IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 254 OF 2021 (DDJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF PEARL HOLDING III LIMITED

IN OPEN COURT

Appearances:	Lachlan Greig of Harney Westwood & Riegels for the Petitioner/Company
Before:	The Hon. Justice David Doyle
Heard:	8 October 2021
Ex Tempore Judgment Delivered:	8 October 2021
Draft Transcript of Judgment Circulated:	22 October 2021
Transcript of Judgment Approved:	25 October 2021

HEADNOTE

Sanction of a scheme of arrangement with creditors
pursuant to section 86 of the Companies Act (2021 Revision)

JUDGMENT

Introduction

1. The matter presently before the court neatly evidences the significant international commercial business that the Cayman Islands legitimately facilitates.

2. This is the hearing of the petition of Pearl Holding III Limited (the **Company**), a company incorporated in the Cayman Islands as an exempted limited company in March 2015. The Company acts as an intermediate holding company with its direct and indirect subsidiaries (the **Group**) being located in Singapore, Hong Kong, the United States, Thailand, Malaysia and the People's Republic of China (**PRC**).

3. The principal business of the Group is the manufacturing of precision plastic injection moulds, high precision plastic injection moulding, laser marking and decorative finishing for engineering components for the automotive, healthcare and consumer product industries. The main operating facilities of the Group are located in the PRC.

4. As at 31 March 2021 the total indebtedness of the Company amounted to US$183,500,000, representing approximately 93% of the total indebtedness of the Group. The Company's principal financial indebtedness arises in respect of: (1) the existing notes, which were issued pursuant to a New York law governed indenture; and (2) the senior secured revolving credit facility, which matures in November 2022.

5. The financial position of the Company and the Group has been severely affected by a number of factors, said to be beyond the Group's control, which have led to its deteriorating financial performance since 2018.These factors include: (1) low market demand; (2) US-China trade tensions; (3) supply chain disruptions due to the COVID 19 pandemic; and (4) loss of certain customers.

6. The Group will be unable to satisfy its annual interest burden and/or repay in full the indebtedness under the existing notes on maturity.

7. In early 2021 the Company commenced discussions and negotiations with an ad hoc group of holders of the existing notes holding approximately 60% in aggregate of the principal outstanding amount of the existing notes. In May 2021 the Company entered into a restructuring support agreement (the **Restructing Support Agreement**) pursuant to which the consenting creditors undertook to support the proposed Scheme.

8. As at the date of the petition 52 note holders representing approximately 94.25% of the total indebtedness owing under the existing notes agreed to the Restructuring Support Agreement.

9. The purpose of the Scheme is to allow the Company and the Group to continue to operate on a going concern basis. The Scheme is intended to restructure the existing notes only. The Scheme Creditors will release and discharge any and all claims against the Company and others in respect of their holdings in the existing notes in return for distributions of the Scheme Consideration comprising cash, new debt and equity instruments. The Company has also proposed the SSRCF Refinancing.

10. If the Scheme fails there would most likely follow an insolvent liquidation of the Company in which scenario Scheme Creditors are projected to receive significantly lower returns than they would receive if the Scheme was successfully implemented.

11. The object of the petition is to obtain the sanction of the Grand Court of the Cayman Islands to the scheme of arrangement between the Company and certain of its creditors, pursuant to section 86 of the Companies Act (2021 Revision) (the **Companies Act**).

12. I have read the papers submitted in the hearing bundles. I have also considered the helpful skeleton argument dated 4 October 2021 and the authorities. I am most grateful to Lachlan Greig, who appears for the Company, for his continuing assistance to the Court.

13. I am satisfied that the single class of Scheme Creditors was correctly constituted and that the Order made on 6 September 2021 has been complied with.

The Function of the Court

14. I note the function of the court at this sanction hearing as usefully outlined by Segal J in *Freeman Fintech Corporation Limited* (unreported, 4 February 2021) at paragraphs 16 and 17. I have also considered the judgment of Parker J in *Ocean Rig UDW Incorporated* 2017 (2) CILR 495.

15. It is well established that the function of the court is not simply to rubber stamp the result of the meeting at which the Scheme was approved but, absent good reason to do so, the court will not normally seek to second guess the creditors on commercial matters. Creditors are usually better judges of their own commercial interests than the court. See for example, *Codere Finance 2 (UK) Ltd* [2020] EWHC 2683 (Ch), Falk J at paragraph 13; and *Ocean RIG UDW Incorporated* 2017 (2) CILR 495, Parker J at paragraph 89. The sanction of the court is not a mere formality. The court must be satisfied on various points before it can properly sanction a scheme and these are outlined in the well-established authorities in this area of the law.

The legal requirements

16. I am satisfied that:

    (1) the majorities required by section 86 of the Companies Act were plainly met;

    (2) the class of scheme creditors was fairly represented by those who attended the meeting;

    (3) there is nothing to suggest that the majority of Scheme Creditors acted other than bona fide or that the majority are coercing a minority; and

    (4) the scheme document provided all the material information reasonably required to enable the Scheme Creditors to come to an informed view on the merits of the Scheme.

17. I agree that the Scheme provides for materially better returns to the Scheme Creditors than in the most likely alternative of an insolvent liquidation of the Company.

18. The Scheme is plainly one that an intelligent and honest person, being a scheme creditor and acting in respect of his or her own interests, might reasonably approve.

19. There are no defects that would constitute a "blot". There are no "show stoppers".

20. As stated in the short judgment I delivered on 6 September 2021 I have, for the reasons therein stated, no concerns on the consent fee issue. I am also satisfied that the Company has taken steps to comply with the rules of the Singapore Stock Exchange.

The international effectiveness of the Scheme

21. I am satisfied as to the international effectiveness of the Scheme, in the sense explored by Segal J in *Freeman Fintech*.

22. The Company is a Cayman Islands company promulgating a Cayman Islands scheme of arrangement in respect of New York law governed notes listed on the Singapore Stock Exchange.

23. The Company's assets are located outside of the Cayman Islands, as are the scheme creditors. In my judgment, the Scheme will be substantially effective internationally.

24. John A Pintarelli, a practising attorney in the state of New York, in his affidavit sworn on 1 October 2021 at paragraph 7 confirms that the relevant US courts would recognise the Company's Scheme and rightly extend comity to an order of this court sanctioning the Scheme and enforcing the releases set forth in the Scheme.

25. Tan Mei Yen, who is admitted to the Singapore Bar, the Malaysian Bar and is a qualified English solicitor and barrister, in a comprehensive affirmation dated 30 September 2021 concludes at paragraph 59 that the Scheme is likely to be recognised in Singapore and that the courts of Singapore will grant relief to give effect to the Scheme in Singapore.

26. There is nothing to suggest that the small minority in value (approximately 1.2% being just US$2 million of the principal value of the existing notes) of the Scheme Creditors are hostile to the Scheme or might take steps to disturb it. No Scheme Creditor has sought to appear to

oppose the Company's application for sanction of the Scheme and, in any event, the principal value held of just US$2 million is not material in the context of the Scheme.

27. Moreover, I am not of the view that there is a serious risk of disturbance to the Scheme by reason of any adverse action in Hong Kong by the unbound Scheme Creditors. Such potential, but unlikely, action does not lead me to conclude that this court should not sanction the Scheme. There has been, to use Segal J's words in *Freeman Fintech*, "*complete radio silence*" from the unbound Scheme Creditors.

28. The Company and Mr Greig, who appears on its behalf, have given me sufficient comfort as to the substantial international effectiveness of the Scheme notwithstanding that the Court has not been provided with any expert evidence to the effect that the Scheme would be recognised and enforced in Hong Kong.

The Order

29. I am therefore content to make an order substantially in terms of the draft, helpfully provided to the court on Tuesday.

David Doyle

THE HONOURABLE JUSTICE DOYLE
JUDGE OF THE GRAND COURT