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IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DISVISION

CAUSE NO: FSD 102 OF 2015 (NSJ)

IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF BJB CAREER EDUCATION COMPANY LIMITED (IN PROVISIONAL LIQUIDATION)

Before:	**The Hon Justice Segal**
Appearances:	**Mr Tom Lowe KC of counsel and Catie Wang of Harneys for the Joint Provisional Liquidators**
Heard:	**28 October 2025**
Draft judgment circulated:	**28 October 2025**
Judgment:	**29 October 2025**

RULING

1. On 11 July 2025 the joint provisional liquidators (***JPLs***) of BJB Career Education Company Limited (the ***Company***) issued a summons seeking the following orders:

   (a). An order discharging the JPLs as provisional liquidators.

   (b). An order releasing the JPLs from their duties as JPLs of the company.

(c). An order that in so far as there are any assets left in the company the JPL's costs of an incidental to the summons be paid out of the assets of the company as expenses.

2. The Tenth Affidavit of Yat Kit Jong (one of the JPLs) was filed on the same date in support of the Summons and subsequently on 21 October 2025 Harney Westwood & Riegels (***Harneys***) filed a skeleton argument.

3. The summons was heard yesterday (on 28 October 2025) and Mr Tom Lowe KC appeared on behalf of the JPLs.

4. On 22 June 2015 Crescent Jade Limited (the ***Petitioner***) presented a winding up petition in its capacity as a contributory seeking a winding up order on the just and equitable ground. The JPLs were appointed on 3 July 2015. It has been a long running and difficult case in which the JPLs were required to take steps to take control of the Company's assets and of its subsidiaries and to bring various sets of proceedings in Hong Kong and the PRC. The JPLs have concluded after taking legal and financial advice that continuing these proceedings and their investigations will serve no further useful purpose or generate any recoveries and therefore that their appointment should now be terminated.

5. The Petitioner was required to advance monies to fund the JPLs' costs and expenses. The Petitioner was struck off the register and dissolved on 28 June 2024. Before then, it had transferred its shares in the Company to PASH MENA Holdings SPC (which transfer was permitted by the Court by an order dated 20 January 2022) and to Project Jade Holdco Ltd (which transfer was permitted by the Court by an order dated 1 June 2023). The Petitioner had held its shares on trust or otherwise on behalf of these two transferees.

6. The JPLs have filed five reports with the Court which have been available to interested parties on application to the Court. The most recent report was dated 30 April 2025. In that report the JPLs confirmed that they had been unable to ascertain the financial position of the Company because the Company's former directors had not provided any financial information to them. They reported that in the period from 1 January 2017 to 30 April 2025 they had received loan funding of US$828,182.30 and earned interest of US$124.98. Most of these funds had been spent on the JPLs' remuneration (US$354,307.28) and legal expenses leaving a balance of only US$28,736.10.

7. The following issues arise in relation to the summons:

(a). Should notice of the summons first be given to shareholders and creditors of the company perhaps by way of an advertisement in appropriate newspapers/media.

(b). What is the current status of the petition in light of the fact that the petitioner is no longer a shareholder in the company?

(c). Do the JPL's have the right and is there jurisdiction for the court to terminate the order appointing the JPLs on an application by the JPLs?

(d). If not, are the JPLs entitled to directions and orders that would result in the order pursuant to which they were appointed being terminated and discharged?

(e). Are the JPLs entitled to a release and if so on what terms and when should the release take effect?

8. As regards the need for notice or an advertisement, it seems to me that at least before the JPLs are given a release shareholders and creditors should be given an opportunity to make representations and objections if they so choose. It would be wrong to grant the JPLs a release from liability when shareholders and creditors are in the dark. At the hearing, Mr Lowe pointed out that while the summons had not been formally advertised, those with an economic interest in this proceeding (in particular the Petitioner, PASH MENA Holdings SPC and Project Jade Holdco Ltd) have been aware for a considerable period of time of the JPLs appointment and had the opportunity to obtain copies of the JPLs' reports and ask for any information from or raise any issues or concerns with the JPLs. No such issues or concerns had been raised. Further, the JPLs Fifth Report had made it clear and given notice that the JPLs would be applying for a discharge of their appointment. I note that at [7] of the Fifth Report the JPLs stated that they considered that it would be preferable to conclude the provisional liquidation and proceed to formal liquidation after consulting with the Petitioner. However, it is not now proposed to proceed with the petition and seek a winding up order since the Petitioner has been struck off.

9. As regards the status of the petition, the Petitioner ceased to hold any shares in the Company on 1 June 2023. From that date it ceased to be entitled to present a petition and lost its standing to do so. Since then, the petition has been defective and as matters currently stand, as Mr Lowe accepted, the petition cannot proceed and falls to be dismissed.

10. As regards the jurisdiction and the power of the JPLs to seek an order under CWR O.4, r.5(1) for the discharge of the order appointing them as provisional liquidators, it seems to me that there is no such jurisdiction or power.

11. CWR O.4, r.5 states as follows:

> *(1) An order for the appointment of a provisional liquidator may be varied or discharged upon the application of — (a) the person on whose application the order was made; (b) the petitioner, if the petitioner was not the person on whose application the order was made; (c) in the case of a creditor's petition, any other creditor; (d) in the case of a contributory's petition, any other contributory; or (e) the company, acting by its directors.*
>
> *(2) A provisional liquidator shall be entitled to apply to the Court for directions, including a direction which constitutes a variation of the order by which the provisional liquidator was appointed.*
>
> *(3) An application under this Rule shall be made by summons, supported by an affidavit, and shall be served upon the provisional liquidator and every person who was entitled to be served with the original order in accordance with Rule 4(4).*

12. In their skeleton argument Harneys had argued that while CWR O.4, r.5(1) did not mention provisional liquidators in a case where the original application to appoint the provisional liquidators was made by a creditor or contributory, nonetheless the court has an inherent jurisdiction to discharge the JPLs on their own application. They cited and relied on the judgment of Chief Justice Smellie (as he then was) in *Star International Drilling Ltd* (unreported, 24 August 2022) in which he had held that the court had an inherent jurisdiction to make an order (on the provisional liquidators' application) discharging the appointment of provisional liquidators who had been appointed on an application made by the company despite the fact that the CWR at the time did not make provision for an order to discharge the appointment of such provisional liquidators.

However, as Mr Lowe accepted at the hearing, this decision is not authority for the proposition that the court has and can exercise an inherent jurisdiction to discharge the appointment of provisional liquidators appointed on an application made by a contributory, as in this case.

13. *Star International* was a decision in which at the relevant time the only rule dealing with the variation or discharge of an order appointing a provisional liquidator applied to a case where the petition had been presented by a creditor or contributory. There were no rules providing for the variation or discharge of an order appointing a provisional liquidator in the case where the petition had been presented by the company. There was therefore clearly a gap or lacuna for cases where the petition had been presented by the company.

14. Chief Justice Smellie decided that in these circumstances the court must have an inherent jurisdiction to vary or discharge the order it had made appointing the provisional liquidator. There was no question of an order being made which was inconsistent with the scope and terms of the existing rules.

15. As regards the case where the petition has been presented by a contributory, CWR O.4, r. 5(1) contains what appears to be a complete list of those with standing to apply for a variation or discharge of the order appointing a provisional liquidator. The provisional liquidator is not included in that list.

16. However, CWR O.4, r..5(2) does refer to the provisional liquidator. It gives him/her the right to apply to the court for directions. The directions for which the provisional liquidator may apply are not defined or set out in an exhaustive list. CWR O.4, r..5(2) provides that the provisional liquidator may apply for directions ***including*** a direction which constitutes a variation of the order by which the provisional liquidator was appointed.

17. I assume that this sub-rule did not exist at the time that *Star International* was decided although Mr Lowe's research had been unable to confirm this. The fact that provisional liquidators are referred to in CWR O.4, r.5(2) but not in CWR O.4, r.5(1) strongly reinforces the conclusion that it was not intended that provisional liquidators be given

standing under CWR O.4, r.5(1) to apply for the discharge of the order pursuant to which they were appointed.

18. But, as I have noted, there is no limit in CWR O.4, r.5(2) to the directions for which a provisional liquidator is entitled to apply. Directions for a variation of the order are only one non-exhaustive possibility. In a case such as the present, I see no reason why the provisional liquidators cannot apply for directions seeking an order that the petition be dismissed since the petitioner is no longer a shareholder and therefore clearly does not have standing to present a winding up petition. The provisional liquidators can also seek an order confirming that upon the dismissal of the petition, their appointment shall cease and seek consequential directions including an order for their release.

19. As regards the terms of the release, Mr Lowe submitted that even though there is no provision in the Companies Act (2025 Revision) or the CWR which permits the court to grant a release to the provisional liquidators on their discharge, the court was to be taken to have the power to do so in an order made at the time that the provisional liquidators were discharged from office. Such a power and inherent jurisdiction was not inconsistent with or precluded by the terms of that Act or the CWR. That seems to me to be right in principle (the court must be able to grant orders in respect of the conduct and to protect its officers) and I am prepared to accept the proposition for the purpose of this application.

20. Harneys in their skeleton argument referred to the statutory provisions in the UK and Hong Kong. It seems to me that, at least for the purpose of this application, the release granted by section 174(4) of the UK Insolvency Act 1986 is a good starting point and model. Under that sub-section, where a liquidator has his release under section 174(2), he is discharged from all liability both in respect of acts or omissions of his during his period in office and otherwise in relation to his conduct as provisional liquidator. This is subject to a carve out because the release does not prevent a liquidator, creditor or contributory applying, with leave of the court, seeking relief against a provisional liquidator who has misapplied or retained or become accountable for any money or other property of the relevant company or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company. Section 174(4) achieves this carve-out by stipulating that the release does not prevent the exercise of the court's powers under

section 212 of the Insolvency Act 1986 in relation to a person who has had his release. Section 212 applies where in the course of the winding up of a company it appears that a person who has acted as a liquidator (and it is assumed for the purpose of this application that this applies to a provisional liquidator) has "misapplied or retained or become accountable for any money or other property of the company or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

21. In my view, a similar carve-out would be appropriate in this jurisdiction, unless the JPLs can show why this would be unfair or unjustified. Mr Lowe accepted that such a carve out from the release would be appropriate.

22. As I have noted, Harneys had suggested in their skeleton argument that the release excludes any liability arising out of *impropriety or bad faith*. However, while I can see that this language attempts to summarise the effect of the carve-out achieved by section 174(4)'s cross-reference to section 212 of the UK's Insolvency Act, I consider that this wording is insufficiently precise and is liable to leave too much room for argument as to what is meant. In my view, it would be preferable to follow the English approach and provide that the release does not cover *any liability of the JPLs in respect of any money or other property of the company which they have misapplied or improperly retained or any breach of any fiduciary or other duty in relation to the company*. It also seems to me to be appropriate to stipulate that any claim must be brought only by a liquidator of the company with leave of the court. I am conscious that care needs to be taken not to seek to replicate by court order in this jurisdiction all aspects of the statutory jurisdiction created by the provisions in the Insolvency Act (which gives creditors and contributories standing to bring proceedings under section 212) but it seems to me to be reasonable to limit the JPLs exposure to claims brought by a liquidator of the company and to allow the court to regulate and oversee the exercise of the right to bring proceedings as is the case in the UK. If a contributory or creditor subsequently wishes to make a claim against the JPLs, not having done so before now, it will need to present a winding up petition and obtain the appointment of a liquidator to do so.

23. The adverse effect and restrictions imposed on contributories and creditors by the release mean in my view that it should only take effect after the terms of the order and the proposed release have been advertised (in all appropriate newspapers and media so that

it is reasonably likely that those who have dealt with the company will become aware of the order) and a suitable period (I would say 21 days) has elapsed without objections being filed. The advertisement should explain the effect of the order and the proposed release and refer to this judgment so that interested parties are properly informed (and should provide an email address for a named person at the JPLs and Harneys to whom objections can be sent). The (former by then) JPLs should file a notice with the court following the expiry of the 21-day period to confirm that no objections to the granting or terms of the release have been received by them (if objections are received the former JPLs will need to notify the Court of the objections and should have liberty to apply for further relief).

24. I note that it was not explained precisely who would assume control of the Company following the discharge of the JPLs. I raised this issue with the JPLs following the hearing. They have said that they consider that it will be for the Company's shareholders to consider who to appoint as directors of the Company to manage its affairs and ensure that it complies with its filing and other statutory obligations. While not giving them a formal direction to do so, I requested that the JPLs notify the shareholders (to the extent that they have their contact details) of their discharge and of the need for the shareholders to consider and take steps to ensure that the Company has directors and is properly managed following the JPLs' discharge.

The Hon Justice Segal
Judge of the Grand Court, Cayman Islands
29 October 2025