

HONG KONG / JUDGMENT

RE TEAM BRIGHT CORPORATION LTD

COURT

Court of First Instance

DECIDED

7 October 2010

CASE / FILE NUMBER

HCCW274/2010

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bjbjT~T~ HCCW 274/2010 IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 274 OF
2010

IN THE MATTER of TEAM BRIGHT CORPORATION LIMITED and IN THE MATTER of the
Companies Ordinance, Cap. 32

Before: Hon Harris J in Court Date of Hearing: 4 October 2010 Date of Reasons for Decision: 7
October 2010

REASONS FOR DECISION

On 4 October 2010 I made an order for the winding up of the Company. These are my reasons. On 23 June 2010 the Director of Legal Aid acting on behalf of the petitioner issued the present petition for the compulsory winding up of the Company, which carried on a business called Planet Yoga, which operated 3 yoga studios. The business has some notoriety. Its customers purchased membership subscriptions which entitled them to attend classes. According to a statements of affairs dated 23 June 2010 following the board passing on 13 May 2010 a section 228A resolution, a subject to which I return later, the Company had at 23 June a liquidation deficit of HK\$109,655,088.25, which seems an extraordinary amount given the nature of its business. The Company has apparently about 13,000 members a large proportion of which are owed money by the Company in respect of their subscriptions. They have been vocal in their complaints, which have been widely aired in the media. Recently the Commercial Crimes Bureau has arrested a number of people in connection with the Company's activities. The petition was presented at the instigation of the Director of Legal Aid to trigger payments to employees under the Protection of Wages on Insolvency Fund. The Director had indicated prior to the hearing to

the Official Receiver that he would seek a stay of the petition. The Official Receiver was represented at the hearing of the petition by Mr Glen, who argued that the winding up should be conducted under the supervision of the court and a winding up order made. The petitioner does not object to this course if the court considers it appropriate. The reason why the Official Receiver considers that the liquidation should be conducted under the supervision of the court is as follows. According to the summary of the statement of affairs provided to the Official Receiver on 27 July 2010 the liabilities of the Company which exceed HK\$114,000,000 include H\$79,837,725.96 of receipts in advance (presumably of subscriptions from members) and HK\$22,474,764 by way of directors loans. The 3 directors of the Company to whom this money is owed resigned on 26 April 2010 and were replaced (presumably at their instigation) by 2 new directors: Law Ka Fai and Honest Joy (Nominees) Limited (Honest Joy Nominees). Mr Law holds the entire issued share capital of Honest Joy Nominees and was its sole director. Honest Joy Nominees was the corporate secretary of Honest Joy Hong Kong Group Limited and Honest Joy Enterprise Consultants Limited. Danvil Chan, whose significance I explain later, was a director of Honest Joy Hong Kong Group Limited and held the entire issued share capital in Honest Joy Enterprise Consultants Limited. On 13 May the new directors of the Company resolved under section 228A to put the Company into liquidation. The Notice of Winding up and appointment of Danvil Chan as provisional liquidator were gazetted on 20 May 2010. At a meeting of creditors on 31 May 2010 Michael Chan was appointed liquidator. I was told by Mr Glen that when asked whether Michael Chan was related to Danvil Chan there was a reluctance to answer. I was told when I asked Mr Cheung who appeared for Michael Chan whether they are related that they are brothers. The relevance of this is that in 2009 the Official Receiver made successful applications to court in 7 liquidations for Danvil Chan s removal as liquidator for various different kinds of misconduct and on 24 June 2010 the Official Receiver took out an originating summons under section 168G(1)(1) of the Companies Ordinance for his disqualification from acting as a director of a company. The Official Receiver is concerned that Danvil Chan is involved in this matter. The Official Receiver questions why it was thought that there was no alternative to winding up the Company under section 228A. A more conventional route would have been for the Company to petition for its own winding up. The fact that the directors resigned to be replaced with a person connected with Danvil Chan followed shortly by the passing of the section 228A resolution suggests that there was a conscious decision based on advice from Danvil Chan and perhaps his brother Michael to try and avoid a compulsory liquidation and that this is real reason why section 228A was used. It clearly gives reason to question the impartiality of Michael Chan. These concerns have only been increased by the absence of any explanation by Danvil Chan as provisional liquidator or his brother as liquidator for what happened to the members subscriptions or the reason for the directors resignation. More generally the Official Receiver argues that the circumstances and surprising extent of the failure of the Company s business make it clearly more appropriate that the liquidation should be conducted under court supervision. Michael Chan was represented at the hearing by Mr Lawrence Cheung. Mr Chan objects to a compulsory winding up and asked for 28 days to file evidence. I asked Mr Cheung why Mr Chan actively opposes the petition rather than take a neutral stance and perhaps provide factual information he thought was relevant. Mr Cheung was not able to tell me. Mr Peter Yu

appeared for one of the directors and creditors, Mr Eric Levine, who apparently is owed HK\$14,626,716. He objects to a compulsory winding up on the grounds that appointment of a new liquidator would result in duplication of work and additional costs. He also wanted 28 days to file evidence. It seems to me that for the reasons advanced by the Official Receiver that this is a liquidation, which should clearly be conducted under court supervision and that a compulsory liquidation should be commenced as soon as possible. Nothing that either Mr Cheung or Mr Yu submitted suggests that any purpose will be served by giving their respective clients the opportunity to file evidence. The fact that they have done nothing in this regard to date and ask for such a long period of time in which to prepare what one would expect to be straightforward evidence only serves to suggest that they are trying to delay matters and only heightens the impression that Mr Michael Chan is not behaving impartially. (J. Harris) Judge of the Court of First Instance High Court Mrs Hadiwibawa of Legal Aid Department, for the Petitioner Mr Lawrence Cheung, instructed by Messrs Wong, Fung & Co., for the Liquidator Mr Peter Yu, instructed by Messrs Au & Associates, for the Creditor, Eric Mark Levine Mr Glen, for the Official Receiver

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