IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 29

Originating Application No 646 of 2022

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Aaquaverse Pte Ltd

… *Applicant*

Originating Application No 647 of 2022

In the Matter of Section 65 of the Insolvency, Restructuring and Dissolution Act 2018

Aaqua BV

… *Applicant*

Originating Application No 648 of 2022

In the Matter of Section 65 of the Insolvency, Restructuring and Dissolution Act 2018

Aaqua Pte Ltd

… *Applicant*

Originating Application No 656 of 2022

In the Matter of Section 65 of the Insolvency, Restructuring and Dissolution Act 2018

Aaqua Inc

… *Applicant*

BRIEF REMARKS

[Companies] — [Schemes of Arrangement] — [Moratoria] — [Reasonable Prospect of the Scheme Working]

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[2023] SGHC 29

General Division of the High Court — Originating Application No 646 of 2022, Originating Application No 647 of 2022, Originating Application No 648 of 2022 and Originating Application No 656 of 2022
Aedit Abdullah J
10 November 2022, 19 January 2023

10 February 2023

Aedit Abdullah J:

1 These remarks are issued to assist practitioners in this area of law and will be subject to any full grounds that may be furnished. These remarks focus primarily on the question of whether the applicants showed, for the purposes of an extension of moratoria under ss 64 and 65 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), that there was a reasonable prospect of the proposed scheme of arrangement (the "Scheme") working.

Background

2 The applications were made by companies in the Aaqua Group: Aaquaverse Pte Ltd (the group holding company incorporated in Singapore), Aaqua BV (a Netherlands subsidiary), Aaqua Pte Ltd (a Singapore subsidiary), and Aaqua Inc (a United States subsidiary). The Aaqua Group is a largely

Singapore-based start-up engaged in creating a social media platform, "Aaqua" (the "Aaqua App").[1]

3 The applicants outlined the Scheme at a hearing before me on 10 November 2022.[2] First, the Scheme proposed that all assets and liabilities of the Aaqua Group be pooled in Aaquaverse Pte Ltd to allow for easier restructuring of the debts of the entire Group.[3] The applicants later disclosed that these assets comprised intellectual property ("IP") in the Aaqua App and shares in Audioboom, an audio hosting and podcasting platform.[4] Next, the Scheme contemplated that the applicants would be awarded a substantial sum by the English courts following an ongoing inquiry into damages (the "Damages Inquiry").[5] The applicants expected that this sum would be sufficient to pay all Scheme creditors in full.[6]

4 As I had concerns about aspects of the application, I granted only a relatively short extension of the moratoria until 20 January 2023 and directed that the applicants file further affidavits to substantiate parts of their case, namely:[7]

(a) the assets of the various entities seeking ss 64 and 65 moratorium protection;

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[1] Applicant's Written Submissions dated 4 November 2022 ("AWS") at [5]-[6].

[2] AWS at [26].

[3] AWS at [26(a)], Robert Bonnier's affidavit dated 13 October 2022 ("RB") at [65(a)].

[4] Power Michael Declan's affidavit dated 16 December 2022 ("PMD") at [10].

[5] AWS at [26(b)], RB at [65(b)].

[6] AWS at [26(c)], RB at [65(c)].

[7] 10 November 2022 Minute Sheet at pages 7-8.

(b) the status of the foreign proceedings;

(c) the likely damages to be awarded by the English Court in the Damages Inquiry;

(d) the financing and facilities that were obtained previously; and

(e) further details of the Scheme and how it was envisaged to benefit all creditors, including the employees.

Prospect of the scheme working

5 At the 19 January 2023 hearing, which is the subject of these brief remarks, the applicants sought a further extension of the moratoria. They argued that they had made out sufficiently for that stage the reasonable prospect of the Scheme working.[8]

6 I appreciated that Mr Han, his team and the financial advisors put in great effort on behalf of their clients in the matter, and I was grateful for the assistance given. However, I was not persuaded to grant the applications and accordingly dismissed them.

7 Primarily, the applicants failed to make out the requirement in *Re Pacific Andes Resources Development Ltd and other matters* [2016] SGHC 210 ("*Pacific Andes*") that there was a reasonable prospect of the Scheme working: *Pacific Andes* at [65].

8 While the test was expressed in *Pacific Andes* and *Re Conchubar Aromatics Ltd and other matters* [2015] SGHC 322 as requiring a reasonable

[8] Applicant's Further Written Submissions dated 17 Jan 2023 ("AFWS") at [13].

prospect of the scheme working and being acceptable to the general run of the creditors, such support by the creditors was not sufficient on its own. The former limb of the test was equally important: the court should only let through a scheme that had a reasonable prospect of working.

9 It is true that only a general assessment was to be done at that stage. Unfortunately, what was put before me fell short. Much depended on the award to be given following the Damages Inquiry. While the applicants tendered a report on that issue,[9] it was not supported by a legal opinion evaluating the likelihood of the English court making such an award and assessing the possible range. A KC's opinion, or that of an experienced English solicitor practising in this area, would have given much more substance. Furthermore, any scheme proposal hinging on an award by a court would attract quite a bit of scrutiny: litigation is risky, and the best laid forecasts may come to grief when judgment is given. Any award would also be subject to appeals, as well as the filleting of the award to pay the lawyers, advisors and others involved in the process.

10 All this meant that any applicant for a moratorium or scheme relying on an inflow of funds from a judicial or arbitral award should be prepared to face heavy questioning and should be prepared to give robust and rigorous analysis to support their position. Unfortunately, I did not find this to be the case here.

11 The other aspects of the Scheme were also very doubtful: the IP valuation of the Aaqua App seemed rather optimistic. The Aaqua App had not been brought to market; the forecasts and dreams of the developers could not be the basis of a scheme proposal. The cost of development certainly could not.

[9] PMD at [14]-[16] and at Tab 7 pages 73-99.

The app graveyard is full of costly and expensive apps which have come to nought, despite the best hopes of those involved.

12 That left the shares in Audioboom, which were not sufficient to make a substantial enough difference to my mind even assuming they could be sold off at a good return in the market.

13 I therefore found that the forecast of a probable better return than liquidation was really unsupported. The fact that a majority of the creditors may have been in support did not alter the result.[10]

14 The shortcomings above also pointed to a lack of bona fides in the application. One would have expected from a good faith application much more planning and certainty to be put in in terms of possible financing.

15 I did not address the allegations raised by Candy Ventures; I was not sure that those allegations touched on bona fides for the purposes of the applications, though they may have raised other issues. I also left for another day the question of whether Candy Ventures had in fact submitted to the court's jurisdiction. Neither was necessary for the disposal of the applications which were before me.

[10] AWS at [19]-[20].

Conclusion

16 The applications for extension of moratoria under ss 64 and 65 of the IRDA were dismissed.

Aedit Abdullah
Judge of the High Court

Han Guangyuan Keith, Tan Mei Yen and Ammani Mathivanan (Oon & Bazul LLP) for the applicants;
Samuel Richard Sharpe (Sharpe & Jagger LLC) for Candy Ventures Sarl (non-party).