



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

FSD 79 OF 2022 (DDJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF POSITION MOBILE LTD SEZC**

Before: The Hon. Justice David Doyle

Heard: On the papers

**Draft Judgment
Circulated:** 28 November 2023

Judgment Delivered: 30 November 2023

HEADNOTE

Determinations as to costs

JUDGMENT

1. On 31 October 2023, for the reasons stated in a judgment delivered that day, I dismissed a second application by Technology Investment Consortium LLC (the “Petitioner”) for the appointment of joint provisional liquidators (“JPLs”) in respect of Position Mobile Ltd SEZC (the “Company”). It was ordered that any ancillary applications including in respect of costs be filed and served together with draft orders by 14 November 2023 with any concise written submissions in opposition and draft orders to be filed and served within 14 days of service of the relevant ancillary application.

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2. By written submissions dated 9 November 2023 Genimous Investment (Hong Kong) Co., Ltd and Genimous Holding (HK) Limited (together “Genimous”) applied for the costs of and incidental to the Petitioner’s Summons dated 3 August 2023 (the “Second JPL Summons”) to be taxed, if not agreed, on the indemnity basis or, in the alternative, the standard basis and be paid by the Petitioner forthwith. A draft order was attached. I have considered those submissions and the draft order.
3. In its written submissions dated 24 November 2023 the Petitioner denies that there is any basis for an indemnity costs award or for costs to be taxed forthwith. The Petitioner seeks that no order be made in respect of the costs of the Second JPL Summons at this juncture, with such a determination left to the conclusion of the substantive proceedings. I have considered the Petitioner’s written submissions.
4. The Petitioner has been unsuccessful. It did not obtain an order for the appointment of JPLs over the Company. Costs should follow the event. It should pay the costs of Genimous of and incidental to its second failed attempt to have JPLs appointed. There is no good reason to defer the determination as to costs in respect of the Second JPL Summons until the determination of the winding-up petition.
5. Although, as should be clear from the judgment delivered on 31 October 2023, I have been unimpressed with the conduct of the Petitioner in certain respects I do not think such was unreasonable or improper to such a high degree that indemnity costs would be justified. Moreover I do not think that exceptionally a “forthwith” order is justified either.
6. The order I make is an order requiring the Petitioner to pay the costs of Genimous of and incidental to the Second JPL Summons such to be taxed on the standard basis in default of agreement. I make no other orders as to costs.
7. Counsel to file a draft order reflecting the determinations in this judgment within 5 days of the delivery of this judgment.

David Doyle

THE HONOURABLE JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT

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