



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

CAUSE NUMBER FSD 126 of 2022 (MRHJ)

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF FRESH EXPRESS DELIVERY HOLDINGS GROUP CO. LIMITED**

ON THE PAPERS

Before: Hon Mrs Justice Margaret Ramsay-Hale

Application by: Nick Hoffman and Rhiannon Zanetic, Harney, Westwood & Reigels, Attorneys for the Applicant.

Draft circulated: 5 September 2022

Judgment delivered: 9 September 2022

Headnote

Companies Act - Winding Up Order - Service of Winding Up Order - Companies Winding Up Rules - Company having no registered office - Substituted Service - Service on Company at place of business and on Directors - GCR O.65, r. 4

JUDGMENT

Introduction

1. On 29 July 2022, this Court made an order winding up Fresh Express Delivery Holdings Group Co., Limited, an exempt Company registered in the Cayman Islands, but carrying on business in the People's Republic of China (the "PRC") and Hong Kong (the "Company"), on the application of the petitioning creditor, Ms Hu Yan, (the "Petitioner"), a citizen of the PRC (the "Winding Up Order").
2. By Summons dated 12 August 2022, the Petitioner seeks an order for substituted service of the Winding Up Order to serve the Company other than at its registered office.
3. The application is made pursuant to GCR O.65, r.4(1) which provides,

"If, in the case of any document by which virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document."



4. The Petitioner proposes to serve the Winding Up Order through the following modes of service:
 - (i) By email to Mr Pan Junfeng (panjunfengsh@gmail.com) and Mr Tang Dacong (m15722551488@163.com), being the known personal email addresses of two of the former directors of the Company;
 - (ii) By email to Mr William Chan (wchan@mli-co.com.hk) of Michael Li & Co, being the attorney for the current directors of the Company;
 - (iii) Further, or in the alternative, by hand or courier to Suite 501, 88 Keyuan Road, Pudong New Area, Shanghai, being the last known operating address of the Company in the People's Republic of China;
 - (iv) Further, or in the alternative, by hand or courier to 3/F., Woo Sing Kee Industrial Building, 138 Wai Yip Street, Kwun Tong, Kowloon, Hong Kong, being the last known operating address of the Company in Hong Kong.

Background

5. The Petitioner advanced significant sums of money to the Company under two loan agreements and a rather complex financing arrangement recorded in two "*share transfer and cooperation agreements*" made between the Company and the Petitioner in 2020, under which the Petitioner paid out significant sums of money to or for the benefit of the Company. The transactions were made in both Hong Kong dollars and Renminbi.
6. The monies advanced by the Petitioner under the share transfer and cooperation agreements were due to be repaid by the Company in May, 2021. The monies were not repaid.
7. Subsequent to certain events which gave the Petitioner the right to accelerate the repayments under the loan agreements, the Petitioner served Notices of the events on the Company and demanded repayment of the loans. The loans were not repaid.
8. On 5 August 2021, the Petitioner issued a statutory demand against the Company demanding repayment of what was the sum then due and owing by the Company to the Petitioner in the sums of HK \$50,660,666.67 and RMB 244,210,750.23 under the agreements.
9. On 11 August 2021, the Company and the Petitioner signed a memorandum recording the arrangement made by the Company and the Petitioner for the discharge of the Company's indebtedness to the Petitioner (the "*Indebtedness Memorandum*"), as well as the rates of interest and/or liquidated damages that would be applicable to the indebtedness.
10. Certain sums were paid by the Company under the Indebtedness Memorandum. On 21 December 2021, a letter was issued by the Petitioner to the Company, which recorded the payment made



and the outstanding indebtedness of the Company at that date. The debt due at that date was in the sum of RMB 222,639,457.04 which included the sum of HK\$56,886,000 (equivalent to RMB 46,458,796.20).

11. The Company confirmed in writing that this was the total amount of the outstanding indebtedness due and owing to the Petitioner as at 21 December 2021.
12. On 11 February 2022, the Petitioner served a statutory demand (the “Statutory Demand”) on the Company at its Registered Office c/o Conyers Trust Company (Cayman) Limited of an address in George Town, Grand Cayman (“Conyers Trust”), demanding payment of HK\$58,051,333.33 and RMB 179,322,118.82 which represented the debts which the Company confirmed were due to the Petitioner at 21 December 2021, with interest accrued on those sums up to 28 January 2022.
13. The Company made no response to the Statutory Demand. The Petitioner subsequently filed a petition to wind up the Company on 7 June 2022 and served a copy thereof on the Company at its Registered Office through Conyers Trust on 9 July 2022, the receipt of which was duly acknowledged. The petition was duly advertised.
14. The Company did not appear on the petition which was not opposed by any creditor. In the circumstances where the debt was undisputed but remained unpaid, the Court concluded that the Company was unable to pay the debt. The Court ordered the winding up of the Company, exercising its discretion in line with the well-established principle that *“it is not a discretionary matter with the court when a debt is established, and not satisfied, to say whether the company shall be wound up or not; that is to say, if there be a valid debt established, valid both at law and in equity. One does not like to say positively that no case could occur in which it would be right to refuse it; but, ordinarily speaking, it is the duty of the court to direct the winding up: see in Bowes v. Hope Life Insurance and Guarantee Co. (1865), 11 H.L. Cas. 389 per Lord Cranworth at 402.*

This Application

15. The **Companies Winding Up Rules** (“CWR”) at O.3, r. 23(3)(a) requires a petitioner to serve a copy of the winding up order on the Company at its registered office. Pursuant to the Rules, the Petitioner served a copy of the Winding Up Order on the Registered Office through Conyers Trust on 29 July 2022, the receipt of which was acknowledged.
16. On 2 August 2022, Conyers Trust returned the copy of the Winding Up Order to Counsel for the Petitioner, with a note stating that Conyers Trust had ceased providing services to the Company. A search of the Companies Register confirmed that Conyers Trust had resigned as registered office and that no alternate registered office had been appointed for the Company.
17. The application is made pursuant to GCR O.65, r.4(1) which provides,



“If, in the case of any document by which virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.”

The Statutory Framework

18. The **Companies Act** provides at section 70 that:

“Service of notices on company

Any writ, notice, order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter, addressed to the company at its registered office.”

19. CWR, Order 1, Rule 4(1) provides that:

“Every petition, summons, order or other document required to be served by these Rules, shall be served in accordance with GCR Orders 10 and 65, unless some other method of service is expressly required or permitted by these Rules...”

20. The appropriate statutory basis for ordering substituted service was recently considered by Kawaley J. in *Bridge Global Absolute Return Fund SPC* (Unrep. 10 May 2022). In that case, the petitioner’s attorneys attempted to serve a document on the company’s registered office but discovered it was no longer operative. The company had no other local representatives and/or local presence. The petitioner became aware, however, that the company had a sole director currently resident in Hong Kong who was employed by a global firm, and whose email address had been identified. The petitioner therefore sought an Order for substituted service by email on three specified email addresses.

21. The learned Judge considered both Order 65, rule 3 and rule 4 and said this at [6]:

*“GCR Order 65 rule 3 creates a special rule of ordinary service for bodies corporate which are not registered under the Companies Act, **but creates no special service rule for companies which are registered under the Companies Act.** This doubtless because section 70 of that Act prescribes through primary legislation the way in which both originating process and other Court documents may be served on a company registered under the Act. A company which carries on business without a registered office in these Islands is liable to a penalty of \$10 per day (s 50(1). Accordingly, the **most significant service rules for registered companies are those set out under GCR Order 65 rule 4 to deal with the situation when ordinary service cannot be carried out.**” (emphasis added)*



22. Substituted service pursuant to Rule 4(1) is only available where service is impracticable. In the circumstances where no new registered office has been appointed by the Company, ordinary service is not merely impracticable but impossible. The condition in the Rule 4 for making an order for substitute service is satisfied.
23. The commentary in the English *Rules of the Supreme Court* Order 65 rule 4 from which our rules derive, state at 65/4/2 that:

“The terms of this rule are of very wide application, and give a very wide discretion which the Court is not inclined to limit.”
24. I consider that the service on the last known operating address of the Company in the PRC and the last known operating address of the Company in Hong Kong would be sufficient to bring the Winding Up Order to the notice of the Company which is what is required: see *Mangatal J in Bush v Baines, Taylor and the Attorney General* [2016 CILR (2) 274] at 317.
25. Though I do not think it necessary, it will not add to the Petitioner’s cost burden to serve the Order by email to the former and current Directors by email at their known email addresses or, in the case of the current Directors, on their attorney and I make the Order in terms of the Summons.

DATED THE 9TH SEPTEMBER 2022

Hon. Justice Ramsay - Hale
Judge of the Grand Court