

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
IN THE FINANCIAL SERVICES DIVISION**

Cause No: FSD 75 of 2021 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)
AND IN THE MATTER OF CHINA RESOURCES AND TRANSPORTATION GROUP LIMITED**

Appearances: Mr. Tony Heaver-Wren of Appleby (Cayman) Limited for
China Resources and Transportation Group Limited

**No Appearance by or on behalf of Mighty China
International Limited**

Before: The Hon. Justice David Doyle

Heard: 26 May 2021

Judgment Delivered: 26 May 2021



HEADNOTE

Dismissal of winding up petition – Costs - Companies Act (2021 Revision)

JUDGMENT

Introduction

1. Presently before the court is a winding up petition. Some of the history to the proceedings is outlined in my judgment delivered on 23 April 2021 when I dismissed an application by Mighty China International Limited (the “Petitioner”) to appoint joint provisional liquidators of China Resources and Transportation Group Limited (the “Company”) for the

brief reasons stated in that judgment. On 23 April 2021, I also made an order adjourning the winding up petition to today Wednesday, 26 May 2021 for hearing.

2. By summons dated 12 May 2021 Conyers Dill & Pearman attorneys for the Petitioner applied for an Order that upon compliance of the requirements of Order 67 Rule 6 of the Grand Court Rules, Conyers Dill & Pearman ceased to be the attorneys of record acting on behalf of the Petitioner in this matter. The application was supported by the affirmation of Norman Hau dated 12 May 2021. In that affirmation Mr Hau stated he was a partner of the Hong Kong offices of Conyers Dill & Pearman. It was further indicated that following the Orders on 23 April 2021 Conyers Dill & Pearman reported the outcome of the hearing by email to the Petitioner on the same day and had a conference call with the Petitioner on 26 April 2021 during which the outcome of the hearing on 23 April 2021 was communicated to the Petitioner. During the call Conyers Dill & Pearman stressed that it was necessary for the Petitioner to give instructions as soon as practicable. Since 26 April 2021 however despite multiple attempts Conyers Dill & Pearman have been unable to obtain any instructions from the Petitioner. Copies of the Orders and the judgment were sent to the Petitioner by email. There is also reference to the failure of the Petitioner to pay legal fees incurred as a result of the proceedings. Conyers Dill & Pearman seek a declaration that it has ceased to act in the proceedings.
3. By letter dated 3 May 2021 Appleby (Cayman) Limited the attorneys acting for the Company purported to make a letter application for a Validation Order pursuant to section 99 of the Companies Act (2021 Revision) and Order 19 Rule 4 of the Companies Winding Up Rules 2018. The letter application was supported by the second affirmation of Tsang Khan Ching, David dated 29 April 2021 indicating that the Validation Order was requested in respect of payments made by the Company in the usual course of business and the payment of professional fees principally to fund the Company's defence to the winding up petition. Appleby (Cayman) Limited were directed to file a skeleton argument in support of their application but no skeleton appears to have been filed as the matter was overtaken by events as specified below.
4. By email dated 18 May 2021 Chiu Ling Yan stated to be a director of the Petitioner communicated with the court indicating that their "previous Attorneys-at-Law has (sic) already ceased to act on behalf of our company". The communication continued:



“As a result of reaching settlement with the Company, we write to inform His Lordship that:

- 1. We will not be seeking the winding up of the Company and any relief in the Winding Up Petition.*
 - 2. We will not make any presentation or argument at the hearing on 26th May 2021 at 9:30 a.m.*
 - 3. Therefore, we will not attend the hearing on 26th May 2021.”*
5. There was no appearance by or on behalf of the Petitioner at the hearing this morning.

Submissions

6. Mr Tony Heaver-Wren of Appleby (Cayman) Limited appeared for the Company and indicated that the Petitioner has simply abandoned its petition and that costs should follow the event. There has been no agreement between the parties on costs.

Determination

7. I have considered all that has been put before the court and I am very grateful to Mr Tony Heaver-Wren for his assistance.
8. I make a declaration as requested by Conyers Dill & Pearman to the effect that Conyers Dill & Pearman have ceased to be the attorneys acting on behalf of the Petitioner in this matter.
9. I take no action in connection with the Company’s letter application for the Validation Order as that is unnecessary.
10. No-one has appeared today to press for a hearing of the winding up petition and the Petitioner does not wish to proceed with the hearing. By email dated 18 May 2021 4:25pm Conyers say that they did not receive instructions to advertise the hearing of the petition and are not aware of any advertisement having been published. I dismiss the winding up petition.
11. I now turn to the issue of costs.

12. The Petitioner has in effect discontinued the winding up proceedings and has been unsuccessful in obtaining the relief it was seeking namely (1) the appointment of provisional liquidators and (2) a winding up order. There is no evidence before me that the Petitioner has obtained any benefit from instigating these proceedings. For example, there is no evidence that the debt due to the Petitioner has been paid. Indeed it is not due for payment until 15 April 2024.
13. As has previously been said discontinuance usually equals defeat, effectively, or the acknowledgment of a defeat or a likely defeat (paragraph 39 of *Jayhawk Capital Management LLC v Global Cord Blood Corporation* 21 May 2021, McMillan J). The Petitioner is plainly the unsuccessful party, and in such circumstances should pay the costs of the Company of and incidental to these proceedings including the application for the appointment of provisional liquidators and the failed application for a winding up order. These costs to be taxed on the standard basis in default of agreement.
14. I would be grateful if Mr Tony Heaver-Wren (the only attorney who presently appears before me) could prepare the draft Orders setting out my declaration in connection with Conyers Dill & Pearman coming off the record and also an Order dismissing the winding up petition and granting costs against the Petitioner in favour of the Company on the standard basis in default of agreement in respect of the failed applications to appoint provisional liquidators and for a winding up order.

David Doyle

The Hon. Justice David Doyle
Judge of the Grand Court