**Neutral Citation Number: [2025] CIGC (FSD) 81**

**Cause No: FSD 2024-0390 (JAJ)**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**
**FINANCIAL SERVICES DIVISION**

**IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)**
**AND IN THE MATTER OF GOLDEN ARROW TECHNOLOGY CO. LTD**

**BETWEEN:**

**AMAZING ELITE GROUP LIMITED and Another**

**Petitioners**

**-and-**

**GOLDEN ARROW TECHNOLOGY CO. LTD and Others**

**Respondents**

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| **Appearances:** | **Mr Peter de Verneuil Smith KC of counsel instructed by Mr Nicholas Dunne and Mr Sam Hall of Walkers (Cayman) LLP for the Petitioners**<br>**Mr Andrew Ayres KC of counsel instructed by Ms Harriet Ter-Berg and Mr Zuhair Farouki of Appleby (Cayman) Ltd for the Respondents** |
| **Before:** | **The Honourable Justice Jalil Asif KC** |
| **Heard:** | **30 July 2025** |
| **Ex tempore judgment delivered:** | **30 July 2025** |
| **Finalised judgment approved:** | **14 August 2025** |

*Just and equitable winding up—undertaking to court regarding corporate management in interim—construction of undertaking—whether undertaking requires unanimity of directors or majority decision*

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# JUDGMENT

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## A. Introduction

1. I give this judgment on a preliminary question which has arisen in the context of the summons that is before me today for validation orders in respect of certain payments that Golden Arrow Technology Co. Ltd ("the Company") wishes to make in the twilight period before the petition in this matter is heard. The parties have asked me to construe and to clarify an undertaking given jointly by the two gentlemen behind the dispute in this matter, who are directors of the Company. The undertaking was given in connection with an earlier hearing in this action that took place before me on 5 February 2025.

2. The undertaking in question reads as follows:

> *"**AND UPON** Mr Huang and Mr Kuo undertaking as directors of the Company that until further Order neither of them will enter into a transaction on behalf of the Company valued at over US $10,000 without written approval of the Company's Board of Directors"*

3. The issue that has arisen is whether the undertaking means that all three of the current directors of the Company must resolve to enter into a transaction valued at over US $10,000 or whether a majority, two out of the three directors of the Company, can do so.

4. I am reminded by both counsel that whilst I am the judge who heard the matter on 5 February 2025, I should put out of my mind my own subjective view of what was intended and focus on the objective meaning of the undertaking as a matter of pure construction.

5. Given that there is ambiguity as to the meaning of the undertaking, both counsel accept that it is relevant to take into account the underlying context as at 5 February 2025. The relevant context in construing the scope of the undertaking was that Mr Huang and Mr Kuo were in dispute regarding control of the Company, and the wider corporate group, which has operating entities in China, Taiwan,

Vietnam, and the United States of America. Mr Huang and Mr Kuo were the founders of the corporate group, which had been operating for many years on a relatively informal basis. More recently, Mr Kuo took responsibility for the Taiwan end of the business and Mr Huang for the Chinese operation. They had recently branched out to build a factory and to create a facility in Vietnam, to reduce their reliance on China and Taiwan as their manufacturing bases. However, there had been some issues with the development of that business, which had not yet moved into profit. The evidence, as I recall it, and counsel did not disagree with my recollection, was that up until that stage the corporate group had been informally managed. From the Company's incorporation on 13 March 2020 until 2023, Mr Kuo served as its sole director; Mr Huang joined the board in 2023. Mr Kuo and Mr Huang discussed management matters between themselves as necessary rather than calling formal directors' meetings and making resolutions in respect of the Company.

6. The reason that the matter came before the court in February 2025 was that the relationship between Mr Huang and Mr Kuo had broken down. There was deadlock between the two of them as to how the Company and the corporate group overall should move forwards. Mr Huang had therefore filed a winding up petition, seeking the winding up of the Company on the just and equitable basis. In addition to the undertaking in question, the parties agreed a number of other undertakings including that they would cooperate in the appointment of a Mr Chen Heng Kuan as a third director.

7. Mr Peter de Verneuil Smith KC, who appears for Mr Kuo's corporate entities today, says that the undertaking does not require unanimity of the three directors and that it permits transactions that have been approved by a majority of directors to be entered into by the Company. He puts forward three reasons for this:

    7.1 The first reason is that the undertaking refers to *"written approval of the Board of directors"*. He says this does not mean written approval of all of the directors: Article 77 of the Company's Articles of Association permits majority voting of the directors. He argues that following a directors' meeting at which a resolution is discussed and is voted on by the directors, the minutes of that meeting will constitute a written record of the decisions made by the directors.

    7.2 Secondly, he says that the words in the undertaking have been chosen carefully, referring to *"written approval"* rather than to a *"written resolution"*. This is indicative that a record in a minute of the directors' meeting is sufficient to satisfy the requirements of the undertaking, and

a written resolution of the directors is not required. But he says that even if it were correct that a written resolution is required, then Article 88 of the Company's Articles permits a written resolution to be made by a quorum of the directors, which in this case would be two directors, rather than the normal common law position of requiring unanimity for the purpose of making a written resolution.

7.3 Thirdly, Mr de Verneuil Smith submits that the undertaking was made in the context of deadlock amongst the directors at that time and was intended to overcome that position to permit the Company to operate while the petition is outstanding. He argues that it would make no sense for the undertaking to require unanimity of the directors because that would give each of Mr Huang and Kuo a veto power and would entrench the deadlock, rather than addressing it, and would defeat the purpose of the undertaking.

8. Initially Appleby, who act for Mr Huang and his corporate entities, had expressed forceful opposition in correspondence to Mr Kuo's construction of the undertaking, including threatening an application for an injunction if Mr Kuo were to move forwards with transactions which he and Mr Chen had approved but Mr Huang had not. But Mr Andrew Ayres KC, who appears before me today on behalf of Mr Huang's corporate vehicles, has adopted a much more moderate approach. He essentially seeks to be an *amicus curiae* for the court. As he describes it, he has put forward some suggestions as to the appropriate construction of the undertaking, but he has not advocated for a particular position.

9. Mr Ayres starts by saying that Mr de Verneuil Smith's third point is begging the question. The court has to determine whether, on its proper construction, the undertaking does in fact give Mr Huang and Mr Kuo veto powers. He says that point is therefore of no assistance in construing the meaning of the undertaking.

10. Mr Ayres submits that I have to construe the undertaking objectively. He says that there are two routes by which the directors can make decisions, the first is by majority vote at a meeting of the directors, which is then recorded in a minute of the meeting. The second is by making a written resolution. Mr Ayres submits that the reference to *"written approval"* in the undertaking must mean a written resolution. Written resolutions are governed by Article 88 of the Companies' Articles. Article 88 is in the following terms:

> *"Upon the Directors (being in number at least a quorum) signing the minutes of a meeting of the Directors the same shall be deemed to have been duly held notwithstanding that the Directors have not actually come together or that there may have been a technical defect in the proceedings. A resolution signed by all such Directors, including a resolution signed in counterpart by the Directors or by way of signed telefax transmission, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. To the extent permitted by law, the Directors may also meet by telephone conference call where all Directors are capable of speaking to and hearing the other Directors at the same time."*

Mr Ayres submits that use of *"all"* in the phrase *"a resolution signed by all such Directors"* requires a written resolution to be passed unanimously. He says that Mr de Verneuil Smith's submission that a quorum of directors can do so would deprive *"all"* of any meaning and would have the practical result that a minority of directors could pass resolutions binding the Company provided that they are a quorum. He says that on a proper construction, Article 88 allows a written resolution to be passed provided that: (a) the total number of directors (i.e. those holding office) should not be less than a quorum, and (b) all the directors must sign.

11. Mr de Verneuil Smith responds, that if Article 88 were to be construed as Mr Ayres suggests then it would rob it of any utility because it would simply restate the common law position that there must be a quorum of directors to make decisions and that a written resolution of the directors has to be unanimous.

12. I was initially attracted to Mr de Verneuil Smith's point that Article 88 should be construed as providing something more than the common law position. Having considered the point in more detail, I have concluded that Mr Ayres' submission is to be preferred. I think an objective bystander would consider that it was not the intention of the members of the Company when they approved Article 88 that a quorum of directors, which could be significantly fewer than an overall majority depending on how many have been appointed, should have the power to pass written resolutions binding all of the directors. As Mr Ayres put it, this would be a recipe for chaos in the management of the Company. The result that parts of Article 88 may therefore be otiose in that they repeat the common law position is not sufficient to displace this conclusion.

13. However, I do not consider that the question of the construction of Article 88 is determinative. Going back to the language of the undertaking, in my judgment, Mr de Verneuil Smith is right that, objectively construed, the reference to "…*written approval of the Company's Board of directors*" means that it is sufficient that a majority decision by the Company's Board of Directors, recorded in

writing – including a minute of a directors' meeting – is sufficient. The undertaking does not require unanimity of the directors. I am reinforced in that view by the background context that:

13.1 this was, at 5 February 2025, a company that was in deadlock because the two directors could not agree on the vast majority of decisions that were necessary for the Company and the wider corporate group to continue operating; and

13.2 a third independent director was to be appointed, Mr Chen Heng Kuan, so that there would no longer be a deadlock.

14. On an objective reading of the undertaking, it must be that a transaction on which either all three directors or a majority of them agree, and which is recorded in writing, should be treated as a valid decision, and should permit the Company to enter into a transaction.

15. It seems to me the objective reason for referencing *"written approval"* is to avoid arguments about whether there was an oral approval which has not been recorded. Accordingly, provided there is a majority decision of two of the three directors which is recorded in writing, that will be sufficient to comply with the undertaking and to authorise the Company to enter into a transaction.

**Dated 14 August 2025**

**THE HONOURABLE JUSTICE JALIL ASIF KC**
**JUDGE OF THE GRAND COURT**