HCCW 13/2025
[2025] HKCFI 4998

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

COMPANIES (WINDING-UP) PROCEEDINGS NO. 13 OF 2025

IN THE MATTER of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)

and

IN THE MATTER of BDH COMMERCIAL (HONG KONG) LIMITED (北大荒商貿(香港)有限公司)

BETWEEN

Hoi Bun Investments No 1 Ltd — Petitioner

and

BDH Commercial (Hong Kong) Ltd — Respondent

Before: Deputy High Court Judge Alan Kwong in Court

Date of Hearing: 30 September 2025

Date of Judgment: 30 September 2025

JUDGMENT

A. Introduction

1. By petition dated 8 January 2025, Hoi Bun Investments No 1 Ltd (the "**Petitioner**") seeks to wind up BDH Commercial (Hong Kong) Ltd (the "**Company**") on the ground that it has failed to pay a debt of HK$2,611,643.90 (the "**Petitioning Debt**").

2. The Company opposes the petition on the grounds that:-

(1) it has a *bona fide* dispute on substantial grounds; and

(2) the Petitioning Debt has been secured or compounded for, and thus the Petitioner is unable to show that the Company is insolvent.

B. Material Background

3. The Petitioner was at all material times the registered owner of an industrial property in Kwun Tong (the "**Property**").

4. By a lease dated 7 October 2021 (the "**Lease**"), the Petitioner let the Property to BDH Commercial Logistics Ltd (the "**Tenant**") for a fixed term of 4 years at a monthly rental of HK$1,167,900 (exclusive of management fee and government rates and rent).

5. The Tenant was a subsidiary of the Company at all material times. The Company owned 70% of the shareholding in the Tenant[1].

6. It is not in dispute that the Tenant failed to pay rent, management fee, and government rates and rent pursuant to the terms and provisions of the Lease for the period between 1 September 2024 and 31December 2024. The total outstanding amount is HK$2,611,643.90.

7. It is the Petitioner's case that:-

(1) The Company entered into a deed of guarantee dated 7 October 2021 (the "**Guarantee**"), whereby the Company, as a primary obligor, unconditionally and irrevocably undertakes to indemnify the Petitioner against such losses that the Petitioner may sustain as a result of the Tenant's failure to perform the obligations under the Lease.

(2) Accordingly, the Company is liable to the Petition in respect of the aforesaid outstanding sum of HK$2,611,643.90.

8. At the time when the Guarantee was executed, the Company had 3 directors, *namely* (i) Mr Yuen Tze Fai ("**Mr Yuen**"); (ii) Mr Ma Zhao Lin ("**Mr Ma**"); and (iii) Mr Ge Shao Chao (the "**Mr Ge**").

9. As evidenced by the WeChat messages exchanged amongst Mr Yuen, Mr Ma, and Mr Ge on 15 and 16 June 2021[2], the Company's directors approved the terms of the Lease. This culminated in a Chinese

[1] Mr Ronald Pang (for the Petitioner) referred to the audited financial statement of the Company for the financial year ended 31 December 2013 (Bundle 2, page 524). It appears that the Company owned 70% shareholding in the Tenant (which was formerly known as Beidahuang Logistics Ltd). At the hearing, Ms Joanne Sze (for the Company) confirmed that this is not disputed.

[2] Bundle 4, pages 870 to 871

board resolution dated 29 July 2021, which was signed by Mr Yuen, Mr Ma, and Mr Ge[3].

10. As evidenced by the Company's board minutes dated 13 August 2021 signed by Mr Yuen in his capacity as the chairman[4], a further board meeting of the Company took place on 13 August 2021 (the "**Board Meeting on 13 August 2021**"). There, the Company's directors resolved that:-

(1) the Company should enter into the Guarantee;

(2) the seal of the Company be affixed to the Guarantee in the presence of Mr Yuen; and

(3) Mr Yuen be authorized to execute the Guarantee on behalf of the Company.

11. In the circumstances, on 7 October 2021, Mr Yuen executed the Guarantee on behalf of the Company, and the same was affixed with the Company's common seal. Meanwhile, the Guarantee was also signed by the representatives of the Petitioner and the representatives of the Tenant.

12. In light of the defaults under the Lease and the Guarantee, on 29 August 2024, the Petitioner commenced DCCJ 5095/2024 against the Tenant and the Company.

13. According to the Petitioner, it took the view that the Tenant and the Company played delaying tactics. As such, instead of pursuing

[3] Bundle 4, page 931

[4] Bundle 1, page 117

the claims in DCCJ 5095/2024, the Petitioner decided to pursue a winding-up order against the Company directly. In the circumstances:-

(1) On 19 November 2024, the Petitioner served a statutory demand on the Company and the Tenant.

(2) On 7 January 2025, the Petitioner discontinued DCCJ 5095/2024.

(3) On 8 January 2025, the Petitioner presented the winding-up petition herein based on the aforesaid outstanding sum of HK$2,611,643.90, *ie* the Petitioning Debt.

14. It is the Company's case that the Guarantee is invalid and/or unenforceable for want of authority.

15. According to the Company:-

(1) One of its ultimate shareholders is a central state-owned enterprise, which is under the supervision of the People's Republic of China's Ministry of Finance.

(2) Against this background, on 20 July 2016, the Company's director passed a board resolution (the "**2016 Resolution**"), which provides before the Company could enter into a guarantee, it has to (i) pass a board resolution; (ii) pass a shareholders' resolution; and (iii) seek the approval of its direct majority shareholder (namely 北大荒工貿有限公司).

(3) Before entering into the Guarantee, the Company and/or its board of directors did not (i) procure a shareholders'

resolution to be passed; and/or (ii) seek the approval of 北大荒工貿有限公司.

(4) Thus, the Guarantee is invalid and/or unenforceable for want of authority.

16. Pursuant to the order made by Anthony Chan J (as he then was) on 24 March 2025[5], the Company has paid the entirety of the Petitioning Debt (*ie* HK$2,611,643.90) into court.

17. Relying on the payment in court, the Company further contends that the Petitioning Debt has been secured or compounded for. Thus, the Petitioner is unable to prove that the Company is insolvent, and it is not entitled to seek a winding-up order against the Company.

C. No Bona Fide Dispute on Substantial Grounds

C1. Legal Principles

18. In *Re Brite Advisory Group Ltd* [2024] HKCFI 2574, DHCJ Le Pichon, referring to *Re Hong Kong Construction (Works) Ltd* (HCCW 670/2002, 7 January 2003) at para 6 (*per* Kwan J, as she then was), helpfully summarized the legal principles as follows:-

> "(1) The burden is on the company to establish that there is a genuine dispute of the debt on substantial grounds. In this context, "substantial" means having substance and not frivolous. An honest belief in an insubstantial ground of defence is not sufficient to avoid a winding-up order.
>
> (2) The court should look at the company's evidence against so much of the background and evidence that is not disputed or not capable of

[5] This was a consent order that was made in the context of seeking a validation order pursuant to section 182 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap 32

> being disputed in good faith; in other words, the evidence is not to be approached with a wholly uncritical eye.
>
> (3) The court would caution itself against unsubstantiated and unparticularized assertions ... It is incumbent on the company to put forward "sufficiently precise factual evidence" to substantiate its allegations.
>
> (4) The court does not try the dispute on affidavit but is to determine whether a substantial dispute exists. In so doing, the court necessarily has to take a view on the evidence, to see if the company is merely "raising a cloud of objections on affidavits" or whether there really is substance in the dispute raised by the company ..."

C2. Deliberation

19. Applying the legal principles, I am of the view that the Company has failed to raise a *bona fide dispute* on substantial grounds.

Actual Authority

20. For the following reasons, I am of the view that Mr Yuen must have actual authority to enter into the Guarantee on behalf of the Company.

21. As accepted by Ms Joanne Szeto for the Company[6], in considering the question of actual authority, the starting point is the Company's articles of association.

22. Insofar as the powers of the Company's directors are concerned, clause 18(j) of the Company's articles of association provides that:-

> "Without prejudice to the general powers conferred by the preceding Article and the other powers conferred by these articles, it is hereby expressly declared that the Directors shall have the following powers, that is to say, power:-

[6] See *para* 13 of her skeleton submissions.

> (j) To enter into all such negotiations and contracts and rescind and vary such negotiations and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Company as they may consider expedient for, or in relation to, any of the matter aforesaid, or otherwise for the purposes of the Company."

23. Insofar as the use of the Company's seal is concerned, clause 21 of the Company's articles of association provides that:-

> "Every document required to be sealed with the Seal of the Company shall be deemed to be properly executed if sealed with the Seal of the Company and signed by the Chairman of the Board of Directors, or such person or persons as the Board may from time to time authorize for such purpose."

24. Pursuant to the aforesaid provisions in the Company's articles of association, at the Board Meeting on 13 August 2021, the Company's directors were entitled to resolve that:-

(1) the Company should enter into the Guarantee;

(2) Mr Yuen be authorized to execute the Guarantee on the Company's behalf; and

(3) the Company's common seal be affixed to the Guarantee in Mr Yuen's presence.

25. The proceeding in respect of the Board Meeting on 13 August 2021 is evidenced by the contents of the minutes in respect thereof (which was signed by Mr Yuen)[7]. It can be seen that the 3 directors of the Company at the time (*namely* Mr Yuen, Mr Ma, and Mr Ge) duly attended the Board Meeting on 13 August 2021, and the resolutions mentioned in paragraph 10 above were passed.

[7] Bundle 1, page 117

26. It is not in dispute that a certified copy of the minutes (which was certified by the solicitors representing the Tenant[8]) was provided to the Petitioner.

27. There is no evidential basis for disputing the accuracy of the records set out in the said minutes. The Company has failed to adduce a shred of evidence showing that (i) the Board Meeting on 13 August 2021 did not take place; (ii) Mr Yuen, Mr Ma, and/or Mr Ge did not attend the said Board Meeting; and (iii) the resolutions mentioned in paragraph 10 above were not passed.

28. In this connection, as a matter of public records, Mr Yuen was at all material times (and still is) a director of the Company. For reasons best known to those who have been in control of the Company, there is no evidence from Mr Yuen. Instead, Mr Wang Yucheng and Mr Pan Jun were arranged to make the Company's affirmations in opposition. Tellingly, Mr Wang and Mr Pan were only appointed as the Company's directors on 8 March 2023. As such, they were not privy to the events that took place at the Board Meeting on 13 August 2021, and they were not in a position to give evidence in respect thereof. In my view, the appropriate adverse inference to draw is that had evidence been adduced from Mr Yuen, the unfavourable facts that all the directors of the Company duly approved the Guarantee and that Mr Yuen was duly authorized to execute the Guarantee on behalf of the Company would have been exposed: *see South China Securities Ltd v Lam Kwen Yuen* [2012] 5 HKLRD 524 at *para* 7 (*per* DHCJ Lisa Wong SC, as Lisa Wong J then was); and *Tullet & Tokyo International Securities Ltd. v. APC Securities Co. Ltd* [2001] 2 HKLRD 356, at 365B-J (*per* Le Pichon JA).

[8] Messrs Hau Lau Li & Yeung represented the Tenant in regard to the transaction under the Lease, and the solicitor who certified the copy was Mr Lo Hing.

29. Whilst the Company seeks to contend that the Guarantee was not executed in accordance with the requirements under the 2016 Resolution, it is important not to lose sight of the fact that the contents of the 2016 Resolution never find their way to the Company's memorandum and articles of association. None of the clauses in the Company's memorandum and articles of association suggest that the Company may only enter into a guarantee upon obtaining the approval from its shareholder(s) and/or 北大荒工貿有限公司.

30. In the premises, based on the Company's constitutional documents, the Company's directors are empowered to cause the Company to enter into the Guarantee and to authorize Mr Yuen to execute the Guarantee on the Company's behalf.

31. In my view, the requirements under the 2016 Resolution were nothing more than some internal restrictions that the Company's directors imposed on themselves at the material times. Since the Company's articles of association have never incorporated these self-imposed internal restrictions, I do not see any reason why the Company's directors might not, based on the powers conferred on them under clause 18(j) of the Company's articles of association, liberate themselves from the same. It appears to me that this must have been what the Company's directors tacitly did when they authorized and approved the Guarantee at the Board Meeting on 13 August 2021.

32. However, Ms Szeto (for the Company) contended that clause 18(j) of the Company's articles of association only empowers the Company's directors to enter into contracts, but not deeds. Since the Guarantee is a deed, the same is unauthorized.

33. I am unable to accept Ms Szeto's contention:-

(1) The distinction suggested by Ms Szeto is highly artificial. It is plain that the purpose of clause 18(j) is to empower the Company's directors to cause the Company to enter into commercial transactions that are "contractual" in nature. I am unable to discern any logical basis to suggest that there ought to be a distinction between a transaction that is effected by a contract and a transaction that is effected by a deed. In my view, there is no reason why transactions by deed should be carved out from clause 18(j). It would be absurd to suggest that whilst the directors may cause the Company to enter into a contractual/commercial transaction by contract, they cannot cause the Company to enter into a contractual/commercial transaction to be effected by deed.

(2) There is no question that the Guarantee concerns a contractual transaction. In this connection, clause 1 expressly provides that:-

> "In consideration of the [Petitioner] entering into [the Lease], the [Company] unconditionally and irrevocably guarantees to [the Petitioner], as a primary obligor, the due and punctual performance by the Tenant of all its obligations set out in [the Lease]."

In my view, the Guarantee is plainly a commercial and/or contractual transaction that falls squarely within clause 18(j) of the Company's articles of association. It would be most absurd if the Guarantee is invalid simply because the parties chose to effect the transaction solemnly in the form of a deed.

34. Ms Szeto also contended that clause 18(j) of the Company's articles of association does not empower the Company's directors to enter into any guarantee. In this connection, Ms Szeto relied on the fact that clause 19 of the Company's articles of association provides that clause 81 of Table A does not apply.

35. I do accept Ms Szeto's contention:-

(1) Clause 18(j) of the Company's articles of association was drafted in wide terms. It empowers the Company's directors to enter into "***all such negotiations and contracts****...in the name and on behalf of the Company* ***as they may consider expedient*** *...for the purpose of the Company*."

(2) It is common for companies to enter into guarantees in the course of their ordinary business operation. This sort of arrangement is often commercially beneficial to the companies. For instance, in the present case, the Guarantee executed by the Company was part of the contractual bargain of the parties[9], and it enabled the Tenant (which is a 70% subsidiary of the Company) to carry on business operation at the Property pursuant to the Lease. This would, presumably, generate business revenue. Bearing in mind the commercial reality, I do not see any sound reason why a common commercial arrangement should be carved out from clause 18(j). With no disrespect, Ms Szeto's contention is simply arbitrary.

(3) Indeed, had the drafter of the Company's articles of association intended that transactions relating to guarantee been carved out from clause 18(j), he would have stated so expressly. Ms Szeto was unable to explain why the alleged exclusion that she asserted was absent.

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[9] In this connection, clause 2 in the 2nd Schedule of the Lease expressly provides that the Tenant shall provide the Petitioner with the Guarantee executed by the Company.

(4) For completeness, the fact that clause 81 of Table A does not apply would not avail Ms Szeto's contention. Clauses 81 of Table A encompasses a vast array of matters, such as creating mortgage, charging uncalled capital, and issuing convertible debentures. In the absence of any express indication in the articles of association, I am unable to infer that the drafter intended that the directors are barred from entering into guarantees pursuant to clause 18(j).

36. For the above reasons, I conclude that:-

(1) Pursuant to clause 18(j) of the Company's articles of association, the Company's directors were empowered to (i) cause the Company to enter into the Guarantee, (ii) authorize Mr Yuen to execute the Guarantee on the Company's behalf, and (iii) affix the Company's common seal to the Guarantee in Mr Yuen's presence.

(2) Mr Yuen duly executed the Guarantee on the Company's behalf, and the Company's common seal was duly affixed to the Guarantee in Mr Yuen's presence.

(3) Accordingly, the Guarantee is valid and binding upon the Company.

Apparent Authority

37. In light of the aforesaid conclusion, it may not be necessary to address the issue of apparent authority.

38. If it were necessary to decide this issue, I would have concluded that Mr Yuen must have apparent authority to execute the Guarantee on the Company's behalf.

39. In *Re Power Ease Development Ltd* [2025] HKCFI 2392 at paras 32 to 33, Peter Ng J helpfully summarized the legal principles on apparent authority. His Lordship stated:-

> "32. In *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503, Diplock LJ explained that apparent authority:
>
> > '… is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable [thereunder].'
>
> 33. At 506, Diplock LJ identified 4 conditions which have to be satisfied before a third party, whom he described as a "contractor", can enforce a contract against a company entered into by a purported agent with no actual authority. Those conditions are:
>
> > (1) a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;
> >
> > (2) such a representation was made by a person or persons who had 'actual' authority to manage the business of the company either generally or in respect of those matters to which the contract relates;
> >
> > (3) the contractor was induced by such a representation to enter into the contract, that is, he in fact relied upon it; and
> >
> > (4) under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent."

40. I am satisfied that each of the 4 requirements mentioned by Diplock LJ (as he then was) in *Freeman & Lockyer* (*supra*) is satisfied:-

(1) As pointed out in paragraph 10 above, the minutes in respect of the Board Meeting on 13 August 2021 show that the

Company's board of directors resolved that Mr Yuen be authorized to execute the Guarantee on the Company's behalf. It is incontrovertible that the Company must have provided the minutes to the Tenant and/or its solicitors, and they provided a certified copy thereof (which was undersigned by the Tenant's solicitors) [10] to the Petitioner before the Lease and the Deed executed. This explains why the Petitioner was able to put forward the same in its evidence [11]. In my view, it is clear that there was a representation that Mr Yuen was authorized to execute the Guarantee on the Company's behalf.

(2) For the reasons set out in paragraphs 21 to 36 above, the Company's directors were "actually" empowered to cause the Company to enter into the Guarantee pursuant to clause 18(j) of the Company's articles of association. They did have "actual" authority to cause the Company to enter into the transaction under the Guarantee.

(3) There is no question that the Petitioner would not have signed the Guarantee nor the Lease had it been told that Mr Yuen might not have authority to act on behalf of the Company. In this connection, clause 1 in the 2nd Schedule of the Lease expressly provides that the Tenant shall provide the Petitioner with the Guarantee executed by the Company. It is obvious that the Guarantee was an integral part of the parties' commercial bargain. Had the Guarantee not been executed by Mr Yuen on behalf of the Company, the Petitioner would not have entered into the transaction in question.

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[10] Bundle 1, page 117

[11] This is produced under Exhibit TKM-2 of the 2nd Affirmation of the Petitioner's Mr Tsui Kam Man filed herein on 15 April 2025.

(4) As pointed out in paragraphs 29 and 30 above, none of the clauses in the Company's articles of association mentions the internal restriction under the 2016 Resolution. In the circumstances, the Petitioner could not have discovered the same. In this connection, there is no evidential basis for suggesting that the Petitioner was "put on enquiry". I cannot see how the Company can seriously suggest that the Petitioner (which had no access to the Company's internal documents) would have suspected that the Company's directors might have chosen to restrict their own powers on an occasion in the past. This suggestion makes no sense to me.

41. In the premises, insofar as may be necessary, I would have concluded that the Guarantee is binding on the Company on the basis that Mr Yuen must have apparent authority to execute the same on the Company's behalf.

C3. Sum Up

42. For all the above reasons, I reject the Company's contention that the Guarantee is invalid and/or unenforceable for want of authority. I conclude that the Company has failed to raise a *bona fide* dispute on substantial grounds.

D. The Petitioning Debt has not been secured nor compounded for

43. I now address the Company's contention that as the Petitioning Debt has been paid into court, the Petitioner has failed to prove that the Company is insolvent, and thus the petition should be dismissed.

44. For the following reasons, I reject the Company's contention.

45. Mr Ronald Pang (for the Petitioner) pertinently referred to *Re NT Pharma International Company Limited* [2023] 5 HKC 325. In that case, the company was unable to dispute the petitioning debt. However, the company brought a cross-claim against the petitioner that was pending resolution in a foreign arbitration. Meanwhile, the company paid the entire petitioning debt into court (*see* headnote). Linda Chan J held that the company should not be allowed to withhold payment of the petitioning debt until the determination of its cross-claim in the foreign arbitration (*see paras* 34 to 35).

46. In paragraph 26 of the judgment, Linda Chan J, applying *Cheung Wah v China State Bank Ltd* [1999] 4 HKC 185, 190C-F (*per* Ribeiro J, as he then was), stated:-

> ". …[**Counsel for the Company**] **contends that it is "abusive" for the Petitioner to insist that the Company be wound up, despite its solvency and "the fact that its claim has been fully secured or compounded for". I disagree. The amount paid into court is not security, nor does it compound for the Debt.** As explained by Ribeiro J (as he then was) in *Cheung Wah v China State Bank Ltd* [1999] 4 HKC 185, 190C-F, the words "compound for" encompass offers to pay the debt for less than the full amount or in the full amount." (emphasis added)

47. In paragraph 27 of the judgment, Linda Chan J, applying *Shandong Chenming Paper Holdings Ltd v. ARJOWIGGINS HKK 2* (2022) 25 HKCFAR 98 at *paras* 34 and 37 (*per* Fok and Lam PJJ), further stated:-

> "More importantly, as creditor of the Company, the Petitioner has the right to invoke the statutory demand mechanism and to present a winding up petition for the purpose of seeking payment of the Debt. The principle has been explained by the CFA in *Shandong Chenming Paper Holdings Ltd v. ARJOWIGGINS HKK 2* (2022) 25 HKCFAR 98, §§34, 37 in this way:

> '34. **The statutory demand mechanism is a 'convenient' method of establishing that a company is unable to pay its debts. It operates as conclusive proof of the company's inability to pay its debts for the purpose of establishing the court's jurisdiction to make a winding-up order. Where the company is so deemed to be unable to pay its debts, it is perfectly proper for a creditor to present a winding-up petition in order to seek an order from the court to wind up the company.** If the company is in fact solvent or has realisable assets, its winding up will eventually result in the creditor receiving a dividend from the company's liquidator in satisfaction of the proof of debt lodged in the winding up, which may or may not satisfy the whole of that debt. Most creditors will no doubt hope that the matter is resolved more expeditiously. If the company is indeed solvent, the creditor will hope that the presentation of the petition itself will prompt the company to pay the debt before the matter proceeds to a winding up. As will be seen, **case law recognises the propriety of the use of a winding-up petition as a means of applying commercial pressure to seek payment of an undisputed debt.**
>
> 37. Failure to comply with a statutory demand therefore operates as conclusive proof of insolvency for the purposes of engaging the jurisdiction to wind up a company. That the jurisdiction may ultimately not be exercised in favour of the making of a winding-up order does not diminish the purpose and effect of the statutory demand mechanism. So understood, **there is no tension between failure to comply with a statutory demand operating as conclusive proof of insolvency (regardless of whether the company is, in fact, solvent) and the principle against using winding-up proceedings as a means of debt collection for disputed debts**…'."

(emphasis added)

48. As pointed out by Fok PJ and Lam PJ in *Shandong Chenming* (*supra*) at paras 34 and 37 as well as Linda Chan J in *NT Pharma* (*supra*) at *para* 27, the failure to comply with a statutory demand operates as "*conclusive proof of the company's inability to pay its debts for the purpose of establishing the court's jurisdiction to make a winding-up order*".

49. Since the Company is unable to raise a *bona fide* dispute on substantial grounds, the Petitioner is plainly entitled to (i) present and prosecute the petition and (ii) seek winding-up the Company.

50. I am unable to see any basis for distinguishing the present case from *NT Pharma* (*supra*). In the present case, the position of the Petitioner is even stronger than the position of the petitioner in *NT Pharma* (*supra*)[12]. For the reasons set out in section C above, I conclude that the Company has failed to raise a *bona fide* dispute on substantial grounds. As such, the Petitioner is entitled to be paid forthwith, and the Company cannot use the fund in court as an excuse to delay payment.

51. As pointed out by Linda Chan J in *NT Pharma* (*supra*) at para 26, it cannot be said that a sum paid into court *ipso facto* constitutes a security over the petitioning debt, and the words "*compound for*" encompass "*offers to pay the debt for less than the full amount or in the full amount*".

52. In this connection, I disagree with Ms Szeto's submissions that *NT Pharma* (*supra*) was wrongly decided. In my view, Linda Chan J's views make ample commercial sense. Like the petitioner in *NT Pharma* (*supra*), the Petitioner in the present case is entitled to be paid forthwith. As such, the Company should offer to pay the Petitioning Debt to the Petitioner in its entirety. The Company cannot use the fund in court as an excuse to delay the Petitioner's entitlement. If this is what the Company seeks to achieve, it is open to the Petitioner to seek an order that the Company be wound up, such that the Company's assets could be realized for satisfying the Petitioning Debt under the liquidation regime.

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[12] In *NT Pharma* (*supra*), the company relied on a cross-claim that was pending resolution in a foreign arbitration, and Linda Chan J took the view that such a cross-claim was not a reason to withhold payment of the petitioning debt: *see* paras 34 to 36.

53. Towards the end of her oral submissions, Ms Szeto indicated that if this court takes the view that the Company has failed to raise a *bona fide* dispute on the substantial grounds, the Company would consent that the sum paid into court be released to the Petitioner. This indication was sensible.

E. Conclusion

54. For all the above reasons, the Company has failed to raise any valid ground for opposing the Petitioner's petition.

55. However, I accept that the Company appears to have the means to pay the Petitioning Debt.

56. In the premises, following the approach adopted by Linda Chan J in *NT Pharma* (*supra*) at *paras* 47 to 48, I will adjourn the petition to 27 October 2025 at 9:30am.

57. If the Company pays the Petitioning Debt before the hearing, an application can be made to have the petition dismissed. If (as Ms Szeto indicated) the Company wants to use the sum paid into court to pay the Petitioning Debt, an application can be made by consent for payment out.

58. I make a costs order *nisi* that the costs of and occasioned by the petition, up to and including the costs of the present hearing on 30 September 2025, be paid by the Company to be taxed if not agreed.

59. I thank Mr Ronald Pang and Ms Joanne Szeto for their helpful assistance.

(Alan Kwong)
Deputy High Court Judge

Mr Ronald Pang, instructed by M/s Woo, Kwan, Lee & Lo, for the Petitioner

Mr Joanne Szeto, instructed by M/s Alvan Liu & Partners for the Company