



IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

101
CAUSE NO: FSD OF 2024 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF COSMIC GLORY LIMITED

PETITION

TO THE GRAND COURT OF THE CAYMAN ISLANDS

The humble Petition of John Greenwood of FIN Law, Arawak Chambers, Mandar House, 3rd Floor, Johnson's Ghut, Tortola, VG1110, British Virgin Islands, Roy Bailey of Ernst & Young, Ritter House, Road Town VG1110, British Virgin Islands and Tsui Chi Chiu of Ernst & Young Ernst & Young Transactions Limited, 27/F, One Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong in their capacity as joint liquidators of BGA Holdings Limited (*Petitioners* or *BGAH JLS*) shows that:

INTRODUCTION

- 1 By this Petition, the Petitioners seek *inter alia*, orders that the deemed dissolution of Cosmic Glory Limited (*CGL* or the *Company*) is declared void, that the Company be restored to the register of companies and wound up under the supervision of the Court.

BACKGROUND

Cosmic Glory Limited

- 2 CGL was incorporated and registered (registration no. 292063) on 23 September 2014 under the Companies Act. The last registered address of CGL was Vistra (Cayman) Limited, P.O. Box 31119, Grand Pavilion Commercial Centre, 802 West Bay Road, Grand Cayman KY1-1205, Cayman Islands.

- 3 CGL was formerly named Ausca Group Limited.
- 4 Prior to CGL's dissolution, Chu Ting Hang (**Tyler Chu**) was the sole director of the Company.
- 5 On 11 November 2021, CGL was placed into voluntary liquidation by a special resolution passed at an extraordinary meeting of the Company held on the same day.
- 6 On 31 January 2022, a notice was published in the Cayman Islands Gazette that CGL had been placed into voluntary liquidation and that Vistra Corporate Services (Cayman) Limited was appointed as the voluntary liquidator.
- 7 CGL was dissolved on 21 July 2022.

BGA Holdings Limited (in Liquidation)

- 8 Ocean Sino Limited (**OSL**) was incorporated on 6 November 2009 by Mr Lau Wing Yan (**Mr Lau**) and Mr Chu Kong (**Mr Chu**), in which they each hold a 50% shareholding. Mr Lau and Mr Chu have significant experience in the shipping and logistics business in the PRC, and have been acquainted since at least 1995. PBM Asset Management Limited (**PBM**) is a wholly-owned subsidiary of OSL.
- 9 BGAH was established as a joint venture company between PBM and Beibu Gulf Holding (Hong Kong) Co., Limited (**BBGH**) and held subsidiaries and sub-subsidiaries in jurisdictions such as the Marshall Islands, BVI, Hong Kong and Samoa (collectively, the **Beibu Gulf Group**). At the time of establishment, PBM and BBGH owned 49% and 51% of the shares in BGAH respectively.
- 10 The Beibu Gulf Group was formed to carry out three lines of business, namely:
 - a) Investments in dry bulk carriers, held by offshore special purpose vehicles, including "MV BBG Hope", "MV BBG Glory", "MV BBG Bright" and "MV BBG Endeavour";
 - b) Dry bulk chartering business, carried on by Beibu Gulf Shipping Limited (**BBG Shipping**), a Hong Kong company, which was formerly a wholly-owned subsidiary of BGAH; and
 - c) Dry bulk trading business, carried on by Beibu Gulf Resources Limited (now known as Ausca Resources Limited) (**BBG Resources**), a Hong Kong company, which was formerly a wholly-owned subsidiary of BGAH.

- 11 On 7 January 2016, BBGH transferred its 51% shareholding to Bright Good (Asia) Limited (**Bright Good**). Bright Good subsequently transferred 6% of this shareholding to Polyrise Team Limited (**Polyrise**) on or around 5 February 2016.
- 12 After Bright Good and Polyrise became shareholders of BGAH, Mr Zhu Xiwu (**Mr Zhu**), Mr Li Zongwei (**Mr Li**) and Mr Li Yubao were appointed as directors of BGAH upon Bright Good's nomination at a purported Extraordinary General Meeting of BGAH held on 5 February 2016. Mr Lau was removed as director of BGAH against his will on 10 March 2016 and, on the same day, Mr Li Yubao resigned as director. From 10 March 2016 until 21 June 2016, BGAH's board of directors consisted of Mr Chu, Mr Zhu and Mr Li.
- 13 Mr Kwok Kai (**Mr Kwok**) was appointed to replace Mr Li on 21 June 2016. The board then comprised Mr Chu, Mr Zhu and Mr Kwok.
- 14 On 12 June 2017, Mr Chu ceased to be a director of BGAH.
- 15 The BGAH JLS' investigation to date suggests that Mr Zhu, Mr Li, and Mr Kwok were likely nominees of Mr Chu who acted in accordance with his directions. Further, the BGAH JLS' investigation to date suggests Bright Good and Polyrise were very likely entities connected to Mr Chu and there are grounds to suspect BBGH's transfer of 51% interest in BGAH was engineered by Mr Chu, resulting in Mr Chu gaining effective control of BGAH at this time.
- 16 The BGAH JLS have permission from the BVI court to rely on information obtained from Norwich Pharmacal proceedings commenced in the BVI (the **NPO**) in relation to the shareholding and directorship of Bright Good and Polyrise. The NPO is dated 31 March 2021 and the documents produced confirmed the following:
- a) Bright Good is a 100% subsidiary of Highest Mirror Limited (a BVI entity) (**Highest Mirror**);
 - b) Highest Mirror was incorporated on 30 October 2013. From 30 November 2013 and until 12 March 2015, Mr Chu was the sole shareholder of Highest Mirror. Mr Chu then transferred the single share in Highest Mirror to Hu Muzhong (**Mr Hu**) for US\$1;
 - c) On 1 March 2016, at a time at which Bright Good owned 45% of the shares in BGAH, Mr Hu transferred the single share in Highest Mirror to Mr Kwok for US\$1. Mr Kwok was appointed as a director of Highest Mirror on the same date (in place of Mr Hu who resigned) alongside So Yuk Kwan (**Ms So**), who was the sole director of the

company from 30 November 2013, until Mr Hu was appointed to its board on 14 December 2015. Mr Kwok is a director of BGAH and many of its underlying subsidiaries;

- d) Ms So remained as a director of Highest Mirror until 13 November 2016. Mr Kwok is the current sole director of Highest Mirror; and
- e) Polyrise was incorporated on 8 December 2015 and its sole shareholder (as at the date of the NPO) was Mr Zhu.

17 Following Mr Chu's takeover of BGAH, between 2015 and 2017, BGAH and its subsidiaries entered into various transactions which ultimately put an end to all the main lines of business of BGAH. Such transactions included the transfer of the businesses of BBG Shipping and BBG Resources to CGL on or about 23 May 2016 for the total consideration of US\$5.1 million (the **Ausca Transaction**). The Ausca Transaction was completed by way of sale and purchase agreements dated 23 May 2016 (the **SPAs**).

The Ausca Transaction

18 The Ausca Transaction is highly suspicious for a number of reasons:

- a) It was not at arm's length as Tyler Chu, Mr Chu's son, owned and controlled CGL (and signed the SPAs on its behalf). At the time of the Ausca Transaction, Tyler Chu was 29 years old and had limited experience in the shipping industry. Tyler Chu was studying at high school and then university up to 2012, was unlikely to have sufficient financial means to acquire BBG Shipping and BBG Resources as it was reported to the Hong Kong Inland Revenue Department that Tyler Chu's annual salary was HK\$232,471 (approximately US\$30,000) and HK\$200,000 (approximately US\$25,000-26,000) for the years of assessment ending 31 March 2013 and 2014 respectively. Similarly, a draft employment agreement dated 1 January 2014 between Tyler Chu and BBG Resources records that he was paid a monthly salary of HK\$22,000 (approximately US\$2,800);
- b) The Ausca Transaction was purportedly approved at a board meeting of BGAH when the board of BGAH was constituted solely of Mr Chu, Mr Zhu and Mr Li. As recorded in the minutes dated 23 May 2016 Mr Chu did not vote on the Ausca Transaction. However, as noted above, it is reasonable to conclude that Mr Zhu and Mr Li acted upon Mr Chu's direction;

- c) The sale was purportedly supported by a valuation report dated 14 March 2016 issued by Jones Lang LaSalle Corporate Appraisal and Advisory Limited (the **JLL Report**). JLL's valuation of BBG Shipping and BBG Resources is questionable in multiple aspects. For example:
- i. the JLL Report did not take into account the cash and current accounts due to and from related companies of BBG Shipping and BBG Resources having been instructed by the then management of BGAH not to do so;
 - ii. There were a number of assumptions made in the JLL Report which were inappropriate for the report's intended purpose;
 - iii. The JLL Report was commissioned upon instructions and information provided by Mr Chu in the context of a wind down and could not properly be relied upon for the purpose of the Ausca Transaction;
 - iv. Further, notwithstanding that the audited financial statements of BBG Shipping for the year ended 31 December 2015 show that BBG Shipping had total equity of US\$29,916,071, the JLL Report valued BGAH's equity interest in BBG Shipping at US\$33,857;
- d) The consideration ultimately paid under the SPAs did not in any event follow the valuation in the JLL Report and arbitrarily determined that consideration of US\$5.1 million matched the "*par value of the total paid up registered share capital of the two companies*";
- e) Dividends calculated in the total sum of US\$25,144,864 (per the SPAs) were relied upon to reduce the balance sheets of BBG Shipping and BBG Resources prior to the completion of the Ausca Transaction. However, of the dividends eventually declared in the sum of US\$24,916,071 (per the annual accounts prepared post the Ausca Transaction), only two cash payments on account of such dividends, totalling US\$874,055, have been identified. There was no apparent payment of any part of the remaining US\$24,080,871 that was purportedly accounted for through the assignment of accounts receivables, "other receivable" and offsets purportedly due;
- f) In any event, the transaction was effected at an undervalue. The consideration of US\$5 million did not reflect the fair value of BBG Shipping. An independent valuation

report by FTI Consulting (Hong Kong) Ltd (the **FTI Report**) obtained by the BGAH JLS during the course of our investigations assesses the market value of BBG Shipping as at 31 December 2015 at US\$83.1 million; and

g) Mr Chu remained as director of each of BBG Shipping and BBG Resources for months after their purported sale.

19 On 29 June 2017, the BVI Commercial Court issued a judgment in *Lau Wing Yan v Ocean Sino Limited et al* (Claim No. BVIHC(COM) 0065 of 2015) and made the following comments concerning the Ausca Transaction:

“79. ... [Bright Good] eventually sold the ship chartering business (supposedly now only consisting of BBG Shipping and BBG Resources) to a company, Ausca Shipping Ltd (“Ausca”) [i.e. CGL] for, so far as I can tell or understood, no discernible commercial benefit or even any kind of proper or cogent due diligence or full and proper knowledge and approval of, or even explanation to, Mr Lau. [CGL] was seemingly operated by Mr Chu’s son and a company of which Mr Chu was and is a director at a time when, according to Mr Chu, [BGAH] was no longer carrying out any active ship-chartering business. Mr Chu’s evidence was that [CGL] paid [US]\$5.1m for the business but there was no documentary evidence that [BGAH] ever received any money from [CGL]. In cross-examination Mr Chu, when challenged about these matters, in my judgment failed to give any satisfactory explanation.”

20 Similarly, in the Privy Council’s judgment dated 12 October 2020, Lord Briggs noted that:

“29. In January 2016 PRC Holdco sold its interest in Beibu Gulf to Bright Good (Asia) Limited (“BGAL”) which in February 2016 sub-sold a 6% stake in Beibu Gulf to Polyrise Team Ltd (“Polyrise”). Mr Lau claimed, and the judge found, that Mr Chu and associates beneficially owned both BGAL and Polyrise, which then combined at shareholder level in Beibu Gulf to remove Mr Lau as a director, and then to sell its ship chartering and commodity trading businesses to Cosmic Glory Ltd, a company beneficially owned by Mr Chu’s son. The judge held that the acquisition of control of Beibu Gulf by BGAL and Polyrise, without disclosure of his interest, may arguably have amounted to a breach by Mr Chu of his fiduciary duty to PBM and OSL.”

21 Without waiving privilege, the BGAH JLS understand that BGAH has at least the following claims against CGL, Mr Chu, Mr Zhu and/or Mr Li:

- a) Mr Chu procured his nominees and/or agents, Mr Zhu and Mr Li, to approve, and Mr Zhu and Mr Li did approve the Ausca Transaction, notwithstanding that they knew the Ausca Transaction was not in the best interests of BGAH but in the interests of Mr Chu or his associates. Therefore, Mr Chu, Mr Zhu and Mr Li acted in breach of their fiduciary or director duties owed to BGAH;
- b) On the basis that CGL (whether as nominee of Mr Chu or otherwise) knew that BBG Shipping and BBG Resources were sold in breach of fiduciary duties, CGL held the interest in these companies on constructive trust for BGAH;
- c) Alternatively, CGL entered into the Ausca Transaction with knowledge of the aforesaid breach of fiduciary duties and is liable for dishonest assistance and/or knowing receipt;
- d) Further or alternatively, Mr Chu, Mr Zhu and Mr Li and CGL (or any two or more together) engaged in a conspiracy to cause damage to BGAH; and
- e) The Ausca Transaction constituted disposition of property with intent to defraud creditors and is liable to be set aside under section 60 of the Conveyancing and Property Ordinance (Chapter 219 of the Laws of Hong Kong).

The Hong Kong Proceedings

- 22 On 23 August 2019, PBM presented a petition before the Hong Kong Court (HCCW251/2019) for the winding-up of BGAH (**BGAH Petition**) on two alternative grounds: (i) the insolvency ground, i.e. on the basis of BGAH's inability to repay the shareholder's loans advanced by PBM; and (ii) alternatively, the just and equitable ground, in view of the series of questionable transactions as mentioned in paragraph 24 above.
- 23 On 22 October 2019, BGAH (then under the control of Mr Kwok and Mr Zhu) issued an application seeking to strike out the BGAH Petition (**BGAH Strike-out Summons**), contending among other things that there was a *bona fide* dispute on substantial grounds over PBM's shareholder's loans. BGAH filed affirmations of Mr Chu, Mr Kwok and Mr Zhu in support of the BGAH Strike-out Summons.
- 24 The BGAH Strike-out Summons was heard on 20 October 2021. On 26 November 2021, the Hong Kong Court dismissed the BGAH Strike-out Summons, concluding BGAH's case, inter alia, to be "*so full of holes to be credible or bona fide*". At the hearing of the BGAH Petition on 6

December 2021, the Hong Kong Court ordered the winding-up of BGAH on the insolvency ground.

- 25 Pending the Hong Kong Court's determination of the identity of the BGAH JJs, on 17 May 2022, PBM applied for an order that the Official Receiver (as provisional liquidator of BGAH at the time) be authorized to commence proceedings in respect of the Ausca Transaction. The application was granted by the Hong Kong Court on 19 May 2022.
- 26 On 27 May 2022, the Official Receiver issued a Writ action in Hong Kong (HCA 631/2022) against various parties including CGL (which was not dissolved at the time) and Mr Chu in relation to, among other things, the Ausca Transaction (*the Hong Kong Proceedings*).
- 27 Following the BGAH JJs appointment on 13 January 2023, they have taken steps to prosecute the Hong Kong Proceedings. Bright Good and Polyrise appealed the decision to appoint the BGAH JJs which was heard on 28 November 2023 and dismissed by the Hong Kong Court on 3 January 2024. Notwithstanding this, and having been refused leave to appeal, Bright Good and Polyrise have nevertheless now sought to further appeal to the Hong Kong Court of Appeal. That hearing is yet to be listed.
- 28 On 25 May 2023, BGAH filed an application to extend the validity of the Hong Kong Writ for 12 months beyond its current expiry date in the Hong Kong Proceedings to allow the BGAH JJs to effect service on all defendants. However, one of the complications faced by the BGAH JJs in effecting service is the fact that CGL has surprisingly since been dissolved noting the writ issued by the Official Receiver. Without waiving privilege, the BGAH JJs understand that the Hong Kong Proceedings may not be properly continued as against CGL unless it is restored.

FRAUDULENT REPRESENTATIONS IN THE VOLUNTARY LIQUIDATION

- 29 Given the voluntary liquidation of CGL was not continued under the supervision of the Grand Court, it is inferred that a declaration of solvency (***Declaration***) was made by the sole director of CGL, being Tyler Chu, son of Mr Chu.
- 30 In view of the circumstances set out above, it is also inferred that the Declaration was made by Tyler Chu in breach of s 124(3) of the Companies Act.
- 31 Taking into account the matters set out above, no director could have reasonable grounds to hold the opinion that a full enquiry into CGL's affairs were made and/or that CGL's assets were properly realised for distribution to creditors and/or shareholders.

32 In summary, the BGAH JLS believe that the voluntary liquidation (and subsequent dissolution) of CGL was fraudulently procured by Mr Chu (through Tyler Chu) to frustrate BGAH's prosecution of its claims against and recovery of assets from CGL in respect of the Ausca Transaction, for the following reasons:

- a) The highly suspicious features of the Ausca Transaction as set out at Paragraph 24 above;
- b) Mr Chu had knowledge of BGAH's potential claims against CGL arising out of the Ausca Transaction, which were alluded to in the judgments handed down by the BVI Commercial Court and the Privy Council as well as the BGAH Petition;
- c) CGL was placed into voluntary liquidation on 11 November 2021, shortly after the substantive hearing in respect of the BGAH Strike-out Summons which took place on 20 October 2021 and shortly before the winding up order was granted in respect of BGAH; and
- d) The Hong Kong Proceedings were issued when CGL was in voluntary liquidation. The issuance of the Hong Kong Proceedings was alluded to in the winding-up proceedings of BGAH and ought to be known to Mr Chu.

33 In all the circumstances the BGAH JLS believe that the voluntary liquidation of CGL was perpetuated by fraud.

NOMINATION OF JOINT OFFICIAL LIQUIDATORS

34 The Petitioners nominate Graham Robinson and James Parkinson of Crowe Cayman Ltd as official liquidators of the Company.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

- (1) The deemed dissolution of CGL is declared void;
- (2) CGL is restored to the Register of Companies;
- (3) The liquidation of CGL continues under the supervision of the Court;
- (4) CGL be deemed to have continued in existence as if it had not been struck off;

- (5) Any property vested in the Minister for Financial Services and Commerce be restored to CGL upon its restoration to the Register of Companies;
- (6) Graham Robinson and James Parkinson of Crowe Cayman Ltd be appointed as joint official liquidators of CGL (JOLs);
- (7) The JOLs have the power to act jointly and severally;
- (8) The JOLs shall not be required to give security for their appointment;
- (9) 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 in any other relevant jurisdiction and to make application to the courts of such jurisdictions for that purpose;
- (10) The JOLs be authorised to execute all of the powers set out in section 110(2)(b) of the Companies Act and Part II of the Third Schedule thereof, without further sanction of this Honourable Court;
- (11) The JOLs be authorised to execute all of the 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;
- (12) No suit, action or other proceeding shall be proceeded with or commenced against CGL except with the leave of the Court and subject to such terms as the Court may impose;
- (13) No disposition of property of CGL by or with the authority of the JOLs in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Act;
- (14) 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 and on such terms as they may think fit and to remunerate them for the same;
- (15) The remuneration and expenses of the JOLs shall be paid out of the assets of CGL in accordance with Part III of the Insolvency Practitioners' Regulations 2018 and Order 20 of the CWR;

- (16) 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 CGL as an expense of the liquidation;
- (17) The JOLs be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of CGL as the Court shall see fit;
- (18) The costs of and incidental to the Petition be paid forthwith out of the assets of CGL as an expense of the liquidation;
- (19) Such further or other relief shall be granted as the Court deems appropriate.

AND your Petitioners will ever pray.

Dated 25 March 2024



Harney Westwood & Riegels

Attorneys for the Petitioners

NOTE: This Petition is intended to be served upon:

- 1 The Registrar of Companies
- 2 The Minister for Financial Services and Commerce
- 3 Cosmic Glory Limited at its last known registered office
- 4 The Attorney General

This Petition is presented by Harney Westwood & Riegels, attorneys for the Petitioners, whose address for service is 3rd Floor, Harbour Place, 103 South Church Street, Grand Cayman, PO Box 10240, KY1-1002, Cayman Islands. (Ref: BPH/LJF/049599.0010)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on the 22 day of April 2024 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, telephone 345 949 4296.