



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 143 OF 2013 (AEFJ)

In Chambers
7 November 2013
Before the Honourable Mr Justice Foster

**IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)
AND IN THE MATTER OF SUNTECH POWER HOLDINGS CO., LTD.**

ORDER FOR APPOINTMENT OF PROVISIONAL LIQUIDATORS

UPON the application of Suntech Power Holdings Co., Ltd. (the "**Company**") by its Ex Parte Summons dated 5 November 2013 for the appointment of joint provisional liquidators pursuant to section 104(3) of the Companies Law (2013 Revision)

AND UPON reading the Petition, the First Affidavit and the Second Affidavit of Christopher Michael Nacson both sworn on 5 November 2013, the First Affidavit of Peter Friedman sworn on 6 November 2013, the First Affidavit of David Walker sworn on 5 November 2013, the First Affidavit of Ian Stokoe sworn on 5 November 2013, the First Affidavit of Rachel Catherine Baxendale sworn on 7 November 2013 and the respective exhibits thereto

AND UPON hearing Counsel for the Company and the Petitioner, and Counsel for Clearwater Capital LLC and Spinnaker Capital, Ltd

IT IS ORDERED that:

- 1 David Walker and Ian Stokoe of PwC Corporate Finance & Recovery (Cayman) Limited, PO Box 258, Strathvale House, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed joint provisional liquidators ("**JPLs**") of the Company with the power to act jointly and severally.



- 2 The JPLs are authorised to develop and propose any compromise or arrangement with the Company's creditors or any class thereof, including a compromise or arrangement by way of a scheme of arrangement pursuant to section 86 of the Companies Law (2013 Revision).
- 3 The JPLs are authorised as representatives of the Company if so advised to seek relief under Chapter 15 of Title 11 of the United States Bankruptcy Code, and to take such steps arising in connection therewith that the JPLs may consider to be appropriate.
- 4 For the purpose set out at paragraph 2 hereof and without prejudice to the powers retained by the directors pursuant to paragraph 8 below, until further Order, the JPLs are authorised to exercise, within and outside the Cayman Islands and without further sanction of the Court, the powers to:
 - (a) monitor, oversee and supervise the directors' management of the day to day business of the Company as retained pursuant to paragraph 8 below and, through the exercise of powers conferred by sub-paragraph (e) below, the business of the Company's direct and indirect subsidiaries, including without limitation Power Solar System Co., Ltd ("PSS"), Wuxi Suntech Power Co., Ltd ("**Wuxi Suntech**") and Suntech Power International Limited ("**SPI**");
 - (b) do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company seal;
 - (c) take possession of, collect and get in the property of the Company and for that purpose to demand all debts due;
 - (d) take possession of, collect and get in the books and records of the Company, including the accounting and statutory records;
 - (e) exercise any and all rights that the Company may have as a shareholder of its subsidiaries or any other entities in which it has invested, in the name and on behalf of the Company, including, but not limited to,



exercising voting rights of the Company in its subsidiaries, including without limitation PSS, Wuxi Suntech and SPI;

- (f) deal with all questions in any way relating to or affecting the assets or the restructuring of the Company;
- (g) do all such things as may be necessary or expedient for the protection or recovery of the Company's property and assets and those of its subsidiaries at law or in equity in such jurisdictions as they may consider to be appropriate;
- (h) supervise the operation and/or opening and/or closing of any bank accounts in the name and on behalf of the Company;
- (i) open any bank accounts on behalf of the Company (in provisional liquidation) for the purpose of paying the costs and expenses of the provisional liquidation;
- (j) draw, accept, make and indorse any bill of exchange or promissory note or borrow funds for the purpose of the day to day expenses of the provisional liquidation, in the name and on behalf of the Company, with the same effect with the respect of the Company's liability as if the bill or note had been drawn, accepted, made or indorsed or the loan had been entered into by or on behalf of the Company in the course of its business;
- (k) communicate with and carry out any necessary filings with regulatory bodies as appropriate, including, without limitation, the Cayman Islands Companies Registry, the Cayman Islands Monetary Authority, the New York Stock Exchange and the US Securities and Exchange Commission, in the name and on behalf of the Company;
- (l) make payments to creditors which may have the effect of preferring a creditor, in order to minimise the interruption to the day-to-day activities of the Company and its subsidiaries;



- (m) prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against the estate of such contributory, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt, insolvent or sequestrated contributory and rateably with the other separate creditors;
- (n) take such steps as the JPLs may consider appropriate in respect of the following legal proceedings, in the name and on behalf of the Company:
 - (i) The proceedings filed against the Company pursuant to Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, Case No. 13-13350;
 - (ii) *Trondheim Capital Partners, L.P. and Michael Meixler v Suntech Power Holdings Co., Ltd.*, U.S. District Court for the Southern District of New York, Case No 13-CV-4668 (RPP)(DF);
 - (iii) *Marcus & Jessica Dugaw, Husband and Wife, and the Marital Community Composed thereof v Suntech Power Holdings Co., Ltd.*, U.S. District Court for the Southern District of New York, Case No. 13-CV-5608 (RPP)(DF);
 - (iv) *Energy Conversion Devices Liquidation Trust, by and through its Liquidating Trustee, John Madden v Trina Solar Limited, Trina Solar (U.S.), Inc., Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., Suntech Power Holdings Co., Ltd., Suntech America, Inc.*, U.S. District Court Eastern District of Michigan Southern Division, Civil Action No. 13-cv-14241;
 - (v) *Solyndra LLC vs. Suntech Power Holdings Co., Ltd., Suntech America, Inc., Trina Solar Limited, Trina Solar (U.S.), Inc., Yingli Green Energy Holding Company Limited, Yingli Green Energy*



Americas, Inc., U.S. District Court for the Northern District of California, Case No. 12-5272;

(vi) *Scott Bruce v. Suntech Power Holdings Co., Ltd.*, U.S. District Court for the Northern District of California, Case No. 12-4061; and

(vii) *Kent Ji v. Zhengrong Shi, et al.*, U.S. District Court for the Northern District of California, Case No. 12-6409;

- (o) discharge debts incurred by the Company after the commencement of these proceedings as expenses or disbursements properly incurred in the provisional liquidation;
- (p) engage staff (whether or not as employees of the Company and whether located in the Cayman Islands or elsewhere) to assist them in the performance of their duties for the purpose of the proceedings herein and to remunerate them out of the assets of the Company as an expense of the provisional liquidation;
- (q) seek recognition of the provisional liquidation and the appointment of the JPLs in any jurisdiction the JPLs consider necessary, including, but not limited to, the United States, the British Virgin Islands, the Peoples' Republic of China and Switzerland;
- (r) appoint attorneys and professional advisors in the Cayman Islands and elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and to remunerate them for their reasonable fees and expenses out of the assets of the Company as an expense of the provisional liquidation;
- (s) authorise the directors to exercise such of the above powers relating to Company on such terms as the JPLs consider fit;



- (t) pay 80% of the JPLs' remuneration on account out of the assets of the Company on the basis set out in the Insolvency Practitioners' Regulations (2008) (as amended) ("**Regulations**"); and
 - (u) do all other things incidental to the exercise of the powers set out above.
- 5 The JPLs shall submit a report to the Court on the conduct of the provisional liquidation within six weeks hereof and at such future intervals as the Court may from time to time direct ("**Reports**").
- 6 All applications to the Court for approval of the JPL's fees shall relate to the work carried out during the periods covered by the Reports and shall be made within 7 days of the submission of each such Report.
- 7 The JPLs are directed to:
 - (a) notify the administrators of Wuxi Suntech Power Co. Ltd and Suntech Power International Limited of their appointment and provide them with copies of the Petition and this Order as soon as reasonably practicable; and
 - (b) to the extent practicable in the circumstances, discuss and consult with the Board (or any relevant sub-committee thereof) any exercise of the powers conferred on them pursuant to this Order in relation to any decisions made by them with respect to material matters concerning the Company.
- 8 Until further Order, the Company's directors shall retain all powers of management conferred on them by the Company immediately prior to the date of this Order, subject to the JPLs overseeing and monitoring the exercise of such powers in relation to matters related to the ordinary course of business of the Company pursuant to paragraph 4(a) hereof, and, in relation to matters outside the ordinary course of business, granting prior approval of the exercise of such powers. In the event that the JPLs and the directors cannot agree upon a proposed action outside of the ordinary course of business, the JPLs and the directors have liberty to apply to the Court for directions. Specifically, and without limiting the foregoing, the directors continue to retain the following powers:

- (a) to continue to conduct the ordinary, day-to-day, business operations of the Company;
- (b) to continue to operate the bank accounts of the Company in the ordinary course of the Company's business; and
- (c) subject to the prior approval and consent of the JPLs, to open and close bank accounts on behalf of the Company.



9 The JPLs are not required to give security for their appointment.

10 For the avoidance of doubt:

- (a) No disposition of the Company's property by or with the authority of the JPLs in either case in the carrying out of their duties and functions and the exercise of their powers pursuant to this Order shall be avoided by virtue of Section 99 of the Companies Law (2013 Revision); and
- (b) Pursuant to Section 97 of the Companies Law (2013 Revision), no suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.

11 The JPLs and the Company acting by its directors shall seek to agree a protocol which sets out the terms upon which the JPLs and the directors shall co-operate with respect to the management of the Company and its subsidiaries.

12 The hearing of the Petition herein shall be listed to be heard on a date to be fixed upon an application to the Court by the JPLs or any creditor of the Company. Any such application by any creditor shall be served on the JPLs at least 7 clear days before the hearing of the application.

13 Any creditor of the Company has liberty to apply to the Court at any time to vary or discharge this order, on not less than 7 clear days' notice to the JPLs, and on receipt of such notice, the JPLs shall immediately notify the directors.

- 14 The appointment of the JPLs be advertised once in the Cayman Islands *Gazette* and once, in English, in the *International Edition of The Wall Street Journal*, once in English in *The China Daily* and once in Chinese in a Chinese language newspaper with national circulation in the Peoples' Republic of China, as soon as reasonably practicable.
- 15 The remuneration and expenses of the JPLs, as approved by the Court, shall be paid out of the assets of the Company on such terms as the Court may direct.
- 16 The JPLs and the directors shall be at liberty to apply for further directions in relation to, without limitation, any matter concerning the Company or the conduct of the provisional liquidation or the JPLs.
- 17 Payments made into or out of the bank account(s) of the Company in the ordinary course of the business of the Company between the date of presentation of the Petition and the date of the appointments of the JPLs shall not be avoided by virtue of the provisions of section 99 of the Companies Law (2013 Revision) in the event of an order for the winding up of the Company being made on the Petition.
- 18 Costs reserved.

Dated the 7th day of November 2013

Filed the 8th day of November 2013



**THE HONOURABLE MR JUSTICE ANGUS FOSTER
JUDGE OF THE GRAND COURT**

