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

[2025] SGHC 218

Originating Claim No 28 of 2025 (Summons No 1849 of 2025)

Between

(1) Jason Aleksander Kardachi (as private trustee in bankruptcy of Rajesh Bothra)
(2) Hamish Alexander Christie (as private trustee in bankruptcy of Rajesh Bothra)

… *Claimants*

And

(1) Deepak Mishra
(2) Nimisha Pandey
(3) Intentio Management Company Limited
(4) Metro Capital Limited

… *Defendants*

Originating Application No 672 of 2025 (Summons No 1971 of 2025)

Between

(1) Jason Aleksander Kardachi (as private trustee in bankruptcy of Rajesh Bothra)
(2) Hamish Alexander Christie (as private trustee in bankruptcy of Rajesh Bothra)

… *Applicants*

And

Deepak Mishra

… *Respondent*

JUDGMENT

[Insolvency Law — Bankruptcy — Trustee in bankruptcy]

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v
Deepak Mishra and others and another matter

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General Division of the High Court — Originating Application No 672 of 2025 (Summons No 1971 of 2025) & Originating Claim No 28 of 2025 (Summons No 1849 of 2025)
Aidan Xu @ Aedit Abdullah J
1 August 2025

4 November 2025 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 This case involves three interlocking applications:

(a) An application by Mr Jason Aleksander Kardachi and Mr Hamish Alexander Christie, in their capacity as the joint and several private trustees in bankruptcy of Mr Rajesh Bothra (collectively, the "Private Trustees"), in HC/OA 672/2025 ("OA 672") for a declaration that Mr Deepak Mishra ("Mr Mishra") did not have the requisite leave of the court to commence SIAC Arbitration No 185 of 2025 ("Arbitration") against the Private Trustees and an order restraining Mr Mishra from pursuing or taking any further steps in the Arbitration against the Private Trustees.

(b) An application by Mr Mishra in HC/SUM 1971/2025 ("SUM 1971") of OA 672 for a declaration that he did not require the leave of the court to commence the Arbitration against the Private Trustees, or, alternatively, for leave with retrospective effect to be granted to Mr Mishra to commence the Arbitration against the Private Trustees.

(c) An application by Mr Mishra, Ms Nimisha Pandy and Metro Capital Limited (collectively, the "defendants") in HC/SUM 1849/2025 ("SUM 1849") of HC/OC 28/2025 ("OC 28") for, *inter alia*, an order that the proceedings in OC 28 be stayed, including but not limited to any enforcement proceedings commenced arising out of the decision in HC/SUM 806/2025 ("SUM 806"), pending the final resolution of the Arbitration.

2 I have concluded that leave is required to commence the Arbitration against the Private Trustees. Such leave may be granted retrospectively. However, retrospective leave should not be granted on the facts of the present case. I also decline to grant the case management stay sought by the defendants.

Facts

3 Mr Bothra was adjudged bankrupt on 21 February 2021. Prior to being adjudged bankrupt, Mr Bothra allegedly fled with his wife to London to avoid the consequences of being made a bankrupt in Singapore.[1] This hampered the Private Trustees' investigation into Mr Bothra's pre-bankruptcy affairs.[2]

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1 Second Affidavit of Deepak Mishra dated 7 July 2025 filed in OC 28 and SUM 1849 ("DM2") at paras 12–14.

2 DM2 at para 12.

4 As such, in or around October 2022, the Private Trustees reached out to Mr Mishra, once a close friend and business associate of Mr Bothra,[3] for assistance in their investigation into the affairs and dealings of Mr Bothra.[4] This led to the Private Trustees and Mr Mishra entering into a Waiver and Consent Agreement dated 2 November 2022 ("Waiver Agreement").[5] Mr Mishra claims that, under the Waiver Agreement, information provided by him to the Private Trustees could only be used for certain purposes (see [9] below).

5 Subsequently, the Private Trustees entered into a confidential settlement agreement with Mr Bothra. This settlement agreement was sanctioned by way of a court order on 16 February 2024, and has been sealed.[6]

6 On 11 January 2025, the Private Trustees commenced OC 28 in respect of 14 disposals of assets and/or cash to the defendants occurring between July 2019 and February 2021. The Private Trustees allege that these disposals were:[7]

(a) transactions at an undervalue within the meaning of s 361 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") and/or s 98 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA");

(b) unfair preferences within the meaning of s 362 of the IRDA and/or s 99 of the BA;

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3 DM2 at para 16.

4 DM2 at para 15.

5 DM2 at para 17.

6 DM2 at para 43, pp 135–136.

7 First Affidavit of Jason Aleksander Kardachi dated 17 June 2025 in OC 28 and SUM 1849 ("JAK1") at paras 11–12.

(c) unauthorised dispositions of Mr Bothra's property within the meaning of ss 327 and 328 of the IRDA;

(d) transfers or conveyances which should be held void and of no effect as against the Private Trustees under s 438 of the IRDA and/or s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") or at common law or equity; and/or

(e) sham transactions such that each of the transferred assets remained beneficially owned by Mr Bothra.

7 On 20 March 2025, the Private Trustees applied for summary judgment in SUM 806.

8 At a case conference dated 26 March 2025, the defendants sought a case management stay of proceedings in respect of OC 28 and SUM 806 on the basis that they intended to file a Challenge Application raising the same alleged breaches that are now the subject of the Arbitration.[8]

9 On 24 April 2025, Mr Mishra commenced the Arbitration against the Private Trustees. Mr Mishra's case in the Arbitration is that:[9]

(a) the Private Trustees had breached an express and/or implied duty of good faith under the Waiver Agreement; and

(b) the Private Trustees had breached an implied term that the documents provided by Mr Mishra to the Private Trustees under the Waiver Agreement would only be used for the purposes of the Private

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8 JAK1 at paras 21–22.

9 DM2 at paras 20, 63 and 71.

> Trustees' investigations into the affairs and dealings of Mr Bothra in connection with any claims under ss 361 and/or 362 of the IRDA, and not for other collateral purposes.

10 On 30 June 2025, I granted an order for summary judgment in respect of three transactions which were post-bankruptcy 'void dispositions' under ss 327 and/or 328 of the IRDA, as well as costs of $16,000 to be paid by the defendants to the Private Trustees ("Summary Judgment Order"). The defendants have yet to comply with the Summary Judgment Order.[10]

11 Shortly thereafter, on 1 July 2025, the Private Trustees filed OA 672, *ie*, the application for a declaration and order against the commencement of the Arbitration by Mr Mishra.

12 This was followed on 3 July 2025 by the defendants filing SUM 1849, *ie*, the application for a stay on case management grounds.

13 Then, on 16 July 2025, Mr Mishra filed OA 1971, *ie*, the application for a declaration that no leave was required to commence the Arbitration and, alternatively, for retrospective leave to be granted.

The issues

14 The issues to be determined are thus as follows:

(a) whether leave of court was required before commencing the Arbitration against the Private Trustees;

(b) whether such leave may be granted retrospectively;

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[10] JAK1 at paras 13–14.

(c) if such leave can be granted retrospectively, whether leave should be granted in the present application; and

(d) whether the case management stay should be granted.

Leave of court is required

15 Mr Mishra had not obtained leave of court before commencing the Arbitration against the Private Trustees. The Private Trustees argue that the defendants should be restrained from taking further steps in the Arbitration on this basis.[11] In response, Mr Mishra denies that leave of court was required before commencement of the Arbitration against the Private Trustees.[12]

16 In *Excalibur Group Pte Ltd v Goh Boon Kok* [2012] 2 SLR 999 ("*Excalibur Group*"), the court held that leave of court is required before a suit may be commenced against a liquidator. This is to ensure that frivolous claims are filtered out to avoid unnecessary and expensive legal proceedings when the main focus of a company and its liquidators once winding up has commenced should be to prevent the fragmentation of its assets and ensure creditors' interests are protected: at [28]–[29], citing *Korea Asset Management Corp v Daewoo Singapore Pte Ltd* [2004] 1 SLR(R) 671 ("*Korea Asset Management*") at [36].

17 The common law requirement for leave of court prior to the commencement of proceedings against liquidators in *Excalibur* applies to the current case by analogy. Once a person is declared bankrupt and their assets vest in the trustee in bankruptcy, the trustee in bankruptcy's role is the same as that

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11 Claimants' Written Submissions ("CWS") at para 1(1),

12 Defendants' Written Submissions ("DWS") at para 38.

of a liquidator of an insolvent company, *ie*, to gather in the assets of the insolvent person and distribute them fairly amongst the creditors in as efficient, expeditious and cost-effective a manner as possible after payment of secured and preferential debts: *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd* [2022] SGHC 271 ("*Wang Aifeng*") at [29], citing with approval *JA v JB* [2005] SGDC 104 at [13]. Further, VK Rajah JC in *Korea Asset Management* noted that the mandatory requirement for leave to commence proceedings against either an insolvent company or a bankrupt is an integral feature of the insolvency scheme upon the initiation of any insolvency process, thereby recognising that the policy considerations are the same across both insolvency and bankruptcy situations: *Wang Aifeng* at [30], citing *Korea Asset Management at* [32]–[37].

18 Mr Mishra does not deny this. Instead, he argues that *Excalibur* does not impose a blanket condition to obtain leave of court before commencing proceedings (in particular, arbitration proceedings) against an insolvency practitioner, and is distinguishable from the current case as there was no contract between the parties there.[13] The Private Trustees in this case had entered into the Waiver Agreement of their own volition. As the arbitration agreement within the Waiver Agreement did not require Mr Mishra to obtain leave of court before commencing said proceedings, he was thus under no obligation to do so.[14]

19 Furthermore, the Private Trustees had not insisted that Mr Mishra obtain leave of court before commencing neutral evaluation proceedings to determine the "Maximum Waiver Amount", as provided for under cl 2.4 of the Waiver

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13 DWS at paras 38 and 41.

14 DWS at para 41.

Agreement. Essentially, the Private Trustees should not be permitted to approbate and reprobate by not insisting on the leave requirement in respect of the neutral evaluation proceedings but insisting on such in respect of the Arbitration.[15]

20 Mr Mishra also relies on s 420(2) of the IRDA, which provides that, if a bankrupt had entered into a contract containing an arbitration agreement prior to his bankruptcy and the Official Assignee adopts the contract, the arbitration agreement would be enforceable against the Official Assignee. It is argued that, as leave of court would not be required to commence an arbitration in such a situation, it follows that the Private Trustees, having entered into the Waiver Agreement on their own, should not be placed in a better position than they would have been in had they adopted a contract made by the bankrupt.[16]

21 I cannot accept these arguments by Mr Mishra.

22 Firstly, as noted above at [17], the same rationale for requiring a party to obtain leave of court to bring proceedings against a liquidator applies with equal force to a trustee in bankruptcy. The aim is to avoid unnecessary and expensive legal proceedings arising from frivolous claims so as to avoid additional expense to the general body of creditors: *Excalibur* at [28]–[29]. The defendants argue that *Excalibur* should be distinguished from the current case on the basis that there was no contract between the claimant and the defendant in *Excalibur*, while here the Private Trustees had a contract with Mr Mishra. But the defendants have failed to explain why the protection of the assets of the insolvent person for distribution to the creditors should be removed because of

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15 DWS at para 42.

16 DWS at paras 43–46.

a contract entered into by a private trustee with the other party. The court's protective role is not removed or rendered nugatory by the existence of any contract with the private trustee. The rationale underpinning the requirement for leave, namely that of protecting the insolvent party's estate, remains.

23 Furthermore, the High Court in *Excalibur* noted that the underlying reason for why liquidators are viewed as requiring the court's protection is that they play a central role in administering the winding-up process: at [29]. It is not uncommon for insolvency practitioners to enter into contractual settlements with other parties as part of their role in administering the insolvent estate, as the Private Trustees have done in this case. It is thus difficult to see how the fact that an insolvency practitioner had entered into a contract in the course of carrying out his duties should make him less worthy of protection.

24 Moving next to Mr Mishra's argument that the Private Trustees should not be permitted to approbate and reprobate, the doctrine of approbation and reprobation precludes a person who had exercised a right from exercising another right which is alternative to and inconsistent with the right he has exercised: *BWG v BWF* [2020] 1 SLR 1296 at [102], citing with approval *Treasure Valley Group Ltd v Saputra Teddy* [2006] 1 SLR(R) 358 at [31]. The doctrine does not apply here. The Private Trustees were not taking contradictory positions about whether leave of court is required before commencing proceedings. They simply declined to exercise their right to object to the neutral evaluation proceedings whilst insisting on leave for the Arbitration. This represents a choice not to enforce a requirement, rather than taking inconsistent positions about its existence.

25 Lastly, Mr Mishra has not established that leave of court is not required prior to commencing an arbitration where the Official Assignee has adopted a

contract containing an arbitration clause. The commentary in *Schaw Miller and Bailey: Personal Insolvency Law and Practice* (Giles Maynard-Connor *et al* eds) (LexisNexis, 6th Edition, 2022) which he cites in support of this contention is not binding on the courts and, in any case, explicitly states that it "is an open question … whether the other party to the arbitration agreement needs the leave of the court to refer a dispute to arbitration" (at para 20.67(2)). The argument that the Official Assignee should be in no more advantageous a position where it voluntarily enters into a contract containing an arbitration clause than where it adopts a contract made by the bankrupt thus fails on this basis.

Leave may be granted retrospectively

26 Mr Mishra argues that if the court finds (as it has) that leave was required to commence the Arbitration, he should be granted retrospective leave.[17] The Private Trustees do not contest that leave may be granted retrospectively – they merely argue that Mr Mishra's application for retrospective leave should not be granted on the facts of this case.[18]

27 For the avoidance of doubt, leave to commence proceedings against the trustee in bankruptcy may be granted retrospectively. As noted by the High Court in *Excalibur*, the purpose of the requirement for leave would not be served if leave may only be granted if applied for prospectively. Having found that the same policy rationale for requiring leave to commence proceedings against a liquidator applies with equal force to proceedings against a trustee in bankruptcy, it follows that leave may be granted retrospectively in both scenarios.

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17 DWS at para 47.

18 CWS at para 4(2).

Leave should not be granted on the facts

28 The High Court in *Excalibur* found that, to succeed in an application for leave to commence proceedings, the applicant "must at least be able to show a *prima facie* arguable case". Further, applications "that are frivolous or vexatious or calculated to delay proceedings or with an ulterior motive will not be allowed". Other relevant factors include the current stage of the proceedings and any delays in making the application: *Excalibur* at [35].

29 Mr Mishra has not shown a *prima facie* arguable case. As noted above at [9], Mr Mishra's case in the Arbitration is that:

> (a) the Waiver Agreement imposes an express and/or implied duty of good faith on the parties, and the Private Trustees have breached this duty to act in good faith; and
>
> (b) the Waiver Agreement contains an implied term that the documents provided by Mr Mishra shall only be used for the purposes of the Private Trustees' investigations into the affairs and dealings of Mr Bothra, and not for any other collateral purpose (such as bringing OC 28 against the defendants).

However, Mr Mishra has not shown, on a *prima facie* basis, that the Private Trustees either acted in breach of their express and/or implied duty of good faith or breached an implied term of the Waiver Agreement by using the defendants' documents for a collateral purpose.

No express duty of good faith

30 Mr Mishra argues that the Waiver Agreement set out an express duty of good faith pursuant to Recital (D) read with cl 5.1(d).[19] The Private Trustees disagree – rather than imposing a duty on parties to act in good faith, they say that the clauses merely pertain to the parties' good faith belief that the Waiver Agreement is to their benefit.

31 Recital (D) provides as follows:[20]

> (D) Each of the Parties have considered the terms of this Agreement and have in good faith considered there to be reasonable grounds on the part of each Party for believing that the entry into and performance of this Agreement would benefit each of themselves, and have on this basis agreed to enter into this Agreement.

32 Clause 5.1(d), in turn, provides as follows:[21]

> **5. Representations and Warranties**
>
> 5.1 Each Party represents and warrants to the others:
>
> …
>
> (d) each of the Parties have acted *bona fide* and reasonably and properly believe in their respective positions; …
>
> [emphasis in original]

33 It is evident from the plain language of the above clauses that they are not concerned with imposing a duty of good faith on the parties. Rather, they merely address the parties' belief that entering into the Waiver Agreement

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19 DWS at para 54.

20 Third Affidavit of Deepak Mishra dated 6 August 2025 filed in OC 28 and SUM 1849 ("DM3") at p 18.

21 DM3 at p 22–23.

would benefit them. Recital (D) says as much in no uncertain terms. Clause 5.1(d) relates only to how the parties had acted up until the point the contract was entered into and therefore cannot be read to govern the parties' subsequent conduct.

34 There is nothing in the Waiver Agreement that creates an express duty of good faith of the sort advocated for by Mr Mishra.

35 As such, Mr Mishra has failed to show a *prima facie* arguable case that the Waiver Agreement imposes an express duty of good faith on the parties.

No implied duty of good faith in law or in fact

36 Mr Mishra states that "it is arguable whether [an implied term of good faith in law] would apply in Singapore".[22] In this regard, he refers to the Court of Appeal's observation in *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] 3 SLR 695 (at [44]) that "the present position in Singapore … is that there is *no* implied duty of good faith based on a 'term implied in *law*'" [emphasis in original in italics, emphasis added in underline].[23] However, he does not put forward any arguments as to why the arbitrator would or should deviate from the present position and imply an implied term of good faith in law.

37 Simply establishing that it is open to the arbitrator to imply a duty of good faith as a term implied in law is not sufficient to establish a *prima facie* arguable case that the arbitrator would do so. This is especially as the bar for

22 DWS at para 55.

23 DWS at para 56.

implication of terms in law is very high: *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*") at [46].

38 Mr Mishra also argues that, in any case, a duty of good faith may be implied into the Waiver Agreement in fact. While the Waiver Agreement includes an entire agreement clause, Mr Mishra notes the Court of Appeal's observation in *Ng Giap Hon* (at [31]) that the presence of an entire agreement clause in a contract "would not, as a matter of general principle, exclude the implication of terms into that contract". The Private Trustees, in turn, note that *Ng Giap Hon* does not stand for the proposition that an entire agreement clause can never exclude the implication of terms in a contract – it may do so if such a clause is expressed in clear and unambiguous language (at [32]). The Private Trustees thus argue that no duty of good faith may be implied into the Waiver Agreement whether in law or in fact as the entire agreement clause expressly precludes the implication of terms.[24]

39 The entire agreement clause is found in cl 7 of the Waiver Agreement:[25]

> **7. Entire Agreement**
>
> This Agreement supersedes and cancels all previous agreements, warranties and undertakings whether oral or written, express or implied, given or made by or between the Parties, and constitutes the entire agreement between the Parties in respect of the matters set out herein, and no other terms and conditions shall be included or implied.
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> [emphasis in original]

40 Clause 7 of the Waiver Agreement provides that "no other terms and conditions shall be … implied". As such, cl 7 clearly and unambiguously

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24 CWS at para 33.

25 DM3 at p 23.

precludes the implication of any terms into the Waiver Agreement. On this basis alone, Mr Mishra has failed to show a *prima facie* arguable case that the Waiver Agreement imposes an implied term of good faith on the parties (whether in law or in fact).

No breach of any duty of good faith

41 In any case, there would not have been any breach of the duty of good faith.

42 Mr Mishra's case in the Arbitration is that the Private Trustees have breached their alleged duty of good faith in two ways:[26]

(a) First, by using information and documents which were provided by Mr Mishra for the purpose of recovering assets from Mr Bothra for the estate to instead enter into a settlement agreement with Mr Bothra.

(b) Second, by using those same documents and information to commence OC 28 against the defendants in relation to claims waived under the Waiver Agreement as part of a settlement under the Waiver Agreement. The defendants further point to the fact that Mr Bothra is funding OC 28 to argue that the Private Trustees have "[i]n effect therefore … lent their public office to [Mr Bothra] to pursue a private action against [Mr Mishra]".

43 Looking at each argument in turn and, starting with the argument referred to at [42(a)] above, Mr Mishra has provided no basis for his contention that the information and documents were provided by him solely for the purpose

[26] DWS at para 57.

of recovering assets from Mr Bothra for the estate. On the contrary, recital (C) of the Waiver Agreement states that Mr Mishra "wishes to assist the Private Trustees in their investigations into the affairs and dealings of [Mr Bothra]". This indicates that the information and documents were provided for the broader purpose of investigating Mr Bothra's dealings, and there is no obligation on the Private Trustees to only use the results of its investigation to pursue a claim against Mr Bothra to the exclusion of pursuing other claims (including against the defendants). On this basis, Mr Mishra has not shown a *prima facie* arguable case that the Private Trustees were precluded from (or acted in bad faith by) using the information and documents provided to enter into a settlement with Mr Bothra.

44 Moving then to the argument at [42(b)] above, as noted by the Private Trustees, Mr Mishra has not established any factual basis for his claim that the Private Trustees relied on documents from Mr Mishra to commence OC 28 against the first and/or second defendant in relation to claims waived under the Waiver Agreement. First, the Private Trustees have confirmed on affidavit that none of the documents relied upon in their application for summary judgment in SUM 806 were provided by Mr Mishra.[27] Second, the Waiver Agreement did not provide for a blanket waiver of claims against the defendants. Rather, it provided that the Private Trustees would waive all claims falling below a "Maximum Waiver Amount" (which the Private Trustees have fixed at $1.2 million).[28] Given that the Waiver Agreement contemplates that the Private Trustees may pursue claims exceeding this cap, it cannot be said that the Private Trustees are acting in bad faith in doing so. For these reasons, Mr Mishra has not shown a *prima facie* arguable case that the Private Trustees would have

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27 CWS at para 40(1).

28 CWS at para 40(3).

breached the alleged duty of good faith by commencing OC 28 against the defendants (even if such a duty exists).

No implied term that the Waiver Agreement shall only be used for investigating into the affairs of Mr Bothra

45 Given my finding at [40] above that the entire agreement clause expressly precludes the implication of any terms into the Waiver Agreement, Mr Mishra has not shown a *prima facie* arguable case that the Waiver Agreement contained an implied term that the documents provided by Mr Mishra shall only be used for the purposes of the Private Trustees' investigations into the affairs and dealings of Mr Bothra and not for any other collateral purpose.

Conclusion on OA 672 and SUM 1971

46 In conclusion, Mr Mishra was required to apply for leave of court to commence the Arbitration and, as Mr Mishra has not been able to demonstrate even a *prima facie* arguable case, he should not be granted retrospective leave to commence the Arbitration against the Private Trustees. Hence, I decline to grant the orders sought in SUM 1971 and grant the orders sought in prayers 1(a) and 1(b) in OA 672 in terms.

No case management stay should be ordered

47 The defendants seek a case management stay over the proceedings in OC 28 (including the enforcement of the Summary Judgment Order) pending the disposal of the Arbitration. Having found that Mr Mishra had not obtained and should not be granted retrospective leave to commence the Arbitration, that in itself is sufficient to dispose of this issue. Nevertheless, for completeness, I

explain why, even if I had granted Mr Mishra retrospective leave to commence the Arbitration, I would not have granted the case management stay.

48 The defendants' main argument is that there is significant overlap between OC 28 (and its related proceedings, including the enforcement of the Summary Judgment Order in SUM 806) and the Arbitration that justifies a case management stay.[29] The Private Trustees, in turn, argue that there is no overlap between OC 28 and the Arbitration.[30] Further, a case management stay should not be granted as there is a significant risk of delay of resolution of the court proceedings. Since the claims in OC 28 are insolvency clawback claims, there is a real risk that the assets subject to clawback may be dissipated.[31] The Private Trustees also argue that, as the defendants had previously sought and failed to obtain a case management stay on the same grounds now relied upon in the current application, they are barred by the doctrine of *res judicata* (specifically, issue estoppel and the extended doctrine of *res judicata*) from seeking the current case management stay.[32]

49 In *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 ("*Tomolugen*"), the Court of Appeal noted that, in deciding whether to grant a case management stay, a court must in every case aim to strike a balance between three higher-order concerns that may pull in different considerations: first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes

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29 DWS at para 67–71.

30 CWS at para 72–75.

31 CWS at paras 76–77.

32 CWS at para 65.

to prevent an abuse of process and ensure the efficient and fair resolution of disputes. The balance that is struck must ultimately serve the ends of justice: *Tomolugen* at [188].

No overlap between OC 28 and Arbitration

50 The defendants argue that "there may well be an overlap of factual evidence and issues" between OC 28 and the Arbitration.[33] Furthermore, they say that there is an overlap between OC 28 and the Arbitration in the sense that the Arbitration will determine whether the Private Trustees have the right to bring OC 28 against the defendants.[34]

51 The Private Trustees argue that there is no overlap in factual and legal issues, and that the issues in the Arbitration do not affect OC 28.[35] The issue of the Private Trustees' improper use of documents and information disclosed by Mr Mishra to commence OC 28 against the defendants in relation to claims that have been waived under the Waiver Agreement does not affect OC 28:[36]

(a) First, this issue does not affect the Summary Judgment Order as the Waiver Agreement does not extend to void disposition claims (which are the subject of SUM 806 and to which the Summary Judgment Order relates).

(b) Second, it is not disputed that the Waiver Agreement does not grant a blanket waiver of claims against the defendant. As such, OC 28

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33 DWS at para 68.

34 DWS at paras 69–71.

35 CWS at para 72.

36 CWS at para 73(2).

> can proceed and the Private Trustees will (if appropriate) account for the Maximum Waiver Amount in determining the sums payable by the defendant at the conclusion of OC 28.

The only potential overlap between OC 28 and the Arbitration is that the Arbitration seeks as a relief a permanent injunction restraining the Private Trustees from pursuing or proceeding with OC 28 and all related proceedings. However, the arbitral tribunal will not have the power to grant this relief as OC 28 relates to claims of void disposition and insolvency clawback which are not arbitrable.[37]

No overlap of factual and legal issues

52 The defendants argue that the circumstances of the transfers of property from Mr Bothra to Mr Mishra are relevant background facts to the execution of the Waiver Agreement, which are likely to be canvassed in the Arbitration in so far as the tribunal will be asked to decide on the interpretation of the good faith clause.[38]

53 However, it is not readily apparent why or how the circumstances of the transfers of property from Mr Bothra to Mr Mishra are relevant to the interpretation of the alleged express and/or implied good faith clauses. The defendants have also failed to explain such relevance. As such, the defendants have not established any overlap of factual and/or legal issues between OC 28 and the Arbitration.

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37 CWS at paras 43–45 and 75.

38 DWS at para 68.

The issues in the Arbitration do not affect OC 28

54 The defendants contend that the fact that OC 28 (and the Summary Judgment Order) relate to transactions that did not fall within the scope of the Waiver Agreement is irrelevant, as its case in the Arbitration is that the Private Trustees should not have been permitted to commence OC 28 at all.[39]

55 However, the defendants' claim is founded on alleged breaches of express and/or implied duties of good faith under the Waiver Agreement. It is unclear how the Private Trustees could have breached their duties under the Waiver Agreement in relation to matters falling outside its scope.

56 The defendants also argue that the Private Trustees have conflated the remedy sought in the Arbitration (namely, the permanent injunction) with the issue of the arbitrability of the underlying dispute in the Arbitration. The defendants cite *Tomolugen* for the proposition that the fact that the specific relief sought may be beyond the power of the arbitral tribunal to award should not preclude the underlying dispute from being resolved by the arbitral tribunal (at [100] and [103]).[40]

57 The defendants appear to have misunderstood the Private Trustees' argument. The Private Trustees are arguing that, not only is the specific relief sought beyond the power of the arbitral tribunal to award, but, also, the arbitral tribunal does not have the power to determine the underlying issue (namely, whether the alleged breaches by the Private Trustees should preclude them from bringing insolvency clawback claims).

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39 DWS at para 72.

40 DWS at para 84.

58 I agree with the Private Trustees.

59 The distinction endorsed in *Tomolugen* between the grounds and the power to grant certain reliefs was founded on the need to hold parties to their agreement and thereby not be too quick to find that issues parties had agreed to refer to arbitration were non-arbitrable: *Tomolugen* at [103]. However, non-arbitrability turns on whether it would be contrary to public policy for a dispute on the subject matter to be resolved by arbitration: *Tomolugen* at [75].

60 In my view, given that this is an action for the benefit of the estate, and creditors' interests as a collective whole are at stake, the public policy underlying protection of insolvency practitioners' ability to pursue such claims trumps any factor pointing to arbitration (including holding parties to their agreement). The Court of Appeal had, in the case of *Larsen Oil and Gas Pte Ltd v Petroprod Ltd* [2011] 3 SLR 414, found that allowing the arbitration of insolvency clawback claims would run contrary to the objectives of the insolvency regime for this very reason: at [45]–[46]. The issue of whether an insolvency practitioner should be allowed to bring such insolvency clawback claims should be treated no differently.

61 For these reasons, I find that the issues in the Arbitration do not affect OC 28.

62 Hence, as there is no overlap in the legal and/or factual issues between the Arbitration and OC 28, and the determination of the arbitrable issues in the Arbitration does not affect OC 28, there is no overlap between OC 28 and the Arbitration warranting the grant of a case management stay.

Clawback actions should generally be allowed to proceed

63 Further, the ends of justice militate against granting the case management stay in respect of clawback actions. This is because (as the Private Trustees rightly note)[41] the nature of the claims in OC 28 are insolvency clawback claims, meaning that there is a real risk that the assets which are the subject of clawback – which are alleged to have already been dissipated once, thereby warranting the clawback – may be further dissipated pending the resolution of OC 28 and the enforcement of the Summary Judgment Order.

***The Defendants are not barred by the doctrine of* res judicata**

64 The Private Trustees also argue that issue estoppel and the extended doctrine of *res judicata* (*ie*, abuse of process) apply to bar the defendants from making their current stay application as, at a case conference on 26 March 2025, the defendants' had sought a case management stay of OC 28 and SUM 806 on the basis of that they would be filing a Challenge Application, which raised the same breaches that are now the subject of the arbitration.[42] The court refused the defendants' Request to File Challenge Application as well as its request for a stay.[43] The Private Trustees argue that, as the issue of whether a case management stay of OC 28 ought to be granted on the basis of the alleged breaches of the Waiver Agreement had already been heard and decided by the court, issue estoppel operates to bar the defendants from making the current stay application.[44] Alternatively, the Private Trustees argue that it is an abuse of process for the defendants to re-litigate their request for a case management stay

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41 CWS at para 77.

42 CWS at paras 67(1) and 68–69.

43 CWS at para 67(2).

44 CWS at para 68.

on the basis of the Arbitration when the Arbitration raises the same exact grounds which were the subject of the proposed Challenge Application.[45]

65 An essential element that must be present to establish issue estoppel is that there must be a final and conclusive judgment on the merits: *Ong Han Nam v Borne Ventures Pte Ltd* [2021] 1 SLR 1248. However, the Private Trustees have failed to show that the court made a final determination. While the Private Trustees assert that the court had refused the stay application by way of further directions issued on 3 April 2025, these directions did not at any point expressly state that the stay application was denied or make any reference to the stay application. The court only directed that the application be filed within another matter (namely, HC/OA 9/2025 ("OA 9"), the proceedings in which the terms of the settlement agreement referred to at [5] above was sanctioned by the court. As such, the Private Trustees have failed to show that any issue estoppel arose as a result of the previous stay application.

66 As regards the Private Trustees' alternative argument of abuse of process, this is not made out. I could not accept the Private Trustees' characterisation of the present application as the defendants' attempt to "re-litigate" their request for a stay. Given that there appears to be no evidence that the court refused the application to stay OC 28 (see above at [65]), it appears that the defendants' application to stay OC 28 on the basis of its prospective Challenge Application simply lapsed after they declined to proceed with the Request to File Challenge Application in OA 9 in favour of commencing the Arbitration. As such, I am not persuaded that the defendants' current stay application is an abuse of process.

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[45] CWS at para 69.

Conclusion on SUM 1849

67 For the foregoing reasons, I dismiss the defendants' application in SUM 1849.

Conclusion

68 Accordingly, I grant the applications for a declaration that Mr Mishra did not have the requisite leave of court to commence the Arbitration and an order restraining Mr Mishra from pursuing the Arbitration in OA 672, and dismiss:

(a) the application for a stay of the proceedings in OC 28 on case management grounds in SUM 1849; and

(b) the application for a declaration that no leave was required to commence the Arbitration and, alternatively, for retrospective leave to be granted in SUM 1971.

69 Cost directions will be given separately.

Aidan Xu
Judge of the High Court

Yeo Alexander Lawrence Han Tiong, Ee Jia Min, Tan Yen Jee, Yeoh Tze Ning, Richard Xu Hanqi and Izzat Rashad Bin Rosazizi (Allen & Gledhill LLP) for the claimants in HC/OC 28/2025 and the applicants in HC/OA 672/2025;
Prakash Pillai, Koh Junxiang and Ng Pi Wei (Clasis LLC) for first, second and fourth defendants in HC/OC 28/2025 and the respondent in HC/OA 672/2025;
The third defendant in HC/OC 28/2025 absent and unrepresented.
