

## BERMUDA SUPREME COURT

### ***Greater Achieve Ltd et al -v- Mingyuan Medicare [2016] SC (Bda) 56 Civ***

### ANCILLARY RELIEF - COMPULSION OF CONVENING AGM - JURISDICTION

The Applicants sought through, *ex parte*, Summons to obtain ancillary relief to previous Orders of the Bermuda Court in March 2016 directing the conduct of an Annual General Meeting (“AGM”) of Minyuan Medicare Development Company Limited (the “Company”) between the 16th and 20th of May (Cf. Digest entry: *Uprise Corporation et al -v- Mingyuan Medicare Development et al [2016] SC (Bda) 28 Civ*). Liberty to apply had been granted in the first Order as the spurious conduct of those controlling the Company gave rise to the suspicion that the Order might not be fully complied with. Indeed, in most respects the original Order was not complied with, but rather, openly flouted. The most significant elements of the ancillary relief attached thereto, particularly that the resolutions proposed by Greater Achieve Limited (one of the present Applicants) for the purpose of removing the current Chairman should be circulated as part of the Agenda for the coming AGM, were ignored. Additional violations, such as the purported holding of the AGM in a highly inconvenient location, also took place.

As a result of these, the Bermuda Courts had issued a number of other supplementary orders to the original relief, granting Greater Achieve more or less full authority to convene the AGM and to act on the Company’s behalf in its dealings with relevant Hong Kong financial institutions. During these proceedings, the Company was invited to participate, but deliberately elected not to do so. On the present application, it was found that the Company, complying with a point of the orders that the AGM was to be held in Hong Kong, was seeking to rely on that one element of compliance to show that the order necessitating it had effectively “fallen away” and that other parts of that same order, particularly that giving Greater Achieve authoritative control of the Company, could therefore be disregarded. Hence, it had

unilaterally decided to convene its own meeting at a different location competing with the meeting authorised by the Court.

On the facts, Kawaley CJ bemoaned the relative lack of enforcement mechanism available in cases regarding companies incorporated in Bermuda but listed in other jurisdictions. He reiterated that he believed that there was sufficient information before the Court to justify a successful petition to wind up the Company, should the Applicants choose to take that step. However, he also recognised that it was right that should the Applicants wish to pursue less intrusive remedies, they should be able to do so. Thus, he made yet another Order in aid of implementing the original Order that no business purported to be done or resolutions purported to be passed at the meeting held by the Company was to have any legal effect, and that Greater Achieve Limited was authorised to circulate to the Company’s shareholders a Circular, as annexed to the Order.

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