IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 171 OF 2024 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF SIGMA FINANCE CORPORATION

Before:	The Hon. Justice David Doyle
Appearances:	Neil Lupton and Alexandra Stasiuk of Walkers (Cayman) LLP for the Petitioner
Heard:	17 July 2024
***Ex Tempore* Judgment Delivered:**	17 July 2024
Draft Transcript of *Ex Tempore* Judgment Circulated:	18 July 2024
Transcript approved:	19 July 2024

Determination of application for a winding up order and the appointment of joint official liquidators

JUDGMENT

Introduction

1. In respect of FSD 171 of 2024 (DDJ) Sigma Finance Corporation (the "Company") applies by way of a petition dated 4 June 2024 (the "2024 Petition") for an order that it be wound up and that Iain Gow and David Griffin of FTI Consulting (Cayman) Ltd be appointed as the joint official liquidators of the Company pursuant to the Companies Act (2023 Revision) (the "Companies Act").

2. I have considered the hearing bundle and the skeleton argument dated 10 July 2024.

3. I have also considered the oral submissions of Neil Lupton put before the court this morning on behalf of the Company.

4. There have been no other appearances. I am satisfied as to advertisement and notice.

5. No one has appeared to oppose the relief sought and no notice of opposition has been given.

6. I am satisfied that those nominated as joint official liquidators can properly act as such.

Background

7. I have considered the relevant background to the 2024 Petition. From the evidence (helpfully summarised in the skeleton argument dated 10 July 2024) it appears that the 2024 Petition has been presented in the context of the Company having undergone a long running insolvent receivership process in the United Kingdom. It is important to have regard to that context.

8. On 6 October 2008 Stephen John Harris, Margaret Mills and Alan Bloom of Ernst & Young LLP in London were appointed joint administrative receivers to the Company (the "JARs"). Subsequently Ms Mills and Mr Bloom were replaced by Simon Edel. The JARs were appointed by Deutsche Trustee Company Limited in its capacity as Security Trustee (the "Security Trustee") under the terms of an Amended and Restated Security Trust Deed dated 27 March 2003 (the "Security Trust Deed") which under clause 38 was governed by English law.

9. On their appointment it became evident that both the Company's secured liabilities (approximately US$6.3 billion) and unsecured liabilities (US$4.8 billion) far outweighed the assets of the Company (approximately US$2 billion). A dispute between the Company's secured creditors was litigated all the way up to the Supreme Court of the United Kingdom ([2009] UKSC 2) with the lead judgment being delivered by Lord Mance (with whom Lord Hope, Scott and Collins concurred) and Lord Walker dissenting. In simple terms it was determined that the JARs were required to distribute any available assets to secured creditors by way of a 'pooling' process which was envisaged by the Security Trust Deed. Three distributions totalling US$406 million were made to the secured creditors over the years.

10. On 19 December 2008 a winding up petition in respect of the Company (the "2008 Petition") was presented to the Grand Court. I made an order earlier this morning in G594 of 2008 giving leave to withdraw the 2008 Petition and it has been withdrawn. It was in effect overtaken by the progress of the work of the JARs and the 2024 Petition.

11. In December 2008, although it was apparent that the Company was heavily insolvent it was at that time unclear whether a winding up of the Company was likely to be necessary or appropriate in circumstances where the receivership was progressing and all of the Company's apparent assets fell to be administered within that receivership. Various adjournments of the hearing of the 2008 Petition were therefore applied for and granted and by order made on 30 October 2009 by Henderson J in the Grand Court it was ordered that the hearing of the 2008 Petition be adjourned generally until interested parties apply to relist it. The 2008 Petition has never been relisted for hearing and was in fact withdrawn earlier today, 17 July 2024.

12. I have noted the position in respect of the receivership and I note that the JARs and the Security Trustee consider that it is appropriate for the Company to be brought to a position where it can now be dissolved and its affairs ended properly in compliance with the laws of the Cayman Islands. It is for these reasons (amongst others) that the Company presented the 2024 Petition. The parties appear to have thought it cleaner and more appropriate for the 2008 Petition to be withdrawn and for the fresh 2024 Petition to be filed and I can see the good sense in adopting that procedure.

Standing

13. The Company has standing pursuant to section 94(1)(a) of the Companies Act.

14. I have also considered *Emmadart Ltd* [1979] Ch 540 cited in *China Shanshui Cement Group Limited* 2015 (2) CILR 255 at [28] and *Banco Economico S.A. v Allied Leasing and Finance Corporation* 1998 CILR 102 and am content in respect of the position of the JARs in the circumstances of this case. Insofar as they need to be recognised by this court, I recognise them and provide assistance insofar as it is appropriate and just to do so.

15. I note clause 14.3 of the Security Trust Deed and the powers, rights and duties of the JARs. Clause 14.3.2 of the Security Trust Deed in effect incorporates the powers under Schedule 1 to the English Insolvency Act 1986. The JARs have under paragraph 5 of Schedule 1 the general power to bring any legal proceedings in the name and on behalf of the Company and under paragraph 21 of Schedule 1 have the specific power to present a petition for the winding up of a company.

16. I note also the verifying affidavit and the consents to act.

Inability to pay debts

17. I find on the evidence before the court that the Company is unable to pay its debts. The evidence reveals that the Company is deeply insolvent both as against its secured liabilities, and as regards its total liabilities including to unsecured creditors. At its height the receivership's realised assets were in the region of US$440 million with secured liabilities alone originally exceeding US$6 billion.

18. Having made various distributions to secured creditors the Company's only remaining asset is cash at bank in the amount of approximately US$4.7 million (as at 31 December 2023) which is secured in favour of secured creditors.

19. I agree that it is entirely appropriate that this court exercise its discretion pursuant to section 92(d) of the Companies Act to make a winding up order and to appoint joint official liquidators.

Just and equitable

20. Furthermore I am also of the opinion that it is just and equitable that the Company be wound up pursuant to section 92(e) of the Companies Act.

21. On the evidence before the court, the Company has lost its substratum and it is otherwise just and equitable that the Company be wound up.

Order

22. I am content to make an order substantially in terms of the draft attached to yesterday's email, 1:50pm from Walkers (Cayman) LLP, the attorneys for the Company, such draft to incorporate the minor amendments I specified during my exchanges with counsel.

23. Counsel to email the updated draft to my PA, copying Alene Donaldson-Walters and the FSD Team before 3pm tomorrow, please.

Thanks

24. I cannot leave this short judgment without expressing my thanks to the attorneys acting for the Company. The authors of the very helpful skeleton argument dated 10 July 2024 were Neil Lupton, Blake Egelton and Alexandra Stasiuk of Walkers (Cayman) LLP. I have benefited greatly from the well-focused skeleton argument and from the eloquent and crystal clear oral submissions placed before the court this morning by Mr Lupton. The written and oral submissions were first class and I thank the attorneys for their valuable assistance to the court.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT