



CAUSE NO: FSD2024-0124 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF META DATA LIMITED

(Previously known as ONESMART INTERNATIONAL EDUCATION GROUP LIMITED

精銳國際教育集團有限公司)

BETWEEN:

CHINA MINSHENG BANKING CORPORATION LTD

Petitioner

-and-

META DATA LIMITED

Respondent

Appearances: Mr Paul Kennedy and Yuan Wen of Campbells for the Petitioner
Mr Christian La-Roda Thomas of Maples & Calder for the Respondent

Before: The Honourable Justice Jalil Asif KC

Heard: 7 August 2024

**Ex tempore Judgment
delivered** 7 August 2024

**Finalised judgment
approved** 2 September 2024

Winding up petition—application by respondent to adjourn hearing of petition—necessity for evidence that reasonable prospect that debt will be paid within reasonable time—whether hearing of petition should be adjourned

JUDGMENT ON APPLICATION TO ADJOURN HEARING OF WINDING UP PETITION

1. I heard argument and gave an ex tempore judgment on 7 August 2024 on an oral application by the Respondent for an adjournment of the hearing of this winding up petition. I refused the adjournment and proceeded to make a winding up order. The Petitioner's attorneys have now requested that I formalise my ex tempore judgment as they consider it may be of assistance to practitioners.
2. The background to the winding up petition is that on 31 March 2022 the Respondent defaulted on its obligations in respect of a loan facility involving a number of different lenders. This led to the facility agent serving a statutory demand on the Respondent on 31 March 2022 on behalf of the cohort of lenders.
3. It appears that there was no substantive progress by the Respondent in paying its accrued debts or making arrangements to do so.
4. On 4 January 2024, the Petitioner served its own statutory demand upon the Respondent in respect of the money that it is owed, followed on 19 April 2024 by the filing of its petition to wind up the Respondent company. During May 2024, the Respondent engaged Harneys to act as its attorneys. The petition was listed for hearing on 11 June 2024. The parties agreed the petition should be adjourned to allow the parties to continue discussions regarding payment of the outstanding debt. The petition was re-listed for hearing on 7 August 2024.
5. The Petitioner was represented at the hearing on 7 August 2024 by Mr Paul Kennedy and Ms Yuan Wen of Campbells. The Respondent was represented by Mr Christian La-Roda Thomas of Maples & Calder, who had been instructed in place of Harneys on 6 August 2024, the day before the hearing. In addition, Mr Ben Henshilwood, of PwC, attended the hearing on behalf of the proposed liquidators.
6. Mr La-Roda Thomas made an oral application to adjourn the hearing for a short period, which he suggested should be two weeks, to enable the Respondent to file evidence regarding the status of the

ongoing discussions between the Respondent and its major creditors, including the Petitioner, regarding payment of the Respondents' outstanding debts.

7. Mr La-Roda Thomas submitted that the Respondent is listed on the New York stock exchange, with a market capitalisation of US \$100 million, so it would be no small step to make a winding up order. He said that the debt has been outstanding since March 2022, and therefore there did not appear to be any immediate urgency to having the petition determined, and a further short adjournment of the petition would not materially prejudice the interests of the Petitioner or other creditors.
8. However, the Respondent had not filed any evidence to support Mr La-Roda Thomas's submissions. The only evidence filed by the Respondent is an affirmation of Mr Xiaoming Li, the Respondent's CEO, filed on 29 May 2024. The gist of Mr Li's evidence is that the Respondent's current management team were not in place when the loan facility was agreed (described by Mr Li as an "alleged" facility), they were not informed of it by the prior management, and they were still investigating the position.
9. The adjournment application was opposed by Mr Kennedy. He relied upon the English Court of Appeal decision in *Edginton v Sekhon and another* [2015] EWCA Civ 816 at [19], to the effect that, where the debt is unchallenged, an adjournment should only be granted if there is credible evidence that the debt is likely to be paid. Lewison LJ, with whom the Master of the Rolls and Underhill LJ agreed, said this:

"19. The court, of course, has the power to adjourn the petition, but the practice is to do so only if there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time. There are many statements to this effect in the cases of which the following recent ones are representative:

'A debtor clearly has no right to an adjournment in these circumstances, although it may be that a court will grant one if he could produce convincing evidence that the debt would be paid within a very short period': Anderson v KAS Bank NV [2004] EWHC 532 (Ch); [2004] BPIR 685, David Richards J.

'A petitioning creditor has a prima facie right to obtain a bankruptcy order on, as this was, a duly presented petition where the liability of the debtor for the petition debt is, as it is here, clearly established. Equally, the court hearing the petition has a discretion to adjourn the petition for payment if but only if there is a reasonable prospect of the petition debt being paid in full within a reasonable time: see Re Gilmartin [1989] 1 WLR 513 at 516 and much subsequent authority to a similar effect. There must be credible evidence to support such a prospect if the court is to grant an adjournment for payment': Harrison v Seggar [2005] EWHC 411 (Ch); [2004] BPIR 583, Blackburne J.

'There is no doubt that the court retains a discretion not to make a bankruptcy order even where the petition debt has been clearly established and any grounds of opposition have been dismissed. However, the authorities establish that in such circumstances the discretion to adjourn should only be exercised if there is a reasonable prospect of the petition debt being paid in full within a reasonable period Furthermore, there must be credible evidence to support such a prospect if the court is to grant an adjournment for payment': Ross v HM Revenue and Customs Comrs [2010] 2 All ER 126, para 72, per Henderson J.

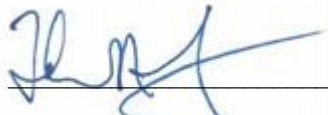
'If the debtor does not produce any evidence of his ability to pay, he takes the risk that the court will not accept his bare assertion as to his means and ability to pay.': see Dickens v Inland Revenue [2004] EWHC 852 (Ch); [2004] BPIR 718.'

10. As to the chronology and the question of prejudice, Mr Kennedy noted that the Petitioner, in contradistinction to the Respondent's other creditors, had been pushing the matter forwards since January 2024 and wished to pursue the winding up petition to a prompt conclusion.
11. There is no substantial challenge to the debt put forward by the Respondent in its evidence – the Respondent's position in Mr Li's affirmation is that the current management team are investigating the circumstances in which the loan facility came about to verify that it is genuine, which falls short of a proper challenge to the debt.
12. Having heard the arguments on the application to adjourn, I noted that the Respondent's application was made at a very late stage of these winding up proceedings. The matter had already been adjourned once on 11 June 2024, by consent, to allow the parties to engage in discussions regarding payment of the debt. I recalled that Mr Kennedy had made the point in his skeleton argument dated 31 May 2024 for the hearing on 11 June 2024 that Mr Li's evidence did not deal with the question of payment of the debt, and I noted that there was no further evidence filed by the Respondent to demonstrate that there was any likelihood, let alone a realistic prospect, of the debt being paid within a short period of time. Adopting the guidance from Edginton v Sekhon and another and the other cases cited by Lewison LJ, there was therefore no evidence on which to base the exercise of my discretion in the Respondent's favour.
13. I also noted that there had been a very late change of the Respondent's counsel. In some cases, the court might have some sympathy with the need for the new attorneys to get up to speed on the matter in order to present their client's case to the best of their ability, and the court might be willing to adjourn the matter on the basis of procedural fairness. However, in this case, I did not have any such

sympathy for the Respondent because it was absolutely plain that the Respondent had chosen to change its attorneys less than 2 days before the hearing for what I perceived to be purely tactical reasons. Fairness means fairness to both parties, and it would not be fair to adjourn in these circumstances.

14. I therefore refused the adjournment of the hearing of the winding up petition.

Dated 2 September 2024



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**