

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**
MISCELLANEOUS PROCEEDINGS NO 2144 OF 2022

IN THE MATTER OF SECTIONS 631 (2)
AND 631 (3) OF THE COMPANIES
ORDINANCE (CAP. 622) AND
REGULATIONS 9 AND 13 OF THE
COMPANY RECORDS (INSPECTION
AND PROVISION OF COPIES)
REGULATION (CAP 622I).

AND

IN THE MATTER OF ORDER 102 RULE
2(1) OF THE RULES OF THE HIGH
COURT (CAP 4A).

AND

IN THE MATTER OF HONGKONG
CHANGCHENG MINING
DEVELOPMENT COMPANY LIMITED
(香港長城礦業開發有限公司) WHOSE
REGISTERED ADDRESS IS ROOMS
05-15, 13A/F., SOUTH TOWER, WORLD
FINANCE CENTRE, HARBOUR CITY, 17
CANTON ROAD, TSIM SHA TSUI,
KOWLOON, HONG KONG AND
COMPANY NUMBER IS 1744886 (THE
"COMPANY" OR THE "RESPONDENT").

AND

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IN THE MATTER OF ALL THOSE
125,489,600 ORDINARY SHARES OUT
OF A TOTAL NUMBER OF 392,160,000
ISSUED ORDINARY SHARES STOOD IN
THE NAME OF 銀河天成集團有限公司
AND NOW PURPORTEDLY STANDING
IN THE NAME OF 杭州旭達貿易有限公
司, IN THE BOOKS OF THE COMPANY
(THE "SHARES").

AND

IN THE MATTER OF THE CHARGING
ORDER ABSOLUTE DATED 26 APRIL
2022 UNDER HCMP 620/ 2020.

BETWEEN

SHANGHAI TANGSHENG INVESTMENT CO.,
LTD.

(上海唐盛投资股份有限公司)

and

HONGKONG CHANGCHENG MINING
DEVELOPMENT COMPANY LIMITED

(香港長城礦業開發有限公司)

Applicant

Respondent

Before: Deputy High Court Judge Le Pichon in Chambers

Date of Hearing: 16 May 2023

Date of Decision: 16 May 2023

Date of Reasons for Decision: 29 May 2023

REASONS FOR DECISION

1. This is the application of Shanghai Tangsheng Investment Co Ltd (“the Applicant”) by originating summons dated 16 December 2022 (“OS”) for an order for inspection and provision of a copy of the Register of Members (“the Register”) of the respondent Hongkong Changcheng Mining Development Co Ltd (“the Company”) under s 631 of the Companies Ordinance, Cap 622 (“the Ordinance”) and ss 9 and 13 of the Company Records (Inspection and Provision of Copies Regulation, Cap 622I, “the Regulation”). At the conclusion of the hearing, I granted the order sought by the Applicant. My reasons appear below.

2. At the outset of the hearing, the court dealt with the Company’s summons dated 3 May 2023 (“the summons”) seeking retrospective leave to file and serve the affirmation of Peng Tao and the 2nd affirmation of Wu Yuxiao (“Mr Wu”), a director of the Company which were exhibited to the 3rd affirmation of Tong Fu Yi Fiona filed on 3 May 2023 (“Tong 3rd”).

3. Directions for the filing of evidence are set out in the consent order of Ng J dated 9 January 2023. It was specifically provided that no further affidavit be filed without the leave of the court.

4. A summons seeking such leave supported by an affidavit stating the reasons for seeking leave should have been filed instead of the summons and Tong 3rd which does not state any reasons.

5. As Wu 2nd merely exhibited official PRC documents that had been referred to in correspondence, those exhibits were admitted into evidence. Subject to that, the summons was dismissed with costs to the Applicant.

Background facts

6. The Applicant is the judgment creditor of a PRC judgment (“the Mainland Judgment”) it obtained in September 2019 against a Mainland company, Yinhe Tiancheng Group Co Ltd (“Yinhe”). The Mainland Judgment was registered in Hong Kong on 20 July 2020.

7. According to the annual returns of the Company for the years 2020, 2021 and 2022¹, Yinhe has been registered shareholder and also, on (the Applicant’s case) the beneficial shareholder of 125,489,600 shares (“the Shares”) in the Company.

8. With a view to securing the Shares for enforcement, the Applicant (a) issued a stop notice pursuant to the RHC O. 50, r. 12 on 12 August 2020 to prevent the Shares from being transferred without 14 days’ prior notice being given to the Applicant; and (b) obtained a charging order *nisi* (“CO *nisi*”) in HCMP 620/2020 on 24 February 2021 over the Shares.

9. The CO *nisi* was served on the Company through the PRC authorities on 28 June 2021.

10. Hangzhou Xuda Trade Company Limited (“Xuda”) filed a summons on 30 August 2021 to discharge the CO *nisi* (“the discharge

¹ The annual return (“AR”) of the Company for each of those years is made up to 15 May of the relevant year and filed shortly after 15 May of the relevant year (“the Original 2020, 2021 and 2022 AR”).

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summons”). It was supported by Wu’s affirmation finalised on 14 October
2021 (“Wu 1st”), to the effect that he had “agreed” to the transfer of the
Shares from Yinhe to Xuda but that the same could not be effected because
of the stop notice. Exhibited to Wu 2nd (finalised on 25 April 2022)² is a
board resolution of the Company of a meeting held at 2 pm on 7 August
2020 approving the transfer.

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11. At the substantive hearing on 26 April 2022 of the Applicant’s
application for a charging order absolute and the Company’s discharge
summons, Master Anthony HK Chan (a) rejecting Xuda’s submissions,
dismissed the discharge summons; and (b) made the charging order
absolute (“CO absolute”). The Company did not appeal the Master’s
decision.

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12. 6 weeks later, on 10 June 2022, the Company lodged
“Amended ARs” for the years 2020, 2021 and 2022 with the Companies
Registry which, instead of showing Yinhe as the registered holder of the
Shares, show that Xuda has been the registered holder of Shares since
3 February 2020 although it is Xuda’s case that the board only approved
the transfer on 7 August 2020.

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13. The Companies Registry endorsed the following on the first
page of each of the Amended ARs:

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**“CR’s annotation: This document replaces the Form NAR1 for
[the relevant year] filed on [date] which is claimed to be
ineffective.”**

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14. The Applicant’s request to the Company made on
25 October 2022 that the Amended ARs be withdrawn and for a copy of

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² This was an exhibit to the 4th affirmation of Zhao Zhipeng dated 25 April 2022 in respect of which
Xuda had unsuccessfully sought leave to adduce at the hearing before Master.

A the Register to be provided was rejected on the ground that the request
B involved “[the Company’s] business secret”. The Company did not reply to
C similar requests made in further letters dated 3 and 17 November 2022.

D 15. When the Applicant’s solicitors attended the Company’s
E registered office (being the office of the company secretary) on 21
F November 2022 to inspect the Register as forewarned by their letter dated
G 17 November 2022, inspection was refused and, instead, they were given a
H letter from the Company directing the company secretary not to allow
I inspection of the Register.

Applicable principles

J 16. Applications for inspection and provision of the Register is
K governed by s 631 of the CO. Any person is entitled, on request and on
L payment of the prescribed fee, to inspect the register and be provided with
M a copy of the register in accordance with the Regulation³. A company is
N required to make its records available for inspection during business hours⁴
and the court is given power to compel⁵ the provision of a copy of the
company records in the event of any contravention of the Regulations.

O 17. The relevant principles were considered by DHCJ To in *Lam*
P *Kin Chung v Soka Gakkai International of Hong Kong Limited* [2017] 4
HKLRD 192 at §§8-9 which can be summarised as follows:

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R ³ See ss (2) and (3) of s 631 which provide as follows:

R "(2) Any other person is entitled, on request made in the prescribed manner and on payment of a
S prescribed fee, to inspect the register and index in accordance with regulations made
T under section 657.

S "(3) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy
T of the register or index, or any part of it, in accordance with regulations made under
U section 657."

T ⁴ See s. 7 (1) of the Regulation.

U ⁵ See s. 9(1) of the Regulation.

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- (i) as a general rule, the court will make a mandatory order to give effect to a legal right, but it, nevertheless, has a narrow discretion to refuse making the order. In other words, the right is not an absolute right;
- (ii) if an application is made by a member of the company, it must be made in connection with some purposes which the applicant as a member has an interest in;
- (iii) the burden must be on the company seeking to resist disclosure to persuade the court that it is appropriate to exercise that discretion;
- (iv) the usual grounds for refusing to make the order are that the inspection was sought for an improper purpose as to amount to an abuse of the legal right;
- (v) if the company seeks to rely on any facts to support the exercise of discretion, it bears at least the evidential burden of proving those facts; and
- (vi) while the circumstances when it is appropriate to exercise such discretion are narrow, the court's discretion is wide.

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18. Those principles echo the approach of the English Court of Appeal in *Pelling v Families Need Fathers Ltd* [2001] EWCA Civ 1280 where a parallel English provision⁶ had to be construed. It adopted the approach of the Australian court in the case of *O'Brien v Sporting Shooters Association of Australia (Victoria)* [1999] 3 VR 251 at 255.

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⁶ Companies Act 1985 [UK] s. 356, 356 (6).

This application

19. Mr Keith Chan, counsel for the Applicant, submitted that even a general member of the public has a right to inspect a company's register. Those dealing with the Company would be interested to see who is behind the Company. While the right is not absolute, the circumstances in which the court would exercise its discretion to refuse inspection are narrow.

20. In the present case, the Applicant has an additional interest in that it holds the CO absolute and its interest is therefore akin to an equitable charge under Hong Kong law.

21. It was submitted that the Applicant clearly has a legitimate interest in inspecting the Register. Should it decide to apply for an order for sale, it must first ascertain the relevant members of the Company who would have an interest in such an application as they would be relevant parties.

22. The Applicant highlighted the following matters:

- (i) the Mainland Judgment was registered in Hong Kong on 20 July 2020 under section 5 of the Mainland Judgments (Reciprocal Enforcement) Ordinance, Cap 597. The Applicant submitted that once registered, the judgment debt takes effect and is enforceable as if it were an order of the Hong Kong court and, *prima facie*, its enforceability is a matter of Hong Kong law rather than PRC law;
- (ii) the Company appears to be in breach of the stop notice issued on 12 August 2020 by giving a notice dated 2 June 2022 of its

intended transfer of the Shares but the Amended 2022 AR recording the transfer was filed on 10 June 2022⁷;

(iii) the Applicant’s request for an inspection of the Register made on 25 October 2022 was refused on the ground of “business secret”; and

(iv) inspection was also refused on 21 November 2022 when the Applicant’s litigation clerk attended the registered office of the Company having given such notice on 17 November 2022.

23. While recognising that there may be competing interests in the proceeds of sale of the Shares, the Applicant submitted that is not a matter to be resolved at this hearing and is not a good reason for not allowing an inspection of the Register.

The Company’s objections

24. Mr Robert Chan, counsel for the Company, relied on 2 objections to the Summons: (a) the order sought would serve no useful purpose; and (b) it is sought for an improper purpose. A further objection (based on the fact of the PRC liquidation) was not pursued at the hearing.

(a) No useful purpose

25. Mr R Chan submitted that the Applicant’s underlying reason for requesting an inspection of the register is to apply for an order for sale of the Shares. At §31 of the affirmation of Chung Suet Yee dated 16 December 2022 (“Chung 1st”) it is stated that following the grant of the CO

⁷ The interval between the date of the Company’s notice and the transfer recorded in the filing was only 8 days.

absolute on 26 April 2022, “the Applicant intends to take further steps ... including an application for an order for sale of the Shares”.

26. The court was referred to the Amended 2020 AR⁸ for the Company which, in pertinent part, shows the following:

姓名/名稱 Name	地址 Address	股份 Shares			備註 Remarks
		現時持有量 Current Holding	轉讓 Transferred		
			數目 Number	日期 Date	
銀河天成集團有限公司 [Yinhe] ⁹	Zhenchen Garden, The Building 2-3-303, No.15 Touch Road, GaoXin Zone, NanNing City, GuangXi, China	Nil	125,489,600	3 Feb 2020	Transfer to 杭州旭達 貿易有限 公司 [Xuda]
杭州旭達貿易有限公司 [Xuda]	Room 1204, Building 2, Baivun Tower, Jiangan District Hangzhou City, Zhejiang Province, China	125,489,600			

27. My understanding of the Company’s submission is that Xuda became the beneficial owner of the Shares on 3 February 2020, that being the date the bought and sold notes were submitted to the stamp office for adjudication which was well before the date of the CO absolute.

28. In so far as the Applicant wishes to have sight of the Register, it was said that the Applicant’s purpose would be to facilitate its intended application for an order for sale. The Company submitted that given

⁸ See Schedule 1 of Form NAR1 in item 8 of CSY 1 to Chung 1st (B1/8/61).

⁹ The English names of the relevant shareholders have been added and shown within square brackets.

A Xuda's interest as clearly shown in the Amended 2020 AR, the Applicant
B cannot possibly succeed, rendering the whole exercise otiose.

C 29. In any event, the Company's stance is that instead of the
D present application, the Applicant should have made an application for an
E order for sale¹⁰.

F 30. But shown on the very first page of the Amended 2020 AR are
G the following endorsements:

H **"CR's annotation: This document replaces the Form NAR1 for
I 2020 filed on 15/05/20 which is claimed to be ineffective ["the
J 1st endorsement"]."**

K **CR's annotation: See the amended Form NAR1 for 2020 filed
L on 27/06/2022 ["the 2nd endorsement"]."**

M 31. The Original 2020 AR (made up to 15 May 2020 and which
N shows a filing stamp of even date) bears an endorsement in terms
O substantially similar to the 1st endorsement:

P **"CR's annotation: This document is claimed to be ineffective
Q and is replaced by the Form NAR1 for 2020 filed on
R 10/06/2022."**

S 32. As earlier noted, the Amended 2020 AR (item 8 of CSY 1)
T was filed on 10 June 2022. However, the 2nd endorsement refers to a filing
U made on 27 June 2022 which does not appear to be in the hearing bundles.
V It is not evident in what respects the Form NAR1 filed on 27 June 2022
differs from that filed on 10 June 2022 which it replaced.

33. Given the several versions of Form NAR1 for 2020 filed at
the Companies Registry, this is hardly a run-of-the-mill case where there is
but one unchallenged filing.

¹⁰ The Company did not address the point made by the Applicant in §21 above.

34. As to whether any reliance should be placed on the Amended 2020 AR as reflecting the true position, the Applicant invited attention to clear inconsistencies between the ARs and the Company's own case in the following respects:

(a) The allegations in Wu's affirmation in these proceedings dated 28 March 2023 ("Wu 1st") at §10 are that (i) the legal title of the Shares was transferred from Yinhe to Xuda on 24 January 2018; and (ii) the beneficial ownership of the Shares was transferred from Yinhe to Xuda on 29 December 2019.

However, those dates do not match the date stated in the Amended 2020 AR filed on 10 June 2020;

(b) In Wu 1st at §47(i), it is asserted that on 7 August 2020, the Board approved the Share Transfer *and* entered the name of Xuda in the Register.

However, that post-dates the date (3 February 2020) stated in the Amended 2020 AR;

(c) In Wu 1st at §§49-50, it is asserted that after the board approved the transfer, the stop notice was issued which held up the process of registration of the share transfer and it was only in June 2022 that the board realised it had misunderstood the effect of the stop notice.

That evidence contradicts his earlier evidence at Wu 1st §47 to the effect Xuda's name was entered in the Register on 7 August 2020. In any event, the realisation occurred in June 2022 and not on 3 February 2020.

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35. In those circumstances, one cannot reasonably be expected to
rely on the information disclosed in the Amended 2020 AR as necessarily
reflecting the true position. The Applicant is plainly entitled to inspect the
Register.

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(b) *Improper purpose*

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36. The sequence of events following the grant of the CO *nisi* on
24 February 2021 may be summarised as follows:

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(a) on 24 January 2022, upon the bankruptcy application by
Tiandi Heming Technology Group Co Ltd for the liquidation
of Yinhe on the ground of the latter's inability to pay its debts,
the Nanning Intermediate People's Court of Guangxi Zhuang
Autonomous Region (the PRC court) granted the application,
and adjudged Yinhe insolvent with immediate effect;

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(b) on 26 April 2022, the Hong Kong court granted the CO
absolute;

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(c) on 16 December 2022 the Applicant made the present
application to inspect the Register;

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(d) on 7 March 2023, the PRC court appointed Beijing Zhong Yin
(Nanning) Law Firm to be the administrator of Yinhe ("the
Administrator") whose duties include the management and
disposal of the debtor's property;

(e) on 20 April 2023, the Administrator wrote to all known
creditors giving them notice of the need to lodge proofs of
debt before 20 June 2023;

(f) prior to 20 April 2023, Jinan Yuxiao (“JY”), a creditor of Yinhe, had informed the Administrator by letter alleging that the Applicant had the “intention of seizing” the Shares, referring to the actions taken by the Applicant in Hong Kong concerning the Shares;

(g) on 20 April 2023, the Administrator replied to JY (“the Administrator’s reply letter”). The Company relied heavily on this letter the contents of which are summarised in the next paragraph.

37. In summary, the Administrator’s reply letter

(a) referred to

(i) JY’s allegation that the Applicant is

“suspected of circumventing this bankruptcy proceedings ... intending to make use of the [Shares] to individually settle [the Applicant’s] debt in ... HCMP 620/2020; and the execution procedure for the individual settlement is currently underway in the Hong Kong court”;

(ii) JY’s request that the Administrator intervene to stop the Applicant’s actions in the Hong Kong court;

(b) stated that the Administrator

(i) has the statutory power to take over all properties of Yinhe, including those outside of China;

(ii) will contact the Company to further understand the status of the disputed shareholding and the actual shareholders;

(iii) has sent a letter to the Applicant requesting it to cease proceedings in the High Court of Hong Kong for individual settlement and, instead, filing its claim for debt with the Administrator for fair compensation through the bankruptcy procedures;

(iv) if necessary, the Administrator will contact the High Court of Hong Kong to ensure that the facts are ascertained and the duties of the Administrator are fulfilled.

38. The Company criticised the Applicant for not disclosing the letter it had received from the Administrator. It submitted that it would be improper for this court to grant an inspection of the Register when there are ongoing liquidation proceedings controlled by the Administrator in the PRC. Further, it would be otiose for the Applicant to apply for an order for sale if, at the end of the day, there is nothing for them to obtain.

39. Suffice it to say that the Company's submission is based on various assumptions which have not been established. Moreover, it is open to the Administrator to seek the recognition and assistance of the Hong Kong court of the PRC liquidation, but he has not yet done so.

40. For present purposes, all the Applicant seeks is an order to inspect the Register pursuant to section 631 of the Ordinance. Whether or not, after perusing entries in the Register, the Applicant will take further action and, if so, what further action, is another matter. But by no stretch of the imagination can it be said that an order made pursuant to section 631 would interfere with or jeopardise the ongoing PRC liquidation.

Conclusion

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41. As neither of the defences raised been established, there is no
valid reason for not granting the order the Applicant seeks which is to have
an immediate inspection of the Register.

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42. The Applicant also requested that it be allowed to take copies
Register upon such inspection in place of paragraph (2) of the OS which
request was granted.

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43. It should be mentioned that in its Reply Submissions, the
Applicant intimated that if the court were minded to grant the application,
the Applicant intends to serve a copy of the order to be made on the
Company, indorsed with penal notice. It was submitted that leave of the
court was not required.

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44. At the hearing this matter was not pursued and the question
whether prior leave is required did not fall for determination.

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Costs

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45. The Applicant applied for indemnity costs on the basis that (a)
the Company's refusal was not justified: it provided no reasons other than a
bare assertion that the information involves "business secret"; (b) it caused
a delay of 7 months since the initial request; and (c) the Company was
obviously acting in concert with Yinhe and/or Xuda to frustrate the
Applicant's interest to enforce its judgment debt.

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46. I did not consider that the matters relied on are not to
egregious conduct that would justify an order for indemnity costs.

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47. Accordingly, the order for costs was made on the usual basis
with certificate for counsel, such costs to be summarily assessed. As the
Applicant was able to provide its statement of costs immediately,

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B directions were given for the Company to file its objections and for the
C filing of a reply if any.

D 48. The assessment will take place in Chambers.

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G (Doreen Le Pichon)
Deputy High Court Judge

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I Mr. Keith Chan, instructed by Withers, for the Applicant
J Mr Robert G M Chan, instructed by Alvan Liu & Partners, for the
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