In The Supreme Court Of Bermuda

CIVIL JURISDICTION
(COMMERCIAL COURT)

2022 No. 289

IN THE MATTER OF US HOLDINGS LTD

IN THE MATTER OF THE COMPANIES ACT 1981

Before: The Hon. Chief Justice Hargun

Representation: Mr Henry Tucker of Carey Olsen Bermuda Limited for the Petitioner

Mr Kevin Taylor of Walkers (Bermuda) Limited for US Holdings Ltd

Ms Lilla Zuill of Harneys (Bermuda) Ltd for BMK Resources Ltd

Date of Hearing: 20 December 2022

Date of Judgement: 17 February 2023

JUDGMENT

Application for the appointment of joint provisional liquidators with full powers for the purposes of restructuring the equity and indebtedness of the company; whether the application is being made for improper purpose; whether commercial pressure or leverage amounts to an improper collateral purpose; the test for the appointment of a provisional liquidators; whether the court should dismiss or adjourn the application on the basis that there are exceptional circumstances

HARGUN CJ

A. Introduction

1. These proceedings concern a Petition presented by Outrider Master Fund, LP ("**the Petitioner**") seeking an order that US Holdings Ltd ("**the Company**") be wound up by the Court under the provisions of the Companies Act 1981 ("**the Act**") and that Mr Michael Morrison and Mr Charles Thresh of Teneo (Bermuda) Limited be appointed as joint provisional liquidators of the Company ("**JPLs**").

2. The Petition is based on a statutory demand dated 2 September 2022 ("**the Statutory Demand**") demanding immediate repayment of the Facility A Repayment Amount and the Outrider Facility C Repayment Amount, being at least US $45,796,237. It is asserted in the Petition that the Statutory Demand was made on the Company following the Company's failure to honour its obligations. It is said that the Company has failed to pay the amounts due to the Petitioner as set out in the Statutory Demand or otherwise. In the premises, the Petitioner asserts that the Company is unable to pay its debts as they fall due whether by reason of the Statutory Demand pursuant to section 162(a) of the Act or otherwise and should therefore be wound up.

3. However, whilst the Petition was returnable at the hearing on 20 December 2022, the Petitioner is not seeking the winding up of the Company (at least at this stage) but instead is seeking the appointment of JPLs with full powers for the purposes of restructuring the Company. Indeed, as an earlier hearing on 28th of October 2020 Mr Tucker advised the Court that "*it is unlikely that we will be seeking a full winding up order, because we don't want to necessarily destroy any value that might exist*".

B. The Background

4. The background to these proceedings is uncontroversial and is set out in the Petitioner's written submissions. On 18 May 2021, the Petitioner served a statutory demand on the Company (then known as Madagascar Oil Ltd) pursuant to section 162 (a) of the Act demanding repayment of US $36,816,841.18, due pursuant to the Facility A Loan, issued on 15 June 2017.

5. On 20 August 2021, the Petitioner presented a petition in respect of the Company (by then known as Green Acquisition Ltd) on the grounds of the Company's insolvency.

6. The Petitioner agreed to withdraw that petition as the Company and Petitioner agreed to the Twelfth Amendment & Restatement of the Facilities Agreement ("**12th A&RFA**"), which in turn extended the repayment date for the amounts owed to the Petitioner by the Company to 31 August 2022. The Company was unable to honour the 12th A&RFA agreement and the amounts owed to the Petitioner were not repaid by 31 August 2022.

7. On 2 September 2022, the Petitioner served the Statutory Demand on the Company (again known as Madagascar Oil Ltd) pursuant to section 162 (a) of the Act demanding repayment of US $45,796,237, due pursuant to the Facility A Loan and Facility caps the Loan.

8. On 29 September 2022, the Petitioner presented the Petition in respect of the Company (now known as US Holdings Limited) on the grounds of insolvency.

9. On 27 October 2022, by way of a letter to the Petitioner's attorneys, the Company's attorneys contended that the Petition was subject to an arbitration agreement. In the end the contention that the issues raised and relief sought in the Petition were the subject matter of mandatory arbitration proceedings was not pursued.

10. On 28 October 2022, at the hearing the Petitioner made known to the Court and the Company its intention to have JPLs appointed in the first instance in lieu of a winding up order. The Court ordered the issue of whether JPLs should be appointed, as well as whether the Petition is subject to an arbitration, should be dealt with by way of a rolled up hearing.

C. Position of the Parties

11. The Petitioner's application for the winding up order and the appointment of the JPLs is supported by the two affidavits of Mr Stephen Hope, Managing Member of the General Partner of the Petitioner, dated 2 November 2022 and 6 December 2022. In his second affidavit Mr Hope states that the purpose of filing the petition is either to receive payment for the Petition that from the Company or to appoint independent officers of the Court as JPLs for the purposes of evaluating whether there is a restructuring alternative to full winding up which will allow the Company to eliminate its due and unpaid debts and continue as a going concern, and which will repay creditors more than they would receive in liquidation alternative.

12. Mr Hope contends that the Petitioner expects that if the JPLs are appointed, they will consider in particular whether any of the following are in the interests of the stakeholders of the Company:

(i) whether or not there are any viable options for maintaining the current capital structure and refinancing the defaulted unsecured debts of the Company, thereby allowing the Company to continue as a going concern without diluting the current equity interests;

(ii) if no such means are available, whether there are any options to revise the current capital structure of the Company to eliminate the defaulted debt of the Company and allow it to continue as a going concern through a debt for equity swap together with interim funding and/or hybrid debt and equity capital raising; and

(iii) if neither of the foregoing option are available, whether to pursue a process (following the winding up order or otherwise) to realise the assets of the Company, if any, for the benefit of the unsecured creditors of the Company, including the Petitioner.

13. Mr Hope considers that, for the following reasons, there is a benefit to the appointment of full powers JPLs in lieu of winding up order:

(i) it takes the Company out of the hands of a sole director, Mr Njoo, who has a substantial conflict of interest in conducting any capital raising restructuring exercise since he indirectly owns over 80% of the equity in the Company and nearly 100% of the subordinated unsecured debt of the Company;

(ii) it ensures that any proposal for restructuring the Company will be accompanied by an independent statement of the alternatives considered and the relative merits of those proposals; and

(iii) it puts in place credible and reputable management without a track record of broken promises to liaise with the Office of National Mines and Strategic Industries of the Government of Madagascar ("**MOSA**" or "**OMNIS**") and the Government of Madagascar regarding the Company's plans to restructure and recapitalise the Company for the purposes of putting it in a position to meet its obligations under the production sharing contract for the production of oil from an area in Madagascar between a subsidiary of the Company and OMNIS (collectively referred to as "**PSC**").

14. The Company's evidence is set out in the two affidavits filed by Mr Njoo Kok Kiang, a director of the Company, dated the 15 November 2022 and 17 November 2022. Mr Njoo contends that

the Petition should be dismissed for a number of reasons including that the Petition is defective and has irregularities, that the subject matter of the Petition is subject to an arbitration agreement between the parties; and that the petition is an abuse of process and that there are no grounds for the appointment of JPLs.

15. It is said on behalf of the Company that this is not an insolvency case where liquidators are sought for the purpose of realising and distributing the assets of the Company, but rather a battle of control of the PSC which has, as of June 2022, just become income producing. As such, the Company contends, the petition is an abuse of process and should be dismissed.

16. The Company contends that in relation to the application to appoint JPLs, that application should be dismissed because:
    (i) there is no evidence before the Court of any mismanagement or misconduct on the part of the Company or a risk of dissipation of assets (or other grounds for the appointment of joint provisional liquidators) that would justify the granting of the orders sought by the Petitioner; and
    (ii) the appointment of JPLs to achieve any restructuring is unnecessary as the alleged benefits of the order sought are achieved by the appointment of independent non-executive directors from Alvarez and Marsal.

17. The reference to the appointment of independent non-executive directors, as confirmed by the first affidavit of Mr Duncan Reynolds dated 16 December 2022, is a reference to the appointment of the Edward Simon Middleton and James Hooper of Alvarez & Marsal Asia as independent non-executive directors with effect from 15 December 2022. Mr Reynolds states that both have extensive experience with restructuring and insolvency matters and are well placed to assist the Company with restructuring its debts. The shareholders have undertaken not to remove Mr Middleton and Mr Hooper as directors during the period of three months from the date of their appointment i.e. before 15 March 2023.

18. The Court has also reviewed the engagement letter with Alvarez & Marsal dated 15 December 2022 appointing Alvarez & Marsal as Financial Adviser to provide the following services:
    (i) conduct a review of the business and operations of the Company;
    (ii) assist in evaluating the Company's current business plan, project economics and cash flow forecast;
    (iii) advise on the formulation of restructuring plan, analyse options and assess impact;
    (iv) assist the Company in managing communications and negotiations with key stakeholders, facilitate to achieve a consensual restructuring solution; and
    (v) assist in identifying potential investor(s) to refinance or acquire loans owed under Outrider debt and/or provide additional capital.

19. BMK Resources Ltd ("**BMK**"), an unsecured creditor of the Company for the sum of approximately but not less than US $10,577,079 as at 31 October 2022, has also appeared in these proceedings and opposes the making of the winding up order or the appointment of the JPLs. BMK is also a majority shareholder of the Company holding approximately 82.6% of the Company's issued shares.

20. BMK opposes the appointment of the JPLs on the basis that such an appointment is likely to imperil the Company's largest asset. BMK states that it is common ground that the Company's largest asset is its indirect interest in the production sharing contract between MOSA and the Government of Madagascar pursuant to which MOSA enjoy certain rights to develop and explore oil and gas ("**the PSC**"). BMK contends that neither the Company nor the Petitioner can say with certainty that the appointment of JPLs will not provide grounds for the Government of Madagascar to terminate the PSC. The Company says that such an appointment will have the likely effect of permitting the Government of Madagascar to take steps to terminate the PSC. Mr Hope in a second affidavit concedes that there is a risk that the appointment of JPLs may place the PSC in jeopardy. At paragraph 15 of the second affidavit Mr Hope states:

"In this regard, Outrider has evaluated the risk that the appointment of provisional liquidators could result in an action to terminate the PSC with MOSA...and has concluded that even bearing in mind that risk, it remains in the interests of the unsecured creditors for the JPLs to be appointed in lieu of a winding up order."

D. Unusual features of the case

21. There are certain features of this case which are not commonly found in winding up proceedings.

22. First, this is not a case where the Petitioner's primary relief is the obtaining of a winding up order seeking to wind up the company under the provisions of the Act. The primary relief sought by the Petitioner is the appointment of JPLs for restructuring purposes and avoid a winding up order, if at all possible. The Company contends that to seek an appointment of JPLs in circumstances where the Petitioner does not genuinely desire a winding up order is an abuse of the process of this Court. The Court accepts the submission made on behalf of the Petitioner that there is nothing inherently abusive about the position where a petitioner's primary relief is restructuring of the company by the appointment of the JPLs, accepting that if the restructuring effort fails then the company will have to be wound up under the provisions of the Act.

23. In *Emerging Markets Special Solutions 3 Ltd v LAEP Investments Ltd* [2017] SC Bda 78 Com Kawaley CJ recognised that it is now well settled under Bermudian insolvency law that a company or a creditor may present a winding up petition where the primary goal is to restructure the company's debts and not to wind up the company; where the debt is undisputed, there is almost a presumption that the petitioner's reasons for invoking the winding up jurisdiction are at least partially legitimate; and the Court should be reluctant to investigate the commercial motivations of the petitioner with an undisputed debt save in clear-cut cases where there is no legitimate reason for the petitioner at all:

"25. The cases demonstrate two broad categories of improper purpose: (1) where there is no genuine intention of obtaining winding-up order at all, and (2) where the petitioner is not acting in the interests of the class of creditors he purportedly represents. As to the first category, in my judgment caution is necessary to appreciate that the range of legitimate purposes for winding-up proceedings in Bermuda is today broader than it was in England in the 1980's. It is now well settled under Bermudian insolvency law that a company or a creditor may present a winding-up petition where the primary goal is to restructure a company's debts and not to wind-up the company at all. For instance in Re Z-OBEE Holdings Limited [2017] Bda LR 19, I noted that:

- *"13 ... Even if a petition is presented by the company with the specific purpose of pursuing a restructuring which if successful will result in the petition being dismissed, it will rarely if ever be the case that there is no possibility at all that the plan will fail and that a winding-up order will still result. In such circumstances, the winding-up jurisdiction is still being used to fulfil the primary purpose of the winding-up jurisdiction: protecting the best interests of the general body of unsecured creditors."*

26. In either category of collateral purpose case, where a debt is undisputed, there is almost a presumption that the petitioner's reasons for invoking the winding-up jurisdiction are at least partially legitimate. The Company in the present case must therefore demonstrate that there was no legitimate purpose at all to justify a finding that the Petition was presented for improper collateral purposes. This point is illustrated by the following passage from the leading judgment in Ross -v- Stonewood Securities Limited [2000] BPIR 636 where Nourse LJ concluded as follows:

- *"28 ....one of the considerations which has led to the presentation of Stonewood's petition is was that Mr Ross would not be able to pursue the claim against Miss Jeffs himself....we cannot in my view proceed on the footing that it was presented solely for the purpose of stifling the action. What has to be considered is the purpose of Stonewood,*

which had obtained a regular judgment against Mr Ross...It must therefore be assumed that part at least of Stonewood's purpose in presenting the petition was the lawful purpose of seeking to obtain a dividend in the bankruptcy.

- *29. Accordingly, though I remain suspicious of Miss Jeff's motives, I do not think that this case can confidently be treated as one of abuse of process. But it does not at all follow from that that it was appropriate for the bankruptcy order to be made."*

27. This Court should also in either category of improper purpose case be reluctant to investigate the commercial motivations of the petitioner with an undisputed debt save in clear-cut cases where there is no legitimate reason for the petition at all. The latter point was explicitly made by Rose J in Maud -v- Aabar Block and Edgworth Capital [2015] EWHC 1626 in the passage reproduced above. I would merely add that the scheme of Part XIII of the Companies Act 1981 is designed to facilitate access to the winding-up jurisdiction of this Court on the part of creditors with undisputed debts, not to impede it."

24. Secondly, as noted above, the Company essentially has two creditors, the Petitioner and BMK, both of whom are involved in this proceeding. BMK contends that as such, there is no need for statutory stay. There is no creditor action pending or contemplated for which the Company might need protection of the statutory stay. This is not a case where the appointment of the JPLs is required so as to trigger the statutory stay of proceedings being brought against the Company so as to provide the breathing space for a deal to be done.

25. Thirdly, as both the Company and BMK point out, the situation facing the Petitioner and the Company is not one which lends itself to resolution through a restructuring via scheme of arrangement. The Company has only two substantive creditors of which one, BMK, is not seeking to compromise its debt. In the circumstances, both the Company and BMK contend that there can be no scheme of arrangement. Rather, any compromise of the Petitioner's debt

will simply comprise a bilateral negotiation between the Petitioner and BMK. In relation to a scheme of arrangement a voting unanimity would be required at a scheme meeting because of the "majority in number" requirement. The Company and BMK both contend that this lends itself to a negotiation rather than a scheme of arrangement.

26. Fourthly, the Petitioner is by far the largest creditor, with well over 75% (by value) required to approve a restructuring. The Petitioner has 82.6% in value of the total debts owed as of 30 September 2021. As such, the Petitioner contends, its opinions are by far the most important factor for the Court to consider in determining what order should be made in respect of a deemed insolvency. The Petitioner states that having regard to its status as by far the largest creditor, its wishes for the appointment of the JPLs with full powers for restructuring purposes should be respected by the Court.

27. Finally, again as noted earlier, both the Company and BMK oppose the appointment of the JPLs on the basis that such an appointment is likely to imperil the company's largest asset. The risk of the appointment of the JPLs resulting in action to terminate the PSC with MOSA is recognised by Mr Hope in his second affidavit. Furthermore, as pointed out by Mr Taylor during the hearing, the effect of Article 18 of the PSC is that if the PSA is terminated by the government of Madagascar, the Company will not only lose its right to extract further oil but will also forfeit the oil it has already extracted and is presently being stowed in Madagascar. Article 18 of the PSA provides:

> *"18.1. Subject to the provisions of Article 18.2, Assets, Properties and Movable Assets ("Assets") held or rented by the CONTRACTING PARTY, whether acquired or leased in Madagascar or abroad, shall remain the property of the CONTRACTING PARTY at all times.*

18.2. If the agreement ends during the Exploration Period, all Assets present in the Madagascar belonging to the CONTRACTING PARTY within the context of the Oil and Gas Operations shall be transferred to OMNIS."

E. Analysis

28. The Court is satisfied that there are no procedural obstacles to the Plaintiff seeking an order either for the winding up of the Company or for the appointment of the JPLs. The Court is satisfied that the Petitioner has the necessary legal standing to bring these proceedings. Indeed, the Court gave leave to the Petitioner to clarify that the phrase "*in voluntary liquidation*" was simply designed to denote that the fund was not accepting any further investment. As noted earlier, the Company has not pursued its contention that the Petition should be stayed on the ground that it is subject to a mandatory arbitration agreement.

29. The Court, for the reasons given earlier, is also satisfied that there is nothing inherently objectionable for a petitioner to commence winding up proceedings in the hope of appointing JPLs with full powers so that the company may be restructured. A petitioner is entitled to take this position understanding that if the restructuring fails the company may well have to be wound up under the provisions of the Act. This posture by a petitioner does not, in the Court's view, amount to an abuse of process.

30. Furthermore, the Petitioner is by far the largest creditor, with 82.6% in value of the total debts owed as of 30 September 2021. The debts owed by the Company to the Petitioner do not appear to be disputed by the Company. In the circumstances, in the ordinary case, the Petitioner would be entitled to the appointment of JPLs and/or a winding up order as a matter of course (See *LAEP Investments Limited* [2014] Bda LR 35 and *Re Gerova Financial Group Ltd* [2012] Bda LR 43).

31. The Court is also satisfied that the Petitioner has established that there is a possibility of the prospect of some sort of benefit from the winding up procedure in accordance with the test laid down by Neuberger J in *Re Demaglass Holdings Limited* [2001] 2 BCLC 633 in that the Petitioner reasonably believes that there is a prospect, which is more than *de minimis,* of repayment of the outstanding indebtedness either by way of restructuring or by way of formal winding up. All that the petitioner has to satisfy under the test in *Re Demaglass* is "*a reasonable possibility of some advantage*". The Petitioner has, in the Court's judgment, clearly established that very low threshold.

32. The fact that the Company contends that the commercial motives of the Petitioner are unduly aggressive is not a relevant consideration in determining the issue whether it is appropriate to appoint JPLs or to make an order winding up the company under the Act. In this case, as Mr Hope emphasises in his second affidavit, the motive of the Petitioner is to have its indebtedness either repaid by the Company or by a third party under some form of restructuring. This is a common position for a creditor to take and does not, in the Court's view, amount to some ulterior purpose which could give rise to either a defence to the appointment of the JPLs or to the making of an order winding up the Company (See: *In the matter of LAEP Investments Ltd* [2014] Bda LR 35).

33. It is not uncommon that a petitioner may commence winding up proceedings in the hope and expectation that it may provide the petitioner with leverage over the company in settling its indebtedness. However, any such motive is again commonplace and does not give rise to a defence either to the appointment of the JPLs or to the making of a winding up order if the underlying debt of the petitioning creditor is undisputed. Mr Tucker helpfully pointed the Court to the decision of the Hong Kong Court of Final Appeal in *Shandong Chenning Paper Holdings Limited v Arjowiggins HKK 2 Limited* [2022] CFA 11, recognising that leverage is always in the background of any civil litigation and a winding up petition is no exception:

> *"As litigants are at liberty to resolve civil disputes by alternative means, leverage is always in the background of any instance of civil litigation and a winding up is no exception. Even*

after the making of a winding up order, leverage can continue to operate in the form of a stay of the winding up proceedings upon the satisfaction of debts of the petitioning and supporting creditors... As we have already stated, the formulation of the threshold requirements in the case law should not be construed as if they were statutory provisions. Since the requirement of benefit is to ensure that some useful purpose would be served [by the winding up order], there is no justification in principle to exclude sufficient leverage benefit arising as an incidence to the presentation of the petition from the assessment of the second requirement even though such benefit may also have a useful impact prior to the making up of a winding up order. In the event that the appellant remained recalcitrant, the leverage would continue to have an effect after the making of a winding up order."

34. A relevant question to consider is whether the facts and circumstances of this case are so exceptional that the ordinary rule should not be applied either by dismissing the application for the appointment of the JPLs or adjourning the present application to date within a short period of time. The authorities do recognise that there may well be exceptional cases where the general rule, which applies in the vast majority of the cases, may have to be departed from in one way or another.

35. In the matter of *Agritrade Resources Limited* [2020] Bda LR 35, having reviewed the relevant authorities in relation to the appointment of a JPLs, this Court (Hargun CJ) concluded that:

"12. The Court is bound to take into account all relevant considerations in making the decision whether or not to appoint provisional liquidators. In particular, the court is bound to consider the commercial consequences of the decision whether to make the appointment. The Court will also consider the views expressed by creditors and the shareholders. In the ordinary case where the company is clearly insolvent, the clearly expressed views of the majority of the creditors in value are likely to be persuasive ***unless there are good reasons why those views should not be accepted and followed.*** " (emphasis added)

36. The Court of Appeal for Bermuda in *The Hong Kong and Shanghai Banking Corp Limited v NewOcean Energy Holdings Limited* [2022] CA (Bda) 16 Civ also recognised that there remained residual discretion not to follow the wish of even an overwhelming majority in truly exceptional cases:

> *"121. The judge took into account the risk that a winding-up might deleteriously effect the value of the Company's assets. In the light of all the other matters to which I refer,* ***I do not regard that as a sufficiently exceptional circumstance justifying in this case the refusal of a winding up order sought by so substantial a majority of creditors.*** *It is not uncommon for a liquidation prejudicially to affect the company's assets, sometimes significantly. Mr Taylor pointed out that a petitioning creditor is not required to demonstrate that the winding up will result in the greatest return to creditors as a whole, only that there is a prospect of some benefit from making it: Re Demaglass at page 638. That is, however, only a threshold requirement to enable an order for winding up to be made.* ***That said, in a case such as this, the large majority creditors may properly be allowed to make their own judgment as to what course is best.*** *It must also be borne in mind that, even with a compulsory liquidation, it is always open to the liquidators to negotiate with the Chinese authorities and others and to take steps with a view to ensuring the continuance of the businesses of the subsidiaries of the Company pending a disposition of the companies owning those businesses."* (emphasis added)

37. In the absence of any exceptional circumstances, I would hold that the Petitioner has the legal standing to pursue these proceedings; these proceedings are not being pursued for a collateral purpose so as to give to the Company a defence either to the appointment of JPLs or to the making of a winding up order; and that the Court would, in the exercise of its discretion, at this stage of the proceedings make an order to appoint JPLs to consider the feasibility of any restructuring of the Company's equity and indebtedness. The Court would exercise its discretion to appoint JPLs given that such a proposal is supported by a very substantial majority (in value) of the creditor body.

38. The question is whether there are exceptional circumstances. The exceptional circumstances relied upon are (i) there is credible concern (shared by the Company, BMK and to an uncertain extent by the Petitioner) that the appointment of JPLs by the Court may have the likely effect of permitting the Government of Madagascar to take steps to terminate the PSC; (ii) if the Government of Madagascar can successfully terminate the PSC, the Company will forfeit all its assets including the oil which it has already extracted such that the Company would be left penniless; (iii) this is not a case where the appointment of the JPL is required in order to obtain the benefit of the statutory stay in respect of other third party creditor claims as there are no other third party creditor claims against the Company; (iv) the Company has already appointed two independent non-executive directors from the financial consultancy firm of Alvarez & Marsal and has engaged that firm for a minimum period of three months for the purposes of conducting a review of the business and operations of the Company; assisting in evaluating the Company's current business plan, project economics and cash flow forecast; advising on the formulation of a restructuring plan, analysing options and assessing impact; and assisting in identifying potential investor(s) to refinance or acquire loans owed to the Petitioner and/or provide additional capital; and (v) the Company, the Petitioner and the Court will know by 15 March 2023 whether the efforts of Alvarez & Marsal to restructure the Company have been successful or are likely to be successful.

39. In the Court's view the facts and circumstances outlined in the previous paragraph do fall in the category of being exceptional. This Court does not consider that it is appropriate to dismiss the application for the appointment of JPLs based on the facts in the previous paragraph. However, the Court does consider that it is appropriate to adjourn this application to a date after 15 March 2023 for the purposes allowing the Company and Alvarez & Marsal to propose a restructuring which has realistic prospects of succeeding and which will satisfy the indebtedness owed to the Petitioner or satisfy the Petitioner's claims in some other way. The Court considers that such a course is appropriate in the circumstances of this case bearing in mind (i) potentially devastating effect of the loss of the entirety of the assets of the Company to the Government of Madagascar; and (ii) the relatively short period of adjournment before

the Court is able to reconsider the Petitioner's application for the appointment of the JPLs. At the adjourned hearing the Court will reconsider the Petitioner's application for the appointment of JPLs and unless the Company can demonstrate that there is a realistic basis for assuming that a restructuring can take place which has the effect of discharging the Petitioner's debt, the Court is likely to accede to the Petitioner's application for the appointment of the JPLs.

40. The Order the Court proposes to make is that both the Petition and the Petitioner's application for the appointment of the JPLs, made by Summons dated 7 December 2022, are adjourned to 27 March 2023 at 9.30 (with an estimated hearing time of one day). The Court also orders that the requirement for the readvertisement of the Petition be dispensed with.

41. In relation to the hearing on the 27 March 2023, the Court orders that any updated affidavit evidence should be filed by the parties by before 4 PM on 17 March 2023. The Court further orders that the parties should exchange written submissions by 4 PM on 23 March 2023 and provide a hard and electronic copy of the submissions to the Court.

42. The Court will hear the parties in relation to the issue of costs, if required.

Dated this 17th day of February 2023

SEAL OF THE SUPREME COURT OF BERMUDA

NARINDER K HARGUN
CHIEF JUSTICE