



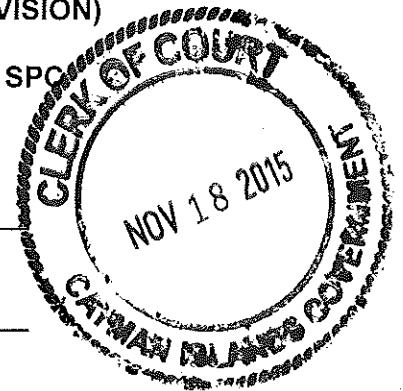
IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

0183
FSD CAUSE NO OF 2015()

IN THE MATTER OF SECTION 224 OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF CAYMAN EMERGING MANAGER PLATFORM SPC

AND IN THE MATTER OF JENEPE IPO CAPITAL FUND S.P.



PETITION

To: The Grand Court of the Cayman Islands

The humble petition of **Nicholas Pereza-Mathews**, managing director of Eden Corporate Pty Ltd of 10 Ord Street, West Perth, WA 6005, Australia (the "**Petitioner**") shows that:

A. BACKGROUND

I. The Portfolio Structure

1. Cayman Emerging Manager Platform SPC (the "**SPC**") is a Cayman Islands Monetary Authority registered (registration number 256544) exempted segregated portfolio company incorporated under the laws of the Cayman Islands on 18 May 2011 with a registered office of Apex Fund Services (Cayman) Ltd, One Artillery Court, 161a Shedden Road, Grand Cayman, KY1-1001, Cayman Islands.

2. On or about 23 July 2013 the directors of the SPC resolved to, *inter alia*, establish Jenepe IPO Capital Fund S.P. (the "**Portfolio**").

II. The Portfolio Shares

3. The authorised share capital of the SPC is US\$50,000.00 divided into 100 management shares of par value of US\$1.00 each (the "**Management Shares**") and 49,900,000 non-voting, participating, redeemable shares of US\$0.001 par value each (the "**Participating Shares**").
4. The investment manager of the SPC and the Portfolio is Emerging Asset Management Ltd., 3rd Floor Williams House, 20 Reid Street, Hamilton HM11, Bermuda (the "**Investment Manager**"). The registered holder of 100% of the Management Shares is the Investment Manager.
5. On about 1 August 2013, Participating Shares on behalf of the Portfolio were offered to prospective investors (the "**Portfolio Shares**").
6. Whilst the functional currency of the Portfolio is USD, Portfolio Shares were issued in USD, GBP, EUR and AUD classes, respectively (together, the "**Portfolio Share Classes**").

B. DRAMATIS PERSONAE

I. The Petitioner

7. By way of background, the Petitioner has changed its name and was formerly known by three different names:
 - (i) First, Jenepe Asset Management Pty Ltd ("**Jenepe Asset Management**");
 - (ii) Then, Pursuit Asset Management Pty Ltd; and
 - (iii) Then, Viridian Funds Management Pty Ltd.
8. Jenepe Asset Management (as the Petitioner was then named) was appointed as the investment advisor of the SPC pursuant to an investment advisory agreement dated

26 June 2013 (the "**Investment Advisory Agreement**") entered into between the SPC, the Petitioner and the Investment Manager.

9. The Portfolio was established by the SPC having consulted with the Petitioner at the material time and certain of its business partners, including IPO Capital Partners Ltd. ("**IPO Capital**") and Jenepe Capital Ltd. ("**Jenepe Capital**").
10. The Investment Advisory Agreement was entered into following the request by the Investment Manager to the Petitioner to provide discretionary investment management services in relation to the assets of the Portfolio.
11. Briefly, the duties and powers of the Petitioner were, *inter alia*, as follows:
 - a. All of the Investment Manager's authority, power and rights to invest the assets of the Portfolio with a view to achieving its investments objectives, were delegated to the Petitioner; and
 - b. Subject to the objectives, policies, guidelines and restrictions relating to the assets, the Petitioner had complete discretion over the Portfolio assets.
12. The Petitioner's appointment as investment advisor to the SPC was terminated on 26 March 2015. The Petitioner understands that the Investment Manager took over its role as investment advisor to the Portfolio on or around 27 March 2015.

II. The directors of the SPC

13. As at the date of swearing this affidavit, the Petitioner understands that the directors of the SPC are:
 - (i) Mr Peter Hughes;
 - (ii) Mr Rayal Bodden; and
 - (iii) Mr Mariano Grandval, who was appointed in or around February 2015.

III. The directors of the Investment Manager

14. As at the date of swearing this affidavit, the directors of the Investment Manager are:

- (i) Mr Hughes; and
- (ii) Mr John Bohan.

IV. The Investment Committee

15. Approval of investment activities by the Portfolio was decided at monthly investment committee meetings of the the Petitioner.

16. The Investment Committee was constituted as follows:

- (i) Mr Clifford Giles ("**Mr Giles**") of IPO Capital;
- (ii) Mr James Skinner ("**Mr Skinner**") of Jenepe Capital;
- (iii) Mr Terry Richards ("**Mr Richards**") of Jenepe Capital;
- (iv) Mr David Mahon ("**Mr Mahon**") of Jenepe Asset Management;
- (v) Mr Mark O'Brien, a consultant to Jenepe Asset Management; and
- (vi) Mr Gerhard Moll ("**Mr Moll**") of Jenepe Capital.

V. The Promoters

17. Jenepe Capital, a corporate advisory firm, was engaged on 17 April 2013 to act as a promotor of the Portfolio and introducer of potential investments. Jenepe Capital is a holder of Portfolio Shares.

18. IPO Capital, a private investment firm, was engaged on 17 June 2013 to act as a promotor of the Portfolio and introducer of investments that potential for reinvestment by the Portfolio. IPO Capital is a holder of Portfolio Shares.

19. Jenepe Capital and IPO Capital are together known as the "**Promoters**".

VI. The Administrator & Sub-Administrator

20. The Administrator of the SPC is Apex Fund Services Ltd., 3rd Floor, Williams House, 20 Reid Steet, Hamilton, HM11, Bermuda (the "**Administrator**").

21. The sub-administrator of the SPC is Apex Fund Services (Australia) Pty Ltd., Level 9, 440 Collins Street, Melbourne VIC 3000 (the "**Sub-Administrator**").

VII. The Custodian and Prime Broker

22. Walker Crips Group PLC, Finsbury Tower, 103-105, Bunhill Row, London, EC1Y 8LZ was the custodian and prime broker of the SPC until 29 October 2014, prior to WH Ireland Limited, 24 Martin Lane, London EC4R 0DR, being appointed (the "**Custodian**").

VIII. The largest holder of Portfolio Shares

23. M&M Management Ltd. ("**M&M**") was and remains the largest holder of Portfolio Shares. M&M is understood to be associated with Rapid Nutrition PLC ("**Rapid Nutrition**") (discussed further below).

C. THE PORTFOLIO

I. Inception of the Portfolio

24. In April 2013, the Investment Manager was approached by the following with a view to establishing the Portfolio:

- (i) Mr Giles of IPO Capital;
- (ii) Mr Skinner, Mr Richards and Mr Moll of Jenepe Capital;
- (iii) Mrs Lisa St Ledger ("**Mrs Ledger**") of Rapid Nutrition via M&M;
- (iv) Mr Barry Amor and Mrs Linda Lowndes of Microskin International Pty Ltd. ("**Microskin**"); and

- (v) Mr Mahon and Nicholas Perez-Mathews of Jenepe Asset Management,

(together, the "Initial Investors").

25. In order to establish the Portfolio, the Initial Investors agreed to contribute, in specie, certain shares directly or indirectly owned by them that were listed on the GXG Markets, a European Regulated Market (which is understood to have ceased operations on or around August 2015) to the SPC on behalf of the Portfolio, in return for Portfolio Shares (the "In Specie Exchange"). Therefore, no cash was injected for the benefit of the Portfolio by the Initial Investors.

II. The In Specie Exchange

26. The In Specie Exchange resulted in the SPC holding shares in Rapid Nutrition (the "Rapid Nutrition Shares") and Microskin (together, the "Acquired Shares") for the benefit of the Portfolio.

27. At the date of the In Specie Exchange, Rapid Nutrition represented approximately 80% of the value of the Portfolio.

D. THE PORTFOLIO'S INVESTMENTS

I. Investment Diversification

28. Whilst the In Specie Exchange assisted with the Portfolio from a balance sheet perspective, it suffered from a severe lack of liquidity. Consequently, the Promoters sought cash subscriptions from prospective investors with a view to funding future investments made by the Portfolio.

29. As stated at paragraph 27, above, the Rapid Nutrition Shares represented approximately 80% of the value of the Portfolio assets. While such overweighting of assets was not desirable, the intention was to sell down this large holding in a

managed process so that the Portfolio could re-invest into new securities in order to diversify its assets.

30. Unfortunately, neither the diversification of the Portfolio's investments nor the managed sell down of the Rapid Nutrition Shares ultimately occurred which eventually proved fatal for the Portfolio.

II. Investment Failure

31. As mentioned at paragraph 28, above, the Promoters were responsible for raising cash subscriptions in the Portfolio from prospective investors in accordance with their respective mandates. Cash would then be invested in new pre IPO securities that were the subject of Jenepe Capital lead listings to grow the value of the Portfolio.
32. Unfortunately, Jenepe Capital were unable to provide investment grade pre IPO securities which met the Portfolio's due diligence mandate for the Investment Committee to consider.
33. A determination of the Promoters' failure was made in December 2013 by the board of the Petitioner. It was initially felt that IPO Capital had been given sufficient time (5 months) to attract potential investors, but had failed to do so. Even if Jenepe Capital had been able to identify investment grade PIPOS for potential acquisition (which it had not), the Portfolio would still not have had sufficient liquid cash available to it which was required for the diversification of the investments of the Portfolio.
34. Unfortunately, despite being given an extra month, IPO Capital's placement efforts still remained unsuccessful by the end of January 2014.
35. On 18 February 2014, Rapid Nutrition placed a twelve month trading restriction on its shares held by the Portfolio spanning 1 March 2014 to 31 March 2015. This caused the Petitioner grave concern, not only because the trading restriction prevented the sell down of the Rapid Nutrition Shares in a managed process to diversify the assets of the

Portfolio, as had been agreed, but also because a static large holding in one issuer would not be attractive to prospective institutional investors.

36. The lack of diversification of the Portfolio's investments as well as the complete illiquidity of the Portfolio, combined with the 12 month trading restriction that was unilaterally imposed by Rapid Nutrition, meant that the Petitioner was effectively hamstrung from meeting the investment objectives of the Portfolio.
37. Furthermore, due to the lack of liquidity and the Rapid Restriction (which further exacerbated the situation), the Petitioner was acutely aware that the Portfolio would be incapable of paying any redemption requests submitted by investors and consequently, advised the board of directors of the SPC to suspend the NAV calculation and any further subscriptions or redemptions in the Portfolio.
38. Following the advice of the Petitioner, the board of directors of the SPC resolved to suspend the NAV calculation and any further subscriptions or redemptions in the Portfolio from 1 April 2014.
39. Given the continued lack of liquidity in the Portfolio's assets, the Petitioner suggested that all creditors' fees (including its own) could be paid in kind or sufficient stock should be sold to pay creditors with the surplus investment assets being distributed to the holders of Portfolio Shares in kind on a pro rata basis.
40. On or about 12 December 2014, the Administrator notified the holders of Portfolio Shares that the directors of the SPC were of the view that, due to the Rapid Restriction, the NAV of the Portfolio should be calculated at cost as at 31 March 2014 (the "**12 December Letter**").
41. Eventually, on or about 24 February 2015, the directors of the SPC notified holders of the Portfolio Shares that the Portfolio would be wound up with a final valuation and audit to determine the final accounts.

E. THE PETITIONER'S REMUNERATION

42. The Petitioner's relationship with the SPC (and the Portfolio) was governed by the Investment Advisory Agreement. The Investment Advisory Agreement is a tripartite agreement between:

- (i) The Investment Manager;
- (ii) The SPC (on behalf of the Portfolio); and
- (iii) The Petitioner.

43. In summary, two main types of fee were payable to the Petitioner, advisory fees and performance fees, which both revolved around the applicable NAV calculations of the Portfolio Share Classes.

I. Advisory Fees

44. In summary, the Portfolio was and remains required to pay to the Petitioner, an advisory fee in monthly arrears, at an amount equal to 1/12th of 1.5% of the NAV of each series of the Portfolio Share Classes.

II. Performance Fees

45. Commencing upon the close of business on the last business day of the first calendar year following the commencement of investment activities, and upon each calendar year thereafter, the Portfolio was obliged to pay the Petitioner a performance fee equal to 20% of the 'Net New Appreciation', if any, achieved by each series of the Portfolio Share Classes during each month of the calendar year.

46. The performance fees were to accrue monthly and be paid half yearly in arrears.

47. In summary, the performance fee in respect of a Portfolio is equal to 20% of the difference, if any, between the:

- (a) NAV of the Portfolio at the end of each calendar month; and
- (b) NAV of the Portfolio at the end of the most recent calendar month for which a performance fee was paid subject to adjustments, or the initial NAV (as applicable),

the difference being the 'Net New Appreciation'.

48. The NAV is construed (as per the founding documents) by reference to the market price of the underlying assets at the close of business on the business day immediately preceding the first business day of the following month (the valuation day). In the case of securities listed on a public exchange, this is the last available sales price as reported by the exchange on the valuation day.

49. The NAVs (and thus the performance fees) for the months between January 2014 and March 2015 should accordingly be calculated with reference to the applicable exchanges' listed prices for the securities as at the relevant valuation days.

III. Set up fees

50. The Petitioner was and remains entitled to fees and expenses incurred in connection with the organisation of the Portfolio and the initial offer and sale of the Portfolio Shares (the "Set Up Fees").

51. The Petitioner also seeks reimbursement of the Set Up Fees.

F. THE DISPUTE

I. Background

52. The dispute arose over the level of performance fee owed to Petitioner (then Jenepe Asset Management) which accrued 2013, and the expectation that a final valuation

would be carried out to calculate final fees owed to the Petitioner as at 27 March 2015 (the "**Dispute**").

53. From August to December 2013, the advisory and performance fee accruals were included in the monthly NAV and balance sheet which the Investment Committee agreed and the SPC and Investment Manager published. The respective balance sheets for each calendar month were approved by the directors of the SPC.

54. With reference to the approved balance sheet marked 'confirmed' and corresponding to September 2013, the performance fees that had accrued to the Petitioner in the first month of active trading, as based on the Net Asset Value determined at 30 September 2013 had amounted to GBP 1,286,426.54 (the "**First Performance Fee**").

55. In addition to the First Performance Fee, the following amounts are due, owing and payable to the Petitioner:

- (i) Monthly accrued advisory fees of 1.5% of the funds under management from August 2013 up to and including 27 March 2015 (when the Petitioner's appointment was terminated), amounting to GBP 391,910.00;
- (ii) A subsequent performance fee based on the NAV calculated as at 27 March 2015, which should be calculated on the basis of the stock market price valuations relating to the Portfolio's assets as at that date; and
- (iii) The Set Up Fees of GBP 3,367.23.

56. The Petitioner has not received sufficient information from the SPC or the Administrator regarding the monthly NAVs determined from 1 January 2014 onward, by which it could calculate subsequent accruals of its performance fees. However, based on the original agreed valuation principles and the underlying security market prices available to the Petitioner, the subsequent performance fees which have accrued to 27 March 2015 and which are payable to the Petitioner amount to 20% of the New Net Appreciation as at 27 March 2015 (the "**Final New Net Appreciation**").

57. The Final New Net Appreciation is calculated by subtracting the September 2013 NAV and the First Performance Fee from the new NAV of the Company as at 27 March 2015.

58. The Petitioner has calculated the Final New Net Appreciation as follows:

- a. GBP 17,421,180.00 (27 March 2015 NAV), minus GBP 12,931,871.38 (30 September 2013 NAV) minus GBP 1,286,426.54 (The First Performance Fee), leaving a total of GBP 3,202,882.08 (the Final New Net Appreciation).
- b. Therefore, the Petitioner's accrued Subsequent Performance Fee for the period from 31 December 2013 to 27 March 2015 is 20% of the Final Net New Appreciation figure of GBP 3,202,882.08.

59. Consequently, the Petitioner is owed a Subsequent Performance Fee of GBP 640,576.42 (the "**Subsequent Performance Fee**").

60. For clarity's sake, the 27 March 2015 NAV and Subsequent Performance Fee are calculated with reference to the recorded traded share prices of the Acquired Shares as at 27 March 2015.

61. In light of the above, as of 27 March 2015, the Petitioner was and remains an unpaid creditor of the Portfolio of at least GBP 2,322,280.19.

II. The Rapid Nutrition Shares

62. In or during February 2014, Rapid Nutrition announced its intention to delist from the GXG Market and re-list on the Deutsche Bourse Frankfurt Exchange (which is a regulated exchange for small to medium sized companies) ("**DBFE**").

63. Jenepe Capital proceeded to act as listing agent for Rapid Nutrition in respect of the alternative listing with DBFE. As stated previously, Rapid Nutrition also asked its

shareholders to sign a voluntary 12 month trading restriction, resulting in the Rapid Restriction.

64. The Portfolio owned over 20% of all the shares of Rapid Nutrition, and the Petitioner believes that directors of the SPC, as shareholder in Rapid Nutrition, signed the Rapid Restriction.
65. With reference to the Rapid Restriction, the restriction period ended on 31 March 2015 and the shares in Rapid Nutrition should have thereafter become freely tradable at the stock listed price. However, the Petitioner understands from the Custodian that the Rapid Nutrition Shares still remained in a restricted form.
66. Consequently, the SPC was and is unable to sell the Rapid Nutrition Shares in order to satisfy the claims of the creditors of the Portfolio.
67. The Petitioner subsequently understands that the Rapid Nutrition Shares have suffered a dramatic decrease in price since April 2015, when they were at their peak, to a sudden loss of approximately 90% of their value as at 10 November 2015.

III. The KPMG Valuation

68. This Dispute ultimately led to a third party valuation being requested by the directors of the SPC and carried out by KPMG (Cayman Islands) (the "**KPMG Valuation**"). A copy of the KPMG Valuation has been requested by the Petitioner, but has never been received. However, the Petitioner is aware that the KPMG Valuation allegedly provides for a total asset value of the Portfolio of GBP 1,844,617.17.

G. THE SOLVENCY OF THE PORTFOLIO

69. In the 12 December Letter, the Sub-Administrator wrote to the holders of Portfolio Shares setting out, *inter alia*, that the NAV calculation, subscription and redemption transactions of the Portfolio were suspended from 1 April 2014. The 12 December Letter also stated that the Portfolio had a number of creditors that remained unpaid

and that no liquidity was available as assets of the Portfolio were either under a restriction or illiquid.

70. Despite the 12 December Letter referring to a derisory amount of GBP 127,705 being payable to the Petitioner, the Portfolio was still considered to be cash-flow insolvent.
71. With reference to paragraphs 42 - 51, above, the Petitioner is a creditor of the Portfolio in the sum of (at least), GBP 2,322,280.19. On that basis, and given the current valuation of the Portfolio by KPMG (GBP 1,844,617.17), the assets of the Portfolio are insufficient to meet the claims of its creditors.
72. Whilst it seems that there may have been sufficient realisable assets within the Portfolio to meet the Portfolio's liabilities in April 2015 (if a sufficient amount of Rapid Nutrition Shares could have been sold) that is no longer the case, given the dramatic decrease in price of the Rapid Nutrition Shares.
73. The Petitioner understands that the Rapid Nutrition Shares remain the subject of some sort of restriction, which means that, in any event, they cannot be traded and/or liquidated to meet creditor claims.

H. THE APPOINTMENT OF JOINT RECEIVERS

74. The Petitioner notes that, even if it were possible to have sold the Rapid Nutrition Shares in a managed sell down, the Petitioner would have accepted its fees in kind (for the performance fees it was owed) so as to facilitate an orderly and equitable non-statutory winding up, (and to avoid liquidation at fire-sale or depressed market prices).
75. However, the Petitioner no longer has any confidence in the directors of the SPC and, as a *bona fide* and confirmed creditor of the Portfolio, it now seeks the appointment of joint receivers to manage the business and assets of the Portfolio for the purposes of:

(a) The orderly closing down of the business of/or attributable to the Portfolio;
and

(b) The distribution of the Portfolio's assets attributable to the Portfolio to its
creditors and stakeholders.

76. The Petitioner is not aware of any potential prejudice that would arise from the
appointment of a receiver in this matter. Further, the appointment of a receiver would:

(i) Enable the winding up of the Portfolio to be subject to the supervision of
the Grand Court of the Cayman Islands;

(ii) Enable the outstanding issues to be considered on an independent and
fresh basis;

(iii) Ensure that the fairest possible outcome is secured in respect of the
calculation of Net Asset Value of the Portfolio;

(iv) Ensure that all creditor claims are discharged in full in priority; and

(v) Ensure the fairest possible outcome for the stakeholders of the Portfolio.

I. THE ORDERS HUMBLY SOUGHT

The Petitioner therefore humbly prays that:

1. That joint receivers be appointed over the Portfolio; and
2. Such further orders as the Honourable Grand Court deems just.

DATED the 17th day of November 2015

Collas Crill & CARD
Collas Crill & CARD
Attorneys-at-Law for the Petitioner

This Petition and the supporting affidavit of Nicholas Perez-Mathews are intended to be served on:

1. The registered office of Cayman Emerging Manager Platform SPC
2. CIMA

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on 2015 at

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106, Tel: (345) 949 4296.

Time estimate: **1 day**