

**THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

**Claim No BVIHC (COM) 2023/0064
BETWEEN:**

JIN YAO HOLDINGS LTD

Applicant

and

[1] FOREVER WINNER INTERNATIONAL LTD

First Respondent

[2] SINO CENTURY HOLDINGS LIMITED

Second Respondent

Appearances:

Mr. Matthew Collings, KC, with Mr. John Carrington KC and Ms. Reisa Singh of
Kendall Law for the Applicant

Mr. John Machell, KC, with Mr. Dean Robson of Carey Olsen, for the Second
Respondent

2025: December 11th

JUDGMENT

[1] **MITHANI J KC (Ag.):** Following the hearing of this Claim on 9th December 2025, I made an order placing the First Respondent into liquidation. A dispute has since arisen between the parties as to the proper form of the order, specifically whether any of the powers of the Joint Liquidators should be subject to prior sanction of the Court.

Statutory Framework

- [2] Section 186(1) of the Insolvency Act 2003 provides that a liquidator has all powers necessary to carry out his or her functions and duties as such, including those expressly conferred by the Act.
- [3] Section 186(2) provides that, without limiting subsection (1), a liquidator has the powers specified in Schedule 2. Section 186(3) confers a discretion on the Court to provide that certain powers may only be exercised with the sanction of the Court.

Proper Interpretation of Section 186

- [4] On a proper construction of section 186, the default position is that a liquidator is entitled to exercise all powers conferred by the Act and Schedule 2 without the need for sanction.
- [5] Section 186(3) operates as an exception to that default. It permits the Court, in the exercise of its discretion, to impose restrictions requiring sanction, in the first instance, in appropriate cases.
- [6] Two propositions follow from this. First, the starting point is that no sanction is required; second, any departure from that position must be justified by reference to the circumstances of the particular case.

Present dispute

- [7] At the substantive hearing, Mr. Wang contended that, if a liquidation order were made, the liquidators should only be permitted to deal with the company's principal asset — its shareholding in SCHL — either by agreement between the parties or with the sanction of the Court. That contention was rejected, and I made the liquidation order without such restriction.

- [8] No material has been placed before me to justify the imposition of sanction requirements, whether in relation to that asset or more generally.
- [9] Mr. Wang submits that the form of order proposed on behalf of Mr. Yao is broader than that originally sought. While that is a fair observation, it is not determinative of the issue.
- [10] Once a liquidation order is made, its terms are a matter for the Court. The Court is not bound by the parties' drafts or proposals.
- [11] In England and Wales, winding up orders are typically made in standard form, and without detailed negotiation of the liquidator's powers by the parties.

Rationale for sanction (and its limits)

- [12] The rationale for requiring sanction is readily understood. It may serve as a safeguard in cases where there is a demonstrated risk of prejudice, conflict, or misuse of powers.
- [13] However, that rationale does not justify its routine or automatic application. The statutory scheme contemplates that such safeguards will be imposed only where justified.
- [14] It should also be noted that interested parties are not without protection. Mechanisms exist to challenge or supervise the conduct of liquidators where necessary.

Clarity in drafting orders

- [15] There is utility in clearly articulating the liquidator's powers within the order, particularly for recognition by foreign courts.

- [16] Such clarity may be achieved either:
- (a) by stating that the liquidator has all powers under section 186 and Schedule 2 without sanction; or
 - (b) by listing those powers expressly and confirming that no sanction is required.
- [17] Where sanction is required for specific powers, this should be expressly and narrowly identified.

Existing Practice

- [18] I was informed that the current practice may have originated with Bannister J. Any departure from that practice should be approached with appropriate caution.
- [19] Nonetheless, it is necessary to consider whether that practice remains consistent with the statutory framework
- [20] I propose to consult further, including with judicial colleagues and, if appropriate, the Court Users Committee or members of the local Bar.
- [21] Pending such consideration, the question of sanction should be determined on a case-by-case basis in accordance with the principles set out in section 186.

Disposition

- [22] In the present case, no sufficient basis has been established for restricting any of the powers of the liquidators.
- [23] The liquidation order will therefore be made without any requirement for prior sanction of the Court.
- [24] For the avoidance of doubt, I refrain from using the expression “usual order,” which appears to have contributed to the present disagreement.

[25] The parties may agree the precise form of the drafting of the order, consistent with this judgment.

[26] I am grateful to counsel for their helpful submissions.

Abbas Mithani KC
High Court Judge (Ag.)

By the Court

Deputy Registrar