



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

CAUSE NO. 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, Caitlin Murdock and Moesha Ramsay-Howell of Harney Westwood & Riegels for the Company

Heard: 7 December 2023

Ex Tempore Judgment delivered: 7 December 2023

Draft transcript of Ex Tempore Judgment circulated: 7 December 2023

Transcript of Ex Tempore Judgment approved: 12 December 2023

HEADNOTE

Sanction of a scheme pursuant to section 86 of the Companies Act (2023 Revision)

231207 In the matter of China Aoyuan Group Limited – FSD 284 of 2023 (DDJ) - Judgment

JUDGMENT

Introduction

1. I will try and keep this judgment relatively concise, just covering the important material issues, and resisting the temptation to write a book on the relevant law as to inter-conditional schemes and their international effectiveness.
2. China Aoyuan Group Limited (the “Company”) seeks the court’s sanction of its proposed scheme of arrangement (the “Scheme”) under section 86 of the Companies Act (2023 Revision) (the “Companies Act”). The Scheme was approved by 79.11% by value and a majority by number of Scheme Creditors present and voting at the scheme meeting (1216 in favour, 61 against). I presided over the sanction hearing today. I am grateful to Tom Smith KC, Ben Hobden, Caitlin Murdock and Moesha Ramsay-Howell who appear for the Company, for their valuable assistance to the court.
3. Some of the background is specified in my judgment delivered on 31 October 2023 and I do not intend to repeat it all again in this short judgment.
4. The Scheme is being proposed in parallel with an inter-conditional scheme in Hong Kong (the “Hong Kong Scheme”), because some debts being compromised are governed by Hong Kong law. An order was made by the Hong Kong court convening the scheme meeting for the Hong Kong Scheme on 31 October 2023. The sanction hearing for the Hong Kong Scheme is listed for 8 and 9 January 2024.
5. The Scheme is part of a wider restructuring (the “Restructuring”) that aims to reduce the short-term debt burden of the Company and the Group to allow the Group to trade on a going-concern basis. As well as the Scheme and the Hong Kong Scheme, the Restructuring involves two other parallel and inter-conditional schemes in relation to the Company’s direct BVI incorporated subsidiary Add Hero Holdings Limited (“Add Hero”), one in Hong Kong (the “Add Hero Hong Kong Scheme”) and the other in the BVI (the “Add Hero BVI Scheme”). The sanction hearing for the Add Hero

BVI Scheme is listed for tomorrow 8 December 2023 and on 8 and 9 January 2024 for the Add Hero HK Scheme. The Restructuring is conditional on all four schemes being sanctioned by the relevant courts. I also note from Mr Chen's third affirmation affirmed and filed yesterday, 6 December 2023, that the Company is currently planning to make a Chapter 15 Application (given that the Existing Public Notes are governed by New York law) such that the Hong Kong Scheme (which has substantially the same terms as the Scheme) will be given full force and effect as a matter of New York law.

6. Put simply, the Scheme involves Scheme Creditors fully releasing the Company and certain offshore subsidiaries from their obligations and liabilities under the Company's existing debt in return for new (or newly transferred) securities. Add Hero will also distribute additional notes and cash consideration under the Add Hero Schemes.
7. The evidence before this court indicates that the most likely outcome if the Scheme is not sanctioned is that the Company, and some or all members of the Group, will enter into value-destructive insolvent liquidations in their respective jurisdictions of incorporation. The evidence also indicates that in an insolvent liquidation, it is estimated that the Scheme Creditors would receive between 3.7% to 4.2% on their existing debt, compared to an estimated 36.1% recovery if the Scheme and Restructuring are successful.

Relevant law

8. With that brief introduction I now turn to the relevant law.
9. I have considered section 86 of the Companies Act, Practice Direction No 2 of 2010, GCR O1 r12, and the relevant caselaw, including *Re E-House (China) Enterprise Holdings Limited* (FSD unreported judgment Segal J 17 November 2022 especially paragraphs 105-106), Parker J in *Re Ocean Rig UDW 2017 (2)* CILR 495, Smellie CJ in *Re SPhinX Group of Companies 2014 (2)* CILR 131, Henderson J in *Re Euro Bank Corporation 2003* CILR 205 and David Richards J (as he then was) in *Re Telewest Communications (No 2) Ltd [2004]* EWHC 1466 (Ch) [2005] BCLC 772.

Determinations

10. I now turn to the determinations of the various issues before the court.
11. I am satisfied that the Order I made on 31 October 2023 (the “Convening Order”) has been duly complied with and that the requisite statutory majorities under section 86(2) of the Companies Act were achieved at the Scheme Meeting.
12. I am satisfied that the class of Scheme Creditors was fairly and adequately represented by those who attended the Scheme Meeting and that there is nothing to suggest that the statutory majorities were not acting *bona fide* or that they were coercing the minority in order to promote interests adverse to those of the class for whom they purported to represent. The Scheme was approved by a wide range of Scheme Creditors. There is nothing to suggest that the majority vote was in any way attributable to any collateral or other interest which might detract from being representative of the class. I note in any event Hildyard J’s comments in *Re Lehman Brothers* [2018] EWHC 1980 (Ch) at paragraphs 89 and 90 and Parker J’s comments in *Ocean Rig* at paragraphs 94 and 122 relying on an earlier English authority *Apcoa* [2014] EWHC 3849 (Ch) at paragraph 130. In the case presently before the court the Scheme was approved by a majority in both categories, namely the ICA-Debt (88.2%) and the Non-ICA Debt (63.77%).
13. I am satisfied that the Scheme is fair, in the sense that it is a scheme of arrangement that an intelligent and honest person, being a member of the class concerned and acting in respect of that person’s interest, might reasonably approve of and that, as a matter of its residual discretion, there is no reason why the court should not sanction the Scheme. Mr Smith reminds me of the well-known and oft repeated words of Lindley LJ in *Re English, Scottish and Australia Chartered Bank* [1893] 3 Ch 385 at 409:

“If the creditors are acting on sufficient information and with time to consider what they are about, and are acting honestly, they are, I apprehend, much better judges of what is to their commercial advantage than the court can be ...”.

14. I also note the comments of Snowden J (as he then was) in *KCA* [2020] EWHC 2977 (Ch) at paragraph 28 in respect of the “fairness” of a scheme. Smellie CJ (as he then was) in *SPhinX* took the same approach at paragraph 3.
15. The commercial purpose of the Scheme, in the case presently before me, was clearly explained in the Explanatory Statement and the Scheme offers material benefits to Scheme Creditors. I note the comparison of the position between a Scheme and an insolvent liquidation. I agree that what are described as the RSA Fees, Work Fees and Advisor Fees do not create fairness issues for essentially the same reasons that they did not give rise to class issues. Moreover, the fact that certain Scheme Creditors will receive Scheme Consideration in more than one scheme does not, in my judgment, give rise to any fairness issues.
16. I am satisfied that the Explanatory Statement provided the information reasonably necessary to make informed decisions. The “sufficient information” duty has been complied with. I note the comments of Sir Alastair Norris in an English context in *Re Inmarsat Plc* [2019] EWHC 3470 (Ch) at [38] – [39]. Certain amendments were made after the Convening Order but prior to being sent out to Scheme Creditors but this is not unusual in large schemes (*China Agrotech Holdings* 2019 (2) CILR 356 at [31]). The Explanatory Statement provided all the information reasonably necessary to enable the Scheme Creditors to make an informed decision about the merits of the proposed Scheme.
17. I am satisfied that there is no blot or defect in the Scheme which would warrant the court refusing to sanction the scheme. The conditionality of the Scheme does not present a problem.
18. In the case presently before me the conditions to which the Scheme is subject may be broadly divided into various categories:
 - (1) approval by courts of other jurisdictions;
 - (2) approval by certain regulatory bodies;
 - (3) the offshore creditors must have appointed their director;
 - (4) the Company must have paid the RSA Fee, the Work Fees and the Adviser Fees;
 - (5) certain other corporate approvals are required including the requisite shareholder approval for the issuance of new share capital; and
 - (6) the Restructuring Documents must be executed (which is achieved by way of the Scheme)

and any conditions precedent in the Restructuring Documents satisfied.

19. The outstanding conditions in this case are not conditions which in effect confer on a third party the right to decide whether, or when, the Scheme should come into operation or which enables the terms of the Scheme to be varied in some material respect. It is well established that a court can sanction a scheme that is subject to conditions (*Lombard Medical Technologies Plc* [2014] EWHC 2457 at [24] and [26] per Henderson J; *China Agrotech* at [35] per Segal J and *Re Smile Telecoms Holdings* [2021] EWHC 685 (Ch) Trower J).
20. The court does not require certainty that a condition will be satisfied. The degree of assurance the court requires depends on all the circumstances of the case. In the case presently before me there are sound grounds for thinking that the conditions will be satisfied and there is no known obstacle to completion. The need to secure regulatory approvals does not prevent the court from sanctioning the Scheme. There is no reason to suppose that the foreign regulatory approvals will not be forthcoming. Neither the Scheme nor the circumstances surrounding the conditions leave the effectiveness of the Scheme to the ultimate discretion of an interested third party. The terms of the Scheme are clear and the Scheme is self-executing with a long-stop date (31 March 2024), after which the terms of the Scheme will lapse and the compromises and arrangements provided for by the Scheme will have no effect.
21. In the particular circumstances of this case, I do not feel the need to exercise the understandable caution exercised by Segal J in the particular circumstances of *China Agrotech*. I do not see the need to adjourn this hearing until after the January 2024 hearing in Hong Kong. Indeed, it may be useful for the Hong Kong court to be aware of the position of the Cayman court before the Hong Kong hearing. I note also that although there were certain issues outstanding (for example the hearing of a chapter 15 petition) Segal J in *E-House* felt able to sanction the scheme in the circumstances of that case.
22. For the sake of completeness I note that a chapter 15 petition will be presented to a court in the United States of America in respect of the Hong Kong Scheme. This morning I was informed that the chapter 15 petition is due to be filed on 19 December 2023. I also note that in Hong Kong, one holder of Non-ICA Debt, China Ping An Insurance Overseas (Holdings) Limited opposes the Hong Kong Scheme and the Add Hero HK Scheme. It will, of course, be entirely a matter for the Hong

Kong court as to how it disposes of such opposition. Suffice to say there is no opposition in the Cayman Islands by anyone to this court sanctioning the Scheme and the opposition in Hong Kong does not prevent the court from sanctioning the Scheme.

23. I note the judgments of Segal J in *Freeman FinTech* 2021 (1) CILR 426 at [31] and *E-House* at [117] and [122] in particular in respect of courts not acting in vain and the international effectiveness of schemes. I do not think I will be acting in vain in sanctioning the Scheme. I am satisfied that there is a good case that the Scheme will be internationally effective and that there is a reasonable prospect that the Scheme will be recognised and given effect in other relevant jurisdictions. At the same time, I fully appreciate that it is entirely up to the foreign courts as to what orders they make in their respective jurisdictions. I agree with Mr Smith that the evidence reveals that the “risk of disturbance” (to use the phrase of Lloyd J in *Re PT Garuda Indonesia* 2001 WL 1171948 on appeal [2001] EWCA Civ 1969) should be low and there are clear and real benefits that will be derived from the Scheme which are unlikely to be disturbed by hostile action following sanction.

Order

24. I am content to make an order substantially in terms of the draft helpfully provided prior to today’s hearing, such draft to include the amendments I specified during my exchanges with counsel earlier today.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT