



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

FSD 284 OF 2023 (DDJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF CHINA AOYUAN GROUP LIMITED (中國奧園集團股份有限公司)

Before: The Hon. Justice David Doyle

Appearances: Tom Smith KC, Ben Hobden and Caitlin Murdock of Harneys on behalf of the Company

Date of hearing: 31 October 2023

Ex Tempore Judgment delivered: 31 October 2023

Transcript of Judgment circulated: 1 November 2023

Transcript of Judgment approved: 2 November 2023

HEADNOTE

Determination of issues in respect of the convening of a meeting to consider a proposed scheme

JUDGMENT

Introduction and issues

1. I am grateful to Tom Smith KC, Ben Hobden and Caitlin Murdock who appear on behalf of China Aoyuan Group Limited (the “Company”) for their considerable assistance to the court. The skeleton argument dated 25 October 2023 of all three and the oral submissions of Mr Smith have helped me to focus on the main issues which arise for today’s hearing. These are helpfully summarised at paragraph 86 of the skeleton argument as follows:
 - (1) notice to creditors of the hearing;
 - (2) class composition;
 - (3) jurisdiction;
 - (4) roadblock;
 - (5) voting on the scheme; and
 - (6) notice, timing and conduct of the scheme meeting.
2. I note that the proposed scheme is conditional on all schemes in the Cayman Islands, Hong Kong and the BVI, being duly sanctioned by the relevant courts. The Company before me today is a Cayman company which is the ultimate parent company of the Group, a Chinese property developer that focuses on the development and sale of residential and commercial properties. As is well known, that sector has had troubled times of late. The real estate industry in the People’s Republic of China suffered a downturn from around 2020. Earlier this year the Company defaulted on certain debt and entered into negotiations in an effort to implement a financial restructuring to allow the Group to continue to trade on a going-concern basis. The total outstanding principal amount of the debt subject to the schemes was approximately US\$6.25 billion as at 30 June 2023.
3. If the scheme is not sanctioned it is likely that the Company will enter into liquidation and creditors (regardless of whether they hold ICA Debt or non-ICA Debt), on an insolvent liquidation, would only receive between 3.7% and 4.2% on their existing debt compared to an estimated 36.1% recovery if the scheme and restructuring are successful. I note the liquidation analysis dated 16 October 2023 prepared by Kroll at Appendix 7 of the Explanatory Statement and I note the limitations specified in the Kroll report. The Board considers the liquidation analysis is the likely alternative in the event that the scheme and the restructuring are unsuccessful.

4. I have considered the Explanatory Statement in relation to the proposed scheme at exhibit CZB-1.

Relevant law

5. I have considered section 86 of the Companies Act, Practice Direction No 2 of 2010 and the relevant authorities.

Primary purpose of hearing

6. The primary purpose of this hearing today is to consider the issue of class composition. The court can also consider any issues as to jurisdiction (including international jurisdiction and effectiveness).
7. The court may also consider any obvious “showstoppers” or “roadblocks”.
8. I appreciate that my function today is not to consider the merits or fairness of the proposed scheme as such will be dealt with at any future sanction hearing if the scheme is approved by the statutory majority of creditors.
9. The court may however, at this early stage, review the Explanatory Statement filed to ensure that there are no manifest deficiencies but it is not my function at this initial hearing to approve the contents of the Explanatory Statement.

Determination of the issues

10. I deal with the various relevant issues as follows.

Notice

11. I am content that sufficient notice of the scheme and this convening hearing has been duly given.

Class composition

12. I note the basic principles in respect of class composition – differences in rights do not necessarily fracture the class and it is important to avoid unnecessary class proliferation. The legal

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submissions, both in writing and orally, in this case covered this issue extremely well if I may say so. Paragraph 3.2 of Practice Direction No 2 of 2010 summarises the position as follows:

“In every case the Court will consider whether it is appropriate to convene class meetings and, if so, the composition of the classes so as to ensure that each meeting consists of shareholders or creditors whose rights against the company which are to be released or varied under the scheme, or the new rights which the scheme gives in their place, are not so dissimilar as to make it impossible for them to consult together with a view to their common interest...”

13. In this case the Company seeks an order that the Scheme Creditors vote in a single class meeting, since the rights of the Scheme Creditors are sufficiently similar to make it possible for them to consult together with a view to their common interest. As Mr Smith puts it they, the ICA debtors and the non-ICA debtors, are “all essentially in the same boat”, as the security (held by the ICA debtors) would be worthless in a liquidation scenario.
14. I agree that the rights are sufficiently similar across all the Scheme Creditors to allow a single scheme meeting to be held. I considered *Re Ocean Rig UDW* 2017 (2) CILR 495 – the helpful judgment of Parker J. I am content with a single class meeting and I note Harris J was also content with such at the hearing which took place in Hong Kong earlier today.
15. Nothing I have read or heard in respect of the RSA Fee, the Work Fee, or the Adviser Fees troubles me in respect of any class issues. There is no justification to fracture the single class approach in this case.
16. I also note the position in respect of access to information. There is no discrimination and no issues to detract from a single class approach.
17. In respect of sanctions no problematic issues appear to arise.

Jurisdiction

18. I am satisfied as to the court’s jurisdiction. The Company is within the definition of company in section 86(5) of the Companies Act and the scheme is a compromise or arrangement.

Roadblock

19. I agree that there is no obvious roadblock or showstopper on the scheme which would unquestionably lead the court not to sanction the scheme. There is no obvious defect or reason to prevent the scheme going forward, if the requisite majority vote is obtained in its favour.
20. There is nothing in what I have read or heard today that leads me to the view that the scheme will not have international effectiveness in the relevant jurisdictions, and I look forward to additional submissions on that point in due course at the sanction hearing, if the scheme is approved by the statutory majority of creditors. There is no obvious reason today as to why scheme would not be recognised internationally.

Voting on the scheme

21. I note the position in respect of voting on the scheme. I also note, in the context of the law in respect of schemes, the position of beneficial noteholders as Scheme Creditors. I note the authorities given by way of example at paragraph 159 of the skeleton argument, including *Castle Holdco 4 Ltd* [2009] EWHC 3919 (Ch) (Norris J) which I touched upon at paragraphs 92-93 of my judgment in *Shinsun Holdings* (FSD unreported judgment 21 April 2023). I note that it will be the beneficial noteholders of the existing notes who will be the Scheme Creditors and who will exercise the voting rights. The relevant trustee and the common depositories will not exercise any voting rights at the Scheme Meeting. There can be no double counting. In the context of schemes, it is the votes of the person with the ultimate economic interest in the debt that is relevant.

Notice, timing and conduct of the scheme meeting

22. I have no substantive issues with the proposed notice, timing and conduct of the creditors' meetings.

Order

23. In summary, I am content to make an order substantially in terms of the draft, such draft to include the amendments specified during my exchanges with counsel.
24. The following order was made:

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- “1 The Company has permission to convene a single meeting (the ***Scheme Meeting***) of certain of its creditors (the ***Scheme Creditors***) for the purpose of considering and, if thought fit, approving, with or without modification, the Scheme.
- 2 The Scheme Meeting shall be held at the offices of Linklaters at 11th Floor, Alexandra House, Chater Road, Hong Kong (or if such venue is not available, such other suitable venue in Hong Kong or the Cayman Islands as the Chairperson, as defined at paragraph 11 below, may select) on 28 November 2023 commencing at 8 pm Hong Kong time, with any adjournment as may be appropriate, with a live video conference linked to the offices of Harney Westwood & Riegels... at 3rd Floor, Harbour Place, 103 South Church Street Grand Cayman PO Box 10240, KY1-1002 Cayman Islands.
- 3 The Company has permission to set a record date of 20 November 2023 following the close of business and cessation of the Clearing Systems (the ***Record Date***) and a reference date of 30 September 2023 (the ***Reference Date***) for the purpose of determining each Scheme Claim. The Scheme Creditors will be assigned a number of votes based on its Scheme Claims calculated at a value equal to the sum of:
- (a) the outstanding principal amount of the Scheme Claims as at the Record Date; and
 - (b) all accrued and unpaid interest relating to such Scheme Claims, up to (and including) the Reference Date.
- 4 The Company has permission to set a time of 4 am Cayman Islands time on 20 November 2023, the equivalent being 5 pm Hong Kong time on 20 November 2023 (the ***Voting Instruction Deadline***) as the latest time by which (a) Morrow Sodali Limited (the ***Information Agent***) must receive a valid Account Holder Letter or Lender Proxy Form (as referenced in paragraph 7 below from Scheme Creditors who are not Sanctions-Affected Scheme Creditors (as defined in the Scheme)), and (b) Madison Pacific Corporate Services Ltd. must receive a valid Blocked Scheme Creditor Form (as referenced in paragraph 7 below) from Blocked Scheme Creditors in order for the Scheme Creditors' voting instructions to be taken into account for the purposes of the Scheme Meeting.

- 5 At least 21 days before the day appointed for the Scheme Meeting, a copy of the notice of Scheme Meeting (the *Scheme Meeting Notice*) shall be circulated to the Scheme Creditors:
- (a) by publication of the Scheme Meeting Notice on the transaction website: <https://projects.morrowsodali.com/Aoyuan> (the *Transaction Website*) and through a public announcement published on The Stock Exchange of Hong Kong Limited;
 - (b) by the Information Agent giving notice through the Clearing Systems and by sending the notice via email to each person whom the Company believes is or may be a Scheme Creditor, and for whom the Information Agent has a valid email address; and
 - (c) in respect of Scheme Creditors under the Existing Syndicated Facilities, Existing Bilateral Facilities (SBLC), Existing Other Offshore Financings, Existing Onshore Facilities, Existing Private Loans and USD100m Noble Prestige Facility (each as defined in the Scheme), by the Company or its advisers to the email address or by prepaid surface mail (in respect of Hong Kong and Macau) or ordinary airmail (to other jurisdictions) to registered or the last known address of such Scheme Creditors in accordance with the notice provisions of the underlying finance documents.
- 6 The Scheme Meeting Notice shall be in substantially the same form as that appended to the Explanatory Statement (Part B of Appendix 4) exhibited in Exhibit CZB-1 to the First Affirmation of Mr. Chen Zhi Bin.
- 7 When distributing the Scheme Meeting Notice to the Scheme Creditors in accordance with paragraph 5 above, electronic copies and/or a link to the Transaction Website will be provided to enable Scheme Creditors to view and download the following documents:
- (a) the Explanatory Statement (which shall include, amongst other documents, the Scheme (as Appendix 3 to the Explanatory Statement) and the Solicitation Packet (as Appendix 5 to the Explanatory Statement) (the latter being instructions as to the registration of claims and voting

procedures for the purposes of the Scheme Meeting, together with the Account Holder Letter, Lender Proxy Form and Blocked Scheme Creditor Form); and

- (b) the other documents referred to in the Explanatory Statement as being available on the Transaction Website.

8 Prior to the Scheme Meeting, the Company shall place an advertisement substantially in the form set out at Appendix 4 to the Explanatory Statement exhibited in Exhibit CZB-1 to the First Affirmation of Mr. Chen Zhi Bin in each of:

- (a) The Cayman Islands Gazette, being a newspaper circulating in the Cayman Islands; and
- (b) The Standard (in the English language) and the Sing Tao Daily (in the Chinese language), being newspapers circulating in Hong Kong.

9 The accidental omission to serve any Scheme Creditor with the aforementioned documents, or the non-receipt by any Scheme Creditor of such documents, shall not invalidate the proceedings at the Scheme Meeting or any resolutions passed thereat.

10 The persons as set out in Appendix 1 shall not vote in respect of their Scheme Claims at the Scheme Meeting.

11 Mr. Edward Simon Middleton, a Managing Director of Alvarez & Marsal Asia Limited of Room 405-7, 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong and/or Mr. James William Hooper, a Managing Director of Alvarez & Marsal Asia Limited of Room 405-7, 4/F, St. George's Building, 2 Ice House Street, Central, Hong Kong and/or such other person(s) of Alvarez & Marsal Asia Limited as appropriate be appointed chairperson(s) (the *Chairperson*) of the Scheme Meeting.

12 The Chairperson be entitled to accept, without further investigation, the signature on any Account Holder Letter, Lender Proxy Form or Blocked Scheme Creditor Form, as applicable, as being genuine and as authority of the signatory to cast the votes in accordance with the instructions outlined in the Account Holder Letter, Lender Proxy Form or Blocked Scheme Creditor Form, as applicable, and the Solicitation Packet.

- 13 The Chairperson be responsible for determining, in accordance with the relevant provisions in the Explanatory Statement, the Scheme Claim of any Scheme Creditor for voting purposes and the validity of the appointment of any person permitted to act as proxy for a Scheme Creditor by reference to the information provided in each Account Holder Letter, Lender Proxy Form or Blocked Scheme Creditor Form, as applicable.
- 14 The Chairperson be at liberty to accept any Account Holder Letter, Lender Proxy Form or Blocked Scheme Creditor Form, as applicable, and the amount of a Scheme Claim in respect of which a Scheme Creditor seeks to vote, notwithstanding that such form has not been completed or submitted in accordance with any instructions contained therein or has been submitted after the deadline provided for in the Solicitation Packet, provided that the Chairperson considers that the information contained therein is sufficient to admit that Scheme Claim for voting purposes.
- 15 Any person validly appointed as proxy for a Scheme Creditor in accordance with the instructions set out in the Account Holder Letter, Lender Proxy Form or Blocked Scheme Creditor Form, as applicable, and the Solicitation Packet may attend and speak at the Scheme Meeting.
- 16 The Chairperson be at liberty to adjourn the Scheme Meeting, in his or her sole discretion, provided that, if adjourned, the Scheme Meeting will recommence as soon as reasonably practicable thereafter. In the event that the Chairperson considers in his or her sole discretion that it is necessary or appropriate to adjourn the Scheme Meeting, the Company shall cause the Scheme Creditors to be notified that there is an adjournment of the Scheme Meeting and as to the time of the adjourned Scheme Meeting as soon as practicable and in the same manner as notice was given to the Scheme Creditors pursuant to paragraph 5.
- 17 The Chairperson be permitted to declare and announce the results of the Scheme Creditors' votes in respect of the Scheme, either during the Scheme Meeting or as soon as reasonably practicable after the conclusion of the Scheme Meeting.
- 18 Within seven (7) days of the Scheme Meeting having been held, the Company must file an affidavit or affirmation sworn or affirmed by the Chairperson verifying that notice was duly sent in accordance with this Order; that the Scheme Meeting was duly held; and giving particulars of the results.

- 19 Mr. Guo Zi Wen is hereby appointed as the Company's foreign representative (the *Foreign Representative*), authorised in these proceedings to act as the Foreign Representative for the purposes of applying for any recognition proceedings in respect of the Scheme and such other relief in the relevant jurisdictions, as the Foreign Representative may deem appropriate.
- 20 The Foreign Representative is authorised on behalf of the Company to take any and all actions to execute, deliver, certify, file and/or record and perform any and all documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities, or certificates, and to take any and all steps deemed by the Foreign Representative to be necessary or desirable to carry out the purpose and intent of the Scheme.
- 21 If the Scheme is approved at the Scheme Meeting by the requisite statutory majorities, the Petition is listed for a further hearing on 7 December 2023 at 10 a.m. Cayman Islands time, for the Court to consider the sanction of the Scheme.
- 22 There shall be liberty to apply generally.”

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT