which relate to dealings by them in any rights to or interest in the claims that are the subject of the current proceedings. That is an unusual application and would require evidence to support it.

93. The Court understood Mr Atherton KC, having heard from Mr Grant KC that on instructions his clients each presently owned the statutory right to compensation, was not pressing the application. He was right not to do so. There is no issue of standing raised by the available evidence.[26]

[26] See Barrie 1 §33.

94. If costs cannot be agreed in relation to the Court's determination of these outstanding matters the Court will determine the matter on written submissions of not more than ten pages in length.

The Hon Justice Parker

Judge of the Grand Court, Cayman Islands

16 January 2025