HCCW 220/2022
[2024] HKCFI 363

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
COMPANIES (WINDING-UP) PROCEEDINGS NO 220 OF 2022

IN THE MATTER of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of the Laws of Hong Kong

and

IN THE MATTER of China Evergrande Group (中國恒大集團)

Before: Hon Linda Chan J in Court

Date of Hearing: 29 January 2024

Date of Judgment: 29 January 2024

Date of Reasons for Judgment: 29 January 2024

REASONS FOR JUDGMENT

---

1. At the sixth hearing of the petition presented by Top Shine Global Limited ("**Petitioner**") on 24 June 2022 (as amended on 17 August 2022) ("**Petition**"), I made a usual winding up order against China Evergrande Group ("**Company**"). These are the reasons for my judgment.

Background

2. The Company was incorporated on 26 June 2006 in the Cayman Islands. It has since 19 December 2006 been registered as an oversea company[1] and a registered non-Hong Kong company[2]. As at 30 September 2023, the Company has issued share capital of US$132,043,009 divided into 13,204,300,900 ordinary shares[3].

3. The shares of the Company are listed on the Main Board of The Stock Exchange of Hong Kong Limited ("**SEHK**") (stock code 3333). Trading of the shares were suspended on 28 September 2023 and resumed on 3 October 2023. The principal place of business of the Company is at 23/F China Evergrande Centre, Wanchai, Hong Kong.

4. The Company is an investment holding company and the ultimate investment holding company of a group of companies known as Evergrande Real Estate Group ("**Group**"), which was founded by Mr Hui Ka Yan ("**Mr Hui**") in 1996 with its headquarters in Guangzhou. The Company is one of the main offshore financing platforms for the Group which raised capital offshore (i.e. outside the Mainland) to support the subsidiaries' business in the form of capital investment and shareholder's loans.

5. The Group engages in property development business with over 90% of its assets located in the Mainland. The majority of the Group's operations are conducted through the Company's indirect onshore subsidiaries (i.e. subsidiaries established in the Mainland). In addition, the Company has direct and indirect subsidiaries incorporated in Hong Kong, the Cayman Islands, the British Virgin Islands and Bermuda[4].

---

1 Under Part XI of the former Companies Ordinance (Cap. 32)
2 Under Part 16 of the Companies Ordinance (Cap. 622)
3 Petition §5; OR's Report §§4-5
4 Hui 1 §§18-20, 25, 55

Main assets of the Company and of the Group

6. The key subsidiaries in the Group are:

(1) Evergrande Property Services Group Ltd ("**Evergrande PSG**"), a company incorporated in the Cayman Islands whose shares are listed on the SEHK (stock code 6666). It manages a portfolio of residential and commercial properties in the Mainland and in Hong Kong and provides property management services to property owners[5]. As at 30 June 2022, the Company held, directly and indirectly, more than 50% shareholding in Evergrande PSG which are unencumbered[6].

(2) China Evergrande New Energy Vehicle Group Ltd ("**Evergrande NEV**"), a company incorporated in Hong Kong whose shares are listed on the SEHK (stock code 0708). It has 2 main business segments, new energy vehicle and health management[7]. As at 30 June 2022, the Company held, directly and indirectly, more than 50% of its shareholding which are unencumbered[8].

(3) Tianji Holding Ltd ("**Tianji**"), a company incorporated in Hong Kong with over 200 subsidiaries incorporated in the BVI, Hong Kong and the Mainland. It is an investment holding company and a guarantor of the "SJ Notes" (as defined below)[9].

(4) Hengda Real Estate Group Co, Ltd ("**Hengda**"), a company established in the Mainland. It is a key onshore subsidiary of the

---

5 Hui 1 §24.1
6 Hui 1 §28.1
7 Hui 1 §24.2
8 Hui 1 §28.2
9 Hui 1 §24.3

Company (holding indirectly 60% of its equity) and holds a substantial number of operating subsidiaries, project companies and assets in the Mainland. It is the sole shareholder of Tianji, the keepwell provider of the SJ Notes and the issuer of the "Hengda Bonds" (as defined below)[10]. Hengda is the main onshore entity within the Group in that as at 30 June 2021, its total assets and net assets were RMB1,905.6 billion and RMB338.3 billion respectively[11].

7. Apart from the interests in Evergrande PSG and Evergrande NEV, the Group's key offshore assets include:

(1) Real estate properties in Hong Kong held through various offshore and/or onshore subsidiaries of the Company, which include China Evergrande Centre in Wan Chai and Wo Sang Wai Project in Yuen Long. The management estimates these assets to have a value of HK$15.5 billion, all of which are encumbered[12].

(2) An unsecured interest free loan of HK$2.07 billion advanced to China Ruyi Holdings Ltd[13] ("**China Ruyi**') (through a wholly owned subsidiary of the Company, Solution Key Holding Ltd, with a maturity date of 30 July 2026[14].

(3) Shares in the Greater Bay Area Homeland Investment Ltd and investment positions in the Greater Bay Area Homeland

---

10 Hui 1 §24.4
11 Hui 1 §27
12 Hui 1 §28.3
13 Formerly known as HengTen Networks Group Ltd, a listed company
14 Hui 1 §28.4

Development Fund LP, with an aggregate book value of HK$1.55 billion as of 30 June 2022[15].

8. All the key subsidiaries and key assets described above are held indirectly by the Company. The material assets held directly by the Company were:

(1) Bank balances of HK$3 million (as at 30 June 2022); and

(2) Receivables of RMB 131.2 billion (as of 30 June 2021) owed by the subsidiaries in the Mainland, Hong Kong, the Cayman Islands, BVI, Bermuda and Canada, of which RMB 48.4 billion were owed by subsidiaries in Hong Kong. The Company owed payables to various subsidiaries in the aggregate amount of RMB65.1 billion[16].

Offshore liabilities

9. The Company has 3 main types of offshore liabilities and the liabilities as at 30 June 2022 were: CEG Notes (US$15.4 billion), SJ Notes (US$5.859) and Private Debts (US$4.099 billion).

10. The Company has issued 10 series of USD denominate senior secured notes and one series of HKD convertible bonds (together "**CEG Notes**"), all of which (except 2022 Privates Notes) are listed on the Singapore Stock Exchange ("**SGX**"). Details of CEG Notes are as follows[17]:

CEG Notes	Principal (USD million)	Interest p.a.	Maturity Date
2022 Private Notes	300.0	9.50%	30/1/2022

[15] Hui 1 §28.5
[16] Hui 1 §29
[17] Hui 1 §§31-32

March 2022 Notes	2,022.0	8.25%	23/3/2022
April 2022 Notes	1,450.0	9.50%	11/4/2022
January 2023 Notes	998.8	11.50%	22/1/2023
Convertible bonds	10.3	4.25%	14/2/2023
April 2023 Notes	834.2	10.00%	11/4/2023
June 2023 Notes	1,331.5	7.50%	28/6/2023
January 2024 Note	995.0	12.00%	22/1/2024
March 2024 Notes	951.0	9.50%	29/3/2024
April 2024 Notes	690.8	10.50%	11/4/2024
2025 Notes	4,649.2	8.75%	28/6/2025
Total	**14,232.8**		

11. The payment obligations under each series of CEG Notes are guaranteed by various subsidiaries of the Company incorporated in the Cayman Islands, the BVI or Hong Kong (collectively "**CEG Notes Guarantors**"), and the shares in CEG Notes Guarantors are pledged as security for the benefit of the holders of the CEG Notes. As at 30 June 2022, the total outstanding principal of the CEG Notes was US$14.23 billion and unpaid interest was US$1.17 billion, all of which are due and payable following event of default[18].

12. In addition, the Company through an indirect subsidiary, Scenery Journey Ltd ("**SJ**"), a company incorporated in the BVI, issued 4 series of USD denominated senior notes (collectively "**SJ Notes**"), all of which are listed on the SGX. Details of SJ Notes are as follows[19]:

SJ Notes	**Principal (USD million)**	**Interest p.a.**	**Maturity Date**
October 2022 Notes	1,999.0	11.50%	24/10/2022
November 2022 Notes	644.0	13.00%	6/11/2022
October 2023 Notes	1,994.0	12.00%	24/10/2023
November 2023 Notes	589.0	11.50%	22/1/2023

[18] Hui 1 §§34-36. An event of default if a winding up petition filed against the Company is not dismissed or stayed within 60 days.

[19] Hui 1 §§37-39

Total	**5,226.0**		

13. The payment obligations under the SJ Notes are guaranteed by Tianji and its 103 subsidiaries incorporated in the BVI or Hong Kong (collectively "**SJ Notes Guarantors**"). In addition, Hengda entered into a keepwell and equity interest purchase agreement in respect of each of the SJ Notes whereby Hengda undertook to, *inter alia*, cause SJ and each of the SJ Notes Guarantors to remain solvent and to purchase their equity interests upon event of default. As at 30 June 2022, the total outstanding principal of the SJ Notes was US$5.23 billion and unpaid interest was US$629 million[20].

14. The Company and various entities within the Group have entered into the following offshore private financing arrangements with total outstanding principal of US$4.099 billion[21] (for §§(1), (2) and (3) below) as at 30 June 2022[22]:

(1) Loan facilities, notes and other debts and purchase obligations to which the Company is an obligor. As at 30 June 2022, the outstanding principal was US$2.67 billion.

(2) Loan facilities, notes and other debts and purchase obligations to which the Company is not an obligor but Tianji is a guarantor or a put option grantor. As at 30 June 2022, the outstanding principal was US$718 million.

(3) Certain FCB Options (including the Debt owed to the Petitioner) where investors have served repurchase notices requiring the

---

[20] Hui 1 §§41-43

[21] For liabilities described in §§(1)-(3). The liability under the guarantee (§(4)) and put option (§(5) is included in onshore liabilities

[22] Hui 1 §§45, 48, 50, 52

Company to pay repurchase price of US$711 million (being initial amount invested by the investors plus a 15% premium).

(4) The Company is a guarantor of certain onshore debts incurred by the onshore subsidiaries, joint ventures or associates and other third parties, which are bank loans, loans from financial institutions, debts to support the joint ventures or associates' operations or debts from cooperative relationship with third parties (collectively "**CEG Guaranteed Onshore Debts**").

(5) The Company is also a put option grantor in relation to Hengda Bonds series 15 Hengda 03.

Onshore liabilities

15. The Group has 2 main types of liabilities: CEG Guaranteed Onshore Debts (US$8.96 billion) and Hengda Bonds (US$7.973 billion).

16. The CEG Guaranteed Onshore Debts were incurred by the Company's subsidiaries, joint ventures or associates and other third parties in the Mainland. As at 30 June 2022, the outstanding principal was US$8.96 billion (RMB 60 billion)[23]. As these onshore debts were borrowed or guaranteed by the Company's subsidiaries in the Mainland and/or are secured against the assets located in the Mainland, the onshore creditors have priority over the claims of the offshore creditors[24].

[23] Hui 1 §52
[24] Hui 1 §47

17. Hengda has issued 9 series of RMB denominated unsecured onshore corporate bonds (collectively "**Hengda Bonds**") with outstanding principal of RMB 53,500 (US$7.973 billion). Details as follows[25]:

Hengda Bonds	**Principal (RMB million)**	**Interest p.a.**	**Maturity Date**
15 Hengda 03	8,200	6.98%	January 2023
19 Hengda 01	15,000	6.27%	May 2023
19 Hengda 02	5,000	6.80%	May 2024
20 Hengda 01	4,500	6.98%	January 2023
20 Hengda 02	4,000	5.90%	May 2023
20 Hengda 03	2,500	5.60%	June 2023
20 Hengda 04	4,000	5.80%	September 2025
20 Hengda 05	2,100	5.80%	October 2025
21 Hengda 01	8,200	7.00%	April 2026
Total	**53,500 (US$7,973 million)**		

Insolvency of the Company and of the Group

18. The Company does not dispute that it is liable to pay the sum of HK$862,500,000 ("**Debt**") to the Petitioner which became due on 18 April 2022[26]. Nor does the Company dispute that it failed to comply with the statutory demand served upon it on 2 June 2022[27]. By virtue of s.178(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("**CWUMPO**"), the Company is deemed insolvent.

19. It is indisputable that the Company is grossly insolvent and is unable to pay its debts. According to the 2023 Interim Report published by the Company on 26 September 2023, as at 30 June 2023, the Company had total assets of RMB 1,743,997 million (comprising non-current assets of RMB 165,533 million and current assets of RMB1,578,464 million including

[25] Hui 1 §48
[26] Petition §§17-18; Hui 1 §§11, 67
[27] Petition §§19-22; Hui 1 §70

cash/cash equivalents of RMB4,047 million) while its total liabilities were RMB2,388,200 million[28]. The Company is balance sheet insolvent.

20. Although the Company is incorporated in the Cayman Islands, there is no dispute that the 3 core requirements for the court to exercise its discretionary over the Company are satisfied:

(1) The Company is a listed company in Hong Kong, has a principal place of business of Hong Kong and some of its senior management are based in Hong Kong. The Company has served as one of the main platforms in raising capital for the Group in Hong Kong.

(2) The Company has substantial assets within the jurisdiction, primarily in the form of subsidiaries incorporated in Hong Kong and receivables owed by such subsidiaries to the Company.

(3) There are many creditors within or have submitted to the jurisdiction including the Petitioner and the *ad hoc* group of creditors[29], who hold US$2 billion in aggregate principal amount of CEG Notes and US$ 1 billion in aggregate principal amount of SJ Notes ("**AHG**")[30]. Kirkland and the financial adviser to the AHG remain in close contact with more than 150 other international investors which hold an approximately US$6.5 billion of the CEG Notes and SJ Notes[31].

---

28 OR's Report §§7-8

29 Being (a) Plum Blossom Master, LLC, (b) Saba Capital Master Fund, Ltd, (c) Ashmore SICAV Emerging Markets Asian High Yield Debt Fund, who filed notices of intention to appear in the Petition on 30 August 2022 and (d) other funds represented by Messrs Kirkland & Ellis ("**Kirkland**")

30 McDonald 1 §5

31 McDonald 1 §5

Proposed restructuring

21. The Petition was presented on 24 June 2022. At the hearings on 5 September 2022, 28 November 2022 and 20 March 2023, the Company opposed the Petition on the ground that it would put forward a comprehensive restructuring in respect of its offshore debts which, if implemented, would restore the solvency of the Company.

(1) On each occasion, the Company filed affirmations to update the creditors and court on the progress of the proposed restructuring. In view of the magnitude and complexity of the proposed restructuring, the progress which had been made by the Company and the view of AHG and other opposing creditors which were supportive of the Company's applications for adjournment, the Petition was adjourned to 31 July 2023. This was despite the Petitioner's stance that the court should make an immediate winding up order against the Company.

(2) In particular, at the hearing on 20 March 2023, both the Company and AHG submitted that the Company had been working towards (a) entering into restructuring support agreements ("**RSA**"), (b) finalising the audited accounts to be included in the scheme documents, (c) preparing draft scheme documents, and (d) fixing the dates for the convening hearings and the sanction hearings.

22. After the hearing, further progress was made by the Company in progressing the proposed restructuring in that:

(1) On 20 March 2023, the Company entered into Term Sheets in relation to the "CEG Schemes"[32], the "TJ Scheme"[33] and the "SJ Scheme"[34] (collectively "**Schemes**"), which sought to arrange and compromise the debts owed by the Company, Tianji and SJ[35].

(2) On 3 April 2023, the Company and AHG entered into 3 RSAs (i.e. Class A RSA, SJ RSA and TJ RSA) under which the parties agreed to cooperate in order to facilitate implementation of the Schemes[36]. Another RSA was signed with the Class C creditors. The Long Stop Date of the RSA is 15 December 2023[37].

(3) On 14 July 2023, the Company published 3 practice statement letters in respect of the CEG Schemes, TJ Scheme and SJ Scheme providing material information in relation to the Schemes in advance of the convening hearings and creditors meetings to be convened by the Court[38].

(4) Based on the timeline provided by the Company, this Court directed that the convening hearings of the CEG Scheme and TJ Scheme to be heard on 24 July 2023, with creditors meetings to be held on 22-23 August 2023. If approved by the requisite majorities of the creditors, the sanction hearings of the CEG Scheme and the TJ Scheme would be heard on 1 and 6 September 2023 (sanction hearing of the CEG Scheme in Cayman Islands on

---

32 Which involved parallel schemes of arrangements in the Cayman Islands and in Hong Kong
33 Scheme in Hong Kong
34 Scheme in the BVI
35 Hui 5 §6.1
36 Hui 5 §11
37 Hui 5 §28
38 Hui 5 §§13-15

6 September 2023 and of the SJ Scheme in the BVI on 4 September 2023)[39] .

(5) On 17 July 2023, the board approved the audited accounts for the years 2021 and 2022 which were announced on the same day[40].

(6) On 20 July 2023, the Company filed an affirmation in support of the convening hearings.

(7) The anticipated effective date of the Schemes was 29 September 2023[41].

23. The Schemes had the support of (1) creditors holding 77% of the outstanding principal of Class A debts (who signed Class A RSA), (2) creditors holding 30% of the outstanding principal of Class C debts (who signed Class C RSA), (3) creditors holding 91% of the outstanding principal of Class B debts (who signed SJ RSA), and (4) creditors holding more than 64% of the outstanding principal of Class D debts (who signed TJ RSA)[42].

24. At the convening hearings on 24 July 2023, this Court made comments on the draft CEG Scheme and the TJ Scheme and gave directions for the Company to convene Scheme meetings to be held on 23 August 2023.

25. By consent summons filed on 26 July 2023, all parties agreed to vacate the hearing scheduled for 31 July 2023 and to have the Petition be adjourned to 30 October 2023. The hearing on 31 July 2023 was vacated given that if the Schemes were approved by the creditors and sanctioned by the Court,

---

39 Hui 5 §§25-26
40 Hui 5 §21
41 Hui 5 §27
42 Hui 5 §29

the Petition would be dismissed. Conversely, if the Schemes fell through, the Company by reason of its insolvency would likely be wound up.

Inability to issue new shares or new instruments

26. However, the Company adjourned the Scheme meetings scheduled for 23 August 2023 and eventually cancelled them:

(1) On 14 August 2023, the Company announced that it had entered into a share subscription agreement with NWTN Inc (a non-Group entity) in respect of a proposed investment in Evergrande NEV, which was said to be intended to support the business recovery and growth of Evergrande NEV and its subsidiaries and, in turn, would benefit the creditors under the CEG Schemes as the scheme consideration was linked to Evergrande NEV. The meeting was adjourned to 28 August 2023 to allow the creditors to consider the proposed investment[43].

(2) On 28 August 2023, the Scheme meetings were further adjourned to 25-26 September 2023 on the grounds that (a) the Company and its financial advisers had received a significant number of questions from CEG Scheme creditors in respect of the logistics of the CEG Schemes, (b) there had been numerous media reports which mischaracterised the Chapter 15 restructuring recognition process in New York as Chapter 11 bankruptcy proceedings; (c) the Company's shares resumed trading on 28 August 2023, which the Company considered was a new development for the creditors[44].

---

[43] Siu 1 §8.1
[44] Siu 1 §8.2

(3) On 22 September 2023, the Company announced that the sales of the Group had been weaker than it expected. The Company considered it necessary to re-assess the terms of the Schemes and cancelled the Scheme meetings[45].

(4) On 24 September 2023, the Company announced that it faced regulatory issues regarding the new debt instruments to be issued as scheme consideration under the CEG Schemes, as the issuance are subject to "The Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies" ("**Administrative Measures**") promulgated by the China Securities Regulatory Commission ("**CSRC**") and "The Administrative Measures for the Approval Registration of Mid-to-Long Term Foreign Debt of Enterprises" ("**NDRC Order No. 56**"). As Hengda is being investigated by CSRC for suspected illegal or irregular disclosure of information, the Group is unable to meet the qualifications for issuing the new debt instruments. [46]

27. As it was clear that the Company would not be able to proceed with the Schemes, this Court dismissed the proceedings in respect of the CEG Scheme and the TJ Scheme.

Hearing on 30 October 2023

28. At the hearing on 30 October 2023, the Company confirmed that:

[45] Siu 1 §8.3
[46] Siu 1 §9

(1) Following enquiries with the CSRC and NDRC, it was not qualified under the Administrative Measures[47] to issue the new debt instruments under the Schemes, which are in the nature of new offshore debts. This is because Mr Hui, the executive director and Chairman of the board, had been subject to mandatory measures due to suspected illegal crimes, as announced by the Company on 28 September 2023[48].

(2) Based on the proxy forms received by the information agent, approximately 45% of the Class C creditors (including the Petitioner) indicated that they would oppose the CEG Schemes[49].

29. On the other hand, certain Class C creditors, viz., Bank of Hainan Co., Ltd, Everbright Xinglong Trust, Xi'an Zishi Equity Investment Management Co., Ltd and Xi'an Tourism Development Fund Partnership (Limited Partnership) (collectively "**Opposing Creditors**"), which held guarantees executed by the Company in the aggregate principal amount of US$511.92 million[50], appeared at the hearing to oppose the Petition and support the Company's efforts to negotiate a revised restructuring proposal. It was not clear what revised restructuring proposal the Opposing Creditors intended to support as none had been put forward by the Company.

30. Nevertheless, as the Company stated that it would work with the AHG in good faith and use best endevaours to negotiate "a revised achievable plan in 3 months" in compliance with the laws and regulations which would

---

47 Sub-section 3, Article 9 of NDRC Order No. 56 provides that the borrowing of foreign debts by an enterprise, including issuing new offshore notes, shall meet the requirement that "the enterprise, its controlling shareholders and actual controllers have not been investigated by law for suspected crimes or major violations of laws and regulations in the latest three years"

48 Siu 1 §§10-12

49 Siu 1 §15

50 Siu 1 §16

not involve issuance of new shares or new debts and could involve provision of shares in Evergrande PSG and Evergrande EPV,[51] and the majority of the creditors appearing in the Petition (AHG and the Opposing Creditors) supported giving the Company a further opportunity to come up with a revised restructuring proposal, this Court adjourned the Petition to 4 December 2023. The Company was told in clear term that it had to work with the creditors and come up with a restructuring proposal which complies with the laws and has the support of the requisite majorities of creditors. If the Company failed to come up with a fully formulated restructuring proposal before the next hearing, it was very likely that the court would make a winding up order against the Company.

Hearing on 4 December 2023

31. Shortly before the hearing, on 29 November 2023, the Company filed Siu 2 to provide an update the court which fell far short of a fully formulated restructuring proposal. The Company claimed that it had been continuing to discuss with the creditors in respect of the "broad framework for the restructuring proposal" which included offering to the scheme creditors the following consideration:

(1) 17.8% shares shares in the Company[52] at an exchange price of HK$0.5775 per share; and 28.5% shares in Evergrande NEV held by the Company at exchange price of HK$3.84 per share; and 21.6% shares in Evergrande PSG held by the Company at exchange price of HK$2.3 per share[53].

---

51 Siu 1 §§17-18
52 Held by Xin Xin (BVI) Ltd
53 Siu 2 §7.1

(2) The remaining value of the claims will be exchanged for certificates, which are not debt instruments but are contractual undertakings which can be repurchased or redeemed from the creditors ("**Certificates**")[54].

32. The Company said that it did not foresee the *same* regulatory hurdles with the CSRC and NDRC since the revised proposal does not involve issuance of new shares or new debt instruments[55]. The board considered the revised proposal would yield a better recovery to the scheme creditors and required time to update the recovery analysis. Other than saying that the revised proposal was shared with the AHG's advisers and the Petitioner on 26 November 2023,[56] no explanation was provided by the Company as to why the revised proposal was not provided to the AHG and the Petitioner much earlier. Nor did the Company provide any analysis, still less by legal and financial advisers, on the viability and the estimated return on the revised proposal.

33. The Petitioner was not satisfied with the so-called revised proposal. In his skeleton arguments dated 30 November 2023, Mr Leo Remedios[57], counsel for the Petitioner, submitted that the revised proposal was "clearly unfeasible" and did not justify any further adjournment of the Petition for the following reasons:

(1) The Company (and the Group) was not able to issue new shares or debt instruments due to governmental regulations in Mainland China. The Company suggests that by issuing the Certificates, it would not face the same regulatory hurdles.

---

54 Siu 2 §8.2
55 Siu 2 §8
56 Siu 2 §§9-10
57 Appearing with Mr Xizhen Wang

(2) However, even upon P's request, the Company failed to clarify or provide any legal opinion on the PRC law as to whether the Certificates are treated differently to debt instruments by the CSRC and NDRC.

(3) There was no suggestion that the performance of the Company (or the Group) had improved, when the weakness of sales of the Group was cited as one of the main reasons for the cancellation of the Schemes.

(4) Even assuming the revised proposal could proceed, the Company failed to show how the financial difficulties of the Company could be addressed, whether in the immediate term, or in the short to medium term, and how the Company can be returned to financial viability (*Re Lerthai Group Limited* [2021] HKCFI 207, §§7 & 8).

(5) The revised proposal relied largely on the disposition of the Company's assets listed in Asset Lists 1 and 2[58]. There has been no explanation or update on the Company's other assets in the Mainland, in particular, whether the Company is still able to control and/or benefit from such assets and whether the same could be used for the intended restructuring.

(6) In spite of the Company's bare assertion that disposal of assets under the revised restructuring would yield a better recovery than in liquidation, it had not been explained why the same could not

[58] Which comprised equity interest in Greater Bay Area Homeland Development Fund LP and 5 other entities or funds, certain receivables held by Solution Key Holdings Ltd, receivable held by the Company owed by Shengyu (BVI) Ltd and Evergrande NEV, and equity interests in 5 other entities

be done by professional liquidators, especially when there were justifiable doubts over the ability of current management of the Company following Mr Hui's detention.

(7) By the same token, the function of ascertaining the status of Company's assets and deciding how to make use of the assets could be carried out by professional liquidators and restructuring could still be pursued.

(8) The revised proposal did not have sufficient creditors' support. It was not clear whether the AHG and the Opposing Creditors would support the same.

(9) Similar to the Schemes, under the revised proposal, the Scheme Creditors would be divided into Class A and Class C, and the treatment of Class C creditor was "significantly unfavourable" as compared to Class A creditors in that:

(a) Class C creditors' claims would be determined on a deficiency claim basis, whereas Class A creditors' claims would not; and

(b) Class A and Class C creditors would be treated very differently in the allocation of shares in the Company, Evergrande PSG and Evergrande NEV in that Class A creditors would be entitled to more shares in Evergrande PSG[59], which are generally considered as more valuable than shares in Evergrande NEV.

[59] Class A creditors to receive 76.3% while Class C creditors to receive 23.7% of the shares in Evergrande PSG [B9/180/2198].

(10) As the revised proposal did not improve the position of the Class C creditors, it was highly unlikely that the requisite majority of Class C creditors would agree to the revised proposal. The revised proposal would fail if one class of creditors rejected it.

34. Mr Jose Maurellet SC[60], counsel for the Company, did not have any satisfactory answer to the points made by Mr Remedios other than submitting that the revised proposal was "concrete with the philosophy behind the plan being explained and set out", reiterating the assertions made by the Company in Siu 2 and contending that a liquidation "means a loss of the Company's listing status and the current synergies within the Group which may attract potential strategic investors". The Company sought a further adjournment of 3 months to adapt the Schemes to the revised proposal, allow the creditors "to properly reflect their views at a vote", further revise the proposal if necessary and "put forward a workable scheme which can gather further and sufficient support".

35. Mr John Scott SC[61] indicated in his skeleton that the AHG did not support the adjournment by the Company and would not oppose the court making a winding up order against the Company.

36. However, without any prior notice to the parties or the court, at the hearing, the Petitioner changed its stance. Mr Remedios informed the court that the Petitioner would not seek an immediate winding up order against the Company and would not oppose the adjournment sought by the Company.

---

[60] Leading Mr Look Chan Ho
[61] Leading Mr Fergus Saurin, solicitor advocate

37. The Court was taken by taken by surprise in the sudden change of stance on the part of the Petitioner and reluctantly adjourned the Petition for a further 8 weeks, and indicated that at the next hearing, the court expected to see the Company had provided (1) a refinement of the revised proposal which the Company said needed more "ironing"; (2) support from the requisite majorities of creditors on the revised proposal; (3) an independent legal opinion on the regulatory issues which were said to have prevented the Company's ability to implement the Schemes or any scheme which requires the issuance of new shares or new debt instruments; and (4) full transparency and updates on the restructuring efforts and steps taken by the Company. The Company was required to provide an update to the court and the parties by filing an affirmation no less than 7 days before the next hearing, and the Petitioner was directed to give notice to the other parties as to whether it intended to seek a winding up order against the Company by the same time limit.

Hearing on 29 January 2024

38. Despite the 8-weeks' adjournment, the Company did not provide any further revised proposal or the type of disclosures directed by the Court. Nor did it file any affirmation to update the court and the parties on the restructuring effort and any further revised restructuring proposal within the time limit imposed by the Court.

39. In view of the Petitioner's stance that it "is prepared not to push for a winding-up order" and would not oppose the Company's intended application for a short adjournment, and the letter dated 23 January 2024 from the Court informing the parties that any creditor who wishes to be substituted

as petitioner may issue a summons[62] for the purpose and the application will be heard at the coming hearing, on 23 January 2024, solicitors for Treasure Glory Global Ltd ("**TG**") wrote to solicitors for the Petitioner and the Company, enclosing drafts of a consent summons for substitution and a Re-Amended Petition, and invited their agreement to the proposed substitution. On 24 January 2024, solicitors for the Petitioner informed solicitors for TG that the Petitioner does not oppose the application. As the Company did not respond, TG issued a summons on 25 January 2024 for substitution as petitioner on the draft Re-Amended Petition supported by the affidavit of Joshua Paul Weisser dated 23 January 2024 ("**Weisser 1**").

40. Mr Scott submits that it is indisputable that TG is a creditor of the Company in respect of an On-Lent Loan in the amount of US$100 million advanced by the Lenders to TG and the Company (each defined as a Borrower) under the Loan Agreement dated 19 July 2021. The Company has accepted and recognised the existence and validity of the On-Lent Loan and its liability[63] and there cannot be any doubt that the Company is, as it has also accepted, hopelessly insolvent.[64] TG is indisputably a creditor of the Company and has standing to petition to wind up the Company.

41. Further, Mr Scott submits that the court should make an immediate winding up order against the Company, having regard to the following facts and matters:

(1) the deliberate unexplained defiance of the Court and failure to provide the information promised is strongly indicative of a lack

---

62 Under rule 33 of the Companies (Winding up) Rules
63 Re-Amended Petition §25; Weisser 1 §35
64 Re-Amended Petition §26

of good faith on the part of the Company in putting together viable restructuring proposals;

(2) equally troubling is it appears from the Petitioner's letter to the court dated 22 January 2024 that the Company has had "off the record discussions" with the Petitioner about a "new restructuring proposal" but has not seen fit to communicate any part of this "new" proposal to the AHG, which holds in total US$4 billion of the CEG Notes[65], and who have worked tirelessly with the Company for about 2 years to attempt to arrive at a viable re-structuring plan. To now freeze out the AHG in this way, when the Group has been so supportive of a re-structuring process in the past is indicative of further bad faith on the part of the Company. This should weigh heavily against granting the Company any further indulgence if a yet further application for an adjournment is to be made;

(3) Although the Court can adjourn a winding-up petition if a viable restructuring plan exists, it will do so only if satisfied that (a) there is funding for the proposed re-structuring; (b) there is a restructuring plan; and (c) the plan has a timetable (*Re Rare Earth Magnesium Technology Group Holdings Ltd.* [2022] HKCFI 1317 at §10). None of these are present.

(4) There is no evidence that there is any substantial in-principle creditors support in favour of an adjournment (cf. *Re UDL*

[65] McDonald 5 §12(a), substantially more than the US$2 billion of the CEG Notes previously represented by the AHG

Holdings Ltd [1999] 2 HKLRD 817, at 823; *Re China Huiyuan Juice Group Ltd.*[66] [2021] 1 HKLRD 255, §§50-51).

(5) All things considered, it cannot reasonably be said that there is any "useful purpose or utility in granting a further adjournment" (*Re Jiayuan International Group Ltd* [2023] HKCFI 1254, §12(3), 18).

42. I agree with Mr Scott's submissions. Neither the Company nor the Opposing Creditors have been able to address the points made by Mr Scott, which I consider to be well founded.

43. It was only until 4pm on 26 January 2024 that the Company belatedly filed a summons for extension of time to file Siu 3 out of time together with the skeleton arguments. In short, the Company asks for a further adjournment of 3 months "to push forward the Company's newly revised restructuring plan exhibited to Siu 3, which was only provided to the AHG on 25 January 2024. There is no explanation for the delay and the failure to provide the so-called "new restructuring plan", other than a general assertion that the Company needs time to "balance a host of factors to formulate a plan that would garner creditor support, taking into account various creditors' concerns including the AHG's reasons for rejecting the previous plan. The current revised plan has sought to accommodate the commercial wishes expressed by the AHG as well as other creditors"[67]. There is simply nothing before the Court to explain or justify the delay and the lack of any progress in putting forward a restructuring proposal on the part of the Company.

---

66 [2021] 1 HKLRD 255 at §§50 to 51

67 The Company's Skeleton §5

44. Indeed, the "new restructuring plan" (set out in a 10-page document) is not even a restructuring proposal, much less a fully formulated proposal. All that it is said is that[68]:

(1) The composition of the class will be changed. Instead of having 2 classes of creditors (Class A and Class C), there will only be one class of creditors. This is to address the concerns from the CEG Guaranteed Onshore Debts (being the majority of the Class C creditors under the CEG Schemes) that (a) their onshore rights may be affected by the implementation of any scheme; (b) the different treatment between Class A and Class C creditors under the CEG Schemes; and (c) the difference in entitlements to the scheme consideration, which was on a fully accrued basis (in respect of Class A creditors) and the so-called deficiency basis (in respect of Class C creditors).

(2) Instead of having the parallel CEG Schemes, there will be a dual scheme structure, with (a) a scheme at the Company's level in Hong Kong ("**Revised CEG Scheme**"), and (b) another scheme at the level of Anji (BVI) Ltd ("**Anji**") in the BVI and/or other relevant jurisdictions ("**Anji Scheme**").

(3) Anji is a direct wholly owned subsidiary of the Company and a guarantor of the CEG Notes. The Anji Scheme, if implemented, will release the guarantee liability and share pledges granted by all the CEG Notes Guarantors in respect of the CEG Notes.

---

[68] Siu 3 §7

(4) The scheme consideration offered to the creditors will be a combination of all the Company's shares in Evergrande NEV (58.5%) and Evergrande PSG (51.6%), which will be apportioned between the Revised CEG Scheme and the Anji Scheme.

45. It is clear that far from ironing out the details of the revised proposal put forward before the last hearing, the Company now seeks to put forward yet another "new restructuring plan" which is nothing but some general ideas about what it may or may not be able to put forward in the form of a restructuring proposal. I say this because there is no detail or analysis on (1) the returns to the creditors under the Revised CEG Scheme or the Anji Scheme; (2) whether the Company is still able to use all the shares in Evergrande PSG and Evergrande NEV for the purpose of the new schemes, which is a real concern in light of the fact that the Security Agent has liquidated 300 million shares in Evergrande PSG and realised net proceeds of US$100 million[69]; (3) whether in light of the difference between the rights of the Class A creditors and the Class C creditors, there is a proper basis to treat all the creditors in the same class; and (4) whether the Revised CEG Scheme or the Anji Scheme will address the regulatory hurdles said to have faced by the Company, supported by legal opinion.

46. Mr Maurellet opposes the summons for substitution and submits that the court should adjourn the application for substantive arguments as the Company has not had the opportunity to file evidence in opposition.

47. In his written submissions, Mr Victor Dawes SC[70] on behalf of the Opposing Creditors opposes the summons for substitution on the grounds that (1) the Opposing Creditors only received summons and Weisser 1 after

[69] Weisser 1 §27
[70] Leading Mr Jason Yu

5pm on 25 January 2024, (2) the status of TG as a creditor appears to be disputable; and (3) in any event, the court should follow the "usual practice" in England and gives directions on the application for substitution and determine any dispute raised by the debtor company (*Liberty Commodities v Citibank* [2023] EWHC 2020 (Ch), §§26, 43-51). Alternatively, the court should determine the application after the parties have had the opportunity to file evidence in respect of the debt relied upon by the creditor seeking to be substituted (*Re Hon Seng Engineering Ltd* [2001] 2 HKLRD 295, at 297H-I). Further and in any event, the Opposing Creditors support the Company's effort in formulating a restructuring proposal and asks the court to adjourn the Petition for argument at another Monday morning hearing.

48. It seems to this Court that in view of the stance taken by the Company and the Opposing Creditors, rather than allowing TG to be substituted as a creditor or to adjourn the application for substantive arguments, which would only result in further delay in the determination of the Petition, the better (and certainly more expedient course) would be for the court to determine whether there is a proper basis for the court to exercise its discretion to grant a further adjournment of the Petition. This is because the Petitioner has *not* asked for leave to withdraw the Petition, which remains extant. All that the Petitioner says is that it does not oppose the application for substitution and does not object to a short adjournment of the Petition in the event that the Company applies for one[71]. This is confirmed by Mr Remedios at the hearing. Indeed, even if all parties to the petition agreed to have the petition be dismissed, the court still has discretion to order the company to be wound up if circumstances warrant (*Re Shop Clothing Ltd (t/a Theme)* [1999] 2 HKLRD 280).

---

[71] Petitioner's Skeleton §5

49. I do not see any proper ground for the court to grant a further adjournment of the Petition, which has been ongoing for over 19 months. The Company has not demonstrated that there is any useful purpose for the court to adjourn the Petition - there is no restructuring proposal, let alone a viable proposal which has the support of the requisite majorities of the creditors. To the contrary, it seems to me that the interests of the creditors will be better protected if the Company is wound up by the court, so that independent liquidators can take control over the Company, secure and preserve its assets and review and formulate a restructuring proposal if they consider that such course is appropriate. It is not uncommon for a company to put forward and implement a scheme of arrangement after it is wound up by the court. Indeed, in respect of the Company, this has the additional advantage of putting the Company out of the control of Mr Hui, which had hitherto been one of the regulatory hurdles preventing the Company from issuing new debt instruments or new shares.

(Linda Chan)
Judge of the Court of First Instance
High Court

Mr Leo Remedios and Mr Xizhen Wang, instructed by K.B. Chau & Co., for the Petitioner

Mr Jose Maurellet SC leading Mr Look Chan Ho, instructed by Sidley Austin, for the Company

Ms Victor Dawes SC leading Mr Jason Yu, instructed by Karas So LLP, for the opposing creditors (Bank of Hainan Co., Ltd, Everbright Xinglong Trust, Xi'an Zishi and Xi'an Tourism)

Mr John Scott SC instructed by Kirkland & Ellis, leading Mr Fergus Saurin, solicitor advocate, for the supporting creditor and AHG

Mr Christopher Chain SC leading Mr Lim Han Sheng, instructed by the Official Receiver's Office for the Official Receiver