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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS
BANKRUPTCY DIVISION

In re IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC, Debtor and Debtor-in-Possession.	Case No. 1:24-bk-00002 **OPPOSITION BY JUDGMENT CREDITOR JOSHUA GRAY TO DEBTOR IPI'S FIRST-DAY MOTIONS** Hearing Date: April 26, 2024 Hearing Time: 8:30 a.m. Judge: Hon. Ramona V. Manglona

On April 19, 2024, Imperial Pacific International (CNMI), LLC (the "Debtor" or "IPI") filed a Chapter 11 voluntary petition for bankruptcy (the "Petition"). IPI then filed a series of "First-Day Motions" (the "Motions") and "Emergency Ex Parte Motion" to shorten the time for the motions and schedule a hearing just three days later. Judgment Creditor Joshua Gray ("Gray") was never provided an opportunity to respond to this "emergency" motion. Notice was then only received less than two

days before a hearing on those Motions was set to take place on April 26, 2024—hardly enough time to adequately or thoroughly review their content, let alone to retain bankruptcy counsel to assist in reviewing the Motions. Accordingly, Gray submits this preliminary opposition to the Motions and requests that they all be denied (except for the motions for attorney admissions) and rescheduled for a hearing on a later date. Gray also notes that IPI's effort to ram through these Motions without giving creditors a proper opportunity to object is very disconcerting.

Chapter 11 Petition Lacks Merit

1. As a preliminary matter, Gray notes that the Debtor is abusing the Chapter 11 process in an attempt to delay the revocation of its license, avoid contempt proceedings, and slow the liquidation of its property. IPI no longer has any "operating business" that can be restructured. Gray expects that he and/or other creditors will be filing a motion to dismiss the bankruptcy petition. Indeed, IPI's parent company tried to argue before the High Court in Hong Kong that it planned to restructure its businesses in order to defeat a "winding up" petition. However, the High Court found that IPI had no means or realistic prospect of actually paying off its debts or reorganizing the company. (*See* **Exhibit A**).

IPI's "Emergency" Motions Demonstrate Bad Faith

2. Gray objects to and calls the Court's attention to the fact that the Debtor is not operating in good faith. In its "First-Day Motions," the Debtor is requesting the Court to issue an order that approves a DIP loan arrangement for which it provides few facts, to approve monthly payments to the Debtor's counsel, to approve PTO payments that accrued several years ago, and various other relief. The Debtor is seeking to have these motions granted prior to IPI providing any specifics about its finances, and without giving IPI's creditors a fair opportunity to analyze or object to these Motions.

3. First, the Debtor filed an "emergency" motion for these Motions to be heard the same week that they were filed. However, there is no actual emergency. The Debtor's bankruptcy counsel still has

a significant retainer of $38,592.70 that should certainly fund at least a few weeks of work. There also must be other funds available to pay security guards, litigation counsel, etc., because IPI has been funding these things for *years* at this point despite the casino being closed since 2020. Therefore, there is no reason that IPI must be approved to incur an additional $7 million in loans so urgently.

4. Second, the Debtor, if anything, should be asking for an interim order granting its motions, but instead is trying to persuade the Court to enter a permanent order. (To be clear, Gray also objects to an interim order.) Further, the Debtor has not even provided the required schedules of its assets and liabilities, or details of its plan, but still asks the Court to issue a permanent order.

The Bare-Bones Motions Should be Denied on Substantive Grounds

5. At this stage, where IPI has provided no schedules of its assets and liabilities, and zero details of its reorganization plan—despite having already retained bankruptcy counsel for many months—Gray contends that no relief requested by IPI (beyond approving the pro hac vice admissions of counsel) should be granted at the April 26 hearing. For instance, how much real estate does IPI own and what is the income? How did IPI find over $150,000 to bid on a Rolls Royce? What happened to the $20 million paid to Ji Xiaobo? Was IPI not prepared to pay over $49 million just weeks ago in order to avoid the revocation of its license? These questions must be answered before any of these Motions should be considered.

6. Interim fees (ECF No. 9). With regards to the motion to establish an interim fee and expense reimbursement procedures, IPI has not demonstrated the need to deviate from the normal procedures set forth in the bankruptcy code. IPI's attempt to have such a request approved without providing any information about its reorganization plan, and without obtaining any meaningful input from creditors, exhibits bad faith and gamesmanship.

7. Bankruptcy counsel (ECF No. 10). With regards to the motion to employ bankruptcy counsel, Gray joins the objection of the United States Trustee that final authorization should not be granted. Gray also intends to object to granting final authorization until the billing records for the $61,407.30 that was already billed by Choi & Ito can be reviewed and explained. The fact that so many hours and so much money has already been spent, but IPI's petition was still so bare-bones—lacking even the most basic schedules and not including any reorganization plan—raises serious concerns. The attempt to ram through these non-interim Motions on an "emergency" basis without providing a meaningful chance for IPI's creditors to object also raises serious concerns about the professionalism and experience of IPI's counsel. Gray also believes that no money should be paid for bankruptcy counsel to travel to Saipan, unless a need to do so can be demonstrated.

8. Pre-petition wages and unpaid PTO (ECF No. 11). Gray objects to the payment of any wages to the individuals listed by IPI until IPI provides evidence of the specific work performed by each individual that it lists, including the dates of employment, rate of pay, and evidence that they performed the work. Gray's counsel has received information suggesting that some of the listed people either do not work for IPI, or are not performing tasks that benefit the company. IPI's excuse for not providing any details or evidence to support the amounts it seeks are unpersuasive; the confidential parts could be easily redacted by Mr. Chi or one of the three law firms representing IPI. (ECF No. 11 ¶ 11). As for the unpaid PTO, Gray objects to this request until IPI explains why it is asking that these amounts—more than 50% of which will go to Howyo Chi—is all of the sudden being paid now but was never paid during the many years since it accrued.

9. Secured indebtedness/DIP financing (ECF No. 12). Gray strenuously objects to this motion by the Debtor, and expresses great dismay and concern that Debtor is attempting to have a motion granted that could impact the substantive rights of creditors without even giving a proper opportunity for

creditors to study the motion with the assistance of bankruptcy counsel. On the substance, Gray joins the objections of the Trustee. It is completely unbelievable that an individual with no insider connection to IPI is willing to loan this failing enterprise $7 million. Mr. Chi is not even willing to state on behalf of IPI that it has no connection with this person; only that Mr. Chi himself has no personal knowledge of the relationship. IPI must be ordered to provide further information on this point before this motion can be seriously considered.

10. Gray also objects to any arrangement in which the lender would receive any form of priority for any debt that might be superior to Gray, or the lender receiving any lien or collateral on IPI property. Further, Gray reminds the Court that IPI has previously attempted to claim that it was loaned money by a party, had pledged a significant portion of its assets to that party, and then tried to block IPI's legitimate judgment creditors from executing on that property. Although IPI did not reveal this fact to the Court, it then became apparent that this party was actually an affiliated entity and individual, and the circumstances of the alleged loan were highly dubious. (*See Gray v. IPI*, No. 19-cv-0008, ECF Nos. 268, 274). Therefore, Gray objects to approving any such arrangement until more fact-finding and investigation can be performed.

11. IPI has presented no information to suggest that it will ever be able to repay the DIP financing. Until it does, its request to approve this lending arrangement should be denied. Since its bankruptcy counsel maintains a significant retainer, and IPI has always found money to pay its rent and employees, there is also no need to approve the $400,000 in financing—at least not until IPI explains where it got the money for rent and wages for the past 6 or 12 months before it filed for bankruptcy.

12. Michael Chen (ECF No. 13). Gray joins in the objections of the Trustee, and also adds that IPI should be compelled to state whether it will drop its appeal of the judgment in *Gray v. IPI* or if it intends to pursue the appeal.

Conclusion

13. Gray apologizes to this Court for submitting this opposition so close in time to the hearing date. However, this is the result of the Debtor failing to provide adequate notice to its creditors and seeking to unfairly jam through its Motions. Gray requests that each of those Motions, except for the requests for pro hac vice admission, be denied, and that a hearing be scheduled for a later date so that all parties can have a proper chance to review the Motions.

Dated: April 25, 2024

Respectfully submitted,

/s/
Aaron Halegua
Bruce Berline

Attorneys for Joshua Gray

Exhibit A

HCCW 408/2023
[2024] HKCFI 1102

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
COMPANIES (WINDING-UP) PROCEEDINGS NO 408 OF 2023

IN THE MATTER of Section 327 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Chapter 32 of the Laws of Hong Kong

and

IN THE MATTER of IMPERIAL PACIFIC INTERNATIONAL HOLDINGS LIMITED (博華太平洋國際控股有限公司) (Company No. F0011534)

Before: Hon Linda Chan J in Court
Date of Hearing: 15 April 2024
Date of Judgment: 15 April 2024
Date of Reasons for Judgment: 19 April 2024

R E A S O N S F O R J U D G M E N T

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1. At the hearing of the petition presented by Guan Chubin, the petitioner ("**Petitioner**") on 14 September 2023 (as amended on 5 January 2024) ("**Petition**") seeking to wind up Imperial Pacific International Holdings

Limited[1] ("**Company**") on insolvency ground, I made the usual winding-up order against the Company. These are the reasons for my judgment.

2. The Company was incorporated on 27 July 2001 in Bermuda as an exempted company. It was registered as an oversea company on 7 November 2001[2] and subsequently registered as a non-Hong Kong company under the Companies Ordinance (Cap. 622). The Company has a principal place of business at On Hong Commercial Building, Wanchai, Hong Kong.

3. The Company has issued 10,649,240,383 shares and its paid-up capital is HK$106,492,403.83.

4. The shares of the Company were listed on the Main Board of The Stock Exchange of Hong Kong Limited ("**HKEx**").

(1) On 1 April 2022, trading of the shares was suspended due to the Company's delay in publishing its financial results for the years ended 31 December 2020 and 2021.

(2) On 13 October 2023, the Company was informed that the Listing Committee of HKEx had rejected the Company's request to extend the remedial period for fulfilment of the resumption guidance and proceeded with cancellation of its listing.

(3) On 25 October 2023, the Company applied for review of the decision of the Listing Committee, which was heard on 19 January 2024, and dismissed on 7 February 2024.

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[1] Formerly known as First China Natural Foods Holdings Ltd (from 27 July 20001 to 9 August 2001) and First Natural Foods Holdings Ltd (from 10 August 2001 to 21 May 2014)

[2] Under the former Companies Ordinance (Cap. 32)

(4) The cancellation of the listing status took effect on 22 February 2024.

5. The Company is an investment holding company and carries on business through its subsidiaries (together "**Group**"). The Group engages in gaming and resort business in the Island of Saipan:

(1) In August 2014, Imperial Pacific International (CNMI), LLC ("**IPI**"), an indirect wholly owned subsidiary of the Company, and the Commonwealth of the Northern Mariana Islands ("**CNMI**") entered into a licence agreement (as amended) ("**Licence Agreement**") in respect of the exclusive casino resort developer licence for the Island of Saipan pursuant to which the Casino Resort Developer Licence ("**Licence**") was granted to IPI.

(2) On 6 July 2017, the casino part of Imperial Palace – Saipan, which has capacity of up to 193 tables and 365 slot machines ("**Casino**"), commenced operation.

(3) As at 30 June 2022, an aggregate amount of US$914 million has been invested in the construction of Imperial Palace – Saipan (including the Casino) which will have 10 restaurants, 329 hotel rooms and 15 villas upon completion.

6. On 17 March 2020, the Casino was closed due to COVID-19 and has not resumed due to the suspension of the Licence:

(1) On 23 April 2021, IPI received the order made by the Commonwealth Casino Commission in Saipan ("**CCC**") suspending the Licence until IPI pays the annual licence fee of

US$15.5 million p.a., the casino regulatory fee of US$3.1 million p.a. and penalties of US$6.6 million.

(2) IPI applied for a review of the decision of CCC on the ground that COVID-19 constituted a natural disaster or *force majeure* under the Licence Agreement such that the annual fee should not be payable.

7. The Petitioner is a holder of bonds issued by the Company. Following the Company's default in payment, the Petitioner commenced HCA 1416/2021 to claim the principal amount of HK$19,500,000 together with interest. On 27 March 2023, the Petitioner obtained a final judgment against the Company for HK$20,832,277.39 (inclusive of interest up to 18 April 2021) together with interest and costs.

8. By a statutory demand served on 17 August 2023 the Company was required to pay HK$22,051,045.63 within 21 days thereof ("**SD**"). In fact, on the date the SD was served, the amount owed by the Company (inclusive of interest but excluding costs) was HK$23,988,516.94 ("**Debt**").

9. It is indisputable that the Company is insolvent and unable to pay its debts:

(1) The Company failed to comply with the SD and was deemed insolvent by virtue of s.178(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("**CWUMPO**").

(2) According to the Company's annual report for the year ended 31 December 2021 ("**2021 AR**"), being the latest annual report published by the Company, as at 31 December 2021, the

Company had net current liabilities of HK$11,000,351,000 and net liabilities of HK$8,352,144,000.

(3) According to the unaudited Interim Results, as at 30 June 2022, the Group had net current liabilities of HK$11,455,543,000 and net liabilities of HK$8,819,310,000, but it only had cash and bank balance of HK$2,082,000. Provisions for impairment of trade receivables due from the Group's largest and 10 largest customers amounted to HK$1,082 million and HK$2,763 million respectively based on the expected credit losses.

10. It is not in dispute that the 3 core or threshold requirements for the court to exercise its discretionary jurisdiction to wind up the Company are met:

(1) The Company has sufficient connection with Hong Kong: (a) Its principal place of business has been in Hong Kong and it is a registered non-Hong Kong company; (b) the shares of the Company had been listed on HKEx until its listing status was cancelled; (c) the company secretary and some of the directors are Hong Kong residents; (d) the principal banker of the Company is DBS Bank (Hong Kong) Ltd; (e) the bonds subscribed by the Petitioner were placed through agents in Hong Kong; and (f) the judgment was obtained by the Petitioner in Hong Kong.

(2) There is a reasonable possibility that a winding up order against the Company would benefit the creditors including the Petitioner and the supporting creditors. According to the 2021 AR, the Company holds assets in Hong Kong which include (a) investments in a listed company, (b) a wholly owned subsidiary incorporated in Hong Kong, (c) receivables due from debtors in

Hong Kong, and (d) substantial costs paid by the Company after presentation of the petition in seeking resumption of listing, which are recoverable by the Company unless sanctioned by the court under s.182 of CWUMPO.

(3) Apart from the Petitioner, 2 creditors (DC Digital Communications Ltd and Luk Chi Shing) have filed notices of intention to support the petition, and one creditor (Wang Yi) has presented another petition in HCCW 438/2023 against the Company relying on a debt of HK$5.3 million[3]. There are other holders of Hong Kong dollars denominated bonds in the principal amount of HK$42,058,000 issued by the Company.

11. At the first callover hearing of the Petition on 11 March 2024, the Company confirmed that it did not dispute the Debt or the fact that it is insolvent. The only ground advanced by the Company in support of its application for an adjournment of the Petition was that it would pursue a proposed restructuring which would involve:

(1) a subscription of the Company's shares by an independent investor, Kyosei-Bank Co., Ltd ("**Investor**"), for HK$852 million, and the proceeds would be applied solely as working capital of the Company and for the purposes of implementing a scheme of arrangement in respect of its indebtedness ("**Proposed Subscription**"). For this purpose, a framework agreement dated 18 January 2024 was entered into between the Company and the Investor ("**Framework Agreement**"); and

[3] As the petition was presented after the petition presented by the Petitioner, it has since been withdrawn with leave of the court

(2) a scheme of arrangement between the Company and its creditors to compromise and discharge all the debts owed to the creditors ("**Proposed Scheme**").

12. However, as pointed out by Ms Sally Wong, counsel for the Petitioner, the Framework Agreement is subject to compliance or waiver of a number of conditions precedent[4] ("**C/Ps**") which include:

(1) no material adverse events have occurred as at the date of the Framework Agreement until the Closing Date (cl. 4.2(c));

(2) confirmation from HKEx that the issues causing suspension in trading have been remedied, and HKEx has provided in-principle approval to resumption of trading of shares (cl. 4.2(f)-(g));

(3) the Investor has completed to its satisfaction a due diligence on the Company and each of the company within the Group (cl. 4.2(h)); and

(4) the proposed restructuring has been approved by all relevant regulators and shareholders, and all relevant agreements have become unconditional (cl. 4.2(o)).

13. Ms Wong submitted that having regard to the Listing Committee's decision to cancel the listing status of the Company and the fact that the Company did not have funds to pay the substantial amount due and payable to CCC, there was no prospect of the Company being able to comply with the C/Ps such that the Proposed Subscription would not be completed.

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[4] Closing Conditions §4.2

14. Mr Him Ho, counsel for the Company at the hearing on 11 March 2024, submitted that the Petition should be adjourned for 4 months so that the Company could continue to pursue the Proposed Subscription which, if successful, would enable the Company to raise HK$852 million. There was a reasonable prospect of the Company being able to comply with the C/Ps given that:

(1) The Investor had indicated that it was prepared to consider waiving the C/Ps pertaining to resumption of listing. A letter dated 7 March 2024 was produced by the Company;

(2) The Company had applied for a review to reverse the decision of the Listing Committee, which was heard on 19 January 2024. Although the Listing Review Committee notified the Company on 7 February 2024 that the decision was upheld, the Company would apply for leave to commence judicial review against the decision of the Listing Review Committee; and

(3) The Company had been actively negotiating with CCC in relation to the payment of the amount due which, if successful, would allow IPI to resume operation of the Casino. Some emails exchanged with CCC were produced by the Company in support of its assertion.

15. On the basis of the Company's representations set forth above, this Court was prepared to adjourn the Petition for 5 weeks to see if the Company would in fact be able to come to any agreement with CCC in respect of payment of the amount due, which was the *only* way to remove the suspension order and allow the Casino to resume operation. It was not in

dispute that if and for so long as the Casino's operation remained suspended, the Proposed Subscription would not proceed to completion.

16. At the second hearing of the Petition on 15 April 2024, Ms Wong points to the following material adverse events, which render completion of the Proposed Subscription not viable:

(1) The Listing Review Committee upheld the decision of the Listing Committee to cancel the listing status of the Company.

(2) The Company and the Investor have entered into a supplemental framework agreement, which provides that the C/Ps pertaining to resumption of listing status [5] shall automatically be waived "provided that the gaming and resort business of the Company in Saipan has been resumed and the casino gaming licence held by the Subsidiaries remains valid at all times"[6].

(3) On 9 April 2024, CCC announced that the negotiations between IPI and CCC had broken down. It was reported in the news that CCC had said that no more settlement talks would take place.

(4) According to the draft Stipulated Agreement produced by the Company, after negotiations with CCC, the amount of fees payable by IPI to CCC is US$154 million (equivalent to HK$1,200 million) and the same must be paid in 4 tranches by 1 October 2024, of which US$7.35 million must be paid by 22 April 2024. There is *no* evidence to suggest that the Company or IPI has the means to make the first payment, still less the entire sum of US$154 million.

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5 Framework Agreement cl. 4.2(f), (g), (j), (k), (l) and (o)

6 Underlined added

(5) It is also clear that even if the Proposed Subscription proceeds to completion, the amount raised (HK$852 million) is not sufficient to pay the fees payable to the CCC under the Stipulated Agreement.

17. In his skeleton, Mr Tony Ko, counsel for the Company at the hearing on 15 April 2024, refers to cases where the court adjourned the winding up petition to enable the company to pursue a scheme of arrangement, particularly where there were creditors opposing an immediate winding up of the company (*Re Advanced Wireless Group Limited*, HCCW 441/2006, 24 April 2007; *Re Lamtex Holdings Ltd* [2021] 2 HKLRD 177, §§37-38; *Re APP (HK) Ltd* [2005] 1 HKLRD 272, §§34, 37; *Re RNA Holdings*, HCCW 388/2004, 13 July 2005, §45). The submission misses the point. The court will only adjourn a winding up petition if the company is able to show that there is a useful purpose for adjourning the petition. Where the proposed adjournment is for the company to pursue a restructuring, it is incumbent upon the company to show that there is at least a reasonable prospect that the restructuring will proceed to completion so as to displace the petitioner's right to seek an immediate winding up order against the company.

18. Mr Ko submits that the court should further adjourn the Petition for 3 months to allow the Company to put the Proposed Scheme into effect, having regard to the following matters:

(1) an immediate winding up order would yield very little, if any, benefit to the creditors;

(2) the Company has put forward the Proposed Subscription which, if completed, will enable the Company to raise HK$852 million;

(3) the Company has put forward the Proposed Scheme which will provide the creditors with a 10% return over a period of 2 years[7], to be paid out of the proceeds of the Proposed Subscription. The Proposed Scheme is "a viable option" as it has in-principle support of over 60% of creditors in value; and

(4) the CCC has agreed to extend the time for IPI to pay the outstanding fees, to lift the suspension of the Licence and to file a motion to voluntarily dismiss the licence revocation proceedings against IPI[8].

19. I do not think that any of the matters relied on by Mr Ko constitute a valid ground in opposition to the Petition.

(1) Clause 7(a) of the Stipulated Agreement states that the Licence "shall remain suspended indefinitely" unless and until IPI pays (a) the Casino Regulatory Fee due on 1 October 2020, 2021, 2022 and 2023 in the total amount of US$12.6 million[9], and (b) the Annual Licence Fee due on 12 August 2020, 2021, 2022 and 2023 in the total amount of US$62 million.

(2) There is no evidence to suggest that the Company or IPI has the means to pay the various amounts payable to CCC as stated in the draft Stipulated Agreement. This means that there is no prospect of IPI being able to remove the suspension order and resume operation of the Casino, which are the main C/Ps for completion of the Proposed Subscription.

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7 No scheme document or term sheet has been adduced. It is not clear what is the basis for suggesting that the creditors will obtain a return of 10%

8 §4-5 of the 4th Affirmation of Chen Feng, the email from the CCC dated 8 April 2024 together with the draft Stipulated Agreement prepared by the CCC (cl. 7(a)), all appended to his skeleton

9 Clause 1(a)

(3) Without the Proposed Subscription, there is no basis for the Company to suggest that the Proposed Scheme will proceed or that it is in the interests of the Company to obtain return under such Scheme.

(Linda Chan)
Judge of the Court of First Instance
High Court

Ms Sally S. Y. Wong, instructed by Chen & Lee Law Office, for the Petitioner

Mr Tony Ko, instructed by Patrick Mak & Tse, for the Company

H. Y. Leung & Co. LLP, for supporting creditor (DC Digital Communication Limited), is absent

Supporting creditor, Luk Chi Shing, is not represented and absent

Ms Mable Yuen, of Official Receiver's Office, for the Official Receiver