



THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 248 2023 (MRHCJ)

(IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF BPGIC HOLDINGS LIMITED

WINDING UP PETITION

TO THE GRAND COURT

The humble petition of MENA Energy Services Holdings Limited of Intertrust Corporate Services (Cayman) Limited, One Nexus Way, Camana Bay, Grand Cayman, KY1-9005 Cayman Islands (the "**Petitioner**") shows that:

Introduction

1. The Petitioner presents this petition for the winding up of BPGIC Holdings Limited (the "**Company**") and seeks the appointment of joint official liquidators over the Company.
2. The Petitioner is a creditor of the Company and seeks the winding up of the Company pursuant to Section 92(d) of the Companies Act (2023 Revision) (the "**Companies Act**") on the ground that the Company is unable to pay its debts.
3. The Company is an exempted company with limited liability incorporated on 9 October 2019 under the laws of the Cayman Islands with registered number 356203. Its registered office is at Maples Corporate Services Limited, P. O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104 Cayman Islands.

The Petitioner

4. The Petitioner is an exempted company with limited liability incorporated on 11 March 2019 under the laws of the Cayman Islands with registered number 348974.

Particulars of the Debt

5. The Company has issued to the Petitioner guaranteed subordinated convertible securities in the principal amount of US\$75,000,000 (the "**Notes**") pursuant to a deed poll dated 19 November 2019, as amended from time to time (the "**Deed Poll**"). Schedule 1 of the Deed Poll sets out the terms and conditions of the Notes (the "**Conditions**"). The Deed Poll and the Conditions are governed by English law.
6. Pursuant to a Deed of Guarantee dated 31 October 2019, SBD International LP, a Cayman Islands exempted limited partnership with registered number 104020, acting by its general partner, SD Holding Limited (the "**Guarantor**"), irrevocably guaranteed the Company's obligations under the Deed Poll, together with the Conditions (the "**Deed of Guarantee**"). The Deed of Guarantee is governed by English law.
7. Condition 5 (*Interest*) of the Deed Poll provides as follows:
 - (a) *"The Securities are entitled to receive annual interest in an amount equal to the Interest Amount which shall be payable on the anniversary of the Original Issue Date in each year (each an "Interest Payment Date") beginning in 2020.*
 - (b) *If the [Company] or the Guarantor fails to pay any Interest Amount on its due date, interest shall accrue on the overdue amount from the due date up to the actual date of payment (both before and after judgment) at a rate of 5% per annum (the "Default Interest"). Default Interest (if unpaid) will be compounded annually but will remain immediately due and payable.*

- (c) *Notwithstanding Condition 5(b), Default Interest will accrue on the overdue Interest Amount due on 31 March 2020 only from (and including) 31 March 2021.*
 - (d) *If the Interest Amount or Default Interest, as the case may be, is required to be calculated for a period of less than twelve months, it will be calculated on the basis of a 360 day year of twelve 30 day months."*
8. Pursuant to Condition 3 (*Definitions*) of the Deed Poll:
- (a) "Interest Amount" means "an amount per Security equal to the product of the Authorised Denomination and the Interest Rate"; and
 - (b) "Original Issue Date" means "31 March 2019".
9. Pursuant to Condition 5(a) of the Deed Poll, annual interest in an amount equal to 10% per annum shall accrue on the Notes, which shall be payable each year on 31 March. The Company has failed to make any payment to the Petitioner of the annual interest pursuant to Condition 5(a) of the Deed Poll falling due for payment on 31 March 2020, 31 March 2021, 31 March 2022 and 31 March 2023, in the total amount of US\$30,000,000 (not including default interest).
10. Pursuant to a letter of forbearance dated 11 April 2021, as amended by a side letter dated 21 April 2021, and as further amended by a side letter dated 10 November 2021, sent by the Petitioner and signed as "confirmed and agreed" by the Company as issuer and the Guarantor, the Petitioner agreed to forbear from enforcing its rights against the Company (and the Guarantor's) in respect of the Company's (and the Guarantor's) failure to pay the annual interest to the Company pursuant to Condition 5(a) of the Deed Poll due and payable on 31 March 2020 and 31 March 2021 for the duration of the Forbearance Period (as defined therein) (the "**Letter of Forbearance**"). The Letter of Forbearance is governed by English law.

11. The Letter of Forbearance defines:
- (a) "Forbearance Period" as *"the period commencing on the Effective Date and ending on the occurrence of a Forbearance Termination Event"*;
 - (b) "Forbearance Termination Event" as *"the occurrence of the earliest of the following: a. The Long Stop Date ... e. The occurrence of an Event of Default under the [Notes], other than the failures to pay the 2020 Interest Amount or the 2021 Interest Amount..."*; and
 - (c) "Long Stop Date" as 31 March 2022.
12. The Forbearance Period expired on 31 March 2022. The Petitioner has declined to agree to any further forbearance on the enforcement of its rights against the Company (and the Guarantor) in relation to the non-payment of interest payments which were due for payment on 31 March 2020 and 31 March 2021 pursuant to Condition 5(a) of the Deed Poll. Accordingly, given the expiry of the Forbearance Period, the Petitioner is entitled to enforce its rights against the Company in relation to the non-payment of interest payments which were due for payment on 31 March 2020 and 31 March 2021 pursuant to Condition 5(a) of the Deed Poll.
13. For the avoidance of doubt, no agreement (howsoever described) has been entered into between the parties pursuant to which the Petitioner has agreed to forbear the enforcement of its rights against the Company (and the Guarantor) in respect of the interest payments which were due for payment on 31 March 2022 and/or 31 March 2023 pursuant to Condition 5(a) of the Deed Poll.
14. As noted above at paragraph 7, under Condition 5(b) of the Deed Poll, default interest accrues at a rate of 5% per annum if interest is not paid in accordance with Condition 5(a) of the Deed Poll (and compounds annually where it remains unpaid). Accordingly, as the Company and the Guarantor have failed to make any

payment to the Petitioner of the annual interest falling due for payment pursuant to Condition 5(a) of the Deed Poll on 31 March 2020, 31 March 2021, 31 March 2022 and 31 March 2023, respectively, default interest has accrued and continues to accrue on the outstanding and unpaid interest.

15. Condition 10 (*Events of Default*) of the Deed Poll provides as follows:

"Each of the following events shall be an "Event of Default": (a) Non-Payment: default is made for more than 5 Business Days in the payment on the due date of interest or principal in respect of any of the [Notes] or their exchange..."

16. The Company's failure to pay the interest and default interest in respect of the Notes to the Petitioner under Condition 5 of the Deed Poll has exceeded 5 Business Days. Therefore, an Event of Default has arisen and continues in respect of the Notes.
17. On 31 May 2023, the Petitioner issued a letter to the Company, providing Company with notice that an Event of Default had occurred and is continuing pursuant to Condition 10(a) of the Deed Poll (the "**Event of Default Notice**").

Statutory Demand

18. As at 6 June 2023, the total amount of interest, together with default interest that was due and owing, was US\$32,205,031.25 (the "**Interest Debt**"), as more specifically set out below:

Interest Payment	Amount of Interest (US\$)	Default Interest referable to the relevant interest payment (as at 6 June 2023) (US\$)
Interest payment due on 31 March 2020	7,500,000	844,546.88
Interest payment due on 31 March 2021	7,500,000	844,546.88
Interest payment due on 31 March 2022	7,500,000	447,187.50
Interest payment due on 31 March 2023	7,500,000	68,750.00
Total	30,000,000	2,205,031.25

19. On 9 June 2023, the Petitioner caused a statutory demand under Section 93(a) of the Companies Act (2023 Revision) (the "**Companies Act**"), and dated 6 June 2023, to be hand-delivered to the registered office of the Company (the "**Statutory Demand**") under which the Petitioner demanded payment of the Interest Debt.
20. The Statutory Demand was served alongside a cover letter which notified the Company that if the Interest Debt was not paid within 21 days, the Company would be deemed to be insolvent and that a winding up petition would be presented against the Company in accordance with Sections 92(d), 93(a) and 94(1)(b) of the Companies Act.
21. The Petitioner also caused the Statutory Demand to be delivered to:
- (a) each of the directors of the Company, by email on 11 June 2023;

- (b) to Maples, by email dated 11 June 2023;
 - (c) to SBD International LP (the Guarantor and shareholder of the Company), under cover letter to its registered address at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, by hand on 12 June 2023;
 - (d) to H Capital International LP, a shareholder of the Company, under cover letter to its registered address at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, by hand on 12 June 2023; and
 - (e) H H Sheikh Mohammed Bin Khalifa Bin Zayed Al Nahyan, a shareholder of the Company, under cover letter to PO Box 45041, Abu Dhabi, United Arab Emirates, by courier on 14 June 2023.
22. As at the date of this Petition, the Interest Debt remains unpaid and the Company has raised no dispute or objection as to whether the Interest Debt is owing.

Redemption of the Notes

23. Condition 7(a) (*Redemption, Purchase and Triggering Event Protections*) of the Deed Poll provides that "*The [Company] undertakes upon written notification of [the Petitioner] to redeem all (but not some only) of the [Notes] during any Redemption Period at the Redemption Amount. To exercise such option, the [Petitioner] must complete and sign a redemption notice ("Redemption Notice") in the form set out in Schedule 5 of the Deed Poll and deliver the signed Redemption Notice to the [Company] together with all Certificates evidencing the Securities to be redeemed by the [Company] at any time during a Redemption Period*".

24. Condition 3 (*Definitions*) of the Deed Poll provides that:
- (a) "Redemption Period" means *"the 30 Business Day period following the date on which [the Petitioner] gives a notice to the [Company] of an Event of Default provided that such notice was given at a time when the relevant Event of Default was continuing"*; and
 - (b) "Redemption Amount" means *"the principal amount of the Securities together with a total amount equal to 50% of the principal amount of the Securities less any Interest Amount that the Securityholders actually received prior to the date fixed for purchase in accordance with Condition 7(a)"*.
25. Accordingly, as an Event of Default has occurred and remains continuing, the Petitioner is entitled to exercise its right to redeem the Notes pursuant to Condition 7(a) within 30 Business Days from the date of the Event of Default Notice.
26. On 14 June 2023, the Petitioner served the Redemption Notice under Condition 7(a) (*Redemption, Purchase and Triggering Event Protections*) of the Deed Poll on the Company, under cover letter and by way of courier to its registered office at Maples Corporate Services Limited.
27. The Petitioner also caused the Redemption Notice, cover letter and related enclosures, to be delivered to:
- (a) each of the directors of the Company, by email on 14 June 2023;
 - (b) SBD International LP (the Guarantor and shareholder of the Company), by courier to Mr Salman Dawood Salman Al-Ameri, as sole director of SD Holding Limited, the sole general partner of SBD International LP, on 16 June 2023; and

- (c) H Capital International LP, a shareholder of the Company, under cover letter to its registered address at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, by courier on 16 June 2023; and
 - (d) H H Sheikh Mohammed Bin Khalifa Bin Zayed Al Nahyan, a shareholder of the Company, under cover letter to PO Box 45041, Abu Dhabi, United Arab Emirates, by courier on 15 June 2023.
28. Pursuant to the Redemption Notice, the Petitioner required payment of US\$112,500,000 (being the "Redemption Amount", as defined in Condition 3 of the Deed Poll).
29. In accordance with the terms of the Deed Poll, the Redemption Period ended on 2 August 2023.
30. As at the date of this Petition, the Redemption Amount remains unpaid and the Company has raised no dispute or objection as to whether the Redemption Amount is owing.

Updated Default Interest

31. Following service of the Statutory Demand, default interest has continued to accrue. As at 2 August 2023, such default interest totals US\$2,453,240.00 and is summarised as follows:

Interest Payment	Amount of Interest (US\$)	Default Interest referable to the relevant interest payment (as at 2 August 2023) (US\$)
Interest payment due on 31 March 2020	7,500,000	908,859.00
Interest payment due on 31 March 2021	7,500,000	908,859.00
Interest payment due on 31 March 2022	7,500,000	508,438.00
Interest payment due on 31 March 2023	7,500,000	127,083.00
Total	30,000,000	2,453,240.00

32. Accordingly, the total debt owing by the Company as at 2 August 2023 totals US\$114,953,240.00 (the "**Debt**") and is summarised as follows:

Debt	Amount (US\$)
Default Interest (as at 2 August 2023)	2,453,240.00
Redemption Amount	112,500,000.00
Total	114,953,240.00

Relief sought

33. In the premises:

- (a) the Petitioner is a creditor of the Company and has standing to present this petition under Section 94(1)(b) of the Companies Act; and
- (b) the Company is unable to pay its debts pursuant to Section 92(d) of the Companies Act and is therefore insolvent and should be wound up.

34. The Petitioner nominates Alexander Lawson of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands, and Guy Wall of Alvarez & Marsal Middle East Limited, Index Tower, The Links West Tower, Office 2201, Trade Centre, Dubai International Financial Centre, Dubai, United Arab Emirates, to act as joint official liquidators of the Company.

Your Petitioner therefore humbly prays that:

- 35. The Company be wound up by the Court in accordance with the Companies Act.
- 36. Alexander Lawson of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands, and Guy Wall of Alvarez & Marsal Middle East Limited, Index Tower, The Links West Tower, Office 2201, Trade Centre, Dubai International Financial Centre, Dubai, United Arab Emirates, be appointed as joint official liquidators of the Company (the "JOLs").
- 37. The JOLs shall not be required to give security for their appointment.
- 38. The JOLs have the power to act jointly and severally in their capacity as liquidators of the Company.

39. The JOLs be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs in the Cayman Islands and/or elsewhere.
40. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and / or their appointment and / or powers in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
41. In addition to the powers set out in Part II of the Third Schedule to the Companies Act, the JOLs be authorised to exercise all of the powers set out in Part I of the Third Schedule to the Companies Act pursuant to Section 110(2) of the Companies Act without requiring further sanction of the Court.
42. The JOLs 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 in accordance with Order 25 of the Companies Winding Up Rules (2023 Consolidation).
43. No disposition of the property of the Company by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this petition shall be voided by virtue of Section 99 of the Companies Act.
44. Subject to Section 109(2) of the Companies Act and the Insolvency Practitioners' Regulations (2023 Consolidation), the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
45. The JOLs 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.

46. The JOLs be at liberty to apply generally.
47. The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company as an expense of the liquidation, such costs to be taxed on the indemnity basis if not agreed with the JOLs.
48. Such further or other relief as the Court deems appropriate.

AND your Petitioner will every pray etc.

DATED The 23rd day of August 2023

Walkers (Cayman) LLP

WALKERS

Attorneys at Law for the Petitioner

NOTE: This petition is intended to be served on the Company.

This **WINDING UP PETITION** is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, for the Petitioner whose address for service is care of its Attorneys at Law.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on 24 October 2023 at 9:30 a.m. am / pm.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone no. +1 345 949 4296.