

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD OF 2022 ( /KJ )



IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)

IN THE MATTER OF FANTASIA HOLDINGS GROUP CO., LIMITED

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WINDING-UP PETITION

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To the Grand Court of the Cayman Islands

The humble petition of **FLOWER SPV 4 LIMITED**, of Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008 (the **Petitioner**) shows that:

**Preamble**

1. The Petitioner presents this petition for the winding up of Fantasia Holdings Group Co., Limited 花樣年控股集團有限公司 (the **Company**) and the appointment of joint official liquidators.
2. The Company is an exempted company incorporated in the Cayman Islands under the Companies Act (2022 Revision) on 17 October 2007 with registration number 197248. The registered office of the Company is situated at Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive,

George Town, Grand Cayman, Cayman Islands. According to its Annual Report for the year ended 31 December 2020, the Company is an investment holding company that has subsidiaries in the People's Republic of China (PRC), Hong Kong, BVI, USA, Singapore, Cayman Islands, Japan, and Macao. According to the Company's Interim Report for the six months ended 30 June 2021, the Group (being the Company and its subsidiaries) is engaged in the business of, *inter alia*, (i) property development; (ii) property investment; (iii) property agency services; (iv) property operation services; (v) hotel operation and related services. In particular, as at 30 June 2021, the Group was involved in a number of property-related projects in the PRC, and had one project under construction in Singapore.

3. The Petitioner is a creditor of the Company and seeks the winding up of the Company on the basis that the Company is unable to pay its debts.

#### The Debt

4. The Company was and is still indebted to the Petitioner in the sum of US\$83,017,428.53 as at 22 October 2021 (the **Debt**). The Debt is due and payable by the Company to Madison Pacific Trust Limited as agent for the account of the Petitioner under a US\$64,000,000 facility agreement originally dated 20 December 2019 and amended and restated (and upsized to US\$149,000,000) pursuant to a supplemental agreement dated 16 June 2021 between (among others) An Chuang Group Limited as issuer (the **Issuer**), Fantasia Investment Holdings Company Limited (the **Investee**), Fantastic Victory Limited (the **Topco**), the Company, Fantasia Holdings (US) Corporation and Advance Era Holdings Limited (the **HK Holdco A**) as original guarantors (collectively, the **Original Guarantors**), Fantasia Group (China) Company Ltd., Flower SPV 1 Limited, Flower SPV 3 Limited (Flower SPV 3 Limited, together with Flower SPV 1 Limited, are the **Original Facility A Lenders**) and the Petitioner (the Petitioner, together with Flower SPV 3

Limited, are the **Original Facility B Lenders**) as original lenders (collectively, the **Original Lenders**), and Madison Pacific Trust Limited as agent (in such capacity, the **Agent**), security agent (in such capacity, the **Security Agent**), and custodian (as so amended, the **Facility Agreement**).

5. Unless otherwise stated, defined terms have the same meaning as are given to them in, and references to clauses are to clauses of, the Facility Agreement.
6. Subject to the terms of the Facility Agreement, the following were made available to the Issuer:
  - a. by the Facility A Lenders, a US dollar term loan facility in an aggregate amount equal to the Total Facility A Commitments (ie US\$64,000,000); and
  - b. by the Facility B Lenders, including the Petitioner, a US dollar term loan facility in an aggregate amount equal to the Total Facility B Commitments (ie US\$85,000,000).
7. Pursuant to the Facility Agreement, funds were advanced to the Issuer as follows:

Drawdown Date	Facility	Principal Amount	Petitioner's Participation
20 December 2019	Facility A	US\$56,000,000	Nil.
28 December 2019	Facility A	US\$8,000,000	Nil.
16 June 2021	Facility B	US\$85,000,000	US\$77,350,000

8. Pursuant to clause 8.2 (Payment of interest) of the Facility Agreement, the Issuer shall pay accrued interest on the Loans and on the Subscription Amount (Investor) (ie US\$129,000) on the last day of each Interest Period.
9. Pursuant to paragraph (b) of clause 10.1 (Arrangement fees) of the Facility Agreement, the Issuer shall pay an arrangement fee, each instalment of which (in an amount equal to US\$744,000, being 0.875% of the Total Facility B Commitment at the First Amendment Effective Date), on the last day of each three Month Period commencing on the Utilisation Date under Facility B (being 16 June 2021).
10. Pursuant to paragraph (a) of clause 10.3 (Special Interest) of the Facility Agreement, the Issuer shall in respect of Facility A only, on each Special Interest Payment Date prior to the Special Interest Termination Date, pay to each Facility A Lender a Special Interest Amount on the Facility A Loan in an amount equal to that Facility A Lender's Pro Rata Share of the Special Interest Amount payable as at that date.
11. Pursuant to paragraph (c) of clause 10.3 (Special Interest) of the Facility Agreement, on the Special Interest Termination Date, the Issuer shall further pay to each Facility A Lender a Special Interest Termination Amount on the Facility A Loan in an amount equal to that Facility A Lender's Pro Rata Share of the Special Interest Termination Amount.
12. Clause 8.3 (Default interest) of the Facility Agreement contains, among others, the following provisions with respect to the payment of default interest:
  - a. If an Obligor or Security Provider fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which is, subject to clause 8.3(b) of the Facility Agreement,

3% per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan for successive Interest Periods, each of a duration selected by the Agent (acting reasonably) (clause 8.3(a) of the Facility Agreement);

- b. Any interest accruing under clause 8.3 of the Facility Agreement shall be immediately payable by the Obligor or Security Provider, as applicable, on demand by the Agent (clause 8.3(a) of the Facility Agreement); and
- c. Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable (clause 8.3(c) of the Facility Agreement).

#### The Guarantee

- 13. Clause 16.1 (Guarantee and indemnity) of the Facility Agreement provides that each Guarantor (including the Company) irrevocably and unconditionally jointly and severally with the other Guarantors (including the Original Guarantors):
  - a. Guarantees to each Finance Party (which includes the Petitioner) punctual performance by the members of the Issuer Group of their obligations under the Finance Documents (clause 16.1(a) of the Facility Agreement);
  - b. Undertakes with each Finance Party (which includes the Petitioner) that whenever the Issuer does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor (clause 16.1(b) of the Facility Agreement); and

- c. Agrees with each Finance Party (which includes the Petitioner) that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of any member of the Issuer Group not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under clause 16 (Guarantee and indemnity) of the Facility Agreement if the amount claimed had been recoverable on the basis of a guarantee (clause 16.1(c) of the Facility Agreement).

#### **Non-payment**

14. On 30 September 2021, being the last day of the then current Interest Period, an aggregate amount of US\$6,834,220.19 (the Unpaid First Interest and Arrangement Fee), being the sum of the following amounts, became due and payable under the Facility Agreement:
  - a. interest in respect of the Facility A Loan for the period from 30 June 2021 to 30 September 2021;
  - b. interest in respect of the Facility B Loan for the period from 16 June 2021 to 30 September 2021; and
  - c. arrangement fee in respect of the Facility B Loan for the period from 16 June 2021 to 30 September 2021.
15. On 5 October 2021, OCP Asia (Singapore) Pte. Limited acting as attorney for and on behalf of the Original Lenders notified the Issuer by letter that:

- a. an Event of Default has occurred and is continuing under clause 23.1 (Non-payment) of the Facility Agreement as the Issuer has failed to pay the Unpaid First Interest and Arrangement Fee which were due on 30 September 2021;
  - b. other Events of Default have occurred and are continuing under clause 23.2 (Specified obligations), clause 23.5 (Cross default) and clause 23.17 (Market Capitalisation, bonds, credit ratings downgrade) of the Facility Agreement; and
  - c. they expressly reserve their rights arising from the Events of Default which have occurred and are continuing, including to, among other things, instruct the Agent to declare that all of the Loans, together with accrued interest, and all other Repayment Amounts accrued or outstanding be immediately due and payable and direct the Security Agent to exercise any of its rights, remedies, powers or discretions under the Finance Documents, including the enforcement of Transaction Security and guarantees provided by the Guarantors and to take any other action available to them against any Obligor or Security Provider.
16. On 6 October 2021, the Agent issued an acceleration and demand notice (the **Acceleration Notice**) to the Issuer, under which the Agent:
- a. notified the Issuer that the Events of Default referred to in paragraphs 15(a) and 15(b) above are continuing;
  - b. in accordance with paragraph (a)(i)(C) of clause 23.20 (Acceleration) of the Facility Agreement, (as directed by the Lenders) declared that all of the Loans, together with accrued interest, and all other Repayment Amounts accrued or outstanding be immediately due and payable; and

- c. made a demand for the repayment of the aggregate amount of US\$163,998,990.33.
17. On 11 October 2021, the Agent issued a notice (the **Demand Notice**) to the Original Guarantors, including the Company, and copying the Issuer, demanding immediate payment of the aggregate amount of US\$164,810,134.04 (collectively, the **Demand Notice Amounts**). The Demand Notice Amounts were broken down as follows:
- a. the outstanding principal amount of Facility A Loan, Facility B Loan and Subscription Amount (Investor) in the amount of US\$149,129,000;
  - b. the accrued interest on the principal amount of Facility A Loan, Facility B Loan, Subscription Amount (Investor) outstanding up to and including the date of the Acceleration Notice in the amount of US\$6,329,638.30;
  - c. the unpaid arrangement fee in respect of Facility A Loan and Facility B Loan in the amount of US\$1,548,358.50;
  - d. the Special Interest Termination Amount in the amount of US\$7,392,763.14; and
  - e. the accrued default interest on the Unpaid Sums specified in paragraphs 17(a) to (d) above up to and including the date of the Demand Notice in the amount of US\$410,374.10.

### Security

18. The Company has created security in favour of the Security Agent for the benefit of the Secured Parties (which includes the Petitioner), under the following:

- a. Composite share mortgage and intra-group loan assignment dated 20 December 2019 between the Investee, the Topco, the Company and the Issuer, each as a mortgagor and the Security Agent; and
  - b. Confirmatory share mortgage and intra-group loan assignment dated 16 June 2021 between the Investee, the Topco, the Company and the Issuer, each as a mortgagor and the Security Agent (each a Security Agreement, and collectively, the **Security Agreements**).
19. However, this security is limited to, in summary, (i) rights, title, interest and benefit in respect of undocumented receivables in the amount of RMB5,594,366,237.07 owing by the Investee to the Company (the **Receivables**); and (ii) any share held from time to time in the Issuer and HK Holdco A (for which the Petitioner understands there is none) and related rights (together with the Receivables, the **Security Assets**). In addition, amounts owing to the Company under any other loan agreement which may have been entered into with a member of the Issuer Group would also be security but the Petitioner is not aware of any such loan agreement.
20. In particular, the Receivables are owed to the Company by the Investee, who is jointly and severally liable as guarantor with the other Guarantors (including the Company) for the Debt. As at the date of this Petition, the Investee has neglected to pay the Debt or any part thereof, or to secure or compound for it to the reasonable satisfaction of the Petitioner. In fact, the Investee itself is subject to a winding up petition filed by the Petitioner in the Hong Kong courts on 24 November 2021 (HCCW 448/2021). Therefore, there is no assurance that the Company can recover the Receivables in full.
21. Based on information available to the Petitioner as at the date of the Petition, the value of the Security Assets is clearly insufficient to pay the Debt particularly given

that (i) it is common security for the claims of all the Secured Parties; and (ii) for the reasons stated in paragraph 20 above. In any event, it is unclear that the Security Assets are capable of being promptly realised.

#### Statutory Demand

22. By 28 October 2021, the Demand Notice Amounts had not been paid by the Issuer or any of the Guarantors, either in whole or in part, and the total amount due under the Finance Documents of US\$165,667,208.80 (as at 22 October 2021) (the **Total Amount**) remained due. The Total Amount consisted of:
- a. the outstanding principal amount of Facility A Loan, Facility B Loan and Subscription Amount (Investor) in the amount of US\$149,129,000.00;
  - b. the accrued interest on the principal amount of Facility A Loan, Facility B Loan, Subscription Amount (Investor) outstanding up to and including the date of the Acceleration Notice in the amount of US\$6,329,638.30;
  - c. the unpaid arrangement fee in respect of Facility A Loan and Facility B Loan in the amount of US\$1,548,358.50;
  - d. the Special Interest Termination Amount in the amount of US\$7,392,763.14; and
  - e. the accrued default interest on the Unpaid Sums specified in paragraphs 22(a) to (d) above up to and including 22 October 2021 in the amount of US\$1,267,448.86.
23. As at 22 October 2021, the Debt due to the Petitioner comprises the portion of the Total Amount owing to the Petitioner, comprising:
- a. principal amount: US\$77,417,080.00;

- b. interest on principal amount: US\$4,038,141.26;
  - c. arrangement fee: US\$825,434.12; and
  - d. Special Interest Termination Amount: Nil; plus
  - e. accrued default interest of US\$736,500.15 on the sums at 23(a) - (d) above, calculated up to and including 22 October 2021.
24. Accordingly, on 28 October 2021 at 11:10am, a statutory demand dated 22 October 2021 (the **Statutory Demand**) in the form prescribed by the Companies Winding Up Rules, 2018 Revision (**CWRs**) was served by the Petitioner on the Company at its registered office, demanding payment of the Debt.
25. Pursuant to CWR Order 2, rule 2(6), the Statutory Demand included a statement that if payment of the Debt was not made within 21 days of the date upon which it was served on the Company, the Company would be deemed to be insolvent and a winding up petition may be presented against the Company in accordance with section 92(d) of the Companies Act.
26. The Company has *failed* to make any payment of the Debt to the Petitioner. The Debt thus remains due and owing by the Company in full as of the date of presentation of this Petition. Accordingly, the company is unable to pay its debts and is liable to be wound up.
27. Further or alternatively, based on the Company's failure to satisfy the Statutory Demand or otherwise arrange for the payment of the Debt, the Company is deemed to be unable to pay its debts and is liable to be wound up.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

- (1) The Company be wound up in accordance with section 92(d) of the Companies Act.
- (2) Christopher Kennedy and Alexander Lawson of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman, Cayman Islands, be appointed as joint official liquidators of the Company (**the Joint Official Liquidators**).
- (3) The Joint Official Liquidators shall not be required to give security for their appointment.
- (4) The Joint Official Liquidators shall have the power to act jointly and severally in their capacity as liquidators of the Company.
- (5) The Joint Official Liquidators be authorised 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 applications to the courts of such jurisdictions for that purpose.
- (6) The Joint Official Liquidators' remuneration and expenses be paid out of the assets of the Company in accordance with the Insolvency Practitioners' Regulations 2008 (as amended) and the Companies Winding Up Rules, 2008 (as amended).
- (7) The Joint Official Liquidators be authorised to take such steps as may be necessary or expedient for the protection of the Company's assets and, for that purpose, may exercise any power conferred on them by section 110 and Part I, paragraphs 10 (power to engage staff) and 11 (power to engage attorneys and other professionally qualified persons) and Part II of the Third Schedule of the Act

without further sanction or intervention of the Court and, for the avoidance of doubt, may exercise those powers within or outside the Cayman Islands.

- (8) No disposition of the Company's property by or with the authority of the Joint Official Liquidators in carrying out their duties and functions and the exercise of their powers under the order appointing them shall be voided by virtue of section 99 of the Act.
- (9) No suit, action or other proceeding be proceeded with or commenced against the Company except with leave of the Court and subject to such terms as the Court may impose.
- (10) The Joint Official Liquidators 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.
- (11) The Joint Official Liquidators shall have the power to engage staff (whether or not as employees of the Company) to assist them in their performance of their functions.
- (12) The Joint Official Liquidators shall have the authority and are directed to take possession of, collect and get in any property of the Company and for that purpose to take any proceedings in any jurisdiction that they consider necessary.
- (13) The Joint Official Liquidators have authority and are directed to take all necessary steps to take control of the Company's subsidiaries, if any, including by exercising voting or other rights attached to the shares in the Company's subsidiaries and/or by causing themselves to be registered as holders of the Company's shares in their subsidiaries in place of the Company.

- (14) The Joint Official Liquidators be at liberty to appoint 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 to remunerate them out of the assets of the Company in accordance with CWR Order 25.
- (15) The Joint Official Liquidators shall be at liberty to apply generally.
- (16) The remuneration and expenses of the Joint Official Liquidators shall be paid out of the assets of the Company.
- (17) The costs of and incidental to this Petition shall be paid out of the assets of the Company as an expense of the liquidation.
- (18) Such other further or other relief be granted as the Court deems appropriate.

Dated this 24 day of May 2022

Filed this      day of May 2022

*Mourant Ozannes (Cayman) LLP*

**MOURANT OZANNES (CAYMAN) LLP**  
Attorneys for the Petitioner

This PETITION is filed by Mourant Ozannes (Cayman) LLP, Attorneys-at-Law, for the Petitioner whose address for service is PO Box 1348, 4<sup>th</sup> Floor, 94 Solaris Avenue, Camana Bay, Grand Cayman KY1-1108 (ref:8057925/83671329/1.).

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on *15 July 2022* at *10 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 PO Box 495, Grand Cayman, KY1-1106.