



GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2021 ()

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF MADERA TECHNOLOGY FUND (CI), LTD

WINDING UP PETITION

TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of Fideicomiso F/000118 (**the Petitioner**) of Av Tecnológico 401, Cd Industrial de Celaya, 38010, Gto., United States of Mexico shows that:

Preamble

1. The Petitioner respectfully seeks an order under section 92(e) of the Companies Act (2021 Revision) (the **Companies Act**) that Madera Technology Fund (CI), Ltd (the **Company**) be wound up on the basis that it is just and equitable to do so.
2. The grounds for this Petition can be summarised as follows:
 - (i) the Company sought to compulsorily redeem the Petitioner's shares in the Company in breach of the common law obligation and/or an implied term of the MAA to exercise powers for proper purpose; and
 - (ii) the Company failed to convene an extraordinary general meeting of the members of the Company in breach of the terms of its Articles of Association and/or contrary to representations in the Company's Confidential Explanatory Memorandum;
 - (i) the Petitioner has suffered a justifiable loss of faith in the Company's management;
 - (ii) it is necessary for there to be an independent investigation into the affairs of the Company.

The Company

3. The Company is a Cayman Islands exempted company, with registration number 293508 incorporated on 6 November 2014.
4. The registered office of the Company is at Maples Corporate Services Limited, PO Box 309, Uglund House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.
5. The share capital of the Company is US\$50,000 consisting of 5,000,000 shares with a par value of US\$0.01 per share.
6. The Company acts as a Feeder Fund to Madera Technology Master Fund, Ltd, a Cayman Islands incorporated exempted company that has elected to be treated as a partnership for U.S tax purposes (the **Master Fund** and together with the Company, the **Funds**).
7. The investment manager of the Fund is Madera Technology Advisors, LLC, a Delaware, U.S.A limited liability company (the **Investment Manager**).
8. The general partner of the Investment Manager is Madera Technology Partners LLC (the **General Partner**), a Delaware, U.S.A limited liability company.
9. The managing member of the General Partner is Mr Kris Drankiewicz (**Mr Drankiewicz**).
10. The Funds' administrator is NAV Consulting, Inc.

The Petitioner

11. The Petitioner is a trust, established under the laws of Mexico. In or around July 2018 the Petitioner was provided with a copy of the Company's Confidential Explanatory Memorandum (the **CEM**), which sets out a series of representations in relation to a potential investment in the Company and the basis upon which such investment would be made.
12. On 1 August 2018, relying on the representations made in the CEM, the Petitioner subscribed for 5,514.2533 Accolade E-1 Shares in the Company at a share price of US\$1,000 per share (the **Shares**). At the time of investment the Petitioner was told by the Company that its ownership interest in the Company was approximately 29.5%.
13. The Company's Amended and Restated Memorandum and Articles of Association dated 9 December 2014 (the **MAA**) confers, and the **CEM** references, various rights that attach to the Petitioner's shares, including rights to receive information and to vote.

Information Requests

14. From February 2020 the Petitioner sought various information and documents from the Company, through requests to Mr Drankiewicz. These requests included information and documents relating to i) the Petitioner's percentage shareholding in the Company, ii) financial information regarding the Funds and iii) the basis for 'Capital Calls' made on the Petitioner by the Company (together the **Information Requests**).
15. The Petitioner's shares were issued with voting rights which are exercisable in accordance with shareholder thresholds set out in the MAA. The Petitioner requested disclosure of the percentage of shares that it held in the Company (the **Share Percentage**) in order to understand its voting rights.
16. In February 2020, and on numerous occasions thereafter, the Petitioner made requests by email to Mr Drankiewicz for confirmation as to the current Share Percentage.
17. The Company refused and/or failed to provide the Petitioner with the Share Percentage.
18. In February 2020, and on numerous occasions thereafter, the Petitioner made requests by email to Mr Drankiewicz for various annual reports and financial statements, even if not audited, for the Company (the **Financial Statements**).
19. Despite these requests, the Company refused and/or failed to provide the Petitioner with the Financial Statements for 2019 until 4 September 2020 and have still not provided the Financial Statements for 2020.
20. Since the Petitioner's initial investment on 1 August 2018 the Company has called upon the Petitioner to make 'Capital Call' payments in respect of its investments in the Company (the '**Capital Calls**').
21. The following payments have been made by the Petitioner:
 - (a) a payment in response to a 'capital call' in August 2019, for the amount of US\$162,689.91. This was made on 27 September 2019;
 - (b) a payment in response to a 'capital call' in April 2020, for the amount of US\$148,422.87. This was made on 26 June 2020.
22. The Petitioner received correspondence from the Company on 28 April 2020, 13 May 2020 and 18 May 2020, relating to the second 'capital call' which was due to be paid on 1 May 2020, in the sum of US\$148,422.87.

23. On 21 May 2020, in an email to Mr Drankiewicz, the Petitioner requested further information regarding the timing and breakdown of expenses claimed in relation to the 'capital call'. The Company provided a limited response and in the following weeks the Petitioner made further requests seeking detailed and itemised breakdowns of the 'capital call' expenses, however the additional information requested was not provided.
24. On 23 June 2020 Mr Drankiewicz emailed the Petitioner, stating that the Petitioner's account was in default due to non-payment of the second 'capital call'.

Privileged Emails

25. Between 23 June and 25 June 2020 there was an exchange of confidential and privileged emails internal to the Petitioner and its legal advisors relating to the Information Requests (the **Privileged Emails**).
26. The Privileged Emails included an email dated 25 June 2020 from Mario Bours, to Ms. Rosa Ertze, one of the Petitioner's lawyers at Duane Morris, stating:

"Moreover, the overall goal of the Trust is to gain more control and oversight over its investment primarily (in own view) through three sequential lines of action: i) exercising our rights to receive information on the state of our investment and the partnership, ii) determining the proportional equity stake that the Trust holds in order to ascertain our corporate rights (pursuant the majority thresholds set in the corporate documents), iii) If a majority stake is indeed confirmed at the fund and/or share class levels, to explore the possibility and merits of appointing an independent inspector at the very least and/or designating additional directors to gain more control over the investment and/or removing the sole director altogether, possibly forcing a wind down (the nuclear option). The main purpose of pursuing these actions is to gain control over redemption rights, so that we can exit the investment at our discretion or to at least get comfortable with the state in the investment by having more of a say over its destiny. We believe we can achieve this either judicially or through negotiation with the fund's principal and GP."

27. On the same date, Mario Bours sent the Privileged Emails, by mistake to Mr. Drankiewicz by copying him into a reply.
28. On 26 June 2020, Duane Morris sent a letter on behalf of the Petitioner to the Company, together with confirmation that the Petitioner had paid the second 'capital call'. That letter queried the basis on which the Company purported to make capital calls and repeated some of the earlier unanswered Information Requests, including:

- i) the legal basis or authority that the Company had to make capital calls, as well as an itemised breakdown of the Funds' investment activity, operational expenses and working capital requirements which were intended to be covered by the second 'capital call';
 - ii) a detailed explanation of how the Petitioner's pro rata share of the second 'capital call' was calculated;
 - iii) a quarterly breakdown of the Company's management fee periods, from inception and the calculations thereof;
 - iv) copies of the subscription agreement or other agreement pursuant to which the Petitioner acquired shares in the Company, as well as any other agreements or documents related to the Petitioner's investment in the Company.
29. Mr Drankiewicz and the Company refused and/or failed to provide the Petitioner with any substantive response to Ms Ertz's email of 25 June 2020 or the 26 June 2020 letter.

Compulsory Redemption Notice

30. On 29 June 2020, the Company sent a letter to the Petitioner giving notice that the Company intended to compulsorily redeem all of the Shares (the **Compulsory Redemption Notice**), effective as of 9 July 2020.
31. The Compulsory Redemption Notice purported to be pursuant to Article 12.1 of the MAA, which states as follows:

"The Directors may cause the Company to redeem any or all of the Shares held by any person at the appropriate Redemption Price at any time for any reason. If the Directors determine compulsorily to redeem any Shares under this Article they shall give the holder of the Shares such notice of redemption as they shall have disclosed to the member at the time of its subscription for Shares or, in the absence of such disclosure, within such period as the Directors may determine."

32. The Compulsory Redemption Notice included the following statement:

"Unfortunately, recent communications, which I am sure you are aware of, detail your intention to gain control over the fund, circumvent critical aspects of the Memorandum meant to protect partners, remove directors, and force a wind down of the fund. Not once has anyone expressed any concern with our management of your capital and the underlying investment, and we have provided you with all the information set forth in the Memorandum. I want to remain focused on managing your capital. Continuing to deal with these matters risks your investment and is no longer sustainable."

To protect your investment and best manage your capital, The Directors of Madera Technology Fund (CI), Ltd. (the "Fund") are writing to inform you that, effective 9 July 2020 (the "Redemption Date"), all your Participating Shares in the Fund will be compulsorily redeemed by the Fund. ... "

33. When the Defendant issued the Compulsory Redemption Notice, Mr Drankiewicz did not exercise the power of compulsory redemption pursuant to Article 12.1 for proper purpose. The Defendant issued the Compulsory Redemption Notice in breach of the common law and/or an implied term of the MAA to exercise powers for proper purpose and/or unlawfully and/or improperly, in that:
- i) the Company, through Mr Drankiewicz, improperly relied upon the Petitioner's inadvertent disclosure made in the Privileged Emails;
 - ii) the Company discriminated against the Petitioner;
 - iii) in procuring the exercise of the Power by the Company, Mr Drankiewicz acted in conflict of interest in that he sought to protect and preserve his own personal position as director and maintain control of the Company, rather than acting in the Company's best interests;
 - iv) the Company sought to alter shareholders' voting rights and thereby the ability of shareholders to pass, or prevent from being passed, relevant resolutions, including potential resolutions to appoint or remove directors, appoint an independent inspector and to amend the MAA;
 - v) the Company sought to deprive the Petitioner of its shareholder voting rights;
 - vi) in all the circumstances the Company did not exercise the Power for proper purpose.

The Writ Proceedings

34. On 9 July 2020 the Petitioner issued proceedings against the Company in the Grand Court of the Cayman Islands (FSD 155 of 2020 (CRJ)) (the **Writ Proceedings**) in respect of the Compulsory Redemption Notice. Following an ex parte hearing, the Grand Court issued an injunction sought by the Petitioner (the **Injunction Order**), restraining the Company from redeeming, or treating as redeemed, the Shares.
35. Following the Injunction Order the Petitioner and the Company entered into settlement discussions. On 11 August 2020, the parties agreed to extend the time limit for serving the Defence until 21 days after the conclusion of the without prejudice discussion.

36. By letter dated 27 August 2020, the Company confirmed, unconditionally, that it would no longer proceed with or rely upon the Compulsory Redemption Notice. The Company further confirmed that in light of the Injunction Order the compulsory redemption did not proceed as originally scheduled and the Petitioner remained a shareholder of the Fund, in the same way as if the Compulsory Redemption Notice was never issued.
37. On 24 February 2021, in the absence of any settlement agreement being reached, the Petitioner gave notice to the Company terminating the without prejudice discussions.

Failure to call an Extraordinary General Meeting

38. The Company breached the terms of the MAA and/or resiled from the representations in the CEM in failing to convene an extraordinary general meeting of members (**EGM**) at the request of the Petitioner and other shareholders of the Company, namely JI Family Holdings Limited and Juan Gonzales Diaz Brown (together, the **Requisitionists**).
39. On 11 January 2021 Mr. Drankiewicz sent an email to shareholders of the Company indicating a proposal that involved the redemption of shares in Accolade.
40. On 12 January 2021 the Petitioner responded to the Company, indicating that it was content to receive a distribution that amounted to a full redemption of the Shares, namely its initial capital investment, plus the accrued capital gains throughout the investment period, minus the carry interest of 20% for the Company. The Company responded to this by email on 15 January 2021, in which it clarified that there would only be a partial redemption of about 20% of the Shares. Notwithstanding this difference in understanding, and without further correspondence, the Company proceeded with the partial redemption on 15 January 2021.
41. On 28 January 2021 the Requisitionists sent the Company a request to convene an EGM. By their notice of requisition, the Requisitionists were proposing a resolution to appoint four new Directors (the **Requisition Notice**).
42. The CEM in the "Rights to Shareholders" section, makes the following representation: "*General meetings of the voting Shareholders may be called by the Directors and will be called at the request of the Shareholders holding Common Shares that, in aggregate, represent not less than one half of the votes entitled to be cast on a poll at a general meeting of the business to be considered at the meeting*".
43. With respect to "*the votes entitled to be cast on a poll at a general meeting*" the CEM, in the "Rights to Shareholders" section makes the following representation: "*At a meeting, any Shareholder may demand a poll, and on a poll, the voting rights attributable to each Common*

Share shall be calculated by reference to the net asset value per Common Share (calculated as the most recent valuation day) and not on the basis of one Common Share, one vote."

44. These representations are also reflected in the MAA. Pursuant to Article 26.4 of the MAA;

"The Directors shall on a Members' requisition, forthwith proceed to convene an extraordinary general meeting of the Company. A Members' requisition is a requisition of the Members holding a simple majority of the Voting Shares as at the date of the deposit of the requisition."
(emphasis added)

45. A Voting Share is defined at Article 29.1 of the MAA as follows:

*"Although all Shares generally have voting rights ("**Voting Shares**"), the Directors in their sole discretion may designate certain shares as non-voting (**Non-Voting Shares**) in order to avoid certain adverse tax or regulatory consequences, holding limitations, filing or other requirements or to accommodate a Member request. The status of the Shares as Non-Voting Shares shall be fully disclosed to the investor at the time of its subscription and any such investor will be allowed to revoke its subscription upon such classification."*

46. Pursuant to Article 29.4 of the MAA, subject to any rights or restrictions attached to any Shares, every Member holding Voting Common Shares shall have one vote and on a poll the voting rights attributable to each Share carrying the right to vote on the matter in question shall be calculated by reference to the Net Asset Value¹ per Share (calculated as at the most recent Valuation Date²) and not on the basis of one Share, one vote.

47. The Requisitionists, together, believed that they held a majority of the Voting Shares of the Defendant at the time the Requisition Notice was sent, by reference to the net asset value per Common Shares, and were therefore entitled to requisition an EGM. In breach of its obligations, the Company failed, through its Directors, to convene the EGM.

48. On 5 February 2021, the Requisitionists, relying on Article 26.6 of the MAA, notified the Company by letter that the Requisitionists wished to convene an EGM on 15 February 2021 at the registered office of the Company, requesting that the Company provided the notice and form of proxy attached to the letter to each shareholder (the **Members' Notice**). The Company was asked to provide confirmation by 10 February 2021 that the notice and form of proxy had been sent to all the shareholders.

¹ "Net Asset Value" means the value of the assets less the liabilities of the Fund, or of a Separate Account (as the context may require) calculated in accordance with MAA.

² "Valuation Date" means, in relation to each Class and/or Series of Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Share of that Class and/or Series is calculated

49. Pursuant to Article 26.6 of the MAA:

"If the Directors do not, within seven days from the date of the deposit of the requisition, duly proceed to convene a general meeting to be held within a further twenty-one days, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a general meeting, but any meeting so convened shall not be held after the expiration of three months after the expiration of the first above-mentioned seven days. The requisitionists shall be reimbursed by the Company for all reasonable expenses incurred by them as a result of the failure by the Directors to convene the general meeting."

50. The Requisitionists were unable to exercise their right to convene an EGM because they did not know all the shareholders or have contact details for them.

51. On 9 February 2021 the Company's attorneys responded to the Members' Notice, asserting that the Requisitionists do not hold a sufficient number of shares to convene an EGM. There was no explanation of this bald assertion and no evidence was produced in support of it.

52. On 11 February 2021 the Requisitionists wrote to the Company, setting out why the Requisitionists considered that they held sufficient shares to convene an EGM and seeking further information as to the basis of the Company's bare assertion that they did not hold sufficient shares.

53. The Requisitionists received a reply from the Defendant on 16 February 2021 asserting that the Requisitionists between them held less than 35% of the number of Voting Shares and it is the number of Voting Shares that must be considered in respect of a request to convene an EGM, rather than a majority of the Voting Shares by reference to net asset value as provided for by the CEM and the MAA.

54. In refusing to convene an EGM as requested by the Requisitionists, the Company has resiled from the representations made in the CEM and interpreted the MAA in a manner that is inconsistent with the CEM.

55. The flawed basis on which the Company was acting only became apparent as a result of the Petitioner making detailed enquiries as to the basis on which the Company was acting.

56. On 19 February 2021 the Petitioner filed and served an Originating Summons against the Company in the Grand Court of the Cayman Islands FSD 46 of 2021 (CRJ), seeking an order requiring the Company to convene an EGM or alternatively, to provide the Requisitionists with the necessary information to allow them to convene an EGM (the **Originating Summons Proceedings**).

57. The Originating Summons Proceedings clearly indicated to the Company that the Petitioner was seeking enforce its voting rights attached the Shares in the Company. Notwithstanding that, on 23 February 2021, the Company sent an email to the Petitioner (and all shareholders of Accolade), stating that it would redeem 50% of the Petitioners Shares on 28 February 2021
58. The result of such a substantial partial redemption is likely to be that the Petitioner would have insufficient voting rights attaching to the remaining Shares, such that the Requisitionists would be unable to convene an EGM, or in the event that an EGM was convened, to exercise its voting rights to pass the resolutions sought. This would therefore render nugatory the orders sought by the Petitioner in the Originating Summons Proceedings.
59. In order to avoid the injustice arising from the above, on 23 February 2021, the Petitioner emailed the Company requesting that they provide confirmation that the Company will not, without the Petitioner's consent, partially redeem any of the Petitioner's shareholding in the Company, pending final determination of the Originating Summons Proceedings (the **Undertaking**).
60. On 24 February 2021, the Company responded to the Petitioner's 23 February 2021 email, indicating that they would not provide the Undertaking. The Company's refusal to maintain the status quo means appears to be a deliberate attempt to prevent the Petitioner from exercising its voting rights before the hearing of the Originating Summons Proceedings.

Justifiable Loss of Faith in Management of the Company

61. As a result of the above it is apparent that the Company's affairs have been mismanaged in that the Company has:
- i) Unreasonably refused to provide information pursuant to the Information Requests;
 - ii) Acted for improper purpose and/or in breach of the MAA in the compulsory redemption of the Shares;
 - iii) Acted contrary to the expressed understanding of the Petitioner by proceeding with a partial redemption of the Shares;
 - iv) Acted in breach of the MAA and contrary to the representations in the CEM in refusing to convene an EGM;
 - v) Attempted to obfuscate the flawed basis on which it was refusing to convene an EGM.

62. In the circumstances, the Petitioner's has justifiably lost confidence in the probity with which the affairs of the Company are being conducted.

Investigation Required

63. For the reasons outlined above it is clearly necessary to appoint independent liquidators to take control of the Company's assets and investigate the affairs of the Company.

THE PETITIONER THEREFORE HUMBLY PRAYS THAT:-

- (1) The Company be wound up in accordance with the Companies Act.
- (2) Michael Penner and Yvonne Plamondon of Deloitte, 106 Goring Avenue, PO Box 1787, George Town, Cayman Islands, KY1-1109 be appointed as Joint and Several Official Liquidators of the Company (the **Joint Official Liquidators**) and be granted the power to act jointly and severally.
- (3) The Joint Official Liquidators shall not be required to give security for their appointment.
- (4) The Joint Official Liquidators shall be authorized to take any such action as may be necessary or desirable to obtain recognition of the Joint Official Liquidators and/or their appointment in any other relevant jurisdiction and to make application to the courts of such jurisdiction for that purpose.
- (5) The Joint Official Liquidators shall be authorised to exercise any of the powers set out at section 110(2)(b) of the Companies Act and Part II of the Third Schedule thereof, without further sanction of this Honourable Court.
- (6) The Joint Official Liquidators shall be authorised to execute all powers set out in section 110(2)(a) of the Companies Act and Part I of the Third Schedule thereof, provided sanction of this Honourable Court is obtained.
- (7) No suit, action or other proceeding shall be commenced or proceeded with against the Company except with the leave of the Court and subject to such terms as the Court may impose.
- (8) No disposition of the Company's property by or with the authority of the Joint Official Liquidators in the carrying out of their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Act
- (9) The Joint Official Liquidators shall be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may

consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and remunerate them for the same.

- (10) The remuneration and expenses of the Joint Official Liquidators shall be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioners' Regulations 2018 and Order 20 of the CWR.
- (11) The Joint Official Liquidators shall be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
- (12) The Joint Official Liquidators shall be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit.
- (13) The cost of and incidental to the Petition shall be paid forthwith out of the assets of the Company as an expense of the liquidation.
- (14) Such further order or relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated the 5th day of March 2021

Filed the 5th day of March 2021



Mourant Ozannes

Attorneys for the Petitioner

NOTE: This petition is intended to be served on the Company at its registered office.

This Petition is issued by Mourant Ozannes, Attorneys-at-Law for the Petitioner, whose address for service is 94 Solaris Avenue, Camana Bay, Grand Cayman, KY1-1108, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on _____ at _____ am/pm.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106.