



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

FSD CAUSE NO: 12 OF 2023 (DDJ)

**IN THE MATTER OF SECTIONS 159 OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF O.102 r.18
AND IN THE MATTER OF ZAMIN FERROUS LTD.**

Appearances: Sarah McLennan of Forbes Hare for the Petitioner

Before: The Hon. Justice David Doyle

Heard: 23 February 2023

**Ex Tempore Judgment
Delivered:** 23 February 2023

**Draft Transcript of
Ex Tempore Judgment
Circulated:** 9 March 2023

**Transcript of Ex Tempore
Judgment Approved:** 10 March 2023

JUDGMENT

1. The Petitioner, in its capacity as a contingent creditor, seeks an order restoring Zamin Ferrous Ltd. (the “Company”) to the Register of Companies in the Cayman Islands.

2. I note that section 159 of the Companies Act (2023 Revision) provides:

“If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register in accordance with this Law, the Court on the application of such company, member or creditor made within two years or such longer period not exceeding ten years as the Cabinet may allow of the date on which the company was so struck off, may, if satisfied that the company was, at the time of the striking off thereof, carrying on business or in operation, or otherwise, that it is just that the company be restored to the register, order the name of the company to be restored to the register, on payment by the company of a reinstatement fee equivalent to the original incorporation or registration fee and on such terms and conditions as to the Court may seem just, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may, by the same or any subsequent order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.”

I also note the provision of Order 102 rule 18 of the GCR, FSD Guide section C3 and Order 3 rule 6 of the Companies Winding Up Rules.

3. In *Margara Shipping* (FSD unreported judgment 6 December 2021) applying English authority at paragraph 6 I stated:

“I also note that the word creditor is to be construed widely, to include contingent creditors.”

I note also Kawaley J's judgment in *Mango Jam* (FSD unreported judgment 22 June 2022). Sarah McLennan who appears on behalf of the Petitioner helpfully reminds the court that the petitioner in *Mango Jam* was a contingent creditor and that did not prevent the relief from being granted.

4. The Company appears to have been struck off on 31 March or 29 April 2022. The evidence, which I will come to is inconsistent on this point.
5. The Petitioner issued legal proceedings against the Company in New York on 28 October 2022 claiming losses of a minimum of US\$17,690,000 (the "US Proceedings"). The Petitioner wants to serve the US Proceedings upon the Company once it is reinstated and a registered office is in place.
6. I am satisfied as to the standing of the Petitioner as a contingent creditor.
7. I am satisfied that it is just that the Company be restored to the register. There is a need for restoration in order that the US Proceedings may be served upon the Company. The Petitioner should have the opportunity to progress the US Proceedings. It cannot do that until the Company is restored. As I say, the Company was struck off on either 31 March 2022 or 29 April 2022. A search report indicates status struck off by registrar, status day 29 April 2022. In the struck off list the Registrar of Companies says: "Take notice that the Registrar of Companies having reasonable cause to believe that the under-mentioned companies are no longer carrying on business who are not in compliance with section 117 are struck off the register as at 31 March 2022 in accordance with the provisions of section 156 of the Companies Act" and the Company's name appears on that list. There is also a letter dated 3 January 2023 from Melanie Rivers, Assistant Registrar of Companies, Companies Registry, indicating the Company, Zamin Ferrous Limited 186032 was "struck off 29 April 2022." The exact date of the striking off is somewhat academic for present purposes as the application, by way of Petition, was filed on 19 January 2023 within the relevant time period.

8. I note that Forbes Hare Trust Company has agreed to provide registered office services. The letter from the Companies Registry dated 3 January 2023 indicates that there is no objection to the application to reinstate the Company, “provided the total fee to date of reinstatement is paid, notice of a licensed service provider as the registered office and a Court Order to reinstate the Company are filed at the time of restoration.” The grand total stated on 3 January 2023 is CI\$3,070.00.
9. I am satisfied that the procedural requirements have been met. There are no objections to the relief requested.
10. I make an Order substantially in the terms of the draft filed in advance of today’s hearing, such order to incorporate the amendments I specified during my exchanges with counsel. Counsel to email the updated draft to my PA, copied to the FSD Team, before 3pm today.
11. I am grateful to Sarah McLennan for her valuable assistance to the court.
12. That is my judgment in respect of this matter.

David Doyle

THE HONOURABLE JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT