



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 329 OF 2021 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF SILVER BASE GROUP HOLDINGS LIMITED

**Appearances:** Mr. Jonathon Milne and Róisín Liddy-Murphy for the Petitioner

**Before:** The Hon. Justice David Doyle

**Heard:** 22 November 2021

**Judgment Delivered:** 22 November 2021

#### HEADNOTE

*Failure to give creditors adequate notice of the hearing of an application to appoint provisional liquidators for restructuring purposes – adjournment – information and documentation to creditors – sharing documentation with Hong Kong Court dealing with winding up proceedings – comity concerns*



## JUDGMENT

1. Before the court are two applications by Silver Base Group Holdings Limited (the “Company” and the “Petitioner”). On 11 November 2021, the Company filed a winding up petition pursuant to section 92 (d) of the Companies Act (2021 Revision) (the “Act”) on the ground that the Company was unable to pay its debts. On the same day, the Company issued a summons seeking the appointment of joint provisional liquidators for restructuring purposes pursuant to section 104(3) of the Act. I should add that the Company is incorporated under the laws of the Cayman Islands, is listed on the Hong Kong Stock Exchange with its main business conducted in Hong Kong and elsewhere within the People’s Republic of China and it is in that region where its creditors are located.
2. Before coming into Court, I had read into the documentation that had been filed and the emails that that had been sent to court administration this morning. This afternoon I have heard from Mr. Jonathon Milne for the Company, the Petitioner in this case. I have decided that it is not appropriate to proceed with the hearing this afternoon. I am going to adjourn the proceedings until 10am on Wednesday 1 December 2021 and I give reasons for that decision as follows:
3. As expressed during my exchanges with counsel, I am concerned over the lack of notice to creditors. Although I accept that the word “*ex-parte*” is used in section 104(3) of the Act, the developing case law stresses the importance of the court taking into account the position of creditors when a company is in the zone of insolvency. See for example the decision of Parker J in *CW Group Holdings Limited* (unreported 3 August 2018), the decision of Kawaley J in *ACL Asean Tower Holdco Limited* (unreported 8 March 2019), the decision of Smellie CJ in *Sun Cheong Creative Development Holdings Limited* (unreported 20 October 2020) and the decision of Segal J in *Midway Resources International* (unreported 30 March 2021). The latter authority was not in the bundle of authorities filed by the Petitioner but my personal assistant on my instruction brought it to the attention of the Petitioner’s attorney by email at 8.52am this morning.
4. There were further developments this morning including the filing of the first affirmation of Yung Yin Yee Jasmine affirmed in Hong Kong today 22 November 2021. Attached to it



was an announcement to the Hong Kong Stock Exchange dated 15 November 2021 giving in effect public notice of the petition for the winding-up of the Company and the application for the appointment of joint provisional liquidators. On page 3 it was stated “*The JPL Application is listed for hearing by the Cayman Court on 22 November 2021 (Cayman Islands time)*”. No time was in fact specified; there was no reference to 2.30pm in the announcement. I was also concerned to see at the top of page 1 of the announcement the following words “*Silver Base Group Holdings Limited (Provisional Liquidators Appointed) (For Restructuring Purposes) (Incorporated in the Cayman Islands with limited liability)*”. I require an affidavit or an affirmation to be filed before 2pm on Thursday 25 November 2021 providing an explanation for the inclusion of the words “*(Provisional Liquidators Appointed) (for Restructuring Purposes)*”. This court has not appointed provisional liquidators in respect of the Company.

5. My principal concern however was over the lack of notice to the creditors. My personal assistant notified the attorneys for the Petitioner by email dated Friday 12 November 2021 at 5pm that the hearing date was 22 November 2021 at 2.30pm. The attorneys acknowledged receipt of this email promptly at 5.02pm that day.
6. It appears that letters notifying some of the creditors of the time of today’s hearing were sent out, a week later, on Friday 19 November 2021. We are now Monday 22 November 2021. It appears that the letters were not forwarded by email. It appears they may have been delivered simply by post or by hand to the Hong Kong addresses specified. There is no real information provided in that respect, although I have copies of the letters with the addresses. Moreover it appears that some of the letters were not sent direct to creditors but rather to placing agents for onward transmission. There is no evidence before the court that such letters were forwarded on to creditors.
7. In the second affirmation of Dr Liang Guoxing affirmed in Hong Kong on 11 November 2021 at paragraph 66 he states that the Company wishes to “*remain transparent with the creditors and instill their confidence in the proposed debt restructuring process*”. Extremely short and in some cases no notice of today’s proceedings is unlikely to instill the confidence of creditors in the Petitioner’s proposals. The creditors should be given more time within which to communicate their views. The Company should positively and constructively engage with all creditors. Short notice on a Friday with a hearing on the

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Monday is, as I say, unlikely to inspire trust and confidence in the Company amongst the creditors.

8. At paragraph 51(e) of the Company's skeleton argument dated 17 November 2021 it was stated that: "*The Company has been consulting with bondholders on a regular basis and discussing plans to restructure the debt*" but no real detail was given. At paragraph 51(f) it was stated that: "*The creditors are on notice of the application for the appointment of provisional liquidators*". That notice went out to some creditors and placing agents last Friday for this Monday afternoon's hearing. That is woefully inadequate notice.
9. It is in these rather unsatisfactory circumstances that I adjourn the matters presently before the court (that is the winding-up petition and the application for the appointment of provisional liquidators) to 10am on Wednesday 1 December 2021.
10. The Company must forthwith notify all creditors of the adjourned hearing, the date and the time and indicate to them that the court has requested that the creditors make their views known by filing with the court and serving on the Petitioner's attorneys concise written submissions and in particular indicating whether they support, oppose or take a neutral stance in respect of the Company's application to appoint provisional liquidators for restructuring purposes and that should be done by 2pm on Monday 29 November 2021.
11. I also direct that the Company should provide to the Company's creditors copies of the documents filed with this court including pleadings, evidence, exhibits, skeleton argument, draft orders and all other documentation filed with the court. The creditors need to have that information to express their views on an informed basis. Moreover if the Hong Kong Court proceedings remain active then the Company should also share the documentation filed with this court with the Hong Kong Court.
12. If the Company wishes and is able to put more flesh on the bones of the restructuring proposals and to give an update as to the Hong Kong proceedings, it should do so by filing additional evidence before 2pm on Thursday 25 November 2021.
13. The Company must also before 2pm on Thursday 25 November 2021 file evidence which confirms and exhibits the documentation exhibited to the Written Resolution of the Directors of the Company dated 11 November 2021 (described in the Written Resolution



as “a draft Affirmation of Dr Liang Guoxing”).

14. I should also record in order that the Petitioner may consider the position that, as would have been apparent from my exchanges with counsel, I have comity concerns in respect of the Hong Kong proceedings. I would be reluctant to in effect stay them without further detailed consideration but I keep a mind open to persuasion and will hear further argument on that issue at the adjourned hearing. It may be that I could, subject to considering the view of the creditors, either further adjourn until after 29 December 2021 when a winding-up petition in respect of the Company is before the Hong Kong Courts or I could appoint joint provisional liquidators but exclude any pre-existing Hong Kong proceedings from the stay. These points will have to be considered further and I stress that I keep a mind open to persuasion.
15. Those are the decisions I have arrived at this afternoon for the brief reasons I have specified.
16. The following Order was made:
  - (1) The hearing of the JPL Application be adjourned until 10am on 1 December 2021;
  - (2) All known creditors of the Company shall be given written notice of the adjournment and the return date (including the time of the hearing) specified at paragraph 1 of this Order forthwith;
  - (3) All known creditors of the Company shall be provided with copies of the documents filed with this Honourable Court in connection with the Petition and the JPL Application as soon as practicable;
  - (4) If Hong Kong winding-up proceedings with cause numbers HCCW 372 of 2021 and HCCW 385 of 2021 remain active, the Hong Kong court shall be provided with copies of the pleadings and all evidence filed by the Company with this Honourable Court;
  - (5) The Company shall file additional evidence by 2pm on 25 November 2021 to address at least the following points: (a) provide an update on any and all winding-up proceedings presented against the Company in Hong Kong; (b) provide further detail

- in relation to the Proposed Restructuring Plan (as defined in the Second Affirmation of Dr. Liang Guoxing); (c) confirm and exhibit the documentation which was exhibited to the written Board Resolution dated 11 November 2021 (described in the written Board Resolution as “a draft affirmation of Dr. Liang Guoxing”); and (d) provide an explanation for the reference to “*(Provisional Liquidators Appointed)*” in the header of the announcement on the Hong Kong Stock Exchange dated 15 November 2021;
- (6) Any creditors of the Company may file and serve on the Company’s Cayman Islands attorneys (Conyers Dill & Pearman) concise written submissions by 2pm on 29 November 2021 which, in particular, indicate whether the creditor supports, opposes or remains neutral in relation to the JPL Application; and
- (7) Costs shall be paid out of the assets of the Company.

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**THE HON. JUSTICE DOYLE**  
**JUDGE OF THE GRAND COURT**