



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

CAUSE NO: FSD 88 OF 2021 (ASCJ)

IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF STAR INTERNATIONAL DRILLING LTD

**Appearances: Mr James Clifford, Mr Christopher Levers and Mr Max Galt of
Ogier on behalf of Star International Drilling Ltd**

Before: The Hon. Chief Justice Sir Anthony Smellie

REASONS FOR DECISION

Withdrawal of company's petition to wind up and discharge of Joint Provisional liquidators upon approval of restructuring plan - timing of filing of order with Registrar of Companies- ancillary orders.

Introduction

1. Star International Drilling Ltd (the "Company") applies by *ex parte* summons dated 29 April 2022 (the "Application") for an order (i) discharging Eleanor Fisher of EY (Cayman) Ltd (Ms Fisher) and Roy Bailey of Ernst & Young Ltd. British Virgin Islands (Mr Bailey) as its joint provisional liquidators (the "JPLs") and (ii) giving it leave to withdraw the petition that it presented for its own winding up on 7 April 2021 (the "Petition"). The form of order requested is not entirely usual in that it asks that the discharge and withdrawal take effect, not from the date of the order, but from the date and time the JPLs file any order I make permitting the discharge and withdrawal with the Registrar of Companies; in effect, to enable the JPLs to have control over the timing of their discharge. Assuming I was minded to make such an order, the Company also asks (iii) that the JPLs be at liberty to

apply with respect to their remuneration following their discharge and/or the withdrawal of the petition and (iv) that the costs of the Application be paid out of the assets of the Company as an expense of the provisional liquidation.

2. The JPLs were appointed in a “light touch” capacity to oversee and monitor the day-to-day operations of the Company and to take action in relation to the proposed restructuring described below.
3. The basis of the application is that a restructuring has been achieved and the provisional liquidation is no longer required and it is therefore proposed to discharge the JPLs immediately prior to the restructuring taking effect.
4. The background to the application is set out in the material in the hearing bundles filed in support of the Application, including, in particular, the Second Affidavit of Mr Michael Pearson (of FFP (Cayman) Limited and director of the Company) sworn on 5 May 2022. I have considered that material as well as the written and oral submissions of the Company's counsel.
5. By way also of background, the Company is a member of the Constellation Group, which is a large onshore and offshore drilling group of companies in the oil and gas industry. The Company, together with other members of the Constellation Group, are currently operating under a restructuring proceeding under the auspices of the First Business Court of Rio de Janeiro (the "**Brazilian RJ Proceeding**") which resulted in a reorganisation plan under which the Group companies were to remain under the Brazilian Court's supervision for up to two years until 1 July 2021.
6. However, as a result of liquidity issues caused by various factors including the COVID-19 pandemic, those Group companies (including the Company) who were under the Brazilian Court's supervision, applied to the Brazilian Court seeking a suspension of the then current reorganisation plan, with a view to submitting an amended restructuring plan for the approval of the Brazilian Court.
7. On 7 April 2021, the Brazilian Court made an order granting the requested suspension and, *inter alia*, providing creditors and various other stakeholders in the Brazilian RJ Proceedings the opportunity to present their views on the amended restructuring plan.

8. In support of the Constellation Group's attempts at a further restructuring, Ms Fisher and Mr Bailey were appointed by the Commercial Division of the British Virgin Islands High Court (the "BVI Court"), as joint provisional liquidators over certain British Virgin Islands ("BVI") companies in the Constellation Group, by order dated 8 April 2021. Similarly, by order dated 13 April 2021, I appointed Ms Fisher and Mr Bailey as JPLs over the Company.
9. As set out in the comprehensive evidence filed by the Company:
 - (a) an amended restructuring plan (the "RJ Plan Amendment") was agreed following extensive negotiations between the Constellation Group and their key stakeholders;
 - (b) on 24 March 2022, the RJ Plan Amendment was unanimously approved by all creditors of the Constellation Group at a general creditors meeting;
 - (c) on 28 March 2022, the Brazilian Court approved the RJ Plan Amendment; and
 - (d) on 3 May 2022, the Bankruptcy Court of the Southern District of New York (the "US Bankruptcy Court") made an order giving full force and effect to the RJ Plan Amendment.
10. It is the Company's position that, following the approval of the RJ Plan Amendment by the Brazilian Court, and its recognition by the US Bankruptcy Court, the restructuring is close to completion and it is therefore appropriate for the JPLs to be discharged and the Petition withdrawn, subject to the points as to timing canvassed below.
11. Having considered all the evidence and the submissions before the Court, I granted the relief sought by the Company at the conclusion of the hearing. I set out below my brief reasons for that decision.

Discharge of the JPLs

12. The JPLs were appointed under sections 104(1) and (3) of the Companies Act (the "Act") pursuant to an *ex parte* application by the Company dated 7 April 2021.
13. Upon a perusal of the Act and the Companies Winding Up Rules (the "CWR"), the only rule dealing with the variation or discharge of orders appointing JPLs is Order 4, rule 5 which says as far as material that:

"(1) An order for the appointment of a provisional liquidator may be varied or discharged upon the application of—

(a) the person on whose application the order was made;

... or

(e) the company, acting by its directors.

14. However, Order 4, rule 5 appears in Part I of Order 4 of the CWR, which is headed, "APPLICATION BY CREDITOR OR CONTRIBUTORY." (emphasis added). By contrast, there is no equivalent rule in Part II, which is headed "APPLICATION BY THE COMPANY." Accordingly, a question arose during the course of the hearing as to whether I should treat Order 4, rule 5 of the CWR as being applicable where the appointment of joint provisional liquidators was made pursuant to an application brought by the Company itself and not by a creditor or contributory.
15. In my view, I could not. The provisions relating to discharge contained in Part I of Order 4 of the CWR, of which Order 4, rule 5 forms a part, expressly deals with the situation where the application to appoint the joint provisional liquidators, now desired to be discharged, was brought by a creditor or contributory. This is clear from the wording of Order 4, rule 5 and, in particular, Order 4, rule 5(1) itself. The contextual meaning is also clear from the wording of Order 4 rule (1) which speaks only of the appointment of a provisional liquidator – that which may be varied or discharged pursuant to Order 4 rule 5 - being made on the application of a creditor or contributory.
16. There would therefore appear to be a lacuna in the CWR and it would be worthwhile for the Insolvency Rules Committee to consider whether there should be an express rule in Part II of Order 4 dealing with applications to vary the terms of their appointments or to discharge joint provisional liquidators who have been appointed on the application of the company itself and I intend to refer this matter to the Insolvency Rules Committee for that purpose.
17. However, and notwithstanding this lacuna, it is my view that the Court nevertheless has an inherent jurisdiction to discharge joint provisional liquidators who have been appointed on the application of the company. In this context, I considered that the principles and factors which the Court ought to have in mind when dealing with an application under its inherent

jurisdiction should be the same as those to which the Court should have reference when dealing with an application under Order 4, rule 5 of the CWR¹.

18. The Court therefore has power to discharge the JPLs although it is not obliged to do so. However, I am entirely satisfied that the JPLs should be discharged in the present case. They were appointed as "light touch" liquidators in order to support, under the auspices of the Brazilian Court, certain amendments to the restructuring of the group of which the Company is a member. The amended restructuring has now been agreed; it has been unanimously approved by all the creditors; and it has been approved by the Brazilian Court and been given full force and effect by the US Bankruptcy Court. The appointment of the JPLs has therefore served its purpose.
19. Indeed, on the evidence and submissions presented to the Court, it is clear to me that it is both necessary and desirable that the JPLs be discharged before the date upon which the restructuring is meant to complete as (a) it would be a breach of the finance documentation if the JPLs were not so discharged, and (b) it would be an unnecessary expense for the JPLs, as incumbent office holders being then bound to do so, to incur the time and expense of reviewing the finance documents.
20. As referred to above, making the discharge effective on and from the filing of the order is also something that is asked for in relation to the present application, and I deal with this aspect further below.

Withdrawal of the Winding Up Petition

21. The Company also seeks leave to withdraw the Winding Up Petition.
22. Order 3, rule 19 provides for the withdrawal of a company's winding up petition. Order 3, rule 19(2) says:

"The Court shall grant leave for a company's petition to be withdrawn if it is satisfied that

¹ In this connection I also hold that the application was correctly made *ex parte* in the present case, particularly as the Company's application for appointing the JPLs was also made *ex parte*. The position may be different where the winding up petition has been advertised or some interested party appeared at the hearing of the application at which the provisional liquidator was appointed, but that is not the case here.

(a) the petition has not been advertised; and

(b) no notice of intention to appear and be heard on the petition (whether in support or opposition) has been received from any creditor or, where the company is licensed to carry on a regulated business, the [Cayman Islands Monetary] Authority."

23. By my order dated 13 April 2021, I directed that the Winding Up Petition need not be advertised, and the Company's evidence is that it was not. It is also the Company's evidence that no notice of intention to appear and be heard on the Winding Up Petition had been received such that the requirements of Order 3, rule 19(2) have been met.
24. In these circumstances I decided to grant the Company leave to withdraw the Winding Up Petition.

Timing of the discharge and withdrawal

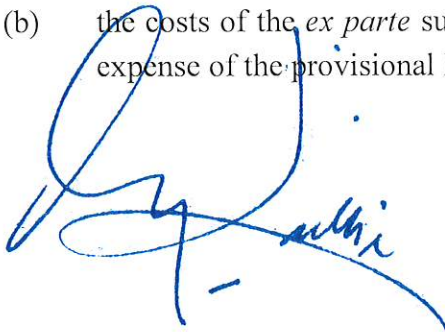
25. As foreshadowed above, there is an issue as to the time at which the discharge of the JPLs and the withdrawal of the Winding Up Petition shall take effect.
26. It was submitted that it is an integral part of the process by which the JPLs are to be discharged in the present case that they should have control over the time on which their discharge takes effect, which is why the Company seeks an order that the JPLs are only discharged on and from the time they file the order permitting their discharge with the Registrar of Companies. I agreed and made that order.
27. I referred above to the fact that it is necessary and desirable for the JPLs to be discharged before the closing of the restructuring, but it is also necessary and desirable that they should remain in place until that time for the sake of good order and to ensure protection against opportunistic creditor action between now and the closing.
28. Although unusual, an order of this nature is not entirely novel. As I have noted above, the RJ Plan Amendment has been supported by the appointment of Ms Fisher and Mr Bailey as joint provisional liquidators of a number of the Constellation Group's BVI companies and orders dated 13 December 2021 have already been made by the BVI Court discharging Ms Fisher and Mr Bailey as joint provisional liquidators of the BVI companies on and from the date on which notice is filed with the BVI Registrar of Companies. Indeed, I also understand that the same form of orders were made by the BVI Court on 13 August 2019

allowing for the same JPL discharge mechanism in connection with the previous restructuring of the Constellation Group.

29. For these reasons, I also directed that the withdrawal of the petition shall not take effect until the order is filed with the Registrar of Companies.
30. However, as the touchstone for the discharge and withdrawal is the closing date of the restructuring, for the avoidance of doubt and so that the terms and effect of this order are clear, particularly where the order will likely be translated for presentation to the Brazilian Court, I consider it important for the order to expressly note that the JPLs' discharge and the withdrawal of the Winding Up Petition should take place before the closing of the restructuring. I therefore made my order that the discharge and withdrawal take effect when the order is filed with the Registrar of Companies subject to the proviso that it is filed before the restructuring's closing date.

Other matters

31. Separately, I also direct that:
- (a) the JPLs shall have liberty to apply with respect to their remuneration following their discharge and/or the withdrawal of the winding up petition; and
 - (b) the costs of the *ex parte* summons be paid out of the assets of the Company as an expense of the provisional liquidation.



THE HONOURABLE SIR ANTHONY SMELLIE
CHIEF JUSTICE OF THE CAYMAN ISLANDS

24 August 2022