

HONG KONG / JUDGMENT

RE GTI HOLDINGS LTD

[2023] HKCFI 176

COURT

Court of First Instance

DECIDED

20 January 2023

CASE / FILE NUMBER

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HCCW 51/2020

[2023] HKCFI 176

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

COMPANIES (WINDING-UP) PROCEEDINGS NO 51 OF 2020

IN THE MATTER OF GTI HOLDINGS LIMITED

and

IN THE MATTER OF the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)

Before: Master Lai in Chambers (open to public)

Date of Hearing: 23 December 2022

Date of Decision: 20 January 2023

D E C I S I O N

Introduction

This is an application by the Official Receiver and Provisional Liquidator (the “OR”) of GTI Holdings Limited (the “Company”) for appointment of liquidators and formation of Committee of Inspection (“COI”) in the liquidation of the Company (the “Application”).

The Company is incorporated in the Cayman Islands on 9 June 2004. The shares of the Company have been listed on the Main Board of the Stock Exchange of Hong Kong Limited (the “SEHK”). On 11 March 2020, the winding-up petition herein was presented against the Company (the “Petition”). Trading of the Company’s shares in the SEHK has been suspended since 4 October 2021. The Company is subject to a resumption guidance and an additional resumption guidance issued by the SEHK (the “Guidance”) for resumption of trading of its shares.

The winding-up order against the Company herein was made on 22 November 2021 (the “WU Order”) and the OR was appointed provisional liquidator of the Company by virtue of section 194(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (the “Ordinance”).

According to the statement of affairs submitted by the directors of the Company, the assets of the Company amounted to \$2,445,600.32 and the liabilities amounted to \$1,258,368,599.00. According to the consolidated statement of financial position published by the Company, the unaudited financial results of the Company as at 31 December 2020 showed net current liabilities and net non-current liabilities in the sum of \$1,226,076.00 and \$1,117,995.00 respectively. As at 27 September 2022, the OR received 223 proofs of debts claiming for a total sum of about \$1,602,142,020.89 and realized an aggregate sum of \$773,920.01 for the estate of the Company. It is not in dispute that the Company is grossly insolvent.

On 22 May 2020, the Company presented against itself a winding-up petition to the Grand Court of the Cayman Islands (the “Cayman Court”) and applied for appointment of provisional liquidators for restructuring purpose (the “Cayman Proceedings”). On 28 May 2020, the Cayman Court appointed Osman Mohammed Arab (“Arab”), Lai Wing Lun (“Lai”) and Claire Marie Loebell who had since been replaced by Owen Walker (“Walker”) (together the “PLs”) as joint and several provisional liquidators of the Company.

On 24 September 2020, the PLs made an ex-parte application to the Hong Kong court in HCMP 1556/2020 to seek recognition of their appointment. On 9 November 2020, Harris J recognised the appointment of the PLs and allowed the PLs to exercise certain powers in Hong Kong for, inter alia, the purposes of putting forward and implementing a restructuring proposal.

After the WU Order was made on 22 November 2021, the Cayman Court also made a winding-up order against the Company on 22 February 2022 and appointed Arab, Lai and Walker (together the “Nominated JLS”) as joint official liquidators (the “JOLs”) of the Company.

At the first creditors' meeting held on 1 September 2022 in the Hong Kong liquidation, the creditors resolved by majority in value to appoint the Nominated JLs as the joint and several liquidators of the Company for the Hong Kong liquidation (the "HKJLs") and to form a COI with four members.

At the first contributories' meeting also held on 1 September 2022, the contributories resolved unanimously to appoint the Nominated JLs as the HKJLs. The contributories also resolved to form a COI for the Company's liquidation.

As both the creditors and the contributories passed the same resolution for appointment of the Nominated JLs as the HKJLs, pursuant to section 194(1)(c) of the Ordinance, this court may make any appointment and order required to give effect to such determination. However, the OR does not support the aforesaid nomination and take out the summons for the Application on 27 September 2022. Hence, this hearing.

The OR had on 6 September 2022 filed the report of result of the first meeting of creditors and the report of result of the first meeting of contributories. The OR had also filed the first report for the Application on 27 September 2022 ("OR-1"), the supplemental report on 14 October 2022 and the 2nd supplemental report on 13 December 2022 ("OR-3").

On 18 November 2022, Mega Yield Enterprise Development Limited ("Mega"), a creditor and "white knight" of the Company, filed an affirmation of Yang Laosi ("Yang's Affirmation") to support the appointment of the Nominated JLs. On 21 December 2022, Mega further filed an affirmation of Chan Yiu Pun Jimmy ("Chan's Affirmation").

On 18 November 2022, Choi Yuk Chor ("Choi"), another creditor of the Company, also filed the 2nd Affirmation of Choi Yuk Chor ("Choi's Affirmation") to support the appointment of the Nominated JLs.

On 30 November 2022, Lai filed the 3rd Affirmation of Lai Wing Lun ("Lai's Affirmation").

The hearing was attended by legal representatives of the OR, the Nominated JLs, Mega and Choi. There is no dispute that both Mega and Choi are the Company's creditors.

The issues before this court are: (1) who shall be appointed as liquidators of the Company? and (2) who shall be appointed as members of the COI? (the "Issues")

Before I go to the Issues, I shall set out the background for the Application including the circumstances when the WU Order was granted and various applications made thereafter, the stance of the OR on the Issues, and the various matters raised by Mega and Choi. I shall also set out my analyses on those matters raised by Mega and Choi.

The WU Order and applications thereafter

The Petition was issued in March 2020. Multiple adjournments during a period of 20 months were granted for the Company to implement a restructuring proposal in respect of debts owed to its creditors. However, as at 22 November 2021, when the Petition was heard, the Company was still

unable to satisfy the conditions imposed by the SEHK on resumption of trading of its shares or to put forward a scheme which had the agreement of the requisite majorities of its creditors. The court found that the restructuring proposal proposed by the Company (the “Scheme”) was not feasible for reasons set out in §19 of the Reasons for Judgment dated 2 December 2021 [2021] HKCFI 3647 (the “WU Judgment”).

The court further noted that despite the appointment of the PLs for about 18 months by then, the financial position of the Company’s group had not improved and the Company remained unable to comply with the basic obligation of publishing its audited financial statements. The court was of the view that it was highly undesirable for the Company with a substantial net deficit to remain in operation as a going concern and the continued increase in net deficit was prejudicial to the interests of the unsecured creditors of the Company. It was under these circumstances that the court made the WU Order.

Shortly after the WU Order was made, Choi applied by summons dated 6 December 2021 for a regulating order under section 227A of the Ordinance on the ground that by reason of the number of creditors and shareholders, it would not be practical and prohibitively expensive to summon the meetings of the creditors and contributories of the Company for the purpose of determining the appointment of a liquidator and a COI (the “s227A Application”).

On 15 December 2021, the court dismissed the s227A Application on the ground that it had not been demonstrated by Choi that there was sufficient justification to displace the usual requirement for the OR to convene meetings of creditors and contributories to ascertain their views on the appointment of liquidators and COI. The court was of the view that the s227A Application was no more than an attempt to bypass the creditors’ statutory rights under section 206 of the Ordinance. The court found that the only purpose of the s227A Application was to ensure that the PLs could be appointed as the HKJLs. (See [2022] HKCFI 2598 (the “Recognition Decision”) at §§6 to 7)

By summons dated 14 January 2022 issued in the Cayman Proceedings, the PLs invited the Cayman Court to list the Cayman Proceedings for hearing on 22 February 2022 (the “February Hearing”). The court found that in the February Hearing, the PLs sought to reverse the findings in the WU Judgment through the backdoor by asking the Cayman Court to re-open the issues already decided by the Hong Kong court. The PLs sought to invite the Cayman Court to conclude that the Scheme was viable, that it would be in the best interest of the Company’s creditors for the PLs to remain in charge of putting forward the Scheme.

In the two affirmations filed on 14 January 2022 and 17 February 2022 by Lai for the February Hearing, the PLs made various representations to the Cayman Court. Linda Chan J was of the view that such representations were not supported by any documents or were inconsistent with evidence filed by the Company in opposition to the Petition. The learned Judge found that: “It is clear from the representations and submissions made to the Cayman court that the PLs did not regard the [WU Judgment] and the findings therein were binding upon them or the Company.” The learned Judge noted that at the February Hearing, it was not drawn to the Cayman Court’s

attention that the PLs were parties to the Petition or privies of the Company for the purpose of issue estoppel and they were bound by the findings in the WU Judgment. (§§3, 10 and 11 of the Recognition Decision)

As the February Hearing was uncontested, Doyle J of the Cayman Court essentially accepted all the arguments advanced by the PLs and the orders sought by the PLs. Doyle J made a winding-up order against the Company and appointed the PLs as the JOLs of the Company at the February Hearing.

On 1 March 2022, the Cayman Court issued a letter of request to the Hong Kong court (the “LOR”) for the purposes of recognising the appointment of the JOLs such that the JOLs had and might exercise, to the fullest extent permitted by the Hong Kong law, the same powers as were available to them in accordance with the relevant legislation of the Cayman Islands.

The LOR further requested the Hong Kong court to make, inter alia, an order that (1) the JOLs to have the power to authorise the directors to approve the audited financial results of the Company; (2) the remuneration and expense of the JOLs be paid out of the assets of the Company in accordance with the applicable rules and regulations; and (3) the JOLs be at liberty to engage counsel, attorneys and professional advisors in Hong Kong or elsewhere as they might consider necessary and to remunerate them out of the assets of the Company.

On 18 March 2022, the JOLs took out an ex-parte summons in HCMP 1556/2020 for recognition of their appointment and related orders (the “Recognition Application”). By a letter dated 18 March 2022, Chung's Lawyers (“CL”) acting for the JOLs sought directions from Harris J for a short hearing and permission to file the Recognition Application on the ground that the JOLs urgently needed to act on behalf of the Company to progress the Scheme. After considering the observations of the OR on the Recognition Application and the history of the matter, Harris J passed the Recognition Application to Linda Chan J to deal with.

On 12 April 2022, Linda Chan J directed the Recognition Application to be heard on 26 April 2022 and raised the following questions to be explained by the JOLs and their legal representatives:

why the Recognition Application was made on an ex parte basis in HCMP 1556/2020 when the Company had already been wound up by the court in HCCW 51/2020;

why the Recognition Application was not made to the Judge who had been dealing with matters concerning the winding-up of the Company; and

why the JOLs should not be personally liable for the costs occasioned by the Recognition Application in any event.

After the court issued the aforesaid directions, the matter took a complete turn. The JOLs no longer urged the court to deal with the Recognition Application on an urgent basis and, instead, abandoned the Recognition Application on the ground that Mega, being the investor, had decided not to fund the Recognition Application due to commercial concerns. In CL's letter of 14 April 2022, the JOLs sought leave to vacate the hearing of 26 April 2022.

On 19 April 2022, Linda Chan J directed the hearing to proceed for the purpose of determining the propriety of the Recognition Application and costs. The learned Judge was of the view that: “The complete volte-face on the part of the JOLs (and the Investor behind them) shows that the JOLs would only pursue the [Recognition] Application if it is heard by their chosen Judge and outside the HCCW. It is a matter of grave concern that the JOLs chose to act in this way.” (§26 of the Recognition Decision)

Having considered the answers of the JOLs and their legal representatives given in correspondence and at the hearing, the history of the matter and the contents of three affirmations of Lai, the learned Judge came to the following conclusion in the Recognition Decision:

“30.

... .. I have come to the firm view that the conduct of the PLs/JOLs has fallen far short of the standards one would expect from officers of the court in the following respects:

The misrepresentations made by the PLs when they applied to the Cayman court for orders appointing them as JOLs and seeking recognition of their appointment in Hong Kong (“Misrepresentations Issue”).

The manner in which the JOLs made the [Recognition] Application to the forum of their choice (“Forum Shopping Issue”).

The misrepresentations and material non-disclosures made by the JOLs when they made the [Recognition] Application on an ex parte basis (“Material Non-Disclosures Issue”).

The above conduct is serious and should not be overlooked by the court simply because the JOLs decided to abandon the [Recognition] Application or agreed to pay the costs occasioned by such Application. It is for the court to uphold the high standards required of officers of the court, as they are the persons entrusted with the responsibility of protecting and furthering the interests of the creditors as a whole and are often conferred with extensive powers to facilitate the performance of their duties.”

The learned Judge explained in length in §§36 to 63 of the Recognition Decision the basis for Her Ladyship to come to the aforesaid conclusion. I do not propose to repeat the same here. At the end of the day, the learned Judge ordered the JOLs to pay personally their remuneration and the costs of and occasioned by the Recognition Application, including the costs incurred by the OR and not entitled to recover such costs and remuneration from the assets of the Company (the “Costs Order”).

The JOLs sought leave from Linda Chan J to appeal against the Costs Order. The learned Judge refused to grant such leave. On 24 November 2022, the JOLs applied to the Court of Appeal (the “CA”) for leave to appeal against the Recognition Decision and the Costs Order. Hearing date for the aforesaid leave application has yet to be fixed by the CA.

On 22 June 2022, the JOLs held the first meeting of creditors in the Cayman Islands. Resolutions were passed to form a liquidation committee of the Company in the Cayman Islands and the following five creditors were appointed as members of the liquidation committee in the Cayman Islands:

Zhu Jieyu (representing Able Express Asia Investment Limited);

Choi Yuk Chor;

Tang Ling Yin;

Hung Chung Shing; and

Wu Ka Wing.

Lai also stated in Lai's Affirmation that the Company (as borrower), Mega (as lender) and the JOLs (as officers of the Cayman Court) had entered into a revised funding agreement to set out the terms of the provision of funding and to make use of a credit facility of up to HK\$60 million made available to the Company as set out in the original funding agreement dated 19 August 2020 and supplemented by a supplemental agreement dated 1 April 2021. On 7 July 2022, the aforesaid revised funding agreement was sanctioned by the Cayman Court.

Voting at the creditors' and contributories' meetings

Both the first creditors' meeting and first contributories' meeting for the Hong Kong liquidation of the Company were held on 1 September 2022.

The first creditors' meeting

The first creditors' meeting was attended by 197 creditors, personally or by proxy, whose proofs of debts against the Company admitted for voting purposes amounted to the total sum of \$755,356,231.72.

The creditors were asked to vote on the appointment of liquidators and formation of the COI. The candidates for liquidators put to the creditors were: (1) the Nominated JJs; and (2) Chua Suk Lin Ivy and Lau Kwok Hung ("Chua & Lau").

About 81% of creditors by value (ie \$611,878,035.35) voted for the Nominated JJs. About 18.56% of creditors by value (ie \$140,192,768.37) voted against them. About 27.41% of creditors by number (ie 54) voted for the Nominated JJs and about 72.08% of creditors by number (ie 142) voted against them. The remaining one creditor holding \$3,285,428.00 of the admitted debts abstained from voting on appointing the Nominated JJs as the HKJJs.

About 23.34% of creditors by value (ie \$176,308,743.31) voted for Chua & Lau. About 76.19% of creditors by value (ie \$575,503,745.09) voted against them. About 75.63% of creditors by number (ie 149) voted for Chua & Lau and about 22.84% of creditors by number (ie 45) voted against them. The remaining three creditors holding \$3,543,743.32 of the admitted debts abstained from voting on appointing Chua & Lau.

About 98.98% of creditors by value (ie 747,670,803.72) voted for forming the COI. None of the creditors voted against that. Two creditors holding \$7,685,428.00 of the admitted debts abstained from voting on this item.

Twelve creditors were nominated to become members of the COI. Only 4 of them received support from more than 50% of the creditors by value. Another 7 of the candidates received support from more than 50% of the creditors by number but the aggregate value of their debts did not exceed 50% of the value of the admitted debts.

As such, at the first creditors' meeting the nomination to appoint the Nominated JLs as the HKJLs of the Company was supported by majority creditors by value of debt and the nomination to appoint Chua & Lau was supported by majority creditors by number. The first creditors' meeting resolved to form the COI both by value and by number. Four candidates were nominated by creditors by value and seven candidates were nominated by creditors by number to the COI.

The first contributories' meeting

The first contributories' meeting was attended by 3 contributories, personally or by proxy, holding totally 15,098,100 shares in the Company.

The contributories were asked to vote on the appointment of liquidators and formation of the COI. The only candidate for liquidators put to the contributories was the Nominated JLs.

The first contributories' meeting unanimously resolved to appoint the Nominated JLs as the HKJLs of the Company.

The first contributories' meeting also unanimously resolved to form the COI. No nomination for COI member was put forward by the first contributories' meeting as the only candidate received only one vote holding 2,000 shares in support when the other contributories all voted against that candidate.

As such, the first contributories' meeting resolved unanimously to appoint the Nominated JLs as the HKJLs of the Company and to form the COI but without nomination for its membership.

The stance of the OR

Having regard to the Recognition Decision and the criticism of the court on the Nominated JLs therein, the OR does not support the appointment of the Nominated JLs as the HKJLs of the Company. The OR had informed the creditors and the contributories of this stance of the OR at the first creditors' meeting and the first contributories' meeting.

The OR proposes that appointment takers under the Administrative Panel of Insolvency Practitioners for Court Winding-up maintained by the OR's office (the "Panel A List") be appointed the HKJLs of the Company. The OR advised that the next available appointment takers on the Panel A List for appointment were So Kit Yee Anita and Lui Yee Lin, both of Ernst & Young Transactions Limited.

The OR considered that a COI exercising a supervisory role over the liquidators would assist in preserving the assets of the Company, in particular the listing status, in the interest of the creditors. Thus, the OR supports the appointment of a COI.

The OR reported in OR-1 that after the first creditors' meeting, a creditor, Wong Lai Ping ("Wong") wrote to the OR on 6 September 2022 proposing that all those who were nominated in the first creditors' meeting as members of the COI should be appointed so that the COI could act independently and fairly to supervise the HKJLs in the liquidation of the Company. Another creditor, Xu Kaimei ("Xu"), represented by Anthony Siu & Co also expressed the same view to the OR by a letter dated 20 September 2022. Both Wong and Xu did not attend the hearings for the Application.

The four candidates nominated by the first creditors' meeting for the COI (the "Majority Candidates") were supported by creditors holding about 77% to 79% of the value of proofs of debt admitted for voting purposes whereas the remaining 8 candidates (the "Minority Candidates") were supported by creditors holding about 6% to 19 % of the value of proofs of debt admitted for voting purposes. As such, the Majority Candidates represent the interest of the main creditors whereas the Minority Candidates represent the interest of minor creditors.

With a view to having a balanced representation in the COI without exceeding the maximum number of seven provided in section 206(3) of the Ordinance, the OR proposes that in addition to the Majority Candidates, three of the Minority Candidates having the next highest votes by value at the first creditors' meeting be appointed as members of the COI to form a COI of seven members for the liquidation of the Company.

The stance of the Nominated JLs

Mr Ho for the Nominated JLs advises that the Nominated JLs took a neutral stance regarding the court's determination of who should be appointed as the HKJLs of the Company and if appointed as HKJLs of the Company, the Nominated JLs would consult with the Company's creditors concerning the future conduct of the Company's liquidation.

Submissions of Mega

There is no dispute that Mega is the "white knight" providing loan to the Company to facilitate the preparation and implementation of the Scheme. Mega supports the appointment of the Nominated JLs.

Mr Wong for Mega points out that the OR made the Application under section 194(1)(c) of the Ordinance. He queries whether section 194(1)(c) is engaged.

Mr Wong submits that section 194(1)(c) provides that: “if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid [ie appointment of liquidator], the court shall decide the difference and make such order thereon as the court may think fit”.

Rule 45(2) of the Companies (Winding-Up) Rules, Cap 32H (the “WU Rules”) further provides that:

“Subject to section 206 of the Ordinance [which concerns COI], upon the result of the meetings of creditors and contributories being reported to the court, the court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the 2 meetings are identical in effect, upon the application of the provisional liquidator, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the court shall, on the application of the provisional liquidator, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary.”

Mr Wong contends that in the present case, the meeting of creditors and the meeting of contributories had each passed the same resolutions and there was no difference between the determinations of the meetings of creditors and contributories in respect of the appointment of the HKJLs for the Company. As such, there is no “difference” required to be determined by the court under section 194(1)(c) of the Ordinance and/or rule 45(2) of the WU Rules.

In respect of appointment of the HKJLs for the Company, Mr Wong submits that the Nominated JLs were very familiar with the affairs of the Company given their involvement since their appointment as the PLs in the Cayman Proceedings by the Cayman Court. He refers to *Re Akai Holdings Ltd & Another* [2001] 2 HKLRD 411 to submit that there is an obvious advantage in appointing the same persons as liquidators in both jurisdictions because of the benefits (both in time and costs) of sharing information and co-ordinating investigative and other activities.

He further submits that the Nominated JLs are also the JOLs appointed by the Cayman Court. They are high up on the “learning curve” of the Company’s affairs. By contrast, any other appointees will have to take time and expend costs in acquainting themselves with the Company’s affairs and possibly having to put new people into place. Some sort of protocol will also have to be agreed and established with the JOLs for matters affecting both sets of liquidations.

Mr Wong further submits that time is of essence in the present case given the resumption deadline of 3 April 2013 imposed by the SEHK for trading of the Company’s shares. He submits that as there are only less than 4 months left until the aforesaid resumption deadline, appointing new liquidators is impracticable and against the interest of the Company and the interest of the creditors whereas the Nominated JLs can, subject to the approval of the court and/or the COI, continue with their work towards fulfilling the requirements of the Guidance.

Mr Wong refers to the case of Da Yu Financial Holdings Limited [2019] HKCFI 2531 to submit that despite a winding-up order having been made against the Company, if the Scheme is approved, the winding-up of the Company can be stayed and the conditions in the Guidance can be modified by the SEHK to allow resumption of trading of the Company's shares.

Mr Wong further refers to Cai Shuyi v The Joint and Several Liquidators of Blockchain Group Company Limited (in liquidation) [2019] HKCFI 1522 to submit that in the case of an insolvent liquidation, it is the interests of creditors that are of paramount importance and their views should carry weight.

Mr Wong notes that before the voting took place, the creditors and contributories had already been informed of the stance of the OR that having regard to the Recognition Decision and the misconduct on the part of the Nominated JLs set out therein, the OR was not prepared to support the appointment of the Nominated JLs as the HKJLs of the Company. Yet the majority of the creditors in value still voted for the Nominated JLs. Mr Wong submits that the Nominated JLs not only have the confidence of the majority of the creditors but also the full confidence of Mega, the Company's "white knight", based on its satisfaction of the Nominated JLs' good track record of performance as the JOLs during the restructuring of the Company.

Mr Wong further points out that in the present case, there is no allegation of lack of independence and impartiality against the Nominated JLs. He refers to the Akai Holdings case (supra) to submit that where a company is being wound-up and has no assets, or insufficient assets, to enable the due processes of the liquidation to be carried through, a creditor is to be encouraged in making funds available to the liquidators and a creditor who is funding the liquidators is entitled to make sure that the funds are not wasted and to be vigilant that the liquidators who will be expending the funds are worthy of his confidence.

Mr Wong further submits that the HKJLs' conduct will be subject to the continuous supervision of the COI especially with the increased number of members proposed by the OR ensuring a balanced representation in the COI.

Mega urges the court to appoint the HKJLs of the Company in accordance with the resolutions passed at the first meetings of creditors and contributories.

Submissions of Choi

There is no dispute that Choi is a creditor of the Company. Choi also supports the appointment of the Nominated JLs as the HKJLs of the Company.

Mr Smith SC for Choi submits that the creditors had resolved at the first creditors' meeting to appoint the Nominated JLs as the HKJLs of the Company. There is no reason why the wishes of the creditors should not be respected.

Mr Smith also refers to the Nominated JJs being the JJs appointed by the Cayman Court. As such, appointing the Nominated JJs as the HKJJs would be beneficial and cost-effective as regards both the restructuring and liquidation of the Company in Hong Kong.

Mr Smith refers to *Re Luen Yick Water & Drainage Works Ltd* (unrep, HCCW 209/2002, 9 January 2003) to submit that where it appears that a company is insolvent, the views of the creditors, whilst by no means binding on the court must be given due weight.

Mr Smith submits that the creditors had expressed their clear wishes to appoint the Nominated JJs as the HKJJs of the Company. They had resolved by a majority in value in the first creditors' meeting that the Nominated JJs be appointed the HKJJs. The Nominated JJs were not only supported by a simple majority, but an overwhelming majority of creditors holding about 81% of the value of the admitted proofs of debt for voting purposes. He submits that the democratic decision of the majority creditors should be respected.

Mr Smith submits that as a matter of law, it is this majority in value of the creditors that is material to the appointment of the HKJJs. He refers to sections 200(2), 244A(5) and 287 of the Ordinance as well as rule 119 of the WU Rules to submit that in terms of the statutory provisions, the court should take into account the value of the claim of the voting creditors to ascertain the wishes of the creditors. He further refers to *Re Luen Yick Water & Drainage Works Ltd* (supra), *Re Sumore Corp Ltd* [2013] 1 HKLRD 153, and *Re William Thorpe & Son Ltd* [1989] 5 BCC 156 to submit that in terms of case law, the importance of the wishes of the majority of creditors in value has also been recognised in Hong Kong and the United Kingdom. He submits that various academic commentaries also emphasised that it is the majority in value that needs to be examined when the appointment of a liquidator is in question. In this respect, he refers me to *McPherson & Keay's Law of Company Liquidation* (5th ed) at §8-034, *Palmer's Company Law* (vol 4) at §15.351, and *The Law of Insolvency* (5th ed) by Ian F Fletcher at §19-021.

Mr Smith also refers to various creditors expressing concerns over the OR's decision to propose candidates other than the Nominated JJs. He criticizes the OR for not putting the OR's proposed Panel A List appointment takers to a vote at the creditors' meeting. He contends that there is no evidence to indicate the level of support for the candidates proposed by the OR and this is an important factor that the court should take into account.

Mr Smith submits that the general importance of ascertaining the wishes of the creditors was expressly recognised and in fact directed by the court when the court rejected the s277 Application of Choi.

Mr Smith further submits that the creditors will nevertheless be at liberty to convene further creditors' meetings or apply to the court at any time under sections 192 and 196 of the Ordinance to change the liquidators if it later becomes appropriate and necessary as the liquidation of the Company proceeds.

Mr Smith submits that appointing the Nominated JLs would be conducive to the proper operation of the liquidation process and is just as between all those interested in the liquidation as the Nominated JLs have been appointed the PLs in the Cayman Proceedings and subsequently the JOLs of the Company in the February Hearing by the Cayman Court. They have the obvious advantage of saving time and costs in handling the liquidation of the Company. Appointing them as the HKJLs would be a natural choice.

Mr Smith also refers to the ongoing restructuring of the Company and the financial support of Mega for the restructuring. He submits that the Scheme depends on the backing of the “white knight” and the Nominated JLs have the support of the “white knight”. Mr Smith notes that the Company’s directors are no longer in a position to drive the restructuring of the Company and the OR is not in a position to make any progress in fulfilling the resumption guidance imposed by the SEHK. Mr Smith submits that with the backing of the majority creditors, the liquidation and/or restructuring of the Company can move on smoothly without any unnecessary disputes.

The Company has more than 35 subsidiaries incorporated in Cambodia, the Mainland, the British Virgin Islands (the “BVI”), the Cayman Islands and Hong Kong. Mr Smith further refers to *Re China Huiyuan Juice Group Ltd* [2021] 1 HKLRD 255 and *Re Grand Peace Holdings Ltd* [2021] 4 HKLRD 230 to submit that appointing the Nominated JLs would also avoid the potential problems of non-recognition of the liquidators in other jurisdictions. Appointing the Nominated JLs (who are also the JOLs appointed by the Cayman Court) as the HKJLs would enable them to deal with and realize the value of the operating BVI subsidiaries of the Company in the event that the resumption of trading should fail.

Mr Smith submits that the criticism of the court made against the Nominated JLs in the Recognition Decision does not impact on the desirability of their being appointed as the HKJLs. When the creditors resolved to appoint the Nominated JLs as the HKJLs in the first creditors’ meeting, the creditors knew full well the observations made by Linda Chan J in the Recognition Decision. The resolution to appoint the Nominated JLs passed at the first creditors’ meeting was a fully informed, democratic and commercial decision of the majority creditors.

Mr Smith further submits that the observations of the court in the Recognition Decision were mostly concerned with the Nominated JLs’ conduct in making the Recognition Application. These observations are not per se directly relevant to the competence and ability of the Nominated JLs in preserving and realising the business and the assets of the Company in the liquidation.

He submits that the court had recognized in §§7(2) and 36 of the Recognition Decision the possibility that the Nominated JLs might be appointed as liquidators of the Company at the first creditors’ meeting or might be appointed as special manager of the Company. He contends that Linda Chan J had emphasized the importance of holding a meeting for the purpose of appointing liquidators. There is nothing in the Recognition Decision to suggest that the Nominated JLs should not be appointed if chosen at the meetings of creditors and contributories.

Choi also supports the establishment of the COI and has no objection to the OR's proposal to appoint three further nominated candidates receiving the next highest votes at the first creditors' meeting.

Mr Smith also refers to section 194(1)(c) of the Ordinance providing for a determination hearing if the meetings of creditors and contributories produce conflicting results. In the present case, the results of the two meetings were not conflicting so that, *prima facie*, a determination hearing is not required.

Discussion

There is no dispute that the court has a wide and unfettered discretion in the exercise of the power to appoint liquidators. It is not bound by the determinations of the meetings of the creditors and/or the contributories although the court will give due weight to their views. (See *Re Akai Holdings Limited* (supra), and *Shagang Shipping Co Ltd v Grand China Shipping (Hong Kong) Co Ltd* (in liquidation) [2013] HKCU 2915)

I shall discuss below various matters raised by the parties in their submissions.

Application of section 194(1)(c) of the Ordinance

The OR took out the Application under section 194(1)(c) of the Ordinance. As the meetings of the creditors and contributories had passed the same resolution in respect of appointment of the HKJLs for the Company and section 194(1)(c) of the Ordinance provides for the court to determine the difference between the creditors' meeting and the contributories' meeting, both Mr Smith and Mr Wong raised the queries as to whether the power of the court under section 194(1)(c) is invoked.

Section 194(1)(c) of the Ordinance provides that the court may make any appointment and order required to give effect to the determination of the creditors' and contributories' meetings for appointment of liquidators. The court "may" but is not obliged to make an order to give effect to such determination of the creditors' and contributories' meetings. In other words, the court "may" make an order not giving effect to such determination.

The aforesaid interpretation of section 194(1)(c) is also consistent with rule 45(2) of the WU Rules which provides that: "upon the result of the meetings of creditors and contributories being reported to the court, the court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the 2 meetings are identical in effect, upon the application of the provisional liquidator, forthwith make the appointments necessary for giving effect to such resolutions." (emphasis added) However, the court "may" also not making such appointment. In such case, rule 45(2) has the following further provisions:

"In any other case the court shall, on the application of the provision liquidator, fix a time and place for considering the resolutions and determinations (if any) of the meetings ... and making such order as shall be necessary."

The parties do not dispute that the court is not bound by the determinations of the creditors' and/or the contributories' meetings on appointment of liquidators and has a wide and unfettered discretion in the exercise of its power to appoint liquidators. Such power is exercised under section 194(1)(c) of the Ordinance and rule 45(2) of the WU Rules.

The Application is made by the OR under section 194(1)(c) of the Ordinance and rule 45(2) of the WU Rules, not to determine the differences between the creditors' and the contributories' meetings, but to invoke the court's power to appoint liquidators for this liquidation of the Company.

Creditors' democracy

As pointed out by the learned author in *The Law of Insolvency* (supra) at §19-021: "One of the fundamental tenets of English insolvency law is that the ultimate control and power of decision in matters pertaining to the conduct of a debtor's insolvency should rest with the creditors since it is they, collectively, who are the financially interested parties."

As pointed out in §§37 to 43 above, the creditors by value had resolved to appoint the Nominated JLs as the HKJLs of the Company whereas the creditors by number had resolved to appoint Chau & Lau.

I have no disagreement with Mr Smith that when the statutory provisions refer to wishes of the creditors, they refer to creditors by value. This is with good reasons as "those with the greatest financial exposure to the debtor's insolvent failure should be accorded a proportionate voting power when matters are put to a vote in a general meeting." However, the learned author of *The Law of Insolvency* (supra) went on to say at §19-021 that such approach is "by no mean uncontroversial, because it can allow the outcome of the vote to be decided by a few creditors – or even a single creditor – to whom substantial debts are owed, even if a numerical majority of creditors would prefer a different result." This is exactly the situation in the present case when 54 creditors (being 27.41% of the creditors) are holding 81% of the value of the debt.

In fact, the concept of creditors' democracy used to refer to compound majority, ie a majority in number and in value, which was specified under the English Winding-Up Rules of 1949. The compound majority requirements were changed by the 1986 iteration of the Insolvency Rules which provided that a resolution at a creditors' meeting was passed when a majority in value of those present and voting, in person or by proxy, have voted in favour of the resolution. (See *The Law of Insolvency* (supra) at §19-021)

As such, creditors' democracy can be understood by reference to number as well as value of debt although I agree that modern insolvency legislations have adopted the reference by value of debt. However, creditors' democracy by reference to number should not be wholly disregarded as liquidation of a company concerns not only the major creditors, but all creditors. The court has to balance interests of all interested parties when dealing with applications before it in insolvency matters. The paramount consideration of the court is what is in the best interests of all persons interested in the winding-up. (See *Re Apastron Capital Ltd* [2022] HKCLC 715, and *Re*

Akai Holdings Limited (supra))

As pointed out by DHCJ William Wong SC in the Cai Shuyi case (supra) at §9(2) of the Judgment: “the creditors holding the majority vote do not have an absolute right as to the choice of liquidator because the appointment of a liquidator has to be conducive to both (i) the proper operation of the process of liquidation, and (ii) justice as between all those interested in the liquidation.”

Mr Smith and Mr Wong rightly point out that the nomination of the Nominated JLs was supported not merely by a simple majority but by an overwhelming majority (ie 81%) by reference to value of the debt. However, let us not forgetting that their nomination was opposed by an overwhelming majority (ie 72.08%) by reference to number of creditors. The Nominated JLs enjoy the support of major creditors but creditors with smaller debts do not seem to have confidence in putting the Nominated JLs in charge of this liquidation.

Criticism of the court on the Nominated JLs

The main concern of the OR causing her unable to support the appointment of the Nominated JLs is the criticism made by the court in the Recognition Decision on the Nominated JLs.

Mr Wong submits that the court had not criticized the Nominated JLs for lack of independence and impartiality. This is not quite right. The court observed in §8 of the Recognition Decision that: “To ensure that they could remain in office, by summons dated 14 January 2022, the PLs invited the Cayman court to list the winding up petition filed therein (“Cayman proceedings”) for hearing on 22 February 2022.” (emphasis added) The court considered that the Nominated JLs had put their own interest at the forefront.

Mr Smith submits that in the Recognition Decision the court criticized the Nominated JLs’ conduct in making the Recognition Application without implicating the competence and ability of the Nominated JLs in handling the liquidation of the Company. He submits that the court had recognized the possibility of the Nominated JLs being appointed as liquidators at the first creditors’ meeting or as special manager of the Company.

Mr Smith further submits that in the Recognition Decision, the court had emphasized the importance of holding a creditors’ meeting for the purpose of appointing liquidators. There is nothing in the Recognition Decision to suggest that the Nominated JLs should not be appointed if chosen at the meetings of creditors and contributories.

In the Recognition Decision, the court criticised the Nominated JLs (as the JOLs of the Company) in two aspects. One is on procedure and the other on handling. The criticism went beyond the matters referred to by Mr Smith.

In terms of procedure, the court criticized the Nominated JLs for seeking to bypass the statutory scheme of winding-up of Hong Kong by making the Recognition Application. Furthermore, when making the Recognition Application in HCMP 1556/2020 instead of in HCCW 51/2020, the Nominated JLs sought to make the Recognition Application to the forum of their choice.

In terms of handling, the court criticized the Nominated JLs for seeking to reverse the findings of the Hong Kong court made in the WU Judgment through the backdoor by asking the Cayman Court in the February Hearing to re-open the issues already decided by the Hong Kong court, and invited the Cayman Court to conclude that the Scheme was viable when the Hong Kong court expressly stated in §19 of the WU Judgment that the Hong Kong court did not think that the Scheme was feasible. The Nominated JLs did so without drawing the attention of the Cayman Court to the fact that the Nominated JLs were parties to the Petition and privies of the Company. The court was of the view that the Nominated JLs were bound by the findings in the WU Judgment but the representations and submissions made by the Nominated LJ to the Cayman Court in the February Hearing showed that they did not regard the WU Judgment and the findings therein were binding upon them or the Company.

The court found that the Nominated JLs made misrepresentations to the Cayman Court in the February Hearing for orders appointing them as the JOLs and seeking recognition of their appointment in Hong Kong. They also made misrepresentations and material non-disclosures when they made the Recognition Application on an ex-parte basis.

The court had made the following finding in the Recognition Decision:

“35.

... ... As is clear from the evidence filed on behalf of the JOLs [ie the Nominated JLs] in the Cayman proceedings (Lai 5th and Lai 7th) and the evidence filed in support of the [Recognition] Application (Lai 2nd) that Lai saw fit to ignore the Judgment and the findings contained therein and, instead, put forward the contrary views and contentions which the directors and/or the Investor [ie Mega as defined in §8 of the Recognition Decision] wanted him to say. This is despite the fact that such views and contentions are misleading or inaccurate”

Mega had denied in Yang’s Affirmation that Mega had given any instruction or exercise any influence on the decision-making of the JOLs. (§40 of Yang’s Affirmation) As the learned Judge pointed out in §§22(3) and 22(4) of the Recognition Judgment, a liquidator must not only be independent but seen to be independent and there is public interest in maintaining the public confidence in the independence of liquidators. Even if I accept Yang’s aforesaid evidence at its face value, because of their conduct in handling the February Hearing and the Recognition Application, the Nominated JLs were not seen to be independent in the eyes of the court.

The court took the view that the misconduct of the Nominated JLs found by the court was serious and should not be overlooked by the court. It was for the court to uphold the high standards required of officers of the court. The court concluded in the Recognition Decision that: “the conduct of the [Nominated JLs] has fallen far short of the standards one would expect from officers of the court.” (§§30 to 31 of the Recognition Decision)

It can be seen that although the court has not doubted the competence and professional abilities of the Nominated JLs in realising the assets of the Company in liquidation, the court did express serious concerns and doubts on whether the Nominated JLs would properly discharge their duties to the court and the creditors as a whole in the liquidation of the Company.

With the aforesaid serious criticism against the Nominated JLs, the reservation of the OR for appointing them as HKJLs is fully justified.

Restructuring of the Company

One of the major grounds relied on by Choi and Mega to urge this court to appoint the Nominated JLs as the HKJLs of the Company is its implication on the on-going restructuring of the Company aiming at preserving the listing status of the Company.

According to an announcement dated 22 July 2022 made by the Company (the “Announcement”), one of the conditions stated in the Guidance for resumption of trading of the Company’s shares at the SEHK was: “Having the winding up order against the Company withdrawn or dismissed and liquidators (provisional or not) discharged.” (the “Condition”) As a winding-up order once made may not be withdrawn or dismissed, it is not possible for the Company to comply with the Condition.

Mr Wong submit that as stated in the Announcement, the SEHK indicated that it might modify the Guidance and/or give further guidance if the situation changed. Mr Wong refers to the Da Yu Financial Holdings Limited case (supra) to submit that if the Scheme is approved by the creditors of the Company and the court, and the winding-up of the Company is stayed, the SEHK will modify the Condition from withdrawal / dismissal of the winding-up order to become stay of the winding-up order to enable resumption of trading of the Company’s shares.

Trading of the shares of the Company has been suspended since 4 October 2021. Choi stated in §30 of Choi’s Affirmation that: “According to the applicable rules and guidelines, the HKEX [ie the SEHK] may cancel the listing of the shares of the Company if the Company is suspended for a continuous period of 18 months. In other words, the Company has 18 months from the date of suspension to satisfy the relevant resumption conditions”. As trading of the Company’s shares has been suspended on 4 October 2021, the current deadline is 3 April 2023 when the Company will be delisted. Thus, there are only less than 4 months left from the date of hearing of the Application on 23 December 2022.

Both Mr Smith and Mr Wong submit that the Nominated JJs, having been appointed by the Cayman Court as the PLs on 20 May 2020 and as the JOLs on 22 February 2022, are familiar with the affairs of the Company. They have been working on the Scheme for 31 months. If others are appointed as the HKJJs of the Company, it will take time for the appointees to familiarize with the affairs of the Company and the Scheme. Furthermore, the Nominated JJs have the confidence and support of the “white knight”, ie Mega.

In Chan’s Affirmation, Chan said that Mega had sought view from its own financial adviser, Octal Capital Limited (“Octal”), on the prospect of the Company’s restructuring and resumption of trading in the event that the JOLs were appointed the HKJJs of the Company at the hearing of 23 December 2023. According to a letter dated 20 December 2020 issued by Octal to Mega (the “Letter”), Octal considered that if the restructuring work of the Company was to be resumed in the event that this court would appoint the JOLs (ie the Nominated JJs) as the HKJJs at the hearing held on 23 December 2022, the restructuring of the Company and resumption of trading of its shares remained reasonably feasible despite a short deadline. Octal then proposed a tentative work plan on the assumption that extension of resumption period would be granted by the SEHK until end of July 2023. In other words, Octal was of the view that even if the Nominated JJs were appointed as the HKJJs of the Company on 23 December 2022, there was no realistic chance for the Company to meet all the resumption conditions on or before 3 April 2023. Any hope of resuming trading of the shares in the SEHK would depend, inter alia, on “approval of the Stock Exchange in relation [to] the extension for the resumption period”. (See penultimate paragraph of the Letter) As such, the Company will not be able to meet the so called “3 April 2023 deadline” in any event irrespective of the result of the Application.

In §39 of Yang’s Affirmation, Yang stated that: “if the JOLs are appointed so that, subject to the approval of this Court and/or the committee of inspection, they can continue with their work towards fulfilling the resumption guidance, I am optimistic that there is a realistic chance of the Company fulfilling the resumption guidance by the resumption deadline.” Yang’s optimistic view is not shared by Octal, its financial adviser.

In §36 of the Recognition Decision, Linda Chan J pointed out that one of the bases upon which the PLs (ie the Nominated JJs) sought the orders from the Cayman Court at the February Hearing was that: “only the PLs had the requisite knowledge and resources to pursue the Scheme”. The learned Judge was of the view that such view was not well founded.

The learned Judge pointed out in §2 of the Recognition Decision that: “The Petition was presented in March 2020 and after multiple adjournments during a period of 20 months, the Company was still not able to satisfy the conditions imposed by the SEHK on resumption of trading or to put forward a scheme which had the agreement (in principle or otherwise) of the requisite majorities of creditors.” No information has been provided by any party to this court for the Application on further progress of the Scheme after the WU Order.

In Yang's Affirmation, Yang referred to a revised funding agreement entered between Mega and the Company on 22 April 2022 to update the terms of the original funding agreement for the purposes of catering the winding-up status in Cayman Islands and an extension letter entered between Mega and the JOL on 13 June 2022 to extend the date of fulfilment for the condition precedent set out in the revised funding agreement in relation to the deadline for obtaining a sanction order of the Cayman Court regarding the revised funding agreement. Yang did not refer to any progress in the Scheme. Instead, he stated that "upon the Company's winding up in Hong Kong, the directors of the Company can no longer exercise their powers as directors in Hong Kong and as such they are no longer in a position to drive the restructuring of the Company" and "the OR has taken no substantive steps other than convening the first meetings of creditors and contributories". (§§20 and 23 of Yang's Affirmation.)

In Lai's Affirmation, Lai also did not mention any progress of the Scheme since the WU Order. In the Letter, Octal stated that: "We are given to understand that the restructuring work of the Company is expected to be resumed in the event the High Court of Hong Kong at the determination hearing to be held on 23 December 2022 grants an order for the appointment of ...". (emphasis added). It seems that the Scheme has remains a standstill since the WU Order.

I agree that the Nominated JLs having worked on the Scheme prior to the WU Order had acquired certain background knowledge of the Company and the Scheme. They will have advantages in such respects when comparing with other proposed liquidators. However, I also bear in mind that the court had previously found that they were not the only persons who "had the requisite knowledge and resources to pursue the Scheme".

Future conduct of liquidation of the Company

Choi submits that: "even if the resumption of trading [of the Company's shares] may not be viable in the end, the Company would require the HK JLs to be appointed as soon as possible to actively preserve and realise the business and assets of the Company and its subsidiaries. Appointing the Nominated JLs who have already acquired knowledge about the Company would be cost-effective. Indeed, there is an obvious advantage in having the same liquidators appointed in both Hong Kong and the Cayman Islands, because of the benefits (both in time and costs) of sharing information and coordinating other activities." (§36 of Choi's Affirmation)

I agree that if there are two teams of liquidators for the Company, ie the JOLs appointed by the Cayman Court and the HKJLs appointed by the Hong Kong court. There will be issues of co-ordination and co-operation between the two teams of liquidators.

There is no dispute that the Company has operations in various other jurisdictions, including Cambodia, the Mainland, the BVI, and the Cayman Islands. The Nominated JLs are also JOLs of the Company appointed by the Cayman Court which is the court of the place of incorporation of the Company. I take note of observations made by the court in previous cases that liquidators appointed by the Hong Kong court might not be readily recognized in other jurisdictions. (See *Re China Huiyuan Juice Group Ltd* (supra), and *Grand Peace Holdings Ltd* (supra)) There will be

obvious advantage, in terms of time and costs, in realizing the assets of the Company in other jurisdictions if the Nominated JLs being the JOLs of the Company are also appointed the HKJLs of the Company.

Appointment of Liquidators

From the parties' submissions and the above analysis, it can be seen that the Nominated JLs are familiar with the affairs of the Company and the Scheme. They are also the JOLs of the Company appointed by the court of the place of incorporation of the Company. They will be more readily recognized in other jurisdictions for realization of the Company's assets in other jurisdictions. To appoint them as the HKJLs of the Company will certainly achieve certain saving of time and costs in the restructuring and/or liquidation of the Company. The Nominated JLs have support of the Company's majority creditors by value and the "white knight".

However, the majority creditors of the Company by number do not support the appointment of the Nominated JLs probably because of the criticism of the court made against them in the Recognition Decision.

The fact that the Nominated JLs in handling the February Hearing and the Recognition Application gave others an impression that they had, contrary to their duties, put forward "views and contentions which the directors and/or the Investor wanted him to say" will no doubt also cause concerns of other creditors that their interest will not be properly taken care by the Nominated JLs.

As officer of the court, the liquidator should maintain an even and impartial hand between all the individuals whose interests are involved in the winding-up. He must not only be independent but seen to be independent.

Liquidator must not allow his private interests to come into conflict with his duties as liquidator, and in discharging the duties, he must at all times act with complete impartiality as between the various persons interested in the property and liabilities of the company concerned.

Liquidators are officers of the court. As pointed out in §31 of the Recognition Decision: "It is for the court to uphold the high standards required of officers of the court, as they are the persons entrusted with the responsibility of protecting and furthering the interests of the creditors as a whole and are often conferred with extensive powers to facilitate the performance of their duties."

Liquidators do not owe duties only to the company concerned, its creditors and contributories. They also owe duties to the court as officers of the court. They have to command confidence of the court in appointing them to the position to entrust the liquidation of the company concerned in their hands. The court relies on the liquidators to uphold the integrity of our liquidation system. There is public interest in maintaining the public confidence in the independence of liquidators.

In this case, the court not only found that the Nominated JLs when acting as the JOLs of the Company had attempted to interfere with the rights of the creditors and bypass the statutory scheme of winding-up in Hong Kong by making the Recognition Application. (§1 of the Recognition Decision) The court further found that in handling the February Hearing, the Nominated JLs as the PLs of the Company saw fit to ignore the WU Judgment and the findings contained therein and put forward views and contentions to the Cayman Court which are misleading and inaccurate. (§35 of the Recognition Decision) The court concluded that the conduct of the Nominated JLs in handling the February Hearing and the Recognition Application “has fallen far short of the standards one would expect from officers of the court”. (§30 of the Recognition Decision)

Mr Smith submits that the court’s observations in the Recognition Decision “are not per se directly relevant to the competence and ability of the Nominated JLs in preserving and realising the business and the assets of Company in the liquidation.” (§16.5 of Skeleton Submissions of Choi Yuk Chor) I agree that the criticism made by the court in the Recognition Decision against the Nominated JLs were not on the competence and ability of the Nominated JLs in preserving and realising the assets of the Company in the liquidation. However, they do cause serious concerns on whether the Nominated JLs are suitable to be appointed as liquidators for this particular liquidation.

After carefully considering submissions made by all parties and the Recognition Decision and bearing in mind that the appointment of a liquidator has to be conducive to both (1) the proper operation of the process of liquidation; and (2) justice as between all those interested in the liquidation, I conclude that it is inappropriate to appoint the Nominated JLs as the HKJLs for the Company.

In accordance with the “Rules for Admission of Firms and Persons for Taking-up Appointment of Liquidators or Special Managers in Non-Summary Court Winding-up Cases” (the “Panel A Rules”), the OR proposes to appoint the next available appointment takers on the Penal A List as the HKJLs for the Company. Mr Smith raises the concern that such nomination had not been put to a vote in the creditors’ meeting.

In §11 of the Panel A Rules, it is provided that:

“If the OR has doubts about the suitability of a liquidator nominated by the creditors and contributories of their own choice, the OR may object to the appointment in the application to the Court for an appointment order and may recommend the ATs [ie firms and appointment takers] of the next eligible firm on the APIPCW [ie Administrative Panel of Insolvency Practitioners for Court Winding-Up] roster list to the Court for appointment as liquidators.” (Emphasis added)

This is what happen in the present case. It can be seen that in situation under §11 of the Panel A Rules (which is different from situation under §10(ii) of the Panel A Rules), the recommendation of the appointment takers is recommendation to the court, not recommendation to the creditors and/or contributories. The OR is right in saying that: “it is in accordance with the provisions of the Scheme [ie the Panel A Rules] that the Proposed Liquidators were not put to vote at the

Creditors' Meeting and the Contributories' Meeting and are recommended by the ORPL for appointment in the present application." (§6(iii) of OR-3) The criticism against the OR on this issue is misconceived.

However, in the present case, I am of the view that the other choice of the creditors, ie Chua & Lau, may be appointed the HKJLs of the Company. They have the support of majority creditors by number (ie 75.63%). The value of debts held by these creditors amounts to \$176,308,743.31. Such amount is substantial. There is no suggestion that any of them is not a fit and proper person to act as the HKJLs of the Company.

I note that extra time and costs will have to be incurred for Chua & Lau to familiarize with the affairs of the Company and the Scheme. I am of the view that these extra costs and time shall not be substantial as the JOLs as professional insolvency practitioners should be able to hand over documents and information in relation to the Company and the Scheme to Chua & Lau in a systematic and organized way. Bearing in mind that the restructuring of the Company, if proceed, will have to be completed beyond the current deadline of 3 April 2023 in any event, the extra time required for Chua & Lau to take up the Scheme should not prejudice its chance of success, if any. The "white knight" supports the Scheme for their commercial reasons. Such support should not be affected by Chua & Lau being appointed as the HKJLs of the Company.

If the restructuring of the Company does not materialise, Chua & Lau will have to co-ordinate with the JOLs for realizing the Company's assets in other jurisdictions. No doubt, this will lead to some extra costs as two teams of liquidators are involved. However, this will also have the benefits of check and balance between the two teams of liquidators to see that the affairs of the Company will be wound-up in a way best benefiting the creditors.

In the premise, I appoint Ms Chua Suk Lin Ivy and Mr Lau Kwok Hung, both of Crowe (HK) CPA Limited, as the HKJLs of the Company.

The COI

Both the creditors' meeting and the contributories' meeting resolved to form a COI for the liquidation of the Company. As pointed out in §51 above, the OR supports the appointment of a COI. I order that a COI be established for the liquidation of the Company.

For members of the COI, the creditors' meeting resolved to appoint four members, namely Able Express Asia Investment Limited ("Able"); (2) Choi Yuk Chor (ie Choi); (3) Hung Chung Shing ("Hung"); and (4) Wu Ka Wing ("Wu"). No candidate had obtained sufficient votes in the contributories' meeting for appointment to the COI.

The OR suggests to increase the number of COI members to seven for this liquidation to extend the coverage of the COI to include representatives of creditors of smaller debts. The OR suggests that candidates who had obtained the next three highest votes at the first creditors' meeting shall be appointed. They are Ma Oi May Amy, Huen Shun Ngor, and Yeung Yuk Ching. Other parties have no objection to the OR's proposal.

Able and Choi are creditors holding debts with value of \$10,000,000 or above. They represent creditors with large size debts. Hung and Wu hold debts with value between \$1,000,000 and \$10,000,000. They represent creditors of medium size debts. The three additional members proposed by the OR hold debts with value less than \$1,000,000. They represent creditors of small size debts. These seven creditors had received the highest votes by value in the first creditors' meeting for their appointment to the COI and they constitute a fair representation of creditors with debts of different sizes.

I am satisfied that the seven members for the COI proposed by the OR should be able to represent interest of creditors at different levels. I appoint all of them to the COI.

Other matters

I note that there is a pending application in the CA for leave to appeal against the Recognition Decision by the JOLs (ie the Nominated JOLs).

It is not for me to speculate on whether leave will be granted by the CA, or whether the intended appeal will be allowed; and if so, on what grounds. In so far as the Recognition Decision has not been overturned, the findings therein remain valid findings.

The court had received some faxes purported to have been sent by creditors of the Company to the court in respect of the Application. This court is not in a position to verify the authenticity of such faxes and the locus of senders. As none of these senders has attended the hearing of 23 December 2022 to make submissions to the court, I give no weight to such faxes.

Conclusion and costs

I order that Ms Chua Suk Lin Ivy and Mr Lau Kwok Hung, both of Crowe (HK) CPA Limited, be appointed the joint and several liquidators of the Company. I further make orders in terms of §§(ii) to (v) of the draft order submitted by the OR together with OR-1.

As parties attending hearings for the Application are to assist the court in determining the Application in a way best benefiting the liquidation of the Company, costs incurred by these parties for the Application shall be an expense of the liquidation and paid out of assets of the Company.

I make an order nisi that costs of the OR of and occasioned by the Application and costs for the Application incurred by all parties attending before the court at hearings for the Application shall be an expense of the liquidation and be paid out of assets of the Company. Without any disrespect to Mr Smith, I grant certificate for one counsel to the aforesaid parties.

The aforesaid costs order nisi shall become absolute 14 days after the date of this decision unless application by summons to vary the same is received by the court from any party within this 14-day period.

(Lai)

Master of the High Court

Ms Maureen Chan, of the Official Receiver's Office, for the Official Receiver and Provisional Liquidator

Mr Anson Wong Yu Yat, instructed by Cheung & Liu, for Mega Yield Enterprise Development Limited (a creditor)

Mr Clifford Smith SC and Mr Billy Liu, instructed by Nixon Peabody CWL, for Choi Yuk Chor (a creditor)

Mr Look Chan Ho, instructed by Chung's Lawyers, for the Nominated Liquidators

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