

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

[2024] SGHC 48

Originating Application No 448 of 2023 (Summons No 3815 of 2023)

In the matter of Part 7 of the Insolvency,
Restructuring and Dissolution Act 2018

And

In the matter of Section 107(3)(a) of the
Insolvency, Restructuring and Dissolution
Act 2018

And

In the matter of Golden Mountain Textile
and Trading Pte Ltd (in judicial
management)

Between

Farooq Ahmad Mann (in his capacity as the
judicial manager)

... Applicant

And

Golden Mountain Textile and Trading Pte
Ltd (in judicial management)

... Respondent

GROUNDS OF DECISION

[Insolvency Law — Judicial management — Extension of time]

[Insolvency Law — Judicial management — Whether judicial management order should be extended]

[Insolvency Law — Judicial management — Whether time to put forward statement of proposals should be extended]

[Companies — Receiver and manager — Judicial management order — Whether judicial management order should be extended]

TABLE OF CONTENTS

BACKGROUND FACTS	2
WHETHER THE JUDICIAL MANAGEMENT ORDER SHOULD BE EXTENDED	3
THE APPLICABLE PRINCIPLES	3
MY DECISION: IT WAS APPROPRIATE TO EXTEND THE JUDICIAL MANAGEMENT ORDER IN THIS CASE	8
WHETHER THE TIME FOR THE APPLICANT TO PUT FORWARD THE STATEMENT OF PROPOSALS SHOULD BE EXTENDED	9
THE APPLICABLE PRINCIPLES	9
MY DECISION: IT WAS APPROPRIATE TO EXTEND THE TIME FOR THE APPLICANT TO PUT FORWARD THE STATEMENT OF PROPOSALS	10
CONCLUSION	11

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Farooq Ahmad Mann (in his capacity as judicial manager)
v
Golden Mountain Textile and Trading Pte Ltd (in judicial management)

[2024] SGHC 48

General Division of the High Court — Originating Application No 448 of 2023 (Summons No 3815 of 2023)

Goh Yihan J

12 January 2024

23 February 2024

Goh Yihan J:

1 The applicant, Mr Farooq Ahmad Mann, is the judicial manager of the respondent, Golden Mountain Textile and Trading Pte Ltd. This was the applicant's application for, among other things, (a) the respondent's judicial management period to be extended for a period of 180 days with effect from 30 January 2024; (b) the applicant's appointment as the respondent's judicial manager to be extended for a period of 180 days with effect from 30 January 2024; and (c) the timeline for the applicant to put forward his statement of proposals to be extended to 16 February 2024. The respondent did not object to the application.

2 At the end of the hearing on 12 January 2024, I allowed the applicant's application. Despite the respondent's lack of objection, I still had to be

independently satisfied that it was appropriate for me to allow the various extensions sought. In short, based on the applicant’s submissions, I was satisfied that the extension of the judicial management order would further the statutory purpose provided in s 89(1)(a) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“IRDA”), that is, the respondent’s survival as a going concern. I now provide these grounds of decision to further explain my reasons for my decision. This is especially since there does not appear to be a local decision about the applicable principles in relation to an extension of a judicial management order pursuant to s 111(3)(a) read with s 111(4) of the IRDA.

Background facts

3 I begin with the background facts. The respondent was placed into judicial management on 2 February 2023. The applicant was appointed as its judicial manager. Pursuant to the judicial management order (*viz*, HC/ORC 5429/2023), the respondent’s period of judicial management would have expired on 29 January 2024.

4 On 6 November 2023, the applicant presented a statement of proposals to the respondent’s known creditors. Among these creditors was PT Bank Negara Indonesia (Persero) TBK, Singapore Branch (“BNI”), which held 62.3% of the total debt owed by the respondent. A creditors’ meeting was also due to be convened on 13 December 2023 for creditors to give feedback on the statement of proposals.

5 Subsequently, on 23 November 2023, BNI emailed the applicant to say that it wished to address certain concerns and propose changes to the statement of proposals. Among other things, BNI wanted clarification on the interest rate to be applied on the respondent’s loans during the period of repayment. BNI

also proposed modifications to the statement of proposals to provide greater clarity and transparency on the proposed repayment schedule. In light of these points, BNI sought an adjournment of the scheduled creditors' meeting so that creditors would have more time to give their feedback on the statement of proposals.

6 The applicant considered BNI's concerns to be helpful for improving the statement of proposals. He also saw merit in BNI's proposal to adjourn the scheduled creditors' meeting. As such, on 4 December 2023, the applicant wrote to the respondent's creditors to inform them of BNI's request to adjourn the scheduled creditors' meeting. In the same letter, the applicant also pointed out that it would be necessary to seek an extension of the respondent's period of judicial management in light of this adjournment. Further, on 14 December 2023, the applicant wrote to the respondent's creditors to set out the indicative timelines for the key milestones of the respondent's judicial management. Among other things, the indicative timelines provided for the applicant to circulate a revised statement of proposals on 16 February 2024 and for the consequent creditors' meeting to be held on 8 March 2024.

7 As of the date of the hearing, no creditor had objected to the adjournment of the creditors' meeting or the indicative timelines.

Whether the judicial management order should be extended

The applicable principles

8 With the above background facts in mind, I turn to consider whether the judicial management order should have been extended. In this regard, the

relevant statutory provisions are s 111(3)(a) read with s 111(4) of the IRDA.

These provisions provide as follows:

End of judicial management

111.—(3) Subject to subsections (4) and (5), a judicial manager may obtain an extension of the judicial manager’s term of office —

(a) by making an application to the Court;

...

(4) On an application under subsection (3)(a), the Court —

(a) may extend the term of office of the judicial manager for a specified period;

(b) may extend the term of office of a judicial manager even though that term of office has previously been extended by the Court or by approval of the company’s creditors under subsection (3)(b); and

(c) may only extend the judicial manager’s term of office before the expiry of that term of office.

9 As is clear, these provisions only set out how a judicial manager may obtain an extension of his term of office, and the orders that a court may make. However, they are silent on the principles which a court should apply in deciding whether to grant the extension sought. Those principles are left to be developed by the courts. In this regard, Chua Lee Ming J in the High Court decision of *Re CNA Group Ltd* [2019] SGHC 78 (“*Re CNA*”) considered an application for an extension of a company’s judicial management order, which had been made pursuant to s 227B(1) of the Companies Act (Cap 50, 2006 Rev Ed) (as opposed to the IRDA). In declining to further extend the judicial management order, the learned judge said (at [15]):

Section 227B(1) of the Act emphatically states that the court may make a judicial management order if, and only if,

(a) it is satisfied that the company is or will be unable to pay its debts; *and*

(b) it considers that the making of the order would be likely to achieve one or more of the purposes set out in s 227B(1)(b).

A judicial management order should therefore not be extended unless the extension would be likely to achieve one or more of the purposes for which the order had been made. ...

[emphasis in original]

Chua J did not extend the judicial management order in *Re CNA* because, among other things, there was insufficient evidence before him to show that extending the order would likely achieve a more advantageous realisation of the company's only remaining asset, its listing status. In particular, all that was before the learned judge was the company's solicitor's statement that the judicial manager was following up with two potential investors. Moreover, the judicial manager had had enough time to sell the said listing status since the judicial management order had been extended six times.

10 The guiding principle, that a judicial management order should only be extended if it would achieve one or more purposes of judicial management, has also been applied in the English courts. Thus, in the English High Court decision of *Re TPS Investments (UK) Limited (In Administration)* [2020] EWHC 1135 (Ch) ("*Re TPS*"), Judge Hodge QC (sitting as a Judge of the High Court) had to consider whether to extend an administrator's term of office pursuant to para 76(2)(a) of Schedule B1 of the (UK) Insolvency Act 1986 ("UK Insolvency Act") (in England, the term "administration" is a broad substitute for the phrase "judicial management" in Singapore). Para 76(2)(a) is expressed in similar terms as s 111(3)(a) of the IRDA, as follows:

Automatic end of administration

76(1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

(a) on the application of an administrator the court may
by order extend his term of office for a specified period

...

11 In *Re TPS*, Judge Hodge QC helpfully listed four questions that tend to arise in applications to extend an administrator’s term of office (at [8]). These are:

- (a) Why has the administration not yet been completed?
- (b) Is any other alternative insolvency regime more suitable?
- (c) Is the extension sought likely to achieve the purpose of administration?
- (d) If an extension is appropriate, for how long should it be granted?

12 This list of questions has been adopted by a number of other English decisions, including *Gillian Eleanor Bruce and others (Joint Administrators of Lehman Brothers (PTG) Ltd (In Administration))* [2023] EWHC 3084 (Ch) at [6], *Re Angelic Interiors Limited (in administration)* [2022] EWHC 2974 (Ch) at [32], and *Re Burningnight Ltd (in administration) and another company; MacKenzie and another v Crowdstacker Corporate Services Ltd* [2021] 1 BCLC 557 at [30]. I note that question (c) in the list above is consistent with Chua J’s sentiments expressed in *Re CNA*, where he had focused on whether one or more purposes of the judicial management order would be achieved by the grant of an extension.

13 In addition to this list of questions, the English High Court in *Re Nortel Networks UK (No 4)* [2018] 1 BCLC 513 (“*Re Nortel*”) also emphasised the

importance of considering the creditors' interests and views when a court decides whether to extend an administrator's term of office. In *Re Nortel*, Snowden J explained (at [22]) that while the court's discretion under para 76(2)(a) is not circumscribed in any way, that discretion "should be exercised in the interests of the creditors of the company as a whole, and that the court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be achieved, (ii) whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors". Snowden J's remarks have been endorsed by a number of English decisions regarding applications to extend an administrator's term of office (see, in this regard, the English High Court decisions of *Baker and another v Biomethane (Castle Easton) Limited* [2019] EWHC 3298 (Ch) and *Christine Mary Laverty and others v Caversham Finance Limited* [2022] EWHC 789 (Ch)).

14 In my view, Judge Hodge QC's list of questions in *Re TPS* are broad enough to indirectly encompass a consideration of the creditors' interests and views, as called for in *Re Nortel*. Therefore, in deciding whether to grant an extension to a judicial management order under s 111(3)(a) read with s 111(4) of the IRDA, a court should consider the entire circumstances of the case, guided by the list of questions laid down in *Re TPS*, read together with *Re Nortel*:

- (a) Why has the administration not yet been completed?
- (b) Is any other alternative insolvency regime more suitable?
- (c) Is the extension sought likely to achieve the purpose of administration?

- (d) How would the creditors' interests be affected by, and what are the creditors' views regarding, the extension sought?
- (e) If an extension is appropriate, for how long should it be granted?

My decision: it was appropriate to extend the judicial management order in this case

15 With the applicable principles in mind, I found that it was appropriate to extend the judicial management order in this case.

16 First, the judicial management had not yet been completed because creditors needed more time to consider and give feedback on the statement of proposals. Furthermore, BNI (the respondent's largest creditor by far) had raised several concerns regarding the statement of proposals, and these needed to be addressed to ensure BNI's support.

17 Second, no other alternative insolvency regime was more suitable at the time of my decision. Indeed, it would have been premature to wind up the respondent at this juncture, given that there was still a chance of preserving it as a going concern.

18 Third, I was satisfied that there was a likelihood that the extension would achieve, or at least contribute to achieving, the survival of the respondent as a going concern. Indeed, this application had been brought to give effect to BNI's request for creditors to be given more time to consider and give feedback on the statement of proposals. Given that BNI had raised concerns, and proposed modifications to address those concerns, it was clear that BNI would likely not have accepted the statement of proposals as it stood on the date of the application. If BNI had rejected the statement of proposals, the statement of

proposals would have been rejected given BNI's majority in the value of the respondent's debt (62.3%). As a result, an extension would increase the likelihood that BNI would accede to any future statement of proposals. This would then likely achieve the survival of the respondent as a going concern. Further, the extension of time sought was not long.

19 Fourth, in considering the creditors' interests, I was satisfied that an extension would not prejudice the other creditors. In fact, BNI's request for modification and feedback not only materially improved the statement of proposals,¹ but also provided other creditors with more time to consider and give their feedback. Besides, it was in the creditors' best interests to give feedback at that point, before the scheduled creditors' meeting, so that there would be no need to expend costs and waste time on another creditors' meeting to enable those creditors to give such feedback. As for the creditors' views, there had not been any objection raised by any other creditor to this application.

20 For these reasons, I found that it was appropriate to extend the judicial management order in this case.

Whether the time for the applicant to put forward the statement of proposals should be extended

The applicable principles

21 I turn now to whether the time for the applicant to put forward the statement of proposals should be extended.

¹ Applicant's Written Submissions ("AWS") at para 14.

22 The applicable legal principles can be stated briefly. As the High Court stated in *PT Bank Negara Indonesia (Persero) TBK, Singapore Branch v Farooq Ahmad Mann (in his capacity as judicial manager) and another and other matters* [2023] SGHC 249, s 107 of the IRDA sets out the requirement for a judicial manager to put forward his statement of proposals within 90 days after the company’s entry into judicial management. More specifically, s 107(3)(a) provides that “a judicial manager may obtain an extension of the period specified in subsection (1) or (2) — (a) by making an application at any time to the Court”. This extension should be allowed where there is good reason. For instance, in the English High Court decision of *Re Bulb Energy Ltd* [2023] 2 BCLC 666, the court (at [47]) raised the example of “when an administrator can point to events in complex inter-company and international seismic insolvencies to argue that he had good reason not to file the statement of proposals within the eight-week period”. As such, a judicial manager may raise the inability to achieve the purpose of judicial management as a good reason for seeking an extension of time.

My decision: it was appropriate to extend the time for the applicant to put forward the statement of proposals

23 Turning to the present application, I was satisfied that it was appropriate to grant an extension of time for the applicant to put forward the statement of proposals. This is because BNI had requested for additional time to consider and propose revisions to the statement of proposals, which the applicant had assessed to be reasonable and sensible. Indeed, not only is BNI a majority creditor of the respondent, but it had also voiced support for the statement of proposals with its modifications and clarifications. Thus, a revised statement of proposals, taking into account feedback from BNI and possibly other creditors,

would likely be approved by the creditors. This made it appropriate, in my view, to extend the time for the applicant to put forward the statement of proposals.

Conclusion

24 For all the reasons above, I allowed the applicant's application for an extension of the judicial management order, as well as an extension of time for him to put forward the statement of proposals.

Goh Yihan
Judge of the High Court

Lau Hui Ming Kenny, Alston Yeong and Huang Xinli Daniel
(Providence Law Asia LLC) for the applicant;
The respondent absent and unrepresented.
