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

[2024] SGHC 305

Companies Winding Up No 205 of 2024

In the matter of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Bob TX Food Empire Pte Ltd

Between

RHB Bank Berhad

… *Claimant*

And

Bob TX Food Empire Pte Ltd

… *Defendant*

Companies Winding Up No 207 of 2024

In the matter of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Valulogistics Pte Ltd

Between

RHB Bank Berhad

… *Claimant*

And

Valulogistics Pte Ltd

… *Defendant*

Companies Winding Up No 208 of 2024

In the matter of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Valusports Pte Ltd

Between

RHB Bank Berhad

… *Claimant*

And

Valusports Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Grounds for petition]
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RHB Bank Bhd
v
Bob TX Food Empire Pte Ltd and other matters

[2024] SGHC 305

General Division of the High Court — Companies Winding Up Nos 205, 207 and 208 of 2024
Vinodh Coomaraswamy J
27 September 2024

18 December 2024

Vinodh Coomaraswamy J:

1 Before me are three related winding-up applications (collectively, "the CWUs") against three connected defendants.[1] Each CWU prays that each defendant be wound up on the primary ground that it is insolvent within the meaning of s 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("the Act") by reason of the presumption found in s 125(2)(*a*) of the Act.[2] I have declined the defendants' request to adjourn each CWU. I have instead made a winding-up order against each defendant on each CWU.[3]

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1 HC/CWU 205/2024, HC/CWU 207/2024 and HC/CWU 208/2024.

2 CWU205, JLWY1 at paras 9–10; CWU207, JLWY1 at paras 9–10; CWU208, JLWY1 at paras 9–10.

3 HC/ORC 5082/2024 in HC/CWU 205/2024, HC/ORC 5077/2024 in HC/CWU 207/2024 and HC/ORC 5076/2024 in HC/CWU 208/2024.

2 The defendants have appealed against my decision to order them to be wound up. I now set out the grounds for my decision. In summary, I have wound up each defendant because: (a) all of the procedural and substantive prerequisites under the Act and its subsidiary legislation for me to make a winding-up order against each defendant under s 125(1)(*e*) of the Act are fulfilled, including the prerequisite that each defendant be insolvent; and (b) no defendant has established any basis for me to disapply the general rule of insolvency practice that a winding-up order will be made in this class of winding-up applications once these prerequisites are fulfilled.

3 In the reasons that follow, I use the word "insolvent" as shorthand for the phrase "unable to pay its debts" within the meaning of s 125(1)(*e*) and s 125(2) of the Act. The substantive financial test envisaged by that phrase is whether a company's current assets exceed its current liabilities such that it is able to pay all of its debts in full "as and when they fall due". That is the sole applicable test of a company being "unable to pay its debts" within the meaning of s 125(2)(*c*) of the Act and its predecessor, s 254(2)(*c*) of the Companies Act (Cap 50, 2006 Rev Ed) (*Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478 ("*Sun Electric*") at [65].

The parties

4 The claimant in all three CWUs is a bank incorporated in Malaysia and doing business in Singapore.

5 The defendant in the first CWU[4] is Bob TX Food Empire Pte Ltd ("Bob TX"). Bob TX was incorporated in June 2018. Its stated principal activity is the retail sale of food. It has a paid-up share capital of $0.7m.[5]

6 The defendant in the second CWU[6] is Valulogistics Pte Ltd ("Valulogistics"). Valulogistics was incorporated in October 2016. Its stated principal activity is the rental and leasing of cars with drivers. It has a paid-up share capital of $0.8m.[7]

7 The defendant in the third CWU[8] is Valusports Pte Ltd ("Valusports"). Valusports was incorporated in February 2012. Its stated principal activity is the wholesale of sporting goods and equipment. It has a paid-up share capital of $1.5m.[9]

8 Mr Ng Yeow Khoon ("Mr Ng") is counsel for the claimant in all three CWUs. Mr Dilip Kumar ("Mr Kumar") is counsel for each defendant in each CWU.

9 The connection between the three defendants is that the same person is the sole shareholder and the sole director of each defendant.[10] That person is one

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4 HC/CWU 205/2024.

5 1st Affidavit of Jonathan Lim Wai Yang dated 5 August 2024 in HC/CWU 205/2024 ("CWU205, JLWY1") at paras 4–5; pp 18–19.

6 HC/CWU 207/2024.

7 1st Affidavit of Jonathan Lim Wai Yang dated 5 August 2024 in HC/CWU 207/2024 ("CWU207, JLWY1") at paras 4–5; pp 18–19.

8 HC/CWU 208/2024.

9 1st Affidavit of Jonathan Lim Wai Yang dated 5 August 2024 in HC/CWU 208/2024 ("CWU208, JLWY1") at paras 4–5; pp 18–19.

10 CWU205, JLWY1 at pp 20–21; CWU 207, JLWY1 at pp 20–21; CWU208, JLWY1 at pp 20–21.

Ms Yap Shiaw Wei ("Ms Yap"). Ms Yap is also a guarantor of the debts that each defendant owes to the claimant.[11] It appears that she is also a guarantor for the debts: (a) that her other companies owe to the claimant; and (b) that her other companies owe to banks other than the claimant (see [18] below).

Procedural history

The CWUs

10 In March 2024, the claimant's solicitors served three letters of demand, one on each defendant.[12] These demands, taken collectively, assert that the defendants are indebted to the claimant in the total sum of just under $2.3m. That sum of $2.3m is broken down as follows:

(a) The claimant asserts that Bob TX is indebted to the claimant in the sum of $1.38m.[13]

(b) The claimant asserts that Valulogistics is indebted to the claimant in the sum of $0.27m;[14] and

(c) The claimant asserts that Valusports is indebted to the claimant in the sum of $0.64m.[15]

11 Each demand goes on, in the usual way, to put each defendant expressly on notice that, if it fails to pay the sum demanded or to secure or compound for

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11 Notes of Argument dated 27 September 2024 ("NA") at p 3 lines 17–21.

12 CWU205, JLWY1 at pp 24–25; CWU 207, JLWY1 at pp 25–26; CWU208, JLWY1 at pp 24–25.

13 CWU205, JLWY1 at p 24.

14 CWU207, JLWY1 at p 25.

15 CWU208, JLWY1 at p 24.

it to the reasonable satisfaction of the claimant within three weeks, that each defendant will be presumed under s 125(2)(*a*) of the Act to be insolvent and may be wound up by the court under s 125(1)(*e*) of the Act.

12 Each defendant has failed to comply with the demand served on it, whether within the stipulated three weeks or at all.[16]

13 In early August 2024, the claimant presented the three CWUs against the three defendants. The claimant did so without commencing civil action against any of the defendants to establish by judgment that that defendant is indebted to the claimant for the reason and in the amounts that the claimant asserted in the demands and now asserts in the CWUs. No defendant, however, even suggests that the CWU presented against that defendant is flawed simply because the claimant has not first secured a judgment against that defendant.

14 At the end of August 2024, the CWUs came up together for hearing before Hri Kumar Nair J. Mr Kumar appeared before Nair J for the defendants and asked for an adjournment to allow Mr Kumar – who had then just been instructed – a reasonable opportunity to take instructions. Nair J accepted Mr Kumar's submission and adjourned the CWUs for a month. He also directed the defendants to file any affidavits they wished to file in opposition to the CWUs within three weeks.[17]

15 The defendants have failed to file any affidavits in opposition to the CWUs, whether in accordance with Nair J's direction or otherwise.

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16 CWU205, JLWY1 at para 8; CWU207, JLWY1 at para 8; CWU208, JLWY1 at para 8.

17 Minute sheet dated 30 August 2024.

16 The adjourned CWUs were then fixed together for hearing before me.

Ms Yap' s application for an interim order

17 While the claimant was pursuing the CWUs against the defendants, it was in parallel pursuing bankruptcy proceedings against Ms Yap in her capacity as the guarantor of the defendants' debts to the claimant.

18 In April 2024, the claimant presented a bankruptcy application against Ms Yap. The claimant's bankruptcy application asserts that she owes the claimant a total sum of $25.86m as the guarantor of the debts of five companies.[18] This sum of $25.86m includes the sum of $2.3m that the three defendants are said to owe to the claimant and which collectively forms the basis of the CWUs (see [10] above). This sum of $25.86m also includes another sum of $23.56m that Ms Yap is said to owe to the claimant as the guarantor of two of her other companies.

19 The claimant's bankruptcy application against Ms Yap followed an earlier bankruptcy application that another bank, CIMB Bank Berhad, had presented against Ms Yap in February 2024 asserting that she owes it $8.39m.[19]

20 To stave off bankruptcy, Ms Yap intends to make a proposal to her creditors for a voluntary arrangement ("a VA") under Part 14 of the Act. In May 2024, as a first step towards proposing a VA, Ms Yap sought protection from her creditors by applying for an interim order ("an IO") under s 276(1) of the

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18 HC/B 1140/2024; Affidavit of Jonathan Lim Wai Yang dated 2 April 2024 at para 5 and p 11.

19 HC/B 770/2024; 1st Affidavit of Phua Sim Guan (Pan Senyuan) dated 29 February 2024 at para 5 and p 16.

Act.[20] The application for an IO was opposed by three of her bank creditors: the claimant, CIMB Bank Berhad and Maybank Singapore Limited.[21]

21 In July 2024, Assistant Registrar Tan Ee Kuan dismissed Ms Yap's IO application. In September 2024, Mohamed Faizal JC dismissed Ms Yap's appeal to a judge in chambers[22] against AR Tan's dismissal of the IO application (see *Re Yap Shiaw Wei (RHB Bank Bhd and others, non-parties)* [2024] SGHC 232 at [2] and [65]).

The parties' submissions

22 At the hearing of the CWUs before me, Mr Ng for the claimant invites me to make a winding-up order against each defendant.[23] Mr Ng submits that the papers are in order and informs me that, since the CWUs were presented, the defendants have not even made any proposals to the claimant for repayment, let alone any actual repayments.[24]

23 Mr Kumar for the defendants invites me to adjourn the CWUs for four weeks.[25] He informs me that Ms Yap has filed an appeal ("the Appeal") to the Appellate Division ("AD") against Faizal JC's decision to refuse her an IO (see [21] above).[26] Mr Kumar informs me, further, that the AD Registry has not accepted the Appeal or assigned an appeal number or a date to the Appeal,

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20 HC/OSB 47/2024; NA at p 3 lines 19–24.

21 NA at p 4 lines 27–28.

22 HC/RA 120/2024 in HC/OSB 47/2024.

23 NA at p 3 lines 7–8.

24 NA at p 2 line 34 to p 3 line 10.

25 NA at p 4 lines 3–4.

26 AD/CA 78/2024.

apparently because of Ms Yap's difficulties in furnishing the requisite security for costs.[27]

24 Mr Kumar seeks a four-week adjournment of the CWUs for one and only one reason: in order to allow the AD Registry to fix a date for the Appeal.[28] The following is the sum total of Mr Kumar's submission in support of the adjournment.[29]

> The sole director of the company is Ms Yap Shiau Wei. She is the sole director. And I am instructed that she is also a guarantor of the loans taken by all three defendants from the claimant. Ms Yap has applied for an interim order for an individual voluntary arrangement to make payment to all the creditors.
>
> The said application was dismissed by the assistant registrar. Then an appeal was made to the judge in chambers. And it was heard before Faizal JC. Who also dismissed the appeal.
>
> So we are instructed by Ms Yap to file an appeal to the Appellate Division. The appeal has been filed, but due to the issue of security for costs, there has been some delay. And so, no appeal number or date has been given by the registry yet.
>
> So my humble request is that since the appeal for the IVA to pay the creditors is pending, we humbly request that this matter be adjourned for four weeks pending a date being given for the appeal. I am just projecting forward. If the appeal is successful and Ms Yap is allowed to proceed with the IVA, this would be beneficial to all creditors including the claimants in all these three matters.
>
> So in conclusion, I just humbly request if the court could allow a four-week adjournment.

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27 NA at p 3 lines 25–28.

28 NA at p 3 lines 29–31.

29 NA at p 3 line 17 to p 4 line 4.

25 Mr Kumar's application for a four-week adjournment to allow a date to be given for the Appeal is unburdened by both evidence and reasons.

26 The absence of evidence arises because, as I have mentioned, the defendants have filed no affidavits in opposition to the CWUs (see [15] above). This is despite the defendants having sought and having been granted an adjournment precisely in order to do so (see [14] above).

27 The absence of reasons is illustrated by the following exchange that I had with Mr Kumar following his application for the adjournment:[30]

> Ct: The IVA is in relation to Ms Yap's personal bankruptcy status and is a method by which she hopes to avoid bankruptcy by proposing what is the equivalent of a scheme of arrangement with her creditors, right?
>
> DC: That is correct, Your Honour.
>
> Ct: And under her IVA is she proposing to make full payment of <u>all</u> the debts for which she is a guarantor?
>
> DC: Yes, those are my instructions.
>
> Ct: Over what period of time?
>
> DC: In terms of period of time, I have no instructions on that. But I hope that it will be within reasonable time.
>
> Ct: And why should the companies not be wound up simply because the guarantor is seeking to avoid bankruptcy through an IVA?
>
> DC: My instructions are that Ms Yap is intending to try and save the companies that she is a director of. If she is successful with the IVA and she can muster a plan to make payment to the creditors, then it will save the companies as well.
>
> Ct: You refer to mustering a plan: you mean she does not have a plan at the moment?

[30] NA at p 4 line 5 to p 5 line 21.

DC: In terms of the IVA, my instructions are that she has got some finances, but with regard to whether the whole thing is sorted out, I have no instructions on that.

Ct: And who was opposing the IVA?

DC: RHB Bank, CIMB Bank. I believe these are the two banks. And also Maybank, Your Honour.

Ct: And what are the grounds of appeal?

DC: That she be given an opportunity---

Ct: No, that's what you want. What are you saying that the AR and Faizal JC did wrong in dismissing the IVA?

DC: Faizal JC stated that regardless of whether under the IVA or whether she is made a bankrupt, it would still proceed, for the assets in her name to be sold, and it may not make any difference. I am just briefly saying what Faizal JC said.

Ct: I asked you for your grounds of appeal.

DC: The grounds for the appeal, Your Honour?

Ct: Yes.

DC: The grounds for the appeal is [*sic*] that she be given an opportunity to apply for an IVA to make arrangements for payments to the creditors.

Ct: So the appeal is not on the basis that the AR or Faizal JC made any mistake in dismissing her application?

DC: Not to say mistake *per se* but that she be given an opportunity to proceed with the IVA considering that she has a genuine intention to pay the creditors. And she has a view of what financing she can obtain to make the payment to the creditors also. And she is just asking the court if she can be given an opportunity to proceed with an IVA arrangement.

Ct: Anything else?

DC: No, those are the issues.

[emphasis in original in underline]

28 Mr Ng opposes Mr Kumar's application to adjourn the CWUs. He makes two broad points. First, on a winding-up application against a company, it is irrelevant that a guarantor of the company's debts intends to make a

proposal for a VA to her creditors. Second, even if her intention were relevant, Ms Yap's intended VA is far too speculative. Mr Ng's submission in full is as follows:[31]

> I would submit that whatever the guarantor Ms Yap is doing, that is totally irrelevant to the companies' liabilities. As far as her proposal is concerned, the defendant is simply saying that there are certain properties that are owned by her, and she is hoping that those properties will be sold *en bloc* in a collective sale. And hopefully those prices will be sufficient to repay all her creditors. That is the thrust of her proposal. That is why it was rejected by both the AR and Faizal JC: because there was no certainty of when the payment would come in. Because that would depend on the properties being successfully sold *en bloc*. And we have no idea of what prices the *en bloc* sale can fetch.
>
> But at the end of the day, whatever Ms Yap is doing, the IVA will not extinguish the liabilities owing by the companies to the creditors. So that is a red herring. The appeal has nothing to do with the three CWUs before Your Honour this morning.
>
> They were given an opportunity to file an affidavit. And as Mr Kumar has told Your Honour, he does not intend to pursue that course of action. And they are definitely not in a position to make payment.
>
> In view of the fact that they are clearly insolvent, we ask for winding up orders to be made against all three companies.

29 Although Mr Kumar was given an opportunity to reply to Mr Ng's submissions, he declined that opportunity. He chose instead to rest on his initial submissions (set out at [24]–[25] above) and on his responses to my queries on them (set out at [27] above).[32] Mr Kumar must therefore be taken to accept that Mr Ng has accurately summarised the VA that Ms Yap intends to propose to her creditors. Thus, it appears, Ms Yap's VA depends entirely on her selling a number of strata-titled properties that she owns through a collective or *en bloc*

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31 NA at p 5 line 23 to p 6 line 11.

32 NA at p 6 lines 12–14.

sale at a price which incorporates a sufficient premium to allow her to pay all of her creditors in full.

30 I accept Mr Ng's submissions and reject Mr Kumar's applications to adjourn the CWUs, whether for four weeks or for any other period, and whether that period is shorter or longer than four weeks.

The prerequisites for a winding-up order are fulfilled

31 As my starting point, I find that all of the procedural and substantive prerequisites under the Act and its subsidiary legislation for me to make a winding-up order against each defendant under s 125(1)(*e*) of the Act are fulfilled.

32 As far as the procedural prerequisites are concerned, the Official Receiver has confirmed that the papers in all three CWUs are in order.[33]

33 As far as the substantive prerequisites are concerned, each defendant must be taken to accept the following four points: (a) that it is indebted to the claimant; (b) that it is indebted to the claimant for the reasons and in the sum asserted in the CWU against it; (c) that it is presumed under s 125(2)(*a*) of the Act to be insolvent; and (d) that it is unable to adduce positive evidence to prove that it is in fact *not* insolvent.

34 The defendants must be taken to accept these four points for three reasons.

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[33] NA at p 3 lines 9–10.

35 First, no defendant has ever disputed – whether on genuine and substantial grounds or otherwise – the existence or the quantum of its indebtedness to the claimant. It is therefore immaterial that the claimant has not secured a judgment against any defendant establishing that defendant's indebtedness to the claimant. That is no doubt why no defendant even suggests that the claimant has no right to present the CWU against that defendant simply because the claimant has not first secured a judgment against it (see [13] above).

36 Second, no defendant has filed any affidavit setting out any facts on which it relies to argue that it does not come within s 125(1) of the Act. This is despite the CWUs having been adjourned for a month for the express purpose of allowing the defendants to produce evidence opposing the CWUs (see [14] above).

37 Finally, Mr Kumar submits only that I should *adjourn* the CWUs (see [23]–[25] above). He raises no point of law or even of fact, from the bar and merely on instructions, to submit that I should *dismiss* the CWUs.[34]

The discretion not to make a winding-up order

38 Although I have started by making the point that the claimant has fulfilled all the prerequisites for a winding-up order under s 125(1) of the Act, that cannot be where I end. Fulfilling these prerequisites merely enlivens the court's discretion to make a winding-up order. By its express terms, s 125(1) confers on the court no more than a discretion to make a winding-up order (*Sun Electric* at [84]). A finding that these prerequisites have been fulfilled, therefore, does not confer on the petitioning creditor a substantive entitlement to a winding-up order or impose on the court a substantive duty to make a winding-

[34] NA at p 3 lines 12–16.

up order. In addition, the express terms of s 128(1) of the Act empower the court, even if these prerequisites are fulfilled, to make one of three types of orders instead of a winding-up order: (a) an order dismissing the winding-up application, with or without costs; (b) an order adjourning the winding-up application, conditionally or unconditionally; and (c) any interim or other order that the court thinks fit.

39 My next point, therefore, is to acknowledge that I do have a discretion under s 125(1) of the Act not to make a winding-up order and that I have a further discretion under s 128(1) of the Act to accede to Mr Kumar's submission and adjourn the CWUs. Nevertheless, for the reasons that follow, I decline to exercise that discretion.

40 These two discretions – the one arising under ss 125(1) of the Act and the other under s 128(1) of the Act – are, quite obviously, judicial discretions. They must therefore be exercised on a principled basis, adhering to reason and justice, rather than on opinion or a whim; and they must be exercised so as to produce results that are legal, regular and predictable rather than results that are arbitrary, vague or fanciful (see *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 at [42], citing *Sharp v Wakefield* [1891] AC 173 at 179; see also *Chng Yew Chin v Public Prosecutor* [2006] 4 SLR(R) 124 at [67], overruled on a different point in *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 at [42]–[47]).

41 In the analysis that follows, I consider the principles on which these discretions are to be exercised judicially in a winding-up application that falls into the same class as the CWUs, *ie*, one with the following features:

(a) it is presented by a creditor of a company founded on a debt that the defendant owes to the creditor;

(b) it seeks to place the defendant in compulsory liquidation under s 125(1)(*e*) of the Act, *ie*, on the ground that the defendant is insolvent;

(c) the defendant either admits or does not dispute that it owes the debt to the petitioning creditor; and

(d) the defendant:

(i) admits that it is insolvent;

(ii) is deemed to be insolvent by s 125(2)(*a*) of the Act; or

(iii) is found by the court to be insolvent.

The general rule

42 Despite the discretionary nature of the court's task under ss 125(1) and 128(1) of the Act, the general rule in this class of winding-up applications is that the petitioning creditor has a *prima facie* entitlement, *ex debito justitiae*, to a winding-up order (*Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 at [61]), citing *Buckley on the Companies Acts* (Butterworth & Co (Publishers) Ltd, 13th Ed, 1957) at p 450, followed in *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 ("*BNP*") at [15], followed in *Sun Electric* at [84]).

43 This general rule goes back to the 19th century and to the very beginnings of modern insolvency law. Indeed, insolvency courts have said from the 19th century to the present day that it is ordinarily the court's duty to make a winding-up order on an application in this class. As Lord Cranworth put it in

Bowes v The Directors of The Hope Life Insurance and Guarantee Company (1865) 11 HLC 388 at 402, cited with approval in *BNP* at [15]:

> [I]t is not a discretionary matter with the Court when a debt is established, and not satisfied, to say whether the company shall be wound up or not; that is to say, if there be a valid debt established, valid both at law and in equity. One does not like to say positively that no case could occur in which it would be right to refuse it; but ordinarily speaking, it is the duty of the Court to direct the winding up.

44 This general rule cannot be a substantive rule of insolvency law. That is so even though it is always expressed in substantive terms, *ie*, as a creditor's "entitlement" (see [42] above) and as the court's "duty" (see [43] above). A substantive rule to that effect would directly contradict Parliament's intent in using expressly discretionary terms to enact both ss 125(1) and 128(1) of the Act. It would also directly contradict long-standing and binding authority that accepts that s 125(1) and its predecessor provisions operate merely to enliven a discretion and not to confer an entitlement or to impose a duty (see [38] above).

45 This general rule is instead merely a procedural rule of insolvency practice. It is one of the many rules of insolvency law and practice that is not found in the primary or even subsidiary insolvency legislation but that the insolvency courts have adopted and applied through "accretion of judicial decisions" (see, in a different context, *In re Bank of Credit and Commerce International SA (No 10)* [1997] Ch 213 at 247C–D (*per* Sir Richard Scott VC), cited in *Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (deugro (Singapore) Pte Ltd, non-party)* [2014] 2 SLR 815 at [60]).

46 This general rule has been adopted as a procedural rule of insolvency practice because it advances simultaneously three interests that the insolvency courts have, ever since their founding, been astute to protect: (a) the interests of

an insolvent company's actual creditors taken as a whole; (b) the interests of an insolvent company's potential creditors taken as a whole; and (c) the interests of the broader economy in which the insolvent company operates.

47 I now elaborate on these three interests.

The first interest: actual creditors

48 Making a winding-up order as a general rule when the prerequisites for doing so are fulfilled advances the interests of its actual creditors taken as a whole for three reasons.

(1) The general rule prevents dissipation

49 First, a winding-up order prevents dissipation of the company's assets. It does this by preventing the company's controllers from continuing to dissipate its dwindling assets by pursuing an *ex hypothesi* failed business to the prejudice of its actual creditors taken as a whole. A company's controllers include its management, its directors and also ultimately its shareholders to whom its directors and management are answerable.

50 A winding-up order prevents controllers from dissipating the company's assets for three reasons.

51 A winding-up order extinguishes the company's right and power to carry on business (*In re International Tin Council* [1987] Ch 419 at 445, citing B H McPherson, *The Law of Company Liquidation* (The Law Book Company Limited, 2nd Ed, 1980) at p 4). Even the company's liquidator, once appointed, may not continue the company's business unless it is "necessary for the beneficial winding up of the company" and, even then, only with prior

authorisation from either the court or the committee of inspection (s 144(1)(*a*) of the Act).

52 A winding-up order extinguishes the directors' powers to manage the company and thereby to direct how its assets are applied (*Goode on Principles of Corporate Insolvency Law* (Kristin van Zwieten gen ed) (Sweet & Maxwell, 5th Ed, 2018) ("*Goode*") para 5-24). The powers of the directors cease upon a winding-up order being made (*Goode* at para 2-07 and Ian Fletcher, *The Law of Insolvency* (Sweet & Maxwell, 5th Ed, 2017) ("*The Law of Insolvency*") at para 22-076; *cf*, s 164(2) of the Act, in the context of a members' voluntary liquidation).

53 A winding-up order establishes the rights and interests of the creditors of a company as paramount by extinguishing the final remnants of any rights or interests that shareholders have in how the company is managed and how its assets are applied (*Walker v Wimborne* (1976) 137 CLR 1; *Nicholson v Permakraft (NZ) Ltd (in liq)* [1985] 1 NZLR 242; *Kinsela & Anor v Russell Kinsela Pty Ltd (in liq)* (1986) 10 ACLR 395 at 401 (*per* Street CJ), cited in *Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 at [49]; and *BTI 2014 LLC v Sequana SA and others* [2022] 3 WLR 709 at [76], [111], [138], [247] and [248]), at least in the absence of a liquidation surplus.

(2) The general rule maximises value

54 Second, a winding-up order maximises the company's remaining value for the benefit of its actual creditors taken as a whole. It does this by preventing a disorderly realisation of the company's assets.

55 Under s 133(1) of the Act, a winding-up order imposes an automatic court-controlled stay upon individual creditor action against the company. Individual creditor action is inevitably self-interested and uncoordinated. It therefore inevitably leads to the company's business being dismembered and its assets being realised piecemeal and at distressed values. A winding-up order maximises the company's value by preventing individual creditor action from eroding the realisable value of what remains of its assets.

(3) The general rule ensures *pari passu* distribution

56 Third, a winding-up order ensures that the company's assets are distributed *pari passu* to the company's creditors. It does this by preventing the company's controllers from applying a company's assets to pay in full only the creditors they favour, leaving disfavoured creditors unpaid. It also prevents certain creditors from seizing the company's assets through individual creditor action and thereby recovering their debts in full by self-help (see ss 133(1) and 206(1) of the Act) while leaving other creditors unpaid.

57 Subject only to statutory intervention on policy grounds (see s 203(1) of the Act), it is a fundamental principle of insolvency law that the loss occasioned by a company's insolvency be distributed *pari passu*, *ie*, equally across the general body of its unsecured creditors as a whole (*The "Hull 308"* [1991] 2 SLR(R) 643 at [14]; *The Commissioners for Her Majesty's Revenue and Customs v The Football League Ltd (The Football Association Premier League Ltd, intervening)* [2012] EWHC 1372 (Ch) at [3]–[4]; and *Strategic Value Capital Solutions Master Fund LP and others v AGPS BondCo plc* [2024] EWCA Civ 24 at [71]). A winding-up order ensures a *pari passu* distribution (s 172 of the Act; see also *Goode* at para 8-02).

(4) Conclusion

58 A winding-up order gives legal effect to the commercial insight that it is the actual creditors of a company who have the real economic interest in its assets and their application upon insolvency. It therefore transfers control of the company's assets and the power to direct the application of those assets to a court-appointed representative of the company's actual creditors taken as a whole, *ie*, a liquidator.

The second interest: potential creditors

59 Making a winding-up order as a general rule when the prerequisites for doing so are fulfilled advances the interests of the company's potential creditors. A winding-up order prevents the company's controllers from incurring new and irrecoverable debt to potential creditors in pursuing an *ex hypothesi* failed business.

60 Once a winding-up order is made, only the liquidator has the power to raise new credit for the company (see, *eg*, s 144(2)(*f*) of the Act), and even then, only to the extent necessary for winding up the company and distributing its assets. Any such credit will then be a cost of the winding-up (see *Chee Kheong Mah Chaly and others v Liquidators of Baring Futures (Singapore) Pte Ltd* [2003] 2 SLR(R) 571 at [51]) and recoverable in priority under s 203(1)(*a*) of the Act.

61 A winding-up order gives legal effect to the commercial insight that an insolvent company should cease trading rather than incur new and irrecoverable debt to potential creditors.

The third interest: the broader economy

62 Finally, making a winding-up order as a general rule when the prerequisites for doing so are fulfilled advances the interests of the broader economy in which an insolvent company operates.

63 An insolvent company is, *ex hypothesi*, a firm that has proven itself unable to put its assets to economically productive use by generating a synchronised surplus of income over expenditure (see *UNCITRAL Legislative Guide on Insolvency Law*, UN Publication Sales No E.05.V.10 (2004) ("*Legislative Guide*") at p 31, para 35). Where a firm finds itself in this position, it is in the interests of the broader economy in which it operates for the assets of that firm to be freed from its controllers' dominion and returned to the pool of assets circulating in that economy.

64 Putting an insolvent company's assets back into circulation in the broader economy gives other actors in the economy an opportunity to acquire those assets and to deploy them under stronger and more capable management in a new business that they consider has a chance of generating a synchronised surplus of income over expenditure. In other words, a winding-up order terminates a firm, and "[t]urnover in the population of firms is central to economic change and progress because it leads to the reallocation of productive resources from nonsurviving to surviving firms, and to the reallocation of management rights from one set of executives to another" (George P. Baker, "Survivorship and the Economic Grim Reaper" (2002) 18(2) JLEO 324 at 325 and 327).

Benefits of applying the general rule early

65 It is important to add a further point. Given that insolvency courts have adopted the general rule in the class of winding-up applications defined at [41] above because it simultaneously advances the three interests identified at [46] above, it maximises the advancement of these interests to make a winding-up order sooner rather than later, *ie*, at the earliest opportunity to do so.

66 A winding-up order made at the earliest opportunity minimises the opportunity for a company's controllers to dissipate its assets to the prejudice of its actual creditors and minimises the opportunity for its controllers and its actual creditors to undermine the *pari passu* principle. An early winding-up order also minimises the opportunity for controllers to turn potential creditors into actual creditors who are owed new and irrecoverable debt or to turn actual creditors into creditors who are owed debt that has been irrecoverable enlarged. An early winding-up order also hastens the recirculation of the company's assets into the broader economy for redeployment that is economically productive.

The discretion to disapply the general rule

67 The effect of the general rule is to put the burden on the defendant in this class of winding-up applications to bring itself within an exception to the general rule, and thereby to persuade an insolvency court to disapply it. The Court of Appeal in *Sun Electric* (at [85]) set out a non-exhaustive list of the factors that may go towards persuading an insolvency court to disapply the general rule. These factors include the viability of the company and the interests of stakeholders. As Court of Appeal put it in *Sun Electric* (at [85]):

> [T]here are exceptions to this general rule and in exercising its discretion, the court should consider factors such as the viability of the company, and the economic and social interests of the company's employees, suppliers, shareholders, non-

> petitioning creditors, customers and other companies in the group enterprise …

68 It is necessary to consider carefully the relevance of these factors in disapplying the general rule.

69 In the 19th century, when the insolvency courts adopted the general rule, insolvency law was seen as having three principal objectives: (a) maximising the return to an insolvent company's creditors; (b) distributing its assets equitably to its creditors; and (c) identifying the causes of its insolvency and sanctioning any breaches of the standards of commercial morality that may have caused or contributed to the insolvency (*Goode* at paras 2-04–2-06; Report of the Review Committee on Insolvency Law and Practice (Cmnd 8558, 1982) ("*Cork Committee Report*") at paras 198(c) and 198(e)–(h)).

70 In the late 20th century, the "rescue culture" revolution explicitly recognised that an insolvent company may nevertheless be viable, in the sense that the company's underlying business may be viable in the medium or long term even though the company is experiencing financial distress in the short term or is even actually insolvent (see *Goode* at 11-03; *Cork Committee Report* at paras 198(j) and 495–498; *Legislative Guide* at p 21, para 2). I shall refer to a company in this position as a "viable company".

71 As a result of embracing the rescue culture, insolvency law now explicitly recognises a fourth objective: allowing a viable company an opportunity to restructure its debts or to rehabilitate its business in order to avoid

liquidation (*Goode* at para 1-33; *Legislative Guide* at p 10, para 4 and p 22, para 4).

72 Although this fourth objective was the last to be explicitly recognised, it is not inconsistent with the underlying imperatives of insolvency law. Extinguishing a viable company's right and power to carry on business and recirculating its assets is economically inefficient. It imposes economic costs on the company and imposes economic and social costs on "the company's employees, suppliers, shareholders, non-petitioning creditors, customers and other companies in the group enterprise" (see [67] above). Further, it imposes these costs without necessarily bringing any tangible economic advantage to its unsecured creditors. Indeed, liquidating a viable company is capable of causing tangible economic prejudice to unsecured creditors in that allowing it a reasonable opportunity for restructuring or rehabilitation may eventually yield creditors a better return on their debt than a liquidation.

73 Before insolvency law recognised the fourth objective, the discretion to disapply the general rule may well have played a valuable role in enabling the court to allow a viable company an opportunity for restructuring or rehabilitation. The company could use the time during an adjournment of a winding-up application to raise the money to pay its creditors in full, to hive down its business to achieve the survival of the company or its undertaking in whole or in part, to reach a compromise or arrangement with its creditors or, at the very least, to achieve a more advantageous realisation of its assets than in a liquidation.

74 Today, the scope for the discretion to disapply the general to play a role in advancing the fourth objective is much diminished. Parliament has now enacted bespoke statutory restructuring regimes that allow a viable company an

opportunity to restructure its debts or rehabilitate its business and thereby avoid the economic inefficiency and economic and social costs associated with liquidation.

75 For example, if a viable company's controllers command the trust and confidence of its creditors, it can formulate and propose a compromise or arrangement with its creditors under s 64(1) of the Act without the directors ceding control of the company to an external administrator. Under s 64(8) read with s 64(14) of the Act, the company will enjoy an automatic moratorium against individual creditor action from the moment an application under s 64(1) of the Act is filed. The economic and social interests of other companies in the group enterprise are addressed by s 65 of the Act. Under s 65(1) of the Act, other companies in the same group as the applicant can themselves apply for a moratorium against individual action by their creditors at the same time as the applicant applies under s 64(1) of the Act for its own moratorium.

76 If a viable company cannot avail itself of s 64(1) of the Act because it cannot satisfy all of the conditions set out in ss 64(2) and 64(4) of the Act, or if it chooses not to avail itself of s 64(1) of the Act because s 64(9) of the Act precludes it from enjoying the automatic moratorium under s 64(8) of the Act, it can instead formulate and propose to its creditors a compromise or arrangement under s 210(1) of the Companies Act 1967 (2020 Rev Ed) ("the Companies Act") read with s 63(2) of the Act. Where such a compromise or arrangement "has been proposed between the company and its creditors or any class of such creditors" within the meaning of s 210(10) of the Companies Act,

the company can seek and secure from the court a moratorium against individual creditor action under and in accordance with that subsection.

77 If a viable company's controllers no longer command the trust and confidence of its creditors, its controllers can cede control of the company to an external administrator in the form of a judicial manager appointed under s 91(1) of the Act read with s 90 of the Act. Once appointed, the judicial manager has a statutory duty to formulate and propose to creditors under s 107 of the Act a plan to achieve one or more of the purposes set out in s 89(1) of the Act, *ie*: (a) the survival of the company or its undertaking in whole or in part as a going concern; (b) the approval of a compromise or arrangement under s 210 of the Companies Act or under s 71 of the Act; or (c) a more advantageous realisation of the company's assets or property than in a liquidation. If it ever appears to the judicial manager that one of the purposes set out in s 89(1) of the Act has been achieved or that none of those purposes is capable of achievement, s 112(1) of the Act imposes a duty on him to apply for the company to be discharged from judicial management.

78 Given the restructuring regimes that are now available to a viable company to restructure its debts or rehabilitate its business, there is far less reason to take those factors into consideration when exercising the discretion to disapply the general rule. At the very least, it will be difficult for a company to seek an extended adjournment or repeated adjournments of a winding-up application by relying on these factors alone.

79 I say that for three reasons.

80 First, and foremost, an insolvency court helps those debtors that help themselves. It behoves a viable company to invoke one of the restructuring

regimes as soon as it experiences financial distress or anticipates actual insolvency. That point in time will inevitably be long before the general rule comes into play at the hearing of a winding-up application. In fact, that point in time is likely to be even before a winding-up application is advertised, before a winding-up application is presented, before the presumption of insolvency under s 125(2)(*c*) of the Act arises, before a demand designed to trigger that presumption is served and before the company fails for the first time to pay a debt in full when it falls due. A company that is forward looking and proactive will invoke one of these restructuring regimes early. It will thereby immediately have a substantive legal entitlement either to a stay or dismissal of any pending winding-up application (see ss 64(8)(*a*) and 95(1)(*a*) of the Act) or a substantive legal entitlement to seek such a stay in the exercise of a statutory discretion designed for the very purpose of allowing a viable company an opportunity to restructure its debts or to rehabilitate its business (see s 64(1)(*a*) of the Act and s 210(10) of the Companies Act). It will not have to rely on the court's discretion to disapply the general rule upon the hearing of the winding-up application in order to secure *de facto* procedural protection from the petitioning creditor.

81 Second, Parliament has put in place a number of safeguards at each step of each of these restructuring regimes. These safeguards strike a carefully thought out, policy-driven balance between the interests of the company, its creditors, its shareholders, its controllers, its stakeholders and the broader economy. In performing its gatekeeping role in these restructuring regimes, an insolvency court must have regard, within the strictures of those regimes, to the viability of the company and to all of these competing interests. In particular, an insolvency court exercising this gatekeeping role must discern whether the company seeking permission to pass through the gate is indeed a viable company or whether it is nothing more than a failed company desperately seeking to dress itself up as a viable company merely to buy time and to advance

the interests of its shareholders and controllers at the expense of creditors and stakeholders. A court hearing a winding-up application will be reluctant to allow even a viable company to bypass these safeguards and strictures, to allow a winding-up application to be presented, advertised and heard and then to rely on the court's *ad hoc* procedural discretion to disapply the general rule simply upon the company's shareholders or controllers asserting that it is a viable company. A court hearing a winding-up application is even more likely to look askance at any plea by the company's shareholders or controllers at this latest of late stages that disapplying the general rule is warranted simply to protect the economic and social interests of the company's stakeholders.

82 Third, relying on the discretion to disapply the general rule as the *ad hoc* equivalent of a statutory restructuring regime creates moral hazard. It gives a viable company and its controllers a perverse incentive to delay invoking any of the restructuring regimes for as long as possible, until the eleventh, twelfth or even the thirteenth hour. Incentivising this delay increasingly shifts the economic and social risks of insolvency over time from shareholders to creditors, employees and other stakeholders. Invoking a restructuring regime early – *ie*, as soon as a company experiences financial distress and well before insolvency – maximises the chances of a restructuring or rehabilitation succeeding. Engaging creditors proactively and early is also likely to foster a relationship of trust and confidence between the company and its creditors. Just as winding up a company that is not viable early promotes the first three principal objectives of insolvency law (see [68] above), withdrawing an perverse incentive for even a viable company to delay invoking a restructuring regime promotes the fourth objective of insolvency law (see [72] above).

83 In this context, a defendant that seeks to avoid a winding-up order on the ground that it is a viable company would be well advised to invoke a

restructuring regime, and to do so early, rather than to rely on the discretion to disapply the general rule at the hearing of a winding-up application simply on the grounds that the defendant is a viable company or simply to protect the social and economic interests of the company's stakeholders. A far more compelling factor will be a reasoned view taken by the general body of the company's creditors taken as a whole as to whether the court should disapply the general rule (see *In re Vuma Ltd* [1960] 1 WLR 1283 and *Re Longmeade Ltd (In liquidation)* [2016] EWHC 356 (Ch) at [51]–[52]).

84 Purely by way of example, a court may disapply the general rule and adjourn a winding-up application if: (a) the defendant seeks an adjournment in order to pay or compound its debts; (b) the general body of the defendant's creditors taken as a whole agrees to the adjournment; *and* (c) the adjournment is consistent with the court's case management policies both in terms of the length of the adjournment now sought and the number of adjournments already granted.

85 By way of counterexample, however, a court may be reluctant to disapply the general rule and to adjourn a winding-up application if: (a) the company has failed to put any evidence before the court to establish that it is a viable company; *or* (b) the company seeks a lengthy adjournment or repeated adjournments despite opposition from its general body of creditors taken as a whole. A defendant that seeks to stave off a winding-up order on any other grounds ought to invoke one of the restructuring regimes (see [75]–[77] above), and to do so much sooner rather than later (see [83] above).

No basis to disapply the general rule

86 The question I must now address is not whether each defendant is insolvent within the meaning of s 125(1)(*e*) of the Act read with s 125(2)(*a*) of

the Act. I have addressed and answered that question by finding that all of the prerequisites for me to make a winding-up order against each defendant under s 125(1) of the Act are fulfilled (see [31]–[37] above). This includes, most obviously, the prerequisite that each defendant be insolvent within the meaning of s 125(1)(*e*) and s 125(2) of the Act.

87 The question I now address is simply whether any defendant has established a basis on which I should exercise my procedural discretion, even though it is undisputed and indisputable that each defendant is insolvent, to: (a) disapply the general rule that applies in this class of winding-up applications (see [41] above); and (b) adjourn each CWU under s 128(1) of the Act.

88 No defendant has established any basis on which I should exercise these discretions in the face of creditor opposition. I say that for three reasons: (a) no defendant has invoked a restructuring regime; (b) Ms Yap's intention to pay the claimants does not render any defendant a viable company; and (c) the basis for seeking an adjournment of the CWUs is too speculative.

89 I now elaborate on these three reasons.

Defendants have not invoked a restructuring regime

90 First, no defendant has made any effort to help itself by invoking a restructuring regime. There are only two possibilities: either a given defendant is a viable company (see [70] above) or is not a viable company. If a given defendant is a viable company and wants blanket protection from its creditors to stave off liquidation while Ms Yap's VA meanders to a conclusion, it should have long ago invoked one of the restructuring regimes available to it (see [74]–[77] above). On the other hand, if a given defendant is not a viable company, the sooner they are wound up the better (see [65]–[66] above).

91 The fact is, however, that no defendant even suggests that it is a viable company. The desire of a shareholder, such as Ms Yap, to stave off liquidation despite creditor opposition is not a relevant factor in the exercise of the discretion to adjourn a winding-up application. Unless and until an insolvent company invokes a restructuring regime, its fate lies in the hands of its general body of creditors taken as a whole. An insolvent company has, *ex hypothesi*, wiped out shareholders' capital. If it fails to invoke a restructuring regime, it lives, in commercial and economic reality, on money and time that it borrows from creditors. Creditors' desires must in these circumstances prevail over shareholders' desires.

92 An insolvent company cannot presume that it will be able to stave off liquidation by doing nothing to help itself and simply relying on the insolvency court's discretion to disapply the general rule at the latest of late stages, *ie*, at the hearing of a winding-up application.

Ms Yap's intention to pay the claimant does not establish viability

93 Second, Ms Yap's stated intention to pay a given defendant's debt to the claimant in full is incapable on any view of showing that that defendant is a viable company (see [70] above) in the sense that its insolvency is reversible in the medium or long term.

94 Ms Yap's stated intention does not and cannot detract from the fact that each defendant is now insolvent. That is because each defendant is presumed to be insolvent by reason of s 125(2)(*a*) of the Act. Further, no defendant has made any attempt to prove that it is in fact not insolvent (see [33] above), *eg*, by making payment of its debt to the claimant (see *Sun Electric* at [104]–[105]) or in any other way.

95 Even on the sole applicable test for insolvency under s 125(2)(*c*) of the Act (*Sun Electric* at [65]), Ms Yap's stated intention does not mean that any given defendant is a viable company in the sense that its insolvency is reversible in the medium or long term. No defendant has made any attempt to show that it is in fact able to pay its debts in full as they fall due out of its *own* current assets in the medium or long term as opposed to out of Ms Yap's assets. The test under s 125(2)(*c*) of the Act is "whether the *company's* current assets exceed its current liabilities such that it is able to meet all debts as and when they fall due" [emphasis added]. This test looks at assets *of the company* that are realisable within a 12-month timeframe and compares them to the debts of the company that will fall due within the same time frame (*Sun Electric* at [65]). An insolvent company is not a viable company if it cannot pay its debts in full as they fall due *out of its own current assets*. The fact that those debts may be discharged in the future out a third party's assets does not make the insolvent company a viable company.

96 It is of course true that a court may consider arrangements between a company and prospective lenders, including bankers and shareholders, when determining whether any shortfall in the company's liquid and realisable assets and its cash flow can be made up by borrowings that will be repayable at a time in the future that is later than the time at which its existing debts will fall due (*Sun Electric* at [69(h)]). Ms Yap is the only prospective lender to any of the defendants. But Ms Yap is incapable of lending the money to the defendants that they need to repay the claimant. That is because it is a reasonable inference that Ms Yap is herself insolvent.

97 It reasonable to infer that Ms Yap is insolvent for four reasons. First, there are two bankruptcy applications pending against her brought on the grounds that she is unable to pay debts totalling over $34.25m (see [18]–[19]

above). Second, and in any event, s 276(1) of the Act empowers only an "insolvent debtor" to apply for an IO. Ms Yap's decision to apply for an IO, and to pursue it even on a further appeal to the AD, therefore amounts to an admission that she is indeed an "insolvent debtor". Third, Mr Kumar concedes that Ms Yap is having difficulty furnishing the requisite security for the costs of the Appeal. The quantum of that security is minuscule compared to the combined debts that underlie the two bankruptcy application against her. If she is having difficulty finishing the security, *a fortiori* she is unable to pay those debts. Finally, Mr Kumar submits that Ms Yap needs "reasonable time" to repay her debts (see [25] above).[35] That submission accepts that she is unable to pay those debts in full even though they have fallen due. Ms Yap is therefore not in any position to lend any funds to the defendants. There is also no basis on which I can draw the inference that she will be in any position to do so within the next 12 months (see [100]–[107] below).

98 Even if Ms Yap were solvent and were in a position to lend the necessary funds to a given defendant, that still would not mean that that defendant is a viable company. That is because there is no evidence that that defendants would be able to repay Ms Yap this hypothetical loan when it fell due. That defendant's ability, on this hypothesis, to borrow money from Ms Yap to repay the claimant does not detract from their insolvency (*Goode* at para 4-20) or turn it into a viable company.

99 It would, of course, be different if Ms Yap were able today to tender full payment under her guarantees of the debts that the defendants owe to the claimant together with all contractual interest, fees and charges. But even that would be a ground for disapplying the general rule only if a given defendant had

[35] NA at p 4 lines 13–14.

no other creditors or if none of its other creditors was prepared to step forward and be substituted as the petitioning creditor in its CWU pursuant to r 74 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020.

Basis for seeking an adjournment is too speculative

100 Finally, the defendants' basis for seeking an adjournment is far too speculative: it piles contingency upon contingency and speculation upon speculation.

101 The first contingency arises from Ms Yap's difficulty in furnishing the requisite security for the costs of the Appeal. There is no certainty that she will do so. There is therefore no certainty that the Appeal will even proceed to a hearing.

102 Even if Ms Yap furnishes the requisite security for the costs of the Appeal, and even if the Appeal proceeds to a hearing before the AD, the path from the AD hearing the Appeal to Ms Yap repaying her creditors in full is far from a straight line. The defendants have put before me no basis whatsoever on which to assess the prospects of Ms Yap's Appeal succeeding. They have put before me no evidence of: (a) the factual and legal basis for Ms Yap's application for an IO; (b) why AR Tan dismissed that application; (c) why Faizal JC dismissed Ms Yap's appeal from AR Tan's decision; (d) the grounds Ms Yap intends to advance on the Appeal; or (e) the prospects, even in tentative terms, of the Appeal succeeding.

103 Indeed, the entire basis of the Appeal appears to be nothing more than Ms Yap's desire to throw herself at the mercy of the AD. Mr Kumar appears to

accept that the Appeal is not based on any error on AR Tan's or Faizal JC's part:[36]

> Ct: And what are the grounds of appeal?
>
> DC: That she be given an opportunity---
>
> Ct: No, that's what you want. What are you saying that the AR and Faizal JC did wrong in dismissing the IVA?
>
> DC: Faizal JC stated that regardless of whether under the IVA or whether she is made a bankrupt, it would still proceed, for the assets in her name to be sold, and it may not make any difference. I am just briefly saying what Faizal JC said.
>
> Ct: I asked you for your grounds of appeal.
>
> DC: The grounds for the appeal, Your Honour?
>
> Ct: Yes.
>
> DC: The grounds for the appeal is [*sic*] that she be given an opportunity to apply for an IVA to make arrangements for payments to the creditors.
>
> Ct: So the appeal is not on the basis that the AR or Faizal JC made any mistake in dismissing her application?
>
> DC: Not to say mistake *per se* but that she be given an opportunity to proceed with the IVA considering that she has a genuine intention to pay the creditors. And she has a view of what financing she can obtain to make the payment to the creditors also. And she is just asking the court if she can be given an opportunity to proceed with an IVA arrangement.
>
> Ct: Anything else?
>
> DC: No, those are the issues.

104 Even if I were able to assess the prospects of the Appeal succeeding, and even if I were somehow to form the view that the Appeal has some or even reasonable prospects of succeeding, that view is ultimately immaterial. It is of

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[36] NA at p 4 line 29 to p 5 lines 21.

course only the AD's view of the Appeal that matters. The AD will, as it must, take its own view of the Appeal and may well dismiss the Appeal.

105 Even if the AD allows the Appeal, and even if Ms Yap thereby secures the benefit of an IO to give her the time she needs to formulate a VA, the nominee's report under s 280(1) of the Act may be unfavourable to her. Even if the report is favourable to her, the court may not be satisfied under s 280(5) of the Act that a meeting of her creditors should be summoned to consider her proposal for a VA. Even if the court is satisfied that a meeting should be summoned, Ms Yap's creditors may not approve the VA by special resolution as required by s 282(1) of the Act.

106 Even if the creditors approve the VA by special resolution, there is no evidence before me as to: (a) the likely timeline for the collective sale of Ms Yap's strata-titled properties; (b) the price she is likely to achieve; (c) whether that price will yield sufficient net proceeds of the sale to allow her to repay her debts in full; (d) when the sale is likely to take place; and (e) when she is likely to receive the proceeds of sale. All of this is not merely unknown but is in the final analysis unknowable today.

107 All of these speculations and contingencies mean that the defendants' request is not a simple request for a single four-week adjournment. Even if a four-week adjournment is granted, it will in substance be the first in a series of an indeterminate number of adjournments of indeterminate total length. The evidence that the defendants have chosen to put before me today is wholly lacking to warrant starting down that road. Doing so would be contrary to the objectives that our insolvency law seeks to advance. Doing so would also be contrary to all of the objectives that our active system of case management seeks to advance, not just in insolvency proceedings but in all civil litigation.

Conclusion

108 Each defendant's application to adjourn its CWU amounts to nothing more than a shareholder of an insolvent company throwing herself and her company at the mercy of the insolvency court. The quality of mercy may not be strained as a matter of literature, but its quality is most definitely constrained as a matter of insolvency law and practice. Ms Yap and the defendants have wholly failed to establish any basis for mercy within the applicable constraints.

109 For all the foregoing reasons, I have made a winding-up order on each CWU against each defendant.

Vinodh Coomaraswamy J
Judge of the High Court

Ng Yeow Khoon, Claudia Khoo and Fiona Tham
(Shook Lin & Bok LLP) for the claimant;
Dilip Kumar (Gavan Law Practice LLC) (instructed),
Dube Vinod Kumar (Whitefield Law Corporation)
for the defendants;
Ramesh Chandra (Insolvency & Public Trustee's Office)
for the Official Receiver.