IN THE GRAND COURT OF THE CAYMAN ISLANDS FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 247 OF 2019 (NSJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF BITMAIN TECHNOLOGIES HOLDING COMPANY

BETWEEN:

GREAT SIMPLICITY INVESTMENT CORPORATION

PLAINTIFF

AND

BITMAIN TECHNOLOGIES HOLDING COMPANY

DEFENDANT

RULING FOLLOWING HEARING ON 28-30 JULY 2020

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1. During the hearing on 28-30 July 2020, I heard five applications, two by the Defendant and three by the Plaintiff:

   (a). the Defendant's application by summons dated 8 May 2020 for amended directions and a (retrospective) extension of time for discovery by lists of documents, and other procedural steps towards trial (the ***Defendant's Extension of Time Application***).

   (b). the Defendant's application for an order that the Plaintiff pay the costs on an indemnity basis of the Defendant's summons dated 8 May 2020 for security for

costs (which relief the Defendant was no longer seeking in view of security offered by the Plaintiff and accepted by the Defendant) (the ***Defendant's Security For Costs Application***).

(c). the Plaintiff's application by summons dated 10 June 2020 for an order striking out Section F of the Defence and Counterclaim pursuant to GCR Order 18, rule 19 and/or the Court's inherent jurisdiction (the ***Plaintiff's Strike Out Application***).

(d). the Plaintiff's application for directions by paragraph 3 of its summons dated 10 June 2020 that there be a trial of certain preliminary issues under GCR Order 33, rule 4(2) or for a split trial (the ***Plaintiff's Preliminary Issues Application***)

(e). the Plaintiff's application made by paragraphs 1 and 2 of its summons dated 10 June 2020 (without prejudice to its primary position in response to the Defendant's 8 May 2020 summons and on the Plaintiff's other applications) for an unless order against the Defendant, and for amended directions (including immediate discovery by the Defendant of certain classes of documents on a staged basis) in the event that the Court is minded to grant any extension of time to the Defendant (the ***Plaintiff's Application for Further Procedural Directions***).

2. At the hearing the Plaintiff was represented by Mr Alex Potts Q.C. of Conyers Dill & Pearman and the Defendant was represented by Mr Stephen Moverley Smith Q.C. (instructed by Ogier).

3. At the conclusion of the hearing I gave directions for the simultaneous filing of further written submissions by both parties by 4pm Cayman time on Thursday 6 August with respect to the Defendant's Security For Costs Application (various additional authorities had been produced by the Defendant shortly before the start of the hearing and extensive oral submissions made by both parties in relation to those and other points of law which had not been addressed by the parties' skeleton arguments). In addition, I also gave directions for the sequential filing of further written submissions, starting with written submissions by the Plaintiff, in relation another issue which emerged as significant

during the hearing (as a result of issues and concerns raised by me) and which had not been covered in the skeletons. This is the issue of whether it is necessary or appropriate for Victory Courage Limited ***(VCL)***, a non-party shareholder in the Defendant who was referred to in paragraph 12 of the Plaintiff's Statement of Claim, to be joined as a party (the ***VCL Joinder Issue***). The direction requires the Plaintiff to file its further written submissions by 4pm Cayman time on Wednesday 5 August; for the Defendant to file submissions by 4pm Cayman time on Tuesday 11 August and for the Plaintiff to file submissions in reply, if it wishes to do so, by 4pm Cayman time on Monday 17 August.

4. I indicated at the conclusion of the hearing that I would reserve judgment on the Defendant's Security For Costs Application and on matters affected by the VCL Joinder Issuer but subject to those qualifications I was prepared to give judgment on aspects of the other applications.

5. I have decided that the Defendant's Extension of Time Application should be granted in so far as it relates to the timetable for the exchange of lists and inspection. I consider that it is appropriate at this stage to give directions for the giving of discovery by the exchange of lists (by 4pm on 28 August 2020) and inspection (by 4pm on 4 September 2020). This will allow the critical next step in these proceedings to proceed and give the Plaintiff an opportunity to review the key documents which it has been seeking for some time.

6. I do not however consider that it is appropriate to decide the Plaintiff's Strike Out Application before having had an opportunity to review the further written submissions on the VCL Joinder Issue. As I explained during the hearing, it seems to me to be arguable that VCL should be joined as a defendant to the Plaintiff's (alternative) claim as set out in paragraph 12 of the Statement of Claim. Paragraph 12 asserts that "*the resolution passed at the Class B Meeting to reduce the voting rights of the Class B ordinary shares from 10 votes to one vote per share was invalid*" on the ground that when voting VCL was under a duty to vote in the interests of the class as a whole, which VCL failed to do. If VCL is joined, it may then be the proper party to file a defence to the paragraph 12 claim and this may obviate the need or remove any justification for the Defendant to defend or respond to that claim, as it currently does in Section F of its Defence and

Counterclaim (or to assert and rely on the subject matter of Section F in its counterclaim). As a result, the VCL Joinder Issue impacts on the Plaintiff's application to strike out Section F of the Defence and Counterclaim (in the Plaintiff's Strike Out Application).

7. Nor do I consider it appropriate to decide the Plaintiff's Preliminary Issues Application or to give further procedural directions before seeing the further written submissions on the VCL Joinder Issuer. Until resolution of the VCL Joinder Issue it is unclear who is to be the proper defendant to the paragraph 12 claim. If VCL is to be joined, it is likely that any decision on whether to order preliminary issues or a split trial will need to wait at least until after VCL has filed a defence and possibly until after the service of witness statements. Until VCL files a defence, assuming it is to be joined, the issues in dispute with respect to the paragraph 12 claim will not be established or clear. It is therefore not possible to form a view as to whether there would be advantages to and sufficient reasons justifying a trial of preliminary issues of law or fact or a separate trial of the Plaintiff's other claims before a trial of its paragraph 12 claim. Furthermore, a decision on the merits of a trial of preliminary issues or a split trial may be premature until after the service of witness statements as the decision on a split trial may be affected by whether there will be witnesses and evidence in common both to the paragraph 12 claim and the other claims relating to the absence of or mechanics of giving of notice. I would note that I can see that it is arguable that at least some of the Plaintiff's other claims - what I would label the no notice and defective notices claims – as currently drafted raise discrete issues of fact and law relating to the absence of or the mechanics of giving notice which are separate from those raised by the paragraph 12 claim. Accordingly, I will reconsider what procedural directions to make beyond the exchange of lists and inspection and whether to make any orders on or in relation to the Plaintiff's Preliminary Issues Application after receiving the further written submissions on the VCL Joinder Issue.

8. As regards the Defendant's Extension of Time Application, I accept the Defendant's submissions on this and that the Defendant has established by evidence that there are proper grounds and reasons justifying the need for the further time it seeks. I reject the criticisms made by the Plaintiff. My main reasons are summarised as follows:

(a). I have carefully reviewed and scrutinised the evidence filed by both the Defendant and the Plaintiff, considered the status and weight to be given to the evidence, taken into account the prejudice to the Plaintiff of giving the Defendant the further time it seeks and considered what is required by the overriding objective.

(b). I have noted and taken into account the conflicting evidence given as to PRC law. I am not in a position to, and do not, decide issues of PRC law but do not consider it necessary to do so. On an application for an extension of time for the giving of discovery where one of the reasons given by the party seeking the extension is that further time is needed and in all the circumstances reasonably required because a document review by its PRC lawyers is necessary to in order to manage the risk of breaches of PRC law including the criminal law, the Court is concerned to see whether there is sufficient and cogent evidence demonstrating that such a review is reasonably necessary and that the party has behaved reasonably and acted properly and promptly. In my view, despite the different and critical views of the Plaintiff's witnesses, the evidence shows that the Defendant satisfies this standard and these requirements.

(c). the Defendant has demonstrated that it has been subject to a combination of circumstances beyond its control which have resulted in further delays and difficulties affecting the collection and review of documents required to be discovered. In particular, the continuing disruption caused by travel, access and self-isolation restrictions resulting from the Covid 19 pandemic have impacted on the Defendant, its staff and advisers; the (admittedly short) disruption to the activities of the Defendant's discovery services provider resulting from a publicly disclosed cyberattack and the process for reviewing documents to ensure that they can be discovered without there being a risk of a breach of relevant PRC law. In my view, the evidence demonstrates that the Defendant's concerns regarding the risk of a breach of PRC law are real, based on bona fide and detailed advice of reputable lawyers including PRC lawyers and the approach it has taken is reasonable in the circumstances. I am not persuaded that the fact that there are

different views regarding the existence of a real or as to the level of risk involved given by the Plaintiff's witnesses changes this conclusion.

(d). at the hearing on 9 March, 2020 (the ***March Directions Hearing***) there was clear evidence of the adverse impact that the Covid 19 virus was having on the Defendant that was sufficient to justify giving the Defendant further time. I made it clear then that I accepted that the impact of the virus was serious and that while it was important that the litigation process proceeded and did so as promptly as possible it was not possible in a fast moving situation to foresee with precision what difficulties would emerge and that it was reasonable to anticipate that further time may be required if there were further real and genuine problems. On that basis I made an order for liberty to apply.

(e). I ordered, at the March Directions Hearing and in the directions order dated 9 April 2020, that exchange of lists take place on 13 May. I note that the Defendant notified the Plaintiff of the problems it was dealing with and the need for further time on 23 April 2020 (in Ogier's letter to Conyers of that date), nearly three weeks before the 13 May deadline. In that letter, Ogier explained that the Defendant anticipated that the its substantive relevance/privilege review would be completed by 14 August and proposed that lists of documents be exchanged by 4pm (I assume Cayman time) on 28 August with inspection taking place seven days thereafter, by 4pm on 4 September. The Defendant's position and timetable has been consistent and not changed since that time.

(f). I do not consider that the prejudice to be suffered by the Plaintiff as a result of the granting the Defendant's application outweighs the adverse impact on the Defendant of dismissing the application (or the other requirements of the overriding objective). The delay between 13 May and 28 August is material but in the circumstances the impact on the Plaintiff will not be serious or substantial. The delay in providing discovery has slowed down the progress of these proceedings and made it more difficult for the Plaintiff to decide precisely how to formulate and plead its claim. The Plaintiff understandably wishes to make rapid progress with

these proceedings and complains of persistent delay and evasive and uncooperative conduct by the Defendant. It also argues that there is a need for these proceedings (which put in issue the validity of important corporate actions, the authority of the directors and the corporate governance of the Defendant, a very substantial Cayman Islands company that wishes to proceed with a public listing) to progress to a hearing rapidly and therefore any delays are to be viewed as seriously prejudicial and to be rarely permitted. The evidence does show that the Defendant could have been more cooperative and helpful by providing at an early stage (many months ago) copies of the core documents relating to the notices and, in my view, in accordance with its duties to help the Court to further the overriding objective it should have been. The early delivery of the core documents would have been of considerable assistance to the Plaintiff and promoted the efficient and cost effective conduct of this litigation. However, I do not consider this failure to be so serious and requires to be given such weight as to justify or require, when weighed against the other factors, a dismissal of the Defendant's Extension of Time Application. It may be of relevance however on some future costs application. Furthermore, the Plaintiff failed to suggest a phased or staged discovery process once it was told of the Defendant's need for further time and both parties have failed to cooperate in relation to the e-discovery process and agree a suitable e-disclosure protocol in advance of document collection. While I accept that this Court will give considerable weight to and take into account the need for litigation in this Court relating to Cayman Islands' companies to be conducted efficiently and promptly, that is only one factor to be considered along with the other elements of the overriding objective including the important requirement to deal with a cause justly. I would also note that if there is evidence justifying immediate intervention by the Court because of action proposed or threatened by the directors of the Defendant whose authority is challenged or by shareholders whose shareholding is subject to the present dispute, it remains open to the Plaintiff to apply for interlocutory relief, which it has so far decided not to do.

(g). I do not consider, for the reasons given by the Defendant, that ordering discovery in two phases at this point in the manner proposed by the Plaintiff in its summons

dated 10 June 2020 will assist with the efficient and cost effective conduct of the proceedings or result in a benefit to the Plaintiff sufficient to outweigh the risk of further delays and cost.

(h). I also do not consider that the Defendant's conduct justifies the making of an unless order at this stage. But I would say that I do not expect to see any further extensions, or further delays. The Defendant must now proceed expeditiously and do everything within its power to give discovery in accordance with the revised timetable it has requested and I have ordered.

(i). I would add this. I recognise that these proceedings arise out of a hotly contested and deeply felt dispute where the battle lines have been firmly drawn for some time but in my view both parties would benefit from increased cooperation between their legal advisers.

The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands

3 August 2020