



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 208 OF 2021 (DDJ)

IN THE MATTER OF SECTIONS 15 AND 86 OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF ORDER 102 OF THE GRAND COURT RULES 1995

AND IN THE MATTER OF BESTWAY GLOBAL HOLDING INC. 榮威國際控股有限公司

Appearances: Mr Ben Hobden for the Petitioner

Before: The Hon. Justice David Doyle

Heard: 30 September 2021

**Ex Tempore Judgment
Delivered: 30 September 2021**

**Draft Transcript of
Judgment Circulated: 7 October 2021**

**Transcript of Judgment
Approved: 7 October 2021**

HEADNOTE

Sanction of scheme of arrangement under section 86 of the Companies Act (2021 Revision)



JUDGMENT

Introduction

1. This Court is asked to sanction a scheme of arrangement, the scheme of arrangement of Bestway Global Holdings Inc., (the “Company”) under section 86 of the Companies Act (2021 Revision) (the “Companies Act”). The Court is also asked to confirm a reduction of share capital pursuant to section 15 of the Companies Act. The Company is incorporated in the Cayman Islands as an exempted company pursuant to the Companies Act.

Documents and submissions considered

2. I have considered the pleadings and the evidence contained in the hearing bundle. I considered the skeleton arguments dated 2 August and 22 September 2021 of Ben Hobden, who appears on behalf of the Company, and I have also considered Mr Hobden’s oral submissions made at the hearing this morning. I am grateful to Mr Hobden and his team for their assistance to the Court.
3. I note the undertakings dated 14 July 2021 to the Court given by the Offeror and the Offeror Concert Parties (as defined in the petition dated 20 July 2021).

The purpose and principal features of the scheme of arrangement

4. I note the purpose and principal features of the scheme of arrangement. The purpose of the scheme of arrangement is to privatise the Company so that the Company will become a wholly owned subsidiary of Great Success Enterprises Holdings Limited, a company incorporated in the British Virgin Islands with limited liability (“Offeror”), Mr Zhu Qiang (“Mr Zhu”), M.S.N.K.S Investments LLC, MSNK Investments II, LLC, Mr Bogden Nowak, Outland Enterprise Company Limited and Mr Patrizio Fumagalli (all being the Offeror Concert Parties).



5. The Offeror notes that the trading volume of the shares in the Company has been at a relatively low level over an extended period of time and this could make it difficult for scheme shareholders to sell their shareholdings in large volume on the market without causing negative impact on the share price of the Company. The Offeror is of the view that the scheme of arrangement provides a good opportunity for the scheme shareholders to realise their investment in the shares without suffering any discount due to low trading liquidity and also an opportunity for investments to be realised at an attractive premium over the prevailing price of the shares.
6. The Offeror is of the view that the Company's ability to raise funds in the equity capital markets for future development and growth is limited and that the administrative costs and management resources associated with maintaining the Company's listing status are no longer justified. Moreover, the Offeror considers that the scheme of arrangement will provide the Offeror with more flexibility in supporting the long-term business development of the Company. The directors, (with Mr Zhu being the Offeror Concert Party abstaining from voting), concluded that the terms of the scheme of arrangement were fair and reasonable and that its implementation was in the interest of the Company and the scheme shareholders.

The relevant requirements are satisfied in respect of the scheme

7. I am satisfied as to compliance with the directions order I made on 3 August 2021.
8. I am satisfied that the Court meeting was duly convened on 15 September 2021. I note the outcome of the Court meeting. The number of scheme shareholders present and voting was 61, representing 185,766,043 shares. 60 scheme shareholders voted to approve the scheme (representing 99.989234% of the shares in value) and one person voted against (representing 0.010766% of the shares in value). The statutory majorities in section 86 of the Companies Act have plainly been met.
9. I note also that a special resolution was passed on 16 September 2021 in respect of a reduction of the issued shares in the share capital of the Company as part of the scheme of arrangement.



10. I am satisfied as to the following:

- 1) the proposed scheme is a scheme of arrangement within the meaning of section 86 of the Companies Act (*Re SIIC Medical Science and Technology Group Limited* 2003 CILR 355; *Euro Bank Corporation (In Liquidation)* 2003 CILR 205);
- 2) the scheme document provided all the material information reasonably required to enable the scheme shareholders to come to an informed view on the merits of the scheme (GCR O.102 r.21(4)(e); Practice Direction No. 2 of 2010 at 3.7; *Re XL Capital Limited* 2010 (1) CILR 52 Smellie CJ).
- 3) the Court meeting was properly held and the statutory majorities were achieved;
- 4) there is no reason to believe that the views of the overwhelming majority of those who voted in favor of the scheme did not fairly represent the views of the scheme shareholders as a whole, that they were not acting *bona fide* or that they were subject to coercion;
- 5) that the scheme of arrangement is fair in the sense that an intelligent and honest person acting in respect of his relevant interest might reasonably approve of it. Those voting are the best judges of their own commercial interests and reasonableness of the terms of the scheme of arrangement. Being fully informed an overwhelming majority voted in favor of the scheme at the Court meeting. In commercial matters members and creditors are generally much better judges of their own interest than the courts; and
- 6) there is no good reason for the court to exercise its residual discretion not to sanction the scheme. See the judgment of Snowden J as he then was in *Barclays Bank Plc* [2019] EWHC 129 (Ch) at paragraph 33 (delivered just 3 years after his insightful *Jurisdiction and Recognition in Cross-Border Restructuring 'Who Dares Wins'* lecture in the Cayman Islands and some 2 years before his recent appointment as a Lord Justice of Appeal in England and Wales). Snowden J's judgment was in respect of the English court's discretion to sanction business transfer schemes under section 111 of the

Financial Services and Markets Act 2000. Snowden J comments to the effect that the court should give due recognition to the commercial judgment of others directly involved in the scheme and that the details of the scheme are not a matter for the court provided the scheme as a whole is found to be fair.

The capital reduction

11. In respect of the capital reduction, I have considered section 15 of the Companies Act and *In the Matter of China.Com Incorporated* [2009] CILR 384. I am satisfied that:
- 1) the Company has power to reduce its share capital (article 10.2 of the Company's articles of association);
 - 2) the shareholders have passed a valid resolution to do so;
 - 3) the Company's creditors will be adequately protected;
 - 4) the shareholders will be treated equitably;
 - 5) the proposed reduction was properly explained; and
 - 6) the reduction was for a discernable purpose and is part and parcel of the scheme of arrangement.

The Orders

12. I am therefore content to sanction the scheme and to confirm the capital reduction and I make an Order in terms of the draft helpfully filed before today's hearing, such draft to incorporate the amendments specified during my exchanges with counsel. That is my judgment in respect of this matter.

THE HON. JUSTICE DOYLE
JUDGE OF THE GRAND COURT