

HONG KONG / JUDGMENT

RE GRAND PEACE GROUP HOLDINGS LTD

[2026] HKCA 795

COURT

Court of Appeal

DECIDED

22 April 2026

CASE / FILE NUMBER

CACV512/2021

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CACV 512 & 597/2021, [2026] HKCA 795

On appeal from [2021] HKCFI 2361

& [2021] HKCFI 3695

(Heard together)

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

CIVIL APPEAL NOS 512 AND 597 OF 2021

(ON APPEAL FROM HCCW 410/2019)

IN THE MATTER of Grand Peace Group Holdings Limited

and

IN THE MATTER of the Companies (Winding Up and Miscellaneous Provisions) Ordinance,
Chapter 32 of the Laws of Hong Kong

(Heard together)

Before : Hon Kwan VP, Cheung JA and Barma JA in Court

Date of Hearing : 20 April 2023

Date of Judgment : 20 April 2023

Date of Reasons for Judgment : 22 April 2026

REASONS FOR JUDGMENT

Hon Barma JA (giving the Reasons for Judgment of the Court):

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On 19 December 2019, the petitioner, Li Ru (“Li”), presented a petition (“the Petition”) pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (“the Ordinance”) to wind up Grand Peace Group Holdings Limited (“the Company”) on the ground of insolvency due to the Company’s failure to satisfy a statutory demand. The Petition was opposed by the Company (see Affirmation of Chow Wai Leong Eric filed on 21 January 2021 (“Chow’s 1st”).

By a Summons filed on 21 May 2021 (“the Substitution Summons”), Madam Chan Tsik Yan (“Madam Chan”), a supporting creditor, sought leave to be substituted for Li as petitioner and to amend the Petition in the form of the draft attached to the Substitution Summons.

By a decision dated 24 August 2021 (“the Substitution Decision”), Harris J (“the Judge”) dismissed the Substitution Summons with costs to the Company, and ordered that the Petition be listed for hearing on 30 August 2021. This hearing was subsequently adjourned to 3 December 2021. In the meantime, on 9 November 2021, the Judge gave leave to Madam Chan to appeal against the Substitution Decision.

By a decision dated 3 December 2021 (“the Dismissal Decision”), the Judge adjourned the Petition to 6 December 2021 before the Companies Judge for dismissal. On 6 December 2021, Linda Chan J duly ordered that the Petition be dismissed (“the Dismissal Order”).

By two Notices of Appeal respectively filed on 18 November 2021 (in CACV 512 of 2021) and 31 December 2021 (in CACV 597 of 2021), Madam Chan lodged appeals against the Substitution Decision, and the Dismissal Decision and Order. No Respondent’s Notice was filed in respect of either of these appeals.

We heard the appeals on 20 April 2023. At the hearing, Madam Chan was represented by Mr Jose Maurellet SC and Mr Lai Chun Ho. No other party appeared or was represented at the hearing to contest the appeals. At the conclusion of the hearing, we allowed the appeals and ordered that Madam Chan’s costs of the appeals and of the petition and the hearings below be paid out of the Company’s estate. We set aside the orders made by the Judge and Linda Chan J, and in their place we ordered inter alia that (i) Madam Chan be substituted in place of Li as the petitioner in HCCW 410 of 2019; (ii) the Amended Petition as per the draft attached to the Substitution Summons be filed by her within 7 days of the hearing; and (iii) the Company be wound-up on the Amended Petition. We indicated that we would hand down our reasons for doing so in due course.

These are our reasons for allowing the appeals, and making the orders indicated above.

Factual and procedural background

The background to this case is not in dispute.

The Company was incorporated on 19 April 2000 under the laws of Bermuda and had previously been listed on the Hong Kong Stock Exchange. It was an investment holding company which operated through its subsidiaries and was principally involved in the businesses of funeral services, loan financing and elderly care homes (see Chow's 1st at [4]-[5]).

The Company had 10 wholly owned subsidiaries, most of which (with one exception, namely Great Mark Holdings Limited ("Great Mark") which was a Hong Kong company) were incorporated in the British Virgin Islands ("BVI"). Such subsidiaries included Merit Vision Holdings Limited ("Merit Vision") and Elite Finance Global Limited ("Elite Finance"). These 'mid-tier' subsidiaries in turn controlled and held (in varying proportions) operating companies incorporated in Hong Kong, the PRC and the BVI.

Li was a creditor of the Company to whom a debt of about HK\$5 million was owed. On 19 December 2019, Li filed the Petition seeking to wind-up the Company in Hong Kong on the basis that it had failed to satisfy a duly served statutory demand. The hearing of the Petition, which was originally fixed to be heard on 19 February 2020, was adjourned on numerous occasions, partly because of the general adjournment of court proceedings during the Covid pandemic, but also to enable the Company to formulate a viable restructuring plan, as well as to facilitate settlement negotiations between Li and the Company (see Affirmation of Chan Tsik Yan dated 17 May 2021 ("Chan's 1st") at [6]-[11]).

Madam Chan was the holder of bonds issued by the Company in the principal sum of HK\$1.5 million with an interest rate of 8% per annum (see Chan's 1st at [4]). As at 14 February 2020, the amount of principal and interest due to her amounted to HK\$1,620,000 (see Chan's 1st at [3]), and the Company had failed to settle a duly served statutory demand for the debt (see Chan's 1st [4]-[5]).

Because of the Company's failure to publish its audited financial statements for the financial year ending 31 December 2019 by the end of March 2020, the trading of its shares in Hong Kong was suspended. This led the Company to file a winding-up petition and an ex parte summons in the Bermudian court on 19 January 2021 seeking to appoint joint provisional liquidators in Bermuda on a soft-touch basis with a view to the formulation of a restructuring plan with the assistance of the Company's directors, who would remain in office (see Chow's 1st at [11]-[15]). The Company's intention was to try to finalise and implement the restructuring plan, and for this purpose, to seek further adjournments of the hearing of the Petition in Hong Kong (see Chow's 1st at [17]).

On 22 January 2021, the Supreme Court of Bermuda appointed joint provisional liquidators ("JPLs") for the Company and further adjourned the hearing of the winding-up petition in the Bermudian proceedings (see Second Affirmation of Chow Wai Leong Eric filed on 4 May 2021 at [17]-[18]). Despite the ongoing Bermudian proceedings, it was not the intention of the Company

to pursue any scheme of arrangement in Bermuda (see Third Affirmation of Chow Wai Leong Eric (“Chow’s 3rd”) at [23]). As it turned out, Company was ultimately unsuccessful in its appeal to the Listing Review Committee in Hong Kong regarding the delisting of its shares (“the Delisting”). The envisaged restructuring plan, which was the sole reason for the commencement of the Bermudian winding-up proceedings and the appointment of the JPLs, was rendered unworkable and thus did not justify further adjournments of hearing of the Petition in Hong Kong (see Fifth Affirmation of Chow Wai Leong Eric filed on 26 August 2021 at [5]; the Substitution Decision at [2]).

Madam Chan and other supporting creditors have at all material times supported the Petition. At an early stage of these proceedings, she was advised that there was a defect in the Petition as it had omitted to deal with the issue of whether the core requirements for the court to wind-up a foreign incorporated company (which the Company was) under section 327 of the Ordinance were met. According to Madam Chan, requests made to Li to make appropriate amendments to the Petition to address this issue were ignored (see Chan’s 1st at [11.1], [11.10]-[11.11]). This led Madam Chan to file the Substitution Summons on 21 May 2021, seeking an order that she be substituted as petitioner and be given leave to file an Amended Petition.

Hearings of the Substitution Summons and the Petition

The Substitution Summons was heard by the Judge on 5 August 2021 and resulted in the Substitution Decision handed down on 24 August 2021. This is the subject of the appeal in CACV 512 of 2021. At the hearing, 16 supporting creditors (including Madam Chan) and the Company were represented. Attendance of the petitioner was excused.

From [1] to [4] of the Substitution Decision, it can be seen that the issues before the Judge were within a very narrow compass. The following were common ground as between the parties and were accepted by the court:

(1)

the petitioner took a neutral stance in relation to the Substitution Summons;

(2)

the Company was not in a position to oppose a winding-up order if its proposed debt restructuring plan was unsuccessful;

(3)

having regard to the Delisting, the envisaged restructuring plan was “no longer feasible”, and there were no alternative restructuring proposals before the court;

(4)

the only question before the Judge was whether the court had jurisdiction to make a winding up order against the Company under section 327 of the Ordinance;

(5)

as to the three core requirements as set out in *Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501 (“Yung Kee”) at [20], the first and the third core requirements were satisfied, and the only issue was whether the second core requirement was met; and

(6)

if the second requirement was met, the Judge considered that the “appropriate course” was to make the usual winding up order.

The second core requirement as stated in *Yung Kee* is that there must be a reasonable possibility that the winding up order would benefit those applying for it.

The Company contended that the second core requirement was not met on the facts of the case, so that the court had no jurisdiction to make a winding up order against it.

The Judge considered that decisions of the courts in Bermuda, the Cayman Islands and the BVI “appear” to establish that the BVI courts would not recognise Hong Kong appointed liquidators of a Bermudian company as having the authority to exercise control over a BVI incorporated subsidiary of the Bermudian company, where the winding up order was made in Hong Kong (not being the place of the company’s incorporation), and that this rendered it “futile to appoint liquidators over a company incorporated in Bermuda in order to take control of its subsidiaries incorporated in the BVI with the ultimate aim of taking control of subsubsidiaries in the Mainland owned by BVI companies” (the Substitution Decision, at [4]).

Mr Lai Chun Ho, who appeared at the hearing below for the supporting creditors (and who also appeared in the present appeals for Madam Chan with Mr Maurellet SC) submitted that having regard to the dicta of Ma CJ and Lord Millett NPJ in *Yung Kee* (at [39]), the liquidators to be appointed in Hong Kong could apply to the Hong Kong court for an order that the directors of the Company (who are resident in Hong Kong and are thus subject to the in personam jurisdiction of the Hong Kong court) do execute the necessary documents (such as to revise the register of members) to enable the liquidators to take control of the BVI subsidiaries, and thus to take control of the assets held by sub-subsidiaries of theirs, thus giving rise to a reasonable possibility that Madam Chan and other supporting creditors would derive benefit from a liquidation in Hong Kong. However, the Judge held that “on a detailed consideration of the private international law principles” it was “doubtful” whether a refusal by the BVI Registrar of Companies (which the Judge thought was possible) to act accordingly and accept the revisions could be circumvented in this way (the Substitution Decision, at [5]-[6]). One private international law principle relied upon by the Judge for this view was the general principle that only a liquidator appointed by the court of the place of incorporation will be recognised and assisted (the Substitution Decision, at [7]).

The Judge went on to hold that as a matter of Bermuda law and BVI law (which the Judge considered to be the same in this regard) and indeed Hong Kong law, liquidators appointed by the Hong Kong court would not “appear” to be the lawful agents of a foreign incorporated company with the power to exercise voting rights as a shareholder of that foreign incorporated company (the Substitution Decision, at [8]-[9]).

He also agreed with the Company’s submission that upon liquidation, the directors of the Company would not have power to change the shareholding composition of its BVI subsidiaries, as their powers would cease as at the making of the winding up order, and thus it would be “artificial and somewhat disingenuous” for the court to make the orders as envisaged in Yung Kee at [39]. The Judge was of the view that it would thus be wrong to make a winding up order on the assumption that the liquidators would be able to gain control of the BVI subsidiaries by seeking orders against the Company’s directors (the Substitution Decision, at [13]).

Mr Lai for the supporting creditors also argued (as recorded at [14] of the Judgment) that even if the Judge opined that the second core requirement cannot be satisfied by the liquidators obtaining control of the Company’s BVI subsidiaries upon winding up, the requirement would in any event be satisfied as there was evidence that the Company had assets in Hong Kong. This evidence (contained in Chow’s 3rd), indicated that the Company had cash amounting to some HK\$78,686 in its bank accounts in Hong Kong (as at the date of Chow’s 3rd) and account receivables of several hundreds of millions Hong Kong dollars owing from Merit Vision and Elite Finance (which were said to be “cash flow insolvent”) (see Chow’s 3rd at [8]-[12]; the Substitution Decision at [15]).

The Judge referred to his decision in *Re China Huiyuan Juice Group Limited* [2021] 1 HKLRD 255, in which he referred to the decision of this court in *Shandong Chenming Paper Holdings Limited v Arjowiggins HKK 2 Limited* [2020] HKCA 670 where it was held that while there could be “some flexibility as to the nature or extent of the likely benefit to the petitioner that should be shown in order to satisfy the second core requirement”, there needed to be a “real possibility, rather than a merely theoretical one”, of there being a benefit to the petitioner arising from the winding up order (see *Re China Huiyuan Juice Group* at [26] and [29], referring to [27] of *Shandong Chenming Paper Holdings*). On this basis, the Judge held in *Re China Huiyuan Juice Group* that the petitioner must be able to point to a “real and discernible” benefit in order to satisfy the second core requirement, and that there had to be a “real possibility of a tangible benefit to creditors”.

On this basis, the Judge went on to hold that as most of the assets of the Company were owned by its BVI incorporated subsidiaries – and thus could, in the Judge’s view, “probably” only be accessed by Bermuda appointed liquidators – Madam Chan and the other supporting creditors had failed to demonstrate a “discernible and real benefit” so as to justify putting into motion the Hong Kong insolvency process in respect of the Company.

For these reasons, the Judge was not satisfied that the second core requirement was met and dismissed the Substitution Summons.

The Petition eventually came to be heard by the Judge on 3 December 2021. At the hearing, the Company applied for dismissal of the Petition, whereas Madam Chan and Li asked for the Petition to be adjourned pending the hearing of Madam Chan's appeal in CACV 512 of 2021 against the Substitution Decision (for which leave to appeal had been granted by the Judge). The Judge took the view that the "normal consequence" of the Substitution Decision would be dismissal of the Petition, and that if there were to be an appeal against a dismissal of the Petition, that appeal would (as has proven to be the case) likely be heard and determined with the appeal in CACV 512 of 2021 and "should not ... involve any substantive work" (see Dismissal Decision at [3]-[4]). The Judge therefore made the Dismissal Decision adjourning the Petition for dismissal before the Companies Judge. On 6 December 2021, Linda Chan J duly made the Dismissal Order.

The arguments advanced on appeal

Notices of Appeal were filed by Madam Chan on 18 November 2021 and 31 December 2021 respectively for her appeals in CACV 512 of 2021 (against the Substitution Decision) and in CACV 597 of 2021 (against the Dismissal Decision and the Dismissal Order). By CACV 512 of 2021, Madam Chan sought to set aside the Substitution Decision and asked that a winding-up order be made against the Company. By CACV 597 of 2021, she sought to set aside the relevant orders.

The grounds set out in the Notice of Appeal in CACV 512 of 2021 can broadly be summarised as follows:

(1)

Ground 1: In holding that there was no reasonable possibility that the winding up of the Company would benefit those applying for it, the Judge erred in law by (i) failing to follow and/or apply the dicta of the Court of Final Appeal at [39] in *Yung Kee* as to how the second core requirement may be satisfied; (ii) falling into error when he concluded at ([10]-[12] of the Substitution Decision) that after a winding up order is made against the Company, its directors are no longer lawful agents of the Company and upon the cessation of their powers, they would not be able to alter the shareholding of its BVI subsidiary so as to enable the liquidators to obtain control of their assets.

(2)

Ground 2: Alternatively, even if the Judge was correct in not simply applying *Yung Kee*, he should have in any event held that the winding up of the Company would benefit those applying for it because the assets of the Company's direct subsidiaries (all of which owed debts to the Company), which on the evidence amounted to some HK\$327 million, were likely to be realisable and would constitute a valuable and real possible benefit to the petitioner upon the making of a winding up order.

(3)

Ground 3: The Judge should have, but did not, make any inference from the fact that the Company inexplicably failed to respond to Madam Chan's inquiries as to the assets owned by the subsidiaries of the Company.

In her Notice of Appeal filed in CACV 597 of 2021, Madam Chan contended that the Petition was wrongly dismissed by reason of the Judge's errors in law in dismissing the Substitution Summons (the subject of the appeal in CACV 512 of 2021) and an erroneous exercise of his discretion in dismissing the Petition when an appeal against the Substitution Decision was pending.

Mr Maurellet SC and Mr Lai, appearing for Madam Chan, lodged skeleton submissions on 22 March 2023 ("A's Skel"). Other related parties, such as Li, the Company and other supporting creditors were excused from attendance and/or did not participate in these appeals.

Mr Maurellet SC submitted that but for the Judge's conclusion that the second core requirement was not satisfied by reason of his views as to the utility of liquidators being able to direct the directors of the Company how to act, with a view to obtaining control of the subsidiaries, it was the general consensus that a winding up order would have been made (A's Skel, at [3]). He also submitted that as the Dismissal Decision and Order were premised on the Substitution Decision, should the appeal against the latter be allowed, the appeal against the former should also be allowed (A's Skel, [5]).

Discussion

The principles upon which an appellate court may interfere with a lower court's exercise of discretion are well established. The appellate court will only interfere if it can be shown that the judge has proceeded on wrong principles, has failed to take into account relevant matters or has taken into account irrelevant matters, or where the exercise of discretion is plainly wrong. If the grounds for reviewing the exercise of discretion do not exist, the appellate court should not exercise the discretion afresh or otherwise usurp the function of the judge. See *Chan WS v CC Bank* [2022] HKCA 1037 at [33].

In respect of Ground 1, Mr Maurellet relied on *Yung Kee*, in particular [39] thereof, and suggested that the second core requirement would be satisfied by the presence of the Company's directors in Hong Kong such that they would be subject to the in personam jurisdiction of the Hong Kong courts, and could be compelled by an order of the court (if they would not do so voluntarily) to assist the liquidators in gaining control of the Company's subsidiaries (including offshore subsidiaries) and other assets, so as to enable the liquidators thereby to obtain and realise the assets of the Company or its subsidiaries (A's Skel, at [19]).

Mr Maurellet further submitted that, given that the principles in *Yung Kee* have been consistently applied by the Judge (e.g. in *Re China Huiyuan Juice* (mentioned above) and in *Re China All Access (Holdings) Ltd* [2021] HKCFI 1842) and by Linda Chan J (e.g. in *Re NewOcean Energy Holdings Limited* [2022] HKCFI 2501 and *Re Carnival Group International Holdings Limited* [2022] HKCFI 2668), there was no basis for the Judge to distinguish *Yung Kee* (as he did in [7], [11]-[12] of the Substitution Decision) and to conclude that the second core requirement was not

satisfied (A's Skel, at [20]-[24]).

Further, in relation to the Judge's reasoning at [11] and [12] of the Substitution Decision, Mr Maurellet submitted that if and when the court made an order compelling the directors to execute documents so as to enable liquidators to take control of the Company's subsidiaries (which might not be necessary if the directors were willing to assist voluntarily), it would merely be exercising its jurisdiction to "give effect" to the winding up order it has made, and the making of such order(s) in aid of the winding up order is not in conflict with the principle that director's powers generally come to an end upon winding up (A's Skel, at [25]).

In his skeleton submissions, Mr Maurellet focused on the arguments pertaining to Ground 1, and in particular the question whether the Judge was right to think that the presence of directors in Hong Kong would not assist in satisfying the second core requirement, having regard to the Judge's views as to whether or not actions by Hong Kong appointed liquidators to obtain control of subsidiaries with the assistance of directors in Hong Kong (if necessary with the assistance of orders of the court along the lines envisaged in Yung Kee) would be recognised in the jurisdictions of incorporation of the Company and its relevant subsidiaries.

As to this, Mr Maurellet submitted that the Judge was wrong to come to this view, as there was no evidence to suggest that the directors of the Company would not voluntarily assist liquidators in Hong Kong, or defy an order of the Hong Kong court requiring them to execute documents to enable the liquidators to gain control of the Company and its subsidiaries. Nor was there any evidence as to BVI law, or to the effect that the Registrar of Companies in the BVI would refuse to accept and act on the documents executed by the Company's directors (A's Skel, at [22]-[24]). We agree with this submission.

As stated by Linda Chan J in *Re NewOcean Energy Holdings* (at [16]), whether liquidators of the holding company appointed in Hong Kong would be able to obtain control over assets held by foreign incorporated subsidiaries is a question of fact, which depends on whether there is evidence or reason to suggest that directors who are subject to the in personam jurisdiction of the Hong Kong court would refuse to cooperate with the liquidators, even if they are ordered by the court to do so as envisaged by the Court of Final Appeal in *Yung Kee*. See also *Re Carnival Group International Holdings* at [25]. There was simply no such evidence in this case.

On the evidence, the majority of the Company's directors are based in Hong Kong, Great Mark is a Hong Kong incorporated subsidiary of the Company, and the directors of Merit Vision, a BVI incorporated subsidiary operating a funeral business in Hong Kong and which holds substantial assets (in the form of account receivables), are also based in and subject to the jurisdiction of the Hong Kong court. There is nothing to suggest that such directors will not cooperate with the liquidators of the Company upon winding up, whether voluntarily or if they are ordered to do so by the court, so as to enable the liquidators to realise the relevant assets.

Although the Judge at [5]-[6] of the Substitution Decision expressed the view that it was "doubtful" as to whether this could be achieved in practice, as it appeared to him that as a matter of Bermuda and BVI law, liquidators appointed in Hong Kong would not be lawful agents of the

Company such that they could exercise voting rights as shareholders of a BVI company. However, there does not appear to have been any evidential basis for this view, as the Judge was not assisted by expert evidence on Bermuda or BVI law on this issue. On the contrary, past experience, as noted by Linda Chan J in *Re NewOcean Energy Holdings* and *Re Carnival*, has shown there have been many instances where assets of a foreign incorporated subsidiary were realised by Hong Kong liquidators by the route suggested in *Yung Kee* without apparent difficulty.

At the hearing of the appeals, the court pointed out that the mere presence of directors within the jurisdiction would not, of itself, seem to be sufficient to satisfy the second core requirement, which was that there should be a reasonable possibility of benefit to the person(s) applying for a winding up order, and that it would still remain necessary to show that there could be some such benefit to be obtained through the assistance of Hong Kong resident directors by, for instance, demonstrating the existence of assets that might thereby become accessible to the liquidators. Mr Maurellet quite fairly accepted this, but also pointed out that the Judge's decision had principally focussed on whether the presence of directors within the jurisdiction would assist in enabling the liquidators to gain access to and control of the Company's subsidiaries. He also pointed out that this was the substance of Ground 2.

In relation to Ground 2, Mr Maurellet submitted that the Judge failed to have adequate regard to possible avenues of recovery by Hong Kong liquidators, in particular the recovery of debts owed to the Company by its subsidiaries by accessing the assets held by them. He also contended that the petitioner could not know the precise position in relation to the subsidiaries' assets until this had been investigated by liquidators utilising the powers available to them in a winding up. Mr Maurellet submitted that the potential benefit to be gained from such an investigation would itself be a benefit of a tangible nature that would satisfy the second core requirement. He went on to submit that on this footing, the Judge had failed to adequately consider the evidence presented before the Bermudian court, including (i) the fact that Merit Vision and Elite Finance (both BVI subsidiaries of the Company which respectively carried on the business of funeral and loan financing services) owned assets in the form of account receivables and although said to be cash flow insolvent, were not said to be balance sheet insolvent (see Chow's 3rd at [9]), so that it might reasonably be considered that there was a reasonable possibility of meaningful recoveries being made; (ii) the Company (and the group itself) appeared to be balance sheet solvent as the unconsolidated accounts contained in a 2019 interim financial report of the Company stated that it had current assets in excess of HK\$327 million with current liabilities mainly consisting of bond repayment debts in the amount of around HK\$164 million (see [54]-[56] of the First Affirmation of Chow Wai Leung Eric filed with the Supreme Court of Bermuda on 19 January 2021). In a similar vein, Mr Maurellet contends that in the light of this evidence, the Judge should have found that the second core requirement was satisfied in terms of there being a likelihood of benefit to the petitioner and other creditors in the event of a winding up.

Again, we agree with Mr Maurellet. It must be borne in mind that the second core requires a reasonable possibility that the winding up would benefit those applying for it. Although the benefit needs to be tangible and real in nature, it need not be shown to be achievable with certainty in practice. The matters we have discussed above in connection with Grounds 1 and 2 do, in our view, demonstrate the existence of the reasonable possibility of benefit that is required.

Mr Maurellet confirmed at the hearing that the appellant would also rely on Ground 3, which is essentially a complaint that the Company had failed, without reason, to respond to the inquiries of Madam Chan regarding the assets owned by its subsidiaries. However, Mr Maurellet also acknowledged that there is no obligation of general discovery in winding up proceedings, and we do not consider that a mere failure by the Company to respond to inquiries is a sufficient basis for inferring that the assets must exist, so as to satisfy the second core requirement. However, as there is in this case evidence that the Company is (or was) balance sheet solvent and that so were some of its subsidiaries, the petitioner does not need to rely on the proposed inference to be drawn from the Company's reticence.

For the reasons explained above, we are satisfied that Grounds 1 and 2 have been made out, and the appeal in CACV 512 of 2021 should be allowed accordingly. Having allowed the appeal in CACV 512 of 2021, it follows that the appeal in CACV 597 of 2021 should also be allowed.

Disposition and costs

For the foregoing reasons, we allowed both appeals, and made orders that:

(1)

the Substitution Decision, the Dismissal Decision and the Dismissal Order be set aside;

(2)

Madam Chan be substituted as the petitioner in HCCW 410 of 2019, and that an Amended Petition be filed by her as per the draft attached to the Substitution Summons within 7 days of the order;

(3)

a winding up order be made against the Company on the Amended Petition;

(4)

costs of the petitioner (i.e. Madam Chan) in the Petition and in these appeals be paid out of the Company's estate; and

(5)

the Official Receiver's costs be paid out of the assets of the Company.

(Susan Kwan)

(Peter Cheung)

(Aarif Barma)

Vice President

Justice of Appeal

Justice of Appeal

Mr Jose Maurellet SC and Mr Lai Chun Ho, instructed by Oldham, Li & Nie, for the appellant (Chan Tsik Yan) in both cases

The Company, unrepresented, absent

Attendance of Francis Kong & Co, for the petitioner (Li Ru) in both cases, was excused

Attendance of Cedric & Co, for the supporting creditor (Sun Fung Capital Limited) in both cases, was excused

Attendance of Fairbairn Catley Low & Kong, for the supporting creditor (Yuen Man Kai) in both cases, was excused

Attendance of Haldanes, for the supporting creditor (Yu Chi Wing) in both cases, was excused

Attendance of Au Yeung, Chan & Ho, for the supporting creditor (Cheung Yuet Lai Hettie) in both cases, was excused

Attendance of Patrick Chu, Conti Wong Lawyers LLP, for the supporting creditor (Suen Lai Ling) in both cases, was excused

Attendance of the Official Receiver was excused

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