Liquidators of Dovechem Holdings Pte Ltd *v* Dovechem Holdings Pte Ltd (in compulsory liquidation)
[2015] SGHC 167

Case Number	: Bill of Costs No 101 of 2013 (Summonses Nos 1561 and 1577 of 2014)
Decision Date	: 30 June 2015
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Kannan Ramesh SC, Marina Chin and Keith Tnee (Tan Kok Quan Partnership) for the applicants in SUM 1561 of 2014 and respondents in SUM 1577 of 2014; Denis Tan and Thomas Ng (Toh Tan LLP) for the applicants in SUM 1577 of 2014 and respondents in SUM 1561 of 2014.
Parties	: COSIMO BORRELLI, Liquidator of Dovechem Holdings Pte Ltd (in compulsory liquidation) — HAMISH ALEXANDER CHRISTIE, Liquidator of Dovecham Holdings Pte Ltd (in compulsory liquidation) — JASON ALEKSANDER KARDACHI, Liquidator of Dovechem Holdings Pte Ltd (in compulsory liquidation) — DOVECHEM HOLDINGS PTE LTD (in compulsory liquidation) — NG JOO SOON alias NGA JU SOON

Insolvency law – winding up – liquidator

30 June 2015 Judgment reserved.

Judith Prakash J:

Introduction

1 In September 2011, Dovechem Holdings Pte Ltd ("the Company") was placed in liquidation. Messrs Cosimo Borrelli, Hamish Alexander Christie and Jason Aleksander Kardachi (collectively "the Liquidators") were appointed, jointly and severally, as the liquidators of the Company. They were involved in this work for some 18 months and subsequently presented their bill of costs for taxation. The issues before me involve the accuracy and reasonableness of the bill presented and raise questions as to the basis on which liquidators should charge for their services.

2 By Bill of Costs No 101 of 2013 ("the Bill") the Liquidators claimed as remuneration for their work between 21 September 2011 and 31 March 2013:

(a) $1,464,097 for Section 1 (work done other than for taxation);

(b) $3,000 for Section 2 (work done for taxation); and

(c) $82,730 for Section 3 (disbursements).

3 The majority shareholders of the Company ("the Majority Shareholders") opposed the Bill on multifarious grounds. As a result, the hearing of their challenges before the Assistant Registrar ("the AR") was prolonged, taking place on five occasions between 28 January 2014 and 17 March 2014. Over the course of the hearing, at the AR's suggestion, the Liquidators reviewed the Bill and voluntarily reduced the fees claimed under Section 1 by $250,136 to $1,213,961. At the conclusion of the hearing, the AR allowed the sum of $667,678.55 under Section 1, thus reducing the Bill by a

further 45%. This substantial reduction not only, quite predictably, dismayed the Liquidators but it also did not satisfy the Majority Shareholders. Both parties filed applications for review. The AR also awarded the Liquidators $7,000 for Section 2 in view of the prolonged hearing.

Background

Events leading to the liquidation of the Company

4 The Company was incorporated to be the holding company of various businesses, mainly in the chemical and paint industries, developed by one Mr Ng Joo Soon ("NJS") and his brothers and nephews. The Dovechem Group headed by the Company was successful in business for many years and at its peak had an annual turnover of over $500m. It comprised several companies in Singapore and abroad. Among these was Dovechem Industries Pte Ltd ("DIPL") which was wholly owned by the Company. DIPL had a substantial shareholding in two Indonesian companies, *viz*, PT Dover Chemical ("PT Dover"), a chemical manufacturing and trading company, and PT Dovechem Maspion Terminal ("PT Maspion"). Another relevant company in the Group was a BVI company, Kunshan Grand Shanghai Enterprise & Development Co Ltd ("Kunshan Ltd") which owned and operated a golf course and resort in Kunshan, China.

5 The Company held a 41.67% interest in Kunshan Ltd ("the Kunshan Shares"). Some years prior to the liquidation, the Company pledged 22.1% of the Kunshan Shares to a company called Goldtrend International Ltd ("Goldtrend") as security for a loan of US$3,325,000. The loan was taken by Kunshan Ltd to assist the Company which was then experiencing some financial difficulty.

6 Before 2002, NJS owned 52% of the shares of the Company. His brothers, Ng Joo Tian and Ng Ju Aik, each held 17% of the shares whilst his nephews, Anta Ng and Andrew Ng, were not shareholders. In 2002, the Company had to be re-structured due to financial problems arising from the 1998 Asian financial crisis. After the re-structuring, NJS's shareholding was reduced to 24% whilst Andrew Ng acquired a 25% shareholding and Anta Ng a 17% shareholding. The shareholdings of NJS's brothers remained unchanged. Together, the brothers and nephews held 76% of the Company's shares. They make up the Majority Shareholders referred to in [3] above.

7 After the re-structuring, NJS became non-executive chairman of the Dovechem Group while the Majority Shareholders managed its operations. They controlled the board, with three out of four board seats, and also sat on the boards of various direct and indirect subsidiaries of the Company.

8 In 2008, disputes arose between the Majority Shareholders and NJS. These disputes resulted in legal actions in 2009/2010. There were two law suits started by NJS against the Company as well as a suit commenced by Thiam Joo Pte Ltd (a wholly-owned subsidiary of the Company) against NJS. The latter suit ("Suit 833"), relating to the employment of one Ms Lidya Susanti in Thiam Joo Pte Ltd, continued to subsist during the liquidation process.

9 In October 2010, the directors of the Company made a statutory declaration declaring that the Company was insolvent by reason of its liabilities, and appointed Ernst & Young Singapore ("EY") as the provisional liquidators of the Company. The appointment of the provisional liquidators lapsed on 15 May 2011 after objections were raised by NJS to their application for a further extension of their appointment.

10 On 15 July 2011, NJS applied to wind up the Company and the winding-up order was made on 21 September 2011. The Liquidators were appointed under the order and carried out their duties until the Majority Shareholders and NJS reached an in-principle settlement on 18 December 2012. The

Liquidators were asked to suspend work while the parties worked out the details of their settlement. However, as the AR alluded to in his findings summarised below, work continued to be performed by the Liquidators to facilitate the winding up process.

11 Under the terms of the settlement, the Liquidators' fees were to be absorbed by the parties. The Liquidators put forward a figure which the Majority Shareholders found objectionable. The Liquidators then moderated the fee by 15%, or $149,597, but the new figure was still too high for the Majority Shareholders. The Liquidators then drew up the Bill for the reduced figure of $1,464,097 and filed it on 14 June 2013. The Majority Shareholders filed their notice of objection to the Bill as drawn and participated actively in the taxation that followed. NJS, however, was content to be an observer and leave the decision to the court.

Brief details of the Bill

12 The Bill was drawn up on the basis of the manpower employed by the Liquidators in conducting the liquidation and the number of hours each person spent on work related to the Company. It detailed that, apart from administrative staff who had spent 76.8 hours on such work, 3,483 hours had been spent by the Liquidators themselves and their "professional" employees. The employees concerned bore the titles of "Accountant", "Associate", "Assistant Manager", "Manager", "Senior Manager" and "Director", the most junior being "Accountant". Altogether, apart from the three Liquidators and the administrative staff, nine employees were involved in the liquidation. The Bill set out the time spent by each of these persons, including the administrative staff and gave the charge-out rates of each of them as follows:

Position	Rate per hour	Total time spent in hours
Liquidators 1 and 2	$1,000	177.8
Liquidator 3	$960	285.2
Director	$890	58.8
Senior Manager	$570	165.1
Managers (2)	$470	965.7
Assistant Manager	$360	59.7
Associates (3)	$270	992.1
Accountant	$140	778.6
Administrative staff	$180	76.8

13 The details of the work done by the Liquidators were set out in Annex A which ran to some 36 pages. The Liquidators stated that since their appointment, substantial work had been undertaken to try and resolve various disputes between NJS (and his supporters) and the Majority Shareholders and, in parallel, to realise the assets of the Company in the most efficient and effective manner. The Liquidators stated that their primary focus was:

(a) to work with the Stakeholders and, based upon the available books and records, to understand the financial and operational affairs of the Dovechem Group and their preparedness to

facilitate a commercial resolution or settlement of the various disputes between them;

(b) to identify and gather the books and records of the Dovechem Group in order to establish the assets and liabilities of the Group;

(c) to identify and establish control over the assets of the Group in order to protect and preserve their value pending realisation; and

(d) to undertake the investigations necessary in respect of the assets and liabilities of the Group.

14 The Liquidators also described the assets of the Dovechem Group and the work undertaken in respect of each of the assets. In particular, they detailed the steps taken to sell the shares of PT Dover, of PT Maspion and of Kunshan Ltd. Details were given of the Liquidators' involvement in Suit 833 and other litigation. Subsequently, at the request of the Majority Shareholders, the Liquidators provided them with voluminous documents relating to the work done.

The taxation proceedings

15 During the taxation of the Bill before the AR, the Majority Shareholders, through their counsel Mr Denis Tan, raised a plethora of objections to the Bill. They disputed the number of people involved in the work, the rates they charged, the hours that they charged for, and the very necessity for various items of work done. In the view of the Majority Shareholders, the Bill was exorbitant and the Liquidators had conducted a great deal of unnecessary work. One of their main arguments was that from the time of appointment the main focus of the Liquidators should have been to realise the three main assets of the Company, namely, the shareholdings in PT Dover, PT Maspion and Kunshan Ltd. Other work done by the Liquidators was a duplication of the work of the provisional liquidators EY. Further, the Liquidators did not have to deal with operational issues as the ongoing operations of the subsidiaries were managed by the shareholders.

16 The AR had, in the course of the hearing, suggested that the Liquidators consider reducing their Bill. The Liquidators accepted the suggestion before the close of the hearing and took off $250,136. The AR considered that this discount was insufficient and that the amended Bill was still "exorbitantly high". Taking what he described as a broad-brush approach, he taxed off a further 45% and allowed $667,678.55 for Section 1.

17 A summary of the AR's findings may be helpful:

(a) The allegations made by the Majority Shareholders that there was a paucity of evidence from the Liquidators to support their claim were not warranted. The Liquidators had tried their best to provide documents and details whenever prayed for.

(b) The time period covered by the Bill, from 21 September 2011 up to 31 March 2013, was reasonable despite the fact that on 21 December 2012 the Liquidators were requested to stop work in view of the global settlement between the feuding parties. The AR observed that after 21 December 2012 "there was work to be done – and reasonably so – by the Liquidators to help parties 'wrap things up'".

(c) The AR rejected four of the five key criticisms levelled by the Majority Shareholders against the Liquidators as being "cavils against the Liquidators' acts with the benefit of hindsight".

(d) The criticism that the AR found justified was that relating to the way that the Liquidators dealt with the Kunshan Shares. The work done to recover the Kunshan Shares in the hands of Goldtrend and to sell the whole parcel came to nought, partly because the Liquidators failed to ascertain at an early stage that the claim against Goldtrend was time-barred. The AR found that the Liquidators ought to have examined the potential time-bar issue early into their investigations and therefore the substantial amount of time spent on the claim was unreasonable. The sum of $233,015 was charged for work in connection with the Kunshan Shares.

(e) The Liquidators had attempted to get the feuding shareholders to reach a settlement and a significant cause of their failure to do so was the behaviour of the shareholders themselves. Therefore, it did not lie in the shareholders' mouths to say that they received little or no benefit from the Liquidators' work because the parties arrived at the settlement agreement of their own accord. It could not be said that the Liquidators did not bring value to the process. The Liquidators did go through the books, find the proper valuations and attempt to obtain buyers for the Company's assets.

(f) The Bill showed significant "overmanning" and the time entries suffered from a lack of precision resulting in double charging at times. It was highly unreasonable for a liquidation of this complexity to be manned by a total of 14 people, excluding the administrative staff. The AR observed that it was a duplication to charge for both the work of administrative staff and some of the work done by the associates and managers. The adjustments made by the Liquidators to the Bill were not sufficient to allay the AR's concerns regarding "overmanning".

The review

The parties' arguments

18 The Majority Shareholders seek that the sum under Section 1 be reduced further to $350,000 and that no costs be awarded under Section 2. In respect of the award under Section 1, the Majority Shareholders submit that a reduction is warranted on the following grounds:

(a) There had been "overmanning" and duplication of labour;

(b) There had been overcharging by way of an exaggeration of time spent;

(c) The assessment of the costs incurred by the supporting members of staff on a time costs basis was unjustified and unreasonable; and

(d) Much of the work carried out by the Liquidators was unnecessary and failed to add value to the liquidation process.

19 The Liquidators, on the other hand, seek the reversal of the reduction made by the AR and the re-instatement of their adjusted fee of $1,1213,961 under Section 1. They say that the AR erred in principle and quantum. In particular, they submit that:

(a) The Majority Shareholders' conduct had caused or contributed to the work done by the Liquidators and they therefore could not challenge fees that were incurred in respect of those matters;

(b) The AR was wrong to have disallowed the fees in relation to the recovery of the Kunshan Shares;

(c) There had been no “overmanning” on the part of the Liquidators; and

(d) The use of a broad-brush approach by the AR to tax off 45% of the Section 1 fees on the basis of two examples was arbitrary.

20 Before I analyse the issues raised by the arguments, there is one legal point that I must deal with. The Liquidators submit that the Majority Shareholders’ submissions are substantially a rehash of the arguments made before the AR. Therefore, they contend that for the Majority Shareholders to succeed on the review they will have to show that the AR did *not* take their arguments into account and hence erred in arriving at his decision on principle or quantum. Unless the Majority Shareholders can show that their arguments are new or not properly considered, their summons should be dismissed.

21 The position taken by the Liquidators is not correct. If the Majority Shareholders can show that the AR made a mistake in principle, then of course to the extent that that mistake influenced his decision, the decision will have to be reconsidered. However, the fact that the Liquidators may be able to show that the AR took all the arguments of the Majority Shareholders into account before arriving at his decision does not mean *ipso facto* that the application for review by the Majority Shareholders must fail. The established position is that a judge on hearing an application for review of taxation of costs hears the matter *de novo* and is not fettered in any way by the decision of the AR (see *Singapore Civil Procedure 2015* vol 1 (G P Selvam gen ed) (Sweet & Maxwell Asia, 2014) at para 59/35/3). A party appearing on a taxation review is entitled to rehash all his arguments before the judge and endeavour to persuade the judge to take a more favourable view of them than the registrar did. While the judge will give the registrar’s decision due weight, he is entitled to substitute his own decision for that of the registrar. Thus, I cannot accept the invitation to cut short the review by rejecting the Majority Shareholders’ application on the basis that the AR has already rejected their arguments.

The issues

22 The issues that arise from the parties’ submissions are:

(a) Did the Bill accurately reflect the time spent by the Liquidators?

(b) Did the Liquidators contribute value to the liquidation?

(c) Was much of the work carried out by the Liquidators unnecessary?

(d) Were the Liquidators entitled to draw up their Bill on the basis of hourly charge-out rates for all personnel involved in the work including junior officers and support staff?

(e) Was there “overmanning”?

Issue 1 – The accuracy of the time recorded

23 The Majority Shareholders, as they did before the AR, seek to impugn the veracity of the information recorded on the Liquidators’ timesheets by picking out “random instances of overmanning … and overcharging”. The examples cited in their written submissions include:

(a) Charging $5,373 for 19.9 hours of work done (later reduced to $707) for the furnishing of a banker’s guarantee for $1,000 which was a “simple administrative task” carried out by one

Associate (whom I shall refer to as "SL") whose charge-out rate was $270 per hour;

(b) Charging $35,660 for the total of 132 hours of work done (equivalent to 17 days' work) by SL who was probably not earning more than $6,000 a month;

(c) Charging $14,322 for the mere collection and storage of books and documents of the Dovechem Group;

(d) Charging $1,500 (later completely dispensed with) for 1.5 hours of work done for the review of a purportedly non-existent document, as well as the signing of standard-form documents;

(e) Charging $768 to review a three-line resolution;

(f) Charging $1,536 for 1.6 hours of work done for drafting a letter and for issuing a draft term sheet to the committee of inspection;

(g) Charging $7,488 for 7.8 hours spent reviewing documents that did not exist at the purported date of the review, and a further $13,248 for 13.8 hours spent in correspondence with Allen & Gledhill LLP;

(h) Charging $31,374 (later reduced to $27,107) for 116.2 hours of work done for a draft court report, for which the Liquidators provided little input;

(i) Charging $63,852 for work done on Suit 833 between February 2012 and June 2012 although the Liquidators' solicitors had only charged $16,000 for work on the Suit during this period; and

(j) Charging $41,731 for work purportedly done to sell the Company's shares in Kunshan Ltd between 15 November 2012 and 3 December 2012, despite the fact that an agreement for the sale of those shares had already been reached on 10 October 2012.

24 The accuracy of the timesheet would refer to whether work recorded was actually done or actually took the time which the timesheet reflected it did.

25 In their submissions, the Majority Shareholders do not make a clear distinction between which fees were the result of unjustified billing (*ie*, billing for work that was not actually done) and which were the result of overcharging (*ie*, work that took too long to be done or should not have been done by the particular person at that level of charge-out rate). In my judgment, the accuracy of the timesheet can only be impugned by examples of unjustified billing. Overcharging is a separate issue and does not impact accuracy.

26 The documents that were brought to my attention do not go so far as to suggest that the Bill reflects charges for work that had actually *not been done*. It cannot be said that it is more likely than not that the amount of time recorded is false on the sole basis that the time recorded was too high. At best, the documents indicate that more time was spent on some tasks than ought to have been.

27 There are only two examples of the ten given by the Majority Shareholders that come anywhere close to establishing unjustified billing. The first is the fee of $7,488 referred to in [23(g)] above. This reflected 7.8 hours allegedly spent over four days in March 2012 in reviewing "correspondence with creditors, EY, books, investigations, sale process and loan". The Majority Shareholders point out that

the documents identified by the Liquidators as having been those reviewed came into existence after 21 May 2012. Therefore, the documents could not have been reviewed in March 2012. However, the documents do exist and the Majority Shareholders did not point to any other charge made by the Liquidators for dealing with these documents. Thus, it is more likely that the Liquidators made a mistake in the dating of their timesheets than that they were dishonestly charging for work that had not been done.

28 The other "questionable" item, reflected in [23(d)] above, was a charge of $1,500 attributed to three tasks carried out by one of the Liquidators, Mr Christie: 30 minutes taken to review documents (which the Majority Shareholders said were non-existent), signing a standard letter and signing two company documents. After the Majority Shareholders submitted to the AR that this billing was absurd, the claim was removed. The Majority Shareholders say this is an example of dubious charging.

29 The Liquidators' response is that they did not remove the claim of $1,500 because it was an "absurd billing". Instead, what they had done was to reduce the first item of $500 by 60%, drop the second item in an effort to be conciliatory and maintain the fee of $500 for the third item. The result was that the number of hours charged by Mr Christie was reduced from 1.5 to 0.7 and the claim accordingly dropped from $1,500 to $700. They say that the onus is on the Majority Shareholders to show that the 0.7 hours charged for work done by Mr Christie is unreasonable and that they have not discharged this onus.

30 The second example does not show dishonest charging either. It is more a dispute over rates and time taken than over work done.

31 Overall, the Majority Shareholders have not been able to substantiate their contentions that the timesheets were wrongly kept.

Issue 2 – The value contributed by the Liquidators

32 One of the criteria that the court considers when it is determining the appropriate level of remuneration for a liquidator is whether the liquidator has made a difference to the liquidation process. The way in which this criterion is applied is set out in the judgment of V K Rajah JC (as he then was) in *Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 SLR(R) 264 ("*Re Econ*"), the leading case in Singapore on the remuneration of liquidators. At [50] the judge said:

> **Value contributed**
>
> 50 This is probably one of the most important aspects of the insolvency practitioner's role. The court, in determining the appropriate level of remuneration, will want to assess what difference the insolvency practitioner has made to the matter. In this exercise, it may be helpful to include the views of the major creditors and in relevant cases those of legitimate independent creditors of substance. …

33 The above passage refers to the "difference the insolvency practitioner has made to the matter" and not the outcome achieved by the practitioner. In court, the Majority Shareholders appeared to suggest that the value of the practitioner's contribution ought to be measured by the outcome he achieves as reflected in the proceeds recovered. Such an argument, if accepted, would have a significant bearing in this case since the Liquidators did not sell any of the assets prior to the settlement. However, the submission is not consistent with the views expressed in *Re Econ*. Further, it is neither logical nor desirable. Adopting the submission would mean that a liquidator's contributions would be determined simply by the worth of an insolvent company's assets rather than his actions.

The liquidator is not a valuer and measuring his remuneration by the value of the company would mean a disregard of the particular circumstances of any liquidation and the amount of effort that may have had to be taken to achieve the value of the company. In a similar vein, any suggestion that the value of the Liquidators' contributions must be pegged to added value in proceeds recovered should also be rejected – it is not necessary that such contributions must manifest in a monetary benefit in order for value to be added. For example, expeditious resolution of disputes between the company and creditors or debtors may be a way in which liquidators may add value without resulting in increased liquidation proceeds.

34 The Majority Shareholders also make specific submissions on the actions taken by the Liquidators here which had an impact on the value of their contributions. First, they emphasise that the Company had been under provisional liquidation for some eight months prior to the appointment of the Liquidators. During this period, the directors of the Company had filed a statement of affairs and this action made the initial task of the Liquidators (*ie*, to take possession of all documents and familiarise themselves with all aspects of the Company and the Dovechem Group) substantially easier.

35 Second, the Liquidators were privy to the contents of reports prepared by Grant Thorton Advisory Services Pte Ltd and KordaMentha Neo respectively (collectively, "the Reports"). The Reports had identified the Company's shares in PT Dover, PT Maspion and Kunshan Ltd as the Company's main realisable assets, and the Liquidators again would have had access to the relevant documents and information in respect of these three companies by virtue of the work done by the parties who had prepared the Reports. Finally, this was a straightforward liquidation given that there were no complications in the continued operations of the Dovechem Group.

36 The Liquidators do not deny that they were assisted by the Reports, but state that the extent to which they were assisted was limited, given that they were obliged to carry out an independent evaluation of the Company. The need to approach the Reports with caution was exacerbated by the fact that they were commissioned by the Company, which had been under the control of the Majority Shareholders, and the Majority Shareholders themselves. The document-gathering and fact-finding that EY had undertaken as provisional liquidators was incomplete at the time of the winding up and the Liquidators had to do more work in these areas. Finally, the liquidation process was not as straightforward as the Majority Shareholders claimed it to be since it was hampered by lack of co-operation from the Majority Shareholders.

37 The Liquidators submit that no weight should be placed on the fact that the Liquidators had, on the basis of their own investigations, adopted the same approaches as recommended in the Reports. This is undoubtedly correct. As the facts show, the opposing camps, comprising the Majority Shareholders on one hand and NJS on the other, were firmly entrenched in their respective positions at the time the Liquidators were appointed, and the acrimony between the parties meant that the actions of the Liquidators were subject to great scrutiny. In this climate, it would have been reckless and negligent for the Liquidators to have adopted the recommendations of the Reports wholesale without carrying out their own investigations to establish the best course of action.

38 The Majority Shareholders had made the same submission to the AR who was not convinced (see the summary at [17(e)] above). I am with the AR in considering that the Liquidators definitely contributed to the process of liquidation. Aside from conducting their own investigations to verify the findings of the Reports and to expand on the work done by EY, the Liquidators managed to secure buyers by way of an open sale in respect of DIPL's shares in PT Dover and PT Maspion, and also secured a preliminary agreement for the sale of the Kunshan shares. The fact that none of these eventuated due to circumstances beyond the Liquidators' control should not detract from the contributions of the Liquidators.

Issue 3 – The scope of work undertaken by the Liquidators

39 The Majority Shareholders focus on four broad areas of work undertaken by the Liquidators and criticise the approach of the Liquidators on the basis that much unnecessary work was undertaken which delayed the expeditious completion of the liquidation and incurred unnecessary costs. These areas are the work done to sell the Company's interests in PT Dover, PT Maspion and Kunshan Ltd and the Liquidators' involvement in Suit 833.

40 In approaching this issue, I bear in mind the observations of Rajah JC in *Re Econ* at [58] that in determining whether particular tasks are within the Liquidators' mandate, a practical approach should be taken. He reminded the court that "in the heat of urgent decision-making, insolvency practitioners may make decisions or take steps which may, in retrospect, prove to be unnecessary or ineffective. They should not be penalised for such decisions. If an impractical standard is set, insolvency practitioners will be crushed between the upper and nether millstones". Rajah JC went on to adopt the test laid down by Ferris J in *Mirror Group Newspapers plc v Maxwell (No 2)* [1998] 1 BCLC 638 for determining whether liquidators have acted properly in undertaking particulars tasks at a particular cost in expenses or time spent. This test is whether a reasonably prudent man, faced with the same circumstances in relation to his own affairs, would lay out or hazard his own money in doing what the liquidators have done. I respectfully agree that this is the correct test to apply in the circumstances.

Suit 833

41 I deal first with Suit 833. The Majority Shareholders compute the total sum charged by the Liquidators for work on this case to be $129,710 whilst the Liquidators computed it at about $20,000 less. Even on the Liquidators' calculation, the Majority Shareholders say that the charge is too high.

42 They point out that Suit 833 had been set down for hearing in July 2011 by the Company's then solicitors, Messrs Toh Tan LLP but on the day of the hearing Toh Tan LLP applied to amend the statement of claim. As a result, the hearing was adjourned. With the Company's liquidation in September 2011, all proceedings in the Suit came to a halt and the court gave the Liquidators up to February 2012 to decide what to do about it. In February 2012, the Liquidators' solicitors, Tan Kok Quan Partnership ("TKQP") took over conduct of the Suit and subsequently filed an amended statement of claim.

43 On 15 June 2012, TKQP billed the Liquidators $16,000 for work done up to 12 June 2012. The Liquidators themselves charged $63,852 for work done on the Suit during the same period. The Majority Shareholders complain that the Liquidators charged four times more than the lawyers had. They point out that in *Re Econ* the learned judge had failed to see why the remuneration of an insolvency practitioner when assessed by the court should substantially surpass that of the solicitors. In this case, the Liquidators had employed five or six persons in relation to Suit 833 and the details of work given were scant. This was an example of arbitrary charging and doubtful hours.

44 Before I deal with the Liquidators' response, I note that the Majority Shareholders were not arguing that the Liquidators should not have continued with Suit 833 or appointed lawyers to handle the case. Their complaint essentially was that the Liquidators had spent too much time on the matter and racked up unnecessary costs.

45 The Liquidators submit that there is no precedent for the argument that a liquidator's fees should be assessed with reference to the fees which his solicitors have charged. The responsibilities and roles are quite different from the work done by the Liquidators and their staff. One of the Associates employed by the Liquidators ("AC") had spent about 80 hours to prepare an investigation

report pursuant to instructions sought by TKQP for the purposes of Suit 833 and the amendment of the statement of claim. The investigation report, though only five pages long, was supported by 12 sets of supporting documents taken from 110 boxes of documents which AC had to go through to extract the necessary information for the lawyers. The Liquidators aver that she had to review all these documents because they were unable to obtain meaningful information from the Majority Shareholders, even though the latter were the ones who had commenced and given instructions to Toh Tan LLP on Suit 833.

46 I accept the Liquidators' argument. The work that the Liquidators had to do was very different from that done by the lawyers. The Liquidators had to establish the facts and find the documents supporting those facts in order to instruct the lawyers and to obtain legal advice on how the statement of claim should be amended. It is not surprising that the work of the Liquidators involved checking many boxes of documents since Suit 833 involved several years of the plaintiff's operations (it related to the employment of an allegedly phantom employee) and the Liquidators had not run the Company or the plaintiff at the material time. In this case, the time spent by the Liquidators and that spent by the lawyers cannot be compared and the fees of the Liquidators cannot be assessed by reference to the lawyers' fees. That does not mean that the Liquidators' charges for the work done should be accepted at face value but only that they cannot be challenged on the basis of such a comparison.

PT Dover and PT Maspion

47 I now turn to the work done by the Liquidators to realise the Company's assets. First, I deal with PT Maspion and PT Dover. The Majority Shareholders say that the approach taken by the Liquidators in the sale of the PT Dover and the PT Maspion shares was fundamentally flawed – given that the Articles of Association of both companies provided a right of first refusal to existing shareholders, the Liquidators should have first obtained the sale price of the shares and offered them to the existing shareholders, rather than market the shares to the public as they had done. The AR did not accept this criticism but I have come to a slightly different conclusion.

48 The relevant provisions of the constitutive documents of the two companies are as follows (translations from Bahasa Indonesia provided by the Liquidators):

> **[Article 9 of PT Dover's Articles of Association]**
>
> A shareholder who wants to sell his/her shares is required to notify the directors in writing concerning his/her intent, *stating the name and address of the prospective buyer and the sale terms and conditions*. The directors must issue a written notification to the shareholders according to the names and last address recorded in the Register of Shares regarding the sale. The notification should specify the time period in which shareholders may inform the Board of Directors of their interest to purchase the shares and their desired quantity. [emphasis added]
>
> **[Article 2.7 of PT Maspion's Articles of Association]**
>
> In the event a party desires to sell or transfer all or part of its shares in the JV (thereinafter called "Offeror"), the Offeror shall first offer to sell the Shares to the other party (hereinafter called "Offeree") at a price equal to the *fair market value of the Shares*.
>
> If the Offeree does not accept the offer within sixty (60) days from the date of receipt of such offer, then the Offeror may sell or transfer the offered Shares made by the Offeror within four (4) months after the date of such offer, provided, however, that the price and conditions [on] which

such Shares are sold to such third party shall not be less than the initial offered price to the Offeree and the terms of payment shall not be more favourable. It is specifically noted that the Offeree or any third party who accept the offer pursuant to this Agreement shall be bound by all of the terms and conditions of this Agreement.

[emphasis added]

49 Therefore, while it is true that the existing shareholders of PT Dover and PT Maspion had a right of first refusal in respect of the shares held by DIPL, it was necessary for the Liquidators to have:

(a) in respect of the PT Dover shares, secured a prospective buyer before offering the shares to the existing PT Dover shareholders; and

(b) in respect of the PT Maspion shares, ascertained the "fair market value" of the shares before offering the shares to the existing PT Maspion shareholders.

50 As far as the PT Dover shares are concerned, there is clearly no merit in the Majority Shareholders' contention that the PT Dover shares could simply have been offered to the existing shareholders, given that a prospective buyer would have had to be secured first. It does not matter that the Liquidators could have determined from PT Dover's balance sheet what the selling price of the shares should be, or that the sale ultimately may not have gone through had the PT Dover shareholders exercised their first right of refusal.

51 The position in respect of the PT Maspion shares is slightly different, in that it was only necessary for the Liquidators to have obtained the "fair market value" of the shares. This is based on the translation of Art 2.7 as provided by the Liquidators. In their written submissions, the Majority Shareholders adopted a different interpretation of Art 2.7 based on a statement made by the Liquidators in para 41 of their draft Court Report dated 1 May 2012 where the Liquidators wrote that under the Articles the shares had to be sold to the existing shareholders at "net book value". In court, Mr Denis Tan corrected this interpretation. In his oral submissions, he accepted that it was not required for the shares to be sold to the existing shareholders of PT Maspion at net book value. Instead, he said that a prior offer was required. This change in position does not assist the Majority Shareholders since the necessity for a prior offer would lend credence to the Liquidators' efforts to obtain other bids by way of an open sale. The stronger case for the Majority Shareholders is that reflected in their written submissions which suggest that the Liquidators should not have gone ahead with the open sale process despite an offer by PT Maspion's existing shareholders at a net book value that accorded with the Liquidators' valuation.

52 In any event, even if it were the case that the existing PT Maspion shareholders had a first right of refusal in respect of DIPL's PT Maspion shares at "fair market value" and that an open sale process would have served to better determine what the "fair market value" was, I do not think that the Liquidators' actions were what a "reasonably prudent man" would have laid out his money to do. The Liquidators argue that it was the Majority Shareholders who had insisted on an open bidding exercise; however, it is clear from the draft Court Report that the Liquidators had proceeded with the sale process "to try to extract a better price" despite knowing of the existing shareholders' right of first refusal, and despite knowing that they had already put in a bid which the Liquidators themselves thought was reasonable. In these circumstances, it is difficult to see what the Liquidators sought to achieve other than to convince the existing shareholders that the "fair market value" of the shares held by DIPL was higher than what the Liquidators themselves thought was reasonable. Even without the benefit of hindsight, there would have been little prospect of the Liquidators obtaining a far higher price that would have justified the work done.

53 The Majority Shareholders calculated that the Liquidators' charges for the work done in marketing both sets of shares total $322,536. Since I have held that the Liquidators did a lot of unnecessary work in relation to the sale of the PT Maspion shares, this figure must be reduced and I will bear this in mind in my final assessment of what is reasonable remuneration for the Liquidators.

Kunshan Shares

54 The Majority Shareholders argue that the Liquidators' efforts to recover certain Kunshan Shares from Goldtrend were futile given that any such claim would have been time-barred. The AR agreed that the Liquidators had done unnecessary work in this regard (see summary at [17(d)] above).

55 The AR's decision to tax off fees charged for work done on the Kunshan Shares appeared to have been made largely due to the fact that the Liquidators had a "team of juniors who were familiar or *au fait* with the Chinese regulations", and that it would therefore have been reasonable for the Liquidators to have been alerted to the time-bar issue. The Liquidators reply that this was a team of junior employees who were not lawyers and that their purported familiarity with the Chinese regulations would not necessarily mean that they would be familiar with Chinese laws on limitation periods. I accept this contention. The law of limitation is usually very technical and something that requires expert knowledge and legal analysis of precedents and circumstances and it is not reasonable to expect the Liquidators to have been alerted to this issue by non-lawyers.

56 Further, as the Majority Shareholders themselves concede, the Majority Shareholders had pressed the Liquidators upon their appointment to take steps to pursue the claim against Goldtrend. While the Liquidators have not denied that this could have been discerned from documents that were already in their possession, the Liquidators point out that the document evidencing the loan from Goldtrend to the Company (which forms the basis of the claim) was only provided to the Liquidators around 9 July 2012, shortly after which the time-bar issue was discovered. Given that the documents were previously in the possession of the Majority Shareholders who had not only failed to spot the time-bar issue but encouraged the Liquidators to pursue the claim, the Majority Shareholders cannot now say that the Liquidators ought to have been alerted to this issue from the outset.

57 I therefore disagree with the conclusion of the AR that the work done by the Liquidators in relation to the recovery of the Kunshan Shares was wasted and should not be remunerated.

Issue 4 – Method of assessment of fees

58 The Majority Shareholders challenge the right of the Liquidators to charge separately on a time basis for the work done by the more junior employees. They refer to the observations of Rajah JC at [57] of *Re Econ* to the effect that the remuneration that an insolvency practitioner can command embraces compensation for the assistance of employees of their firm but that non-essential services, like secretarial backup and routine tasks, can be outsourced if it is economical to do so. His Honour noted that:

> … Appointments in insolvency matters are personal to the office-holders and should not be interpreted as a mandate to appoint staff from the firm from which the office-holder hails, in *all* aspects of the insolvency *at* all times. There should be horses for particular courses. [emphasis in original]

59 The Majority Shareholders interpret the observations in *Re Econ* to mean that the Liquidators are only entitled to charge for the salary and overhead expenses of an employee assisting in the matter. Time charge-out rates cannot be used for these employees much less for more junior

employees providing secretarial backup and routine assistance. Whilst there was no indication in *Re Econ* as to how the compensation of the Liquidators' employees is to be calculated, the Majority Shareholders submit that it should not and cannot be based on hourly rates as to do so would lead to untenable results.

60 The question of how an insolvency practitioner should charge for his services has been considered in various jurisdictions. In Australia, time charge-out rates are accepted as a basis for a bill although the court is not bound by them. *Re Econ* itself referred to the Australian case of *Re Trustees Executors & Agency Co Ltd* (1984) 9 ACLR 497 ("*Re Trustees*") where some observations were made on the taxation process in relation to a liquidator. *Re Trustees* concerned an application by a provisional liquidator for the remuneration of services rendered during provisional liquidation. The liquidator based his application on s 373(2) of the Companies (Victoria) Code (Vic) as it stood then, which provided "[a] provisional liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined by the Court". However, the question to be determined by the court in that case was whether the fees of the provisional liquidator had to be taxed at all since the liquidator's bill related to the cost of services provided to him by his employees. Order 1 r 110(a) of the Supreme Court (Companies) Rule (Vic) provides that "[e]very solicitor, manager, accountant, auctioneer, broker or other person employed by a liquidator in a winding up by the Court shall on request by the liquidator, to be made sufficient time before the declaration of a dividend, deliver his bill of costs or charges to the liquidator for taxation". The court observed at p 500:

> In my opinion, the remuneration of a provisional liquidator, including the cost of services provided to him by his employees, servants and agents who are engaged to assist him in the conduct of the liquidation is not required to be taxed in accordance with O 1 r 110 of the Supreme Court (Companies) Rules. *For the purposes of r 110 a distinction is to be drawn between services provided to a liquidator (including a provisional liquidator) by his associates, staff and interstate agents who assist him with his function as liquidator, and services provided by outside consultants who are engaged by a liquidator for a specific task required to be done in the winding up*. This distinction is suggested by an ejusdem generis interpretation of the opening words in r 110, namely, "every solicitor manager accountant auctioneer broker or other person employed by a liquidator in a winding up". The class of persons described is in the nature of independent professionals who would ordinarily bill the liquidator for their services. Accordingly, their fees can be controlled by the court through the processes of taxation. *In the present case remuneration is sought in respect of persons who ordinarily would not be expected to bill the liquidator for their services. It is unrealistic to expect that a typist, secretary, or even an accountant employed by a liquidator to assist him with his duties should be required to render a bill in taxable form to the liquidator for the services they provide. They are paid their salaries and wages, agency fee and drawings from the partnership in the ordinary manner. The liquidator then seeks a determination from the court in accordance with s 373(2) of the Companies (Vic) Code as to his remuneration out of which he must meet these expenses*. It is through this process, and not through taxation of costs and charges, that the court controls the remuneration of a provisional liquidator. [emphasis added]

61 It would appear from the above excerpt that Australian courts do not expect a liquidator to assess the value of his services by reference to, among other things, specified charge-out rates for his employees. However, that is not the approach of all courts in Australia. The Liquidators tendered cases which suggest that the practice in the courts of Victoria may be different. Gardiner AsJ appears in *IMO Traditional Values Management Limited (in liq)* [2012] VSC 650 to have accepted as normal hourly rates charged by employees of a liquidator who were described as "administrators", "managers", "senior accountants", "intermediate accountants", "executive assistants" and "administrative officers".

62 The position in England is set out in the practice direction for insolvency proceedings. Paragraph 21.4.2 sets out all the information that the insolvency practitioner appointed in a particular case has to provide the court when asking for his remuneration to be taxed. As a matter of course liquidators are required to provide in their bills "details of the individual rates charged by the appointee and members of his staff in respect of the work" and such details have to include a general explanation of the policy adopted in fixing such rates and the recording of time spent. Thus, the time expended and the rates charged are part of the assessment but they are not the only criteria. The paragraph also requires other factors to be indicated in the bill so that an overall assessment of the appropriate remuneration can be made. It is significant that paragraph 21.4.2(7)(b) states that:

> … where, exceptionally, remuneration in respect of time spent by secretaries, cashiers or other administrative staff whose work would otherwise be regarded as an overhead cost forming a component part of the rates charged by the appointee and members of his staff, a detailed explanation as to why such costs should be allowed should be provided.

63 The English approach therefore generally prevents employees performing administrative tasks from billing on a time costs basis. Remuneration in respect of their time spent is only allowed in exceptional cases.

64 As far as the local position is concerned, apart from the references in *Re Econ*, there has been no statement of principle determining which categories of employees the Liquidators are entitled to charge for on a time cost basis. The Liquidators tendered three sample bills which they said showed that local practice allowed time cost fees to be charged for employees performing administrative tasks. I am of the view, however, that those bills cannot be taken as precedents as there is no indication that the time charges of the administrative employees concerned were objected to in principle. Further, in each of those three bills, the total number of persons engaged in the liquidation work was very much lower than the number involved here.

65 In my view, the English practice should be adopted and liquidators and other insolvency personnel should not be allowed to include time charges in their bills for the work done by administrative and support staff. The salaries paid to such employees should be considered part of a liquidator's overheads and should be factored into the general remuneration charged by a liquidator. This decision does not, however, resolve the matter of time charges entirely. The issue is not whether liquidators cannot use time charges at all for the purpose of computing their remuneration (or at least as part of their justification for the amount claimed) but which employees' work can be charged on a time basis.

66 In the case of bills drawn up by law firms for legal work, only qualified lawyers' time is computed for the basis of time charge rates. It is perhaps easier in the case of lawyers to distinguish between which person is considered as a professional doing professional work whose time may be charged for and which person is not in that position. In the case of insolvency practitioners, only the liquidators themselves and senior staff members may be professionally qualified. However, other persons with tertiary education may be trained to carry out certain work under the liquidator's supervision. Further, there is quite a lot of "grunt" work to be done in a liquidation (for example, in relation to sorting out and arranging documents) which does not require special accountancy skills.

67 The Liquidators submit that in their structure there are only three layers of personnel who are considered professional fee earners. These are:

(a) Accountants and Associates;

(b) Assistant Managers, Managers, Senior Managers and Directors; and

(c) Liquidators.

Within each layer, there are persons with different titles which are reflective of their seniority in that layer. Each title does not represent a separate layer and the AR was in error to criticise the Liquidators on the basis that there were five layers within the Liquidators' staff structure.

68 Taking the lowest layer, the Accountant (rate $140 per hour) (experience two years) did not have any accounting qualifications while of the three Associates ($270 per hour) (experience ranging between three and six years), only AC had a clear-cut Bachelor of Accounting degree. The accounting qualifications of the other two were "Bachelor of Business (Accountancy), RMIT University" and "Masters of Professional Accounting & Masters of Commerce (Finance), Deakin University, Australia". It is not clear to me whether these last two qualifications allow the holders to practise as accountants. I also note that one of the Managers has no accountancy qualifications either but only legal qualifications.

69 It is in respect of the Associates that the Majority Shareholders submit that instead of charging $270 an hour for their work, the Liquidators should charge a percentage of their salary and overheads. This has been rejected by the Liquidators who say that there is no precedent for such manner of charging. No doubt nothing in the authorities compels the Liquidators to charge in this way, but it is one way of computing the cost to them of carrying out the work for the Company.

70 The difficulty here is that there is no recognised body of insolvency practitioners that could prescribe who, other than a professional accountant and approved liquidator, could qualify to be recognised as a professional insolvency practitioner and fee earner. In the final analysis, it is up to the Liquidators to justify the way in which they have calculated their remuneration. If they choose to do so on the basis that certain members of their staff are fee earners, they must show that the qualifications and type of work done by these persons would justify this type of charge in the light of the practice in the industry. Further, the Liquidators would have to substantiate their rates by showing how the same were made up or at least, as in England, explaining the policy behind the fixing of the rates. This was not done here. The Liquidators criticise the AR's reduction in their bill as being arbitrary but do not appear to recognise that their rates are, in the absence of any evidence as to how they were derived, equally arbitrary. There is no indication what profit would be earned from such rates and whether that degree of profitability is high, standard or low for the industry. In view of the lack of such evidence, the Liquidators should not be surprised that the court approaches the bill with a healthy degree of scepticism and needs to be convinced that the charges are reasonable. The court does not accept the Liquidator's charge-out rates at face value.

71 In this context, it is apropos to refer to some observations made by the Court of Appeal on charge out rates in the case of *Lin Jian Wei v Lim Eng Hock Peter* [2011] 3 SLR 1052. While the observations were made in relation to a bill of costs presented by a firm of lawyers, they are equally pertinent to the situation of liquidators. At [62], VK Rajah JA, delivering the judgment of the Court, said:

> 62 We should also explain why we think it is unhelpful to focus on charge out rates which are unilaterally set by law firms. Charge out rates are what a particular client will pay his own solicitor for the work done for a fixed period of time (usually hourly). They are not always the best *indicia* of what the Court ought to assess as reasonable compensation for the expertise of a competent solicitor of a certain standing. The Judge in this matter had no reference points for determining that the charge out rates claimed were in accordance with market practice. Here, we note that

the Law Society has not published any guidelines on the charging of costs. All in all, some of the charge out rates claimed by the respondent's counsel in this matter did indeed raise questions of reasonableness.

72 In *Re Econ*, the court noted that the time spent by insolvency practitioners represents a measure not of the value of their service but of the costs of rendering it (at [47]). At [60] it was emphasised that in the final analysis it is for the court, in any particular matter, to determine whether the basis for the remuneration ought to be on a time basis, a realisation basis or all-encompassing basis. The choice would turn on and be determined by the nature of the particular matter.

Issue 5 – "Overmanning"

73 A primary reason which the AR cites for the taxing off of 45% of the Bill is his conclusion that there had been significant "overmanning". In *Re Econ* at [57], this was taken as a measure of whether compensation for the assistance that a liquidator received was reasonably incurred.

74 The Liquidators submit that there are two reasons why the AR was wrong to have taxed off 45% of the Bill. First, even if there had been "overmanning", the total dollar value of what was disputed in the Majority Shareholders' submissions (aside from the sale of shares) amounting to $287,050 would have been adequately addressed by the voluntary discount of $250,136 which the Liquidators gave during the hearing. Therefore, any further reduction would have to be substantiated by other instances of "overmanning", which is unlikely to amount to much given that the Majority Shareholders would have cited the most egregious examples in their submissions. Second, the number of assistants that had worked on the file has no bearing on whether there had been "overmanning"; what matters is the number of fee earners working on the brief *at a particular point in time*.

75 In respect of the latter point, the Liquidators must be correct. Putting aside the possibility that extra time is spent whenever an employee has been placed on the brief and needs to familiarise himself with the background to the matter (which is not the Majority Shareholders' case), the total number of people who have worked on the file says nothing as to whether assistance was reasonably rendered. However, while the examples cited in [23] above do not specifically address the issue of whether there had been *too many people on the file at any point in time*, they directly address the issue of whether the employees assigned to a particular task had *taken too much time* for that task, which also goes to the question of whether compensation for the assistance that a liquidator received was reasonably incurred.

76 In this regard, I am of the view that the examples given by the Majority Shareholders, whilst insufficient to establish arbitrary billing, are sufficient to constitute instances of "overmanning". Many of these tasks should have taken less time to perform given that preparatory work had been done by the provisional liquidators or counsel and also their nature. Following that conclusion, lower fees should have been billed for the performance of these tasks. One particularly egregious example was the fact that it apparently took 19.9 hours for SL, an Associate of four years' standing, to procure the issue of a standard form bank guarantee. Another was the charge of $14,322 for the collection and storage of books and documents of the Dovechem Group. Whilst the Liquidators explained that this was not a simple physical job but involved sorting out and categorising documents that were in a mess, the charge still appears very high.

77 The Liquidators submit (based on the decision of *Conlan v Adams* [2008] WASCA 61) that the court should not infer a systemic problem on the basis of failures to establish discrete parts of a claim. This is particularly the case where a bill has been itemised and sufficient details have been provided as to how the fees claimed have been arrived at, so as to allow parties to assess the

challenge (if need be) each of the itemised claims. I accept this point and observe that in this case the Liquidators did provide enough information to allow for challenges.

78 I note that the sum of $287,050 brought up by the Liquidators did not involve the fees charged for the sale of the shares in PT Dover, PT Maspion and Kunshan Ltd. In relation to those items of work, no specific instance of "overmanning" was raised. Further, the Majority Shareholders do not say that the Liquidators should not be paid at all for their work done in the matters relating to the sum of $287,050. That being the case, the Liquidators' voluntary discount of $250,136 sufficiently deals with the examples given by the Majority Shareholders and also covers what other "overmanning" may be reflected in the Bill.

Conclusion on quantum

79 I have held that the time sheets accurately reflect the time the Liquidators spent on this matter, that the Liquidators had contributed value to the liquidation proceedings and that their work in respect of the sale of the PT Dover and Kunshan Shares should be remunerated. I have also held that the approach taken by them in respect of the sale of the PT Maspion shares was wrong. Further, in respect of the Liquidators' time charges, I consider that they should not be entitled to charge on a time cost basis for the work done by their administrative employees and that there is no evidence supporting the reasonableness of the charge out rates that they have applied to the professional fee earners.

80 The difficulty is determining the quantum to be taxed off. As mentioned earlier, the issue of "overmanning" has been sufficiently addressed by the Liquidators' voluntary discount. In view of my decision relating to the administrative and support staff, the sum of $13,824 charged for the 76.8 hours put in by these employees must be taken off the Bill. As for the work done in respect of the sale of PT Maspion shares, the Bill does not appear to distinguish that from the work done for the PT Dover shares and it is not possible to determine a precise figure that can be taxed off on this ground. While this may be a somewhat rough and ready approach, I do not think it would be unfair to reduce the amount charged by 40%, *ie*, from $322,536 to $193,521 (a reduction of $129,015).

81 The parties agree that the approach to be taken in the court's review of the Bill is a broad-brush one. The court has to decide whether, taking the Bill as a whole, it is fair and reasonable. In this regard, it is useful to consider other bills for services rendered by other liquidators. Counsel for the Majority Shareholders referred the court to three precedent bills:

(a) *Peter Chay Fook Yuen v Wan Soon Construction Pte Ltd (in liquidation)* (BC 1/2013) – this was a claim for $210,000 under Section 1 in respect of work done between 21 March 2005 and 31 December 2011, for which an actual time cost of $894,102.20 (4,453.95 hours) was incurred. The creditors included the employees of company, IRAS, one individual creditor and one secured creditor. The debtors comprised trade debtors and debtors from 15 construction projects the company was involved in. The Liquidators claimed only $210,000 because of the financial position of the Company and the plight of the preferential creditors and they were awarded this amount in full.

(b) *Chan Yee Hong v Comfort Resources Pte Ltd (in liquidation)* (BC 198/2013) – this was a claim for $656,006 under Section 1 in respect of 2,120.5 hours of work done between 18 May 2011 and 30 October 2013. The matter involved 36 creditors, 18 debtors and two legal suits between a group of creditors and the company. Substantial work had been undertaken to mediate between two disputing camps of creditors that had formed. Ultimately, $440,000 was allowed, *ie*, a reduction of about one-third.

(c) *Peter Chay Fook v ACS Innovations International Pte Ltd (in liquidation)*(BC 6/2014) – this was a claim for $290,000 under Section 1 in respect of work done between 15 March 2002 and 31 May 2013, for which an actual time cost of $552,824 (2,599 hours) was incurred. This involved 78 preferential creditors and 138 unsecured creditors, 20 local debtors and overseas debtors in eight different jurisdictions, and one legal suit. The Liquidators claimed only $290,000 because of the limited funds available in the Company's liquidation account.

82 It can be seen from the sample bills that liquidators rarely recover their time costs in full whether on account of lack of funds in the coffers of the company concerned or the approach taken by the court for taxation. The first and third precedents set out above do not serve as good comparisons for the present case since the liquidators there took a voluntary cut in their fees to the level of the funds available, although they do serve as some indication of charge-out rates applied in the industry. The more relevant precedent is the second case. That was a liquidation that took about two years and involved many creditors and two legal actions but only consumed 2,120.5 hours as compared with the 3,483 hours occupied here.

83 The work done for each liquidation process and consequently the charges incurred depend on the circumstances of each case. In the present instance, the relevant factors include that:

(a) the Company in liquidation was the head of a group of companies, some of which were located in Indonesia and China and subject to different laws and regulations;

(b) some work had already been done by provisional liquidators and counsel;

(c) there was internal strife between two opposing factions within the Company;

(d) the Company was directly involved in two law suits and as the holding company of the plaintiff in Suit 833 and there were also litigation proceedings involving DIPL in Indonesia;

(e) there were no issues with the continuing operation of the Company;

(f) the Company's main realisable assets were in foreign jurisdictions; and

(g) most of the creditors were mostly relatives or related parties of the Majority Shareholders and NJS, and were aligned with or controlled by either camp.

84 The Liquidators' Bill as presented currently stands at $1,213,961. Deducting the amounts of $13,824 and $129,015 would reduce the Bill to $1,071,122. In all the circumstances, this figure still seems too high for the work required to be done. Having regard to all the factors set out above and using the usual broad brush, I am of the view that a fair and reasonable remuneration for the Liquidators in this case would be $750,000. I am cognisant that the Liquidators, and perhaps others, may consider this figure to be arbitrary but, since the law does not provide or support a mathematical formula for the calculation of a liquidator's fees, any award made would be open to the same criticism.

Conclusion

85 Given that the final amount awarded is more than half the original amount sought, there is no need for me consider the submissions of the Majority Shareholders in respect of the Section 2 costs.

86 Accordingly, I dismiss the Majority Shareholders' application for review and allow that of the Liquidators. I increase the amount awarded to them to $750,000. I award the Liquidators the costs of

the review and fix the same at $5,000 plus reasonable disbursements.

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