



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

CAUSE NO. FSD 329 OF 2021 (DDJ)

IN THE MATTER OF SECTIONS 94 AND 159 OF THE COMPANIES ACT (2021 REVISION)

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

AND IN THE MATTER OF MARGARA SHIPPING LTD

Appearances: Ms. Roisin Liddy-Murphy and Ms. Sean-Anna Thompson for the
Petitioner

Before: The Hon. Justice David Doyle

Heard: 6 December 2021

Judgment Delivered: 6 December 2021

HEADNOTE

Restoration to the Register of Companies and Winding Up Order

JUDGMENT

1. I am grateful to Ms. Liddy-Murphy and her colleague Ms. Sean-Anna Thompson for their valuable assistance to this Court.
2. Margara Shipping Ltd. (the “Company”) was struck off on 30 December 2011. Under section 159 of the Companies Act (2021 Revision) (the “Companies Act”):



“If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register in accordance with this Act, 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 ”.

3. I also note section 92 of the Companies Act whereby a company may be wound up by the Court if:
 - d) *the company is unable to pay its debts; or*
 - e) *the Court is of opinion that it is just and equitable that the company should be wound up.*
4. The Petitioner applies for an order that the Company be restored to the Register of Companies and that the Company be wound up in accordance with the provisions of the Companies Act.
5. The Petitioner applies as a creditor in respect of the Legal Fees Claim and as a prospective or contingent creditor in the relation to the Underlying Claim.
6. I am satisfied that the application was properly made by petition, that it was served on the last known registered office of the Company and on the Registrar of Companies, that it was duly advertised and that it has been verified by affidavit. I also note that the word creditor is to be construed widely, to include contingent creditors; see for example *Re Harvest Lane Motor Bodies Ltd* [1968] 2 All E.R. 1012.



7. The Assistant Registrar of Companies by letter dated 8 October 2021 indicated it had no objection to the application to reinstate the Company provided the total fee of CI\$15,236.69 was paid and notice of licensed service provider as registered office was filed.
8. By letter dated 3 June 2021, the Deputy Premier and Minister of Finance and Economic Development advised “Cabinet granted approval and there is no objection to the application being made to the Court for the restoration of Margara Shipping Ltd”.
9. Although the extension of the time period is not expressly referred to in that letter, I will take it as implicit that Cabinet allowed a longer period than 2 years but within the 10 year maximum. The Company was struck off on 30 December 2011. The application before the Court was filed on 5 November 2021. Ms. Liddy-Murphy has endeavoured to explain the delay between June and November indicating that discussions were taking place and eventually full instructions were given to proceed. In future, petitioners would be wise to act expeditiously once the extension of time is granted.
10. The Petition in this case was filed just within the 10 year time period and it is fortunate that the Court was able to make time to consider it this month.
11. I am satisfied that the Petitioner has standing to present the Petition as a creditor, contingent or prospective creditor. I am satisfied in the particular circumstances of this case that it is just to make an order restoring the Company to the Register upon payment of the necessary fees.
12. I note the authority of *OVS Capital Management (Cayman) Limited* [2017 (1) CILR 232] and the helpful guidance of Quin J. I also note the English authority of *City of Westminster Assurance Co Ltd v Registrar of Companies & Anor* [1997] BCC 960.
13. In this case the Petitioner wishes to restore the Company in order to seek indemnification in respect of the Underlying Claim and Legal Fees Claim and I am content to make an order restoring the Company to the register and I do so.

14. I also note sections 94, 92 (d) and (e) of the Companies Act. I am satisfied that the Petitioner has standing to present the Winding Up Petition. It appears that the Company is unable to pay its debts but in any event it is also just and equitable for the Company to be wound up. Accordingly I also make a Winding Up Order substantially in terms of the draft helpfully filed with the Court in advance of this afternoon's hearing but with paragraph 6 removed for the reasons specified during my exchanges with counsel.
15. Paragraph 6 of the draft Order read:
- “The JOLs be permitted to exercise any of the powers specified in Part I of Schedule 3 to the Companies Act with further sanction of the Court, and any of the powers specified in Part II of Schedule 3 of the Companies Act with or without further sanction of the Court.”*
16. In short, paragraph 6 is unnecessary as the position is already covered by primary statutory provisions and the Petitioner does not seek to persuade me otherwise this afternoon.
17. That is my judgment in respect of this matter and those are the orders which I make.

THE HON. JUSTICE DOYLE
JUDGE OF THE GRAND COURT