

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 78

Originating Summons No 658 of 2015
(Summons No 655 of 2019)

In the matter of
Section 227B(8) of the Companies Act (Cap 50)

CNA Group Ltd

... Applicant

GROUND OF DECISION

[Companies] — [Receiver and manager] — [Judicial management order] —
[Extension of judicial management order]

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Re CNA Group Ltd

[2019] SGHC 78

High Court — Originating Summons No 658 of 2015 (Summons No 655 of 2019)

Chua Lee Ming J

5 March 2019

19 March 2019

Chua Lee Ming J:

1 On 14 September 2015, I ordered that the applicant, CNA Group Ltd (“the Company”), be placed under judicial management (“the JM Order”). On 5 March 2019, I dismissed the Company’s application in Summons No 655 of 2019 (“SUM 655/2019”) for a seventh extension of the JM Order. The Company has appealed against my decision.

2 The Company was incorporated in Singapore on 26 January 1990 as a private limited company. It was subsequently listed on the Singapore Exchange (SESDAQ) in March 2005, and thereafter on the Singapore Stock Exchange (Mainboard) in September 2007. The Company’s business was in the provision, design and implementation of integrated control and automation systems, information technology solutions for buildings and facilities as well as mechanical engineering solutions.

3 On 13 July 2015, the Company filed the application in this Originating

Summons for the Company to be placed under judicial management to achieve one or more of the following purposes:

- (a) the survival of the Company, or the whole or part of its undertaking as a going concern;
- (b) the approval under section 210 of a compromise or arrangement between the Company and any such persons as are mentioned in that section; and
- (c) a more advantageous realization of the Company's assets than would be effected on a winding up.

4 On 21 July 2015, the Court appointed interim judicial managers pursuant to an application by the Company in Summons No 3380 of 2015.

5 As stated earlier, on 14 September 2015, I made the JM Order. Two judicial managers were appointed. Pursuant to s 227B(8) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act"), the JM Order was to remain in force for 180 days and was therefore due to expire on 12 March 2016.

6 On 7 March 2016, I granted the judicial managers' application to extend the JM Order for a further six months until 12 September 2016.¹ The reason for this first extension was to enable the judicial managers to implement the following proposals that had been approved by the creditors of the Company:

- (a) to sell the Company's shares in an Australian listed company known as Urbanise.com;

¹ Summons No 1008 of 2016.

- (b) to liquidate the Company's dormant subsidiaries, and to sell/liquidate the Company's operating subsidiaries;
- (c) to deal with arbitration proceedings against the Company in Dubai ("the Dubai Proceedings");
- (d) to deal with arbitration proceedings commenced by the judicial managers in Qatar ("the Qatar Proceedings"); and
- (e) to negotiate with potential investors who were interested in effecting a reverse take-over of the Company.

7 On 9 September 2016, I granted the judicial managers' application to extend the JM Order for a further six months until 12 March 2017.² The reasons for this second extension were as follows:

- (a) The sale of the shares in Urbanise.com was not yet completed.
- (b) The Company's former subsidiary in Vietnam ("CNAV") was sold in November 2015. As part of the terms of the sale, CNAV was to repay an intercompany loan due to the Company. An SGD bank account was being opened in Vietnam to enable remittance of the balance amount that was outstanding.
- (c) The Dubai Proceedings and Qatar Proceedings were not yet resolved.
- (d) The Company had entered into an Implementation Agreement dated 29 April 2016 with an investor, SCR International Holdings Pte Ltd ("SCR") for the proposed transfer of the Company's listing status to

² Summons No 4358 of 2016.

SCR or a related corporation. The judicial managers required time to review and consider key deliverables expected to be made available by SCR, and to ascertain if the conditions precedent for the transfer of the Company's listing status were likely to be fulfilled by SCR in time. In this connection, the Singapore Exchange ("SGX-ST") had given the Company up to 15 July 2016 to submit a proposal with a view to resuming trading of its shares ("the Resumption Proposal"). Trading of the Company's shares had been suspended as a result of the JM Order.

8 On 9 March 2017, I granted the judicial managers' application to extend the JM Order for a further six months until 12 September 2017.³ The reasons for this third extension were as follows:

- (a) The shares in Urbanise.com had not been sold because of the low price and low trading volume of the shares.
- (b) The repayment by CNAV of the intercompany loan was pending approval from the State Bank of Vietnam for remittance to the Company.
- (c) The Dubai Proceedings were still pending.
- (d) The Company had reached a settlement in relation to the Qatar Proceedings but the benefits of the settlement had not been received.
- (e) The Implementation Agreement with SCR had been terminated by mutual agreement because it was unlikely that SCR could satisfy the conditions precedent within the intended timeline. However, the judicial managers had entered a memorandum of understanding ("MOU") with

³ Summons No 999 of 2017.

Munsang Media and Printing Group Ltd (“the Munsang Group”) and OSC Group Pte Ltd on 3 March 2017 for the possible transfer of the Company’s listing status or the transfer of ownership of the Company to the investors. The judicial managers had also obtained an extension of time until 15 July 2017 from SGX-ST for the submission of the Resumption Proposal.

9 On 22 September 2017, I granted the judicial managers’ application to extend the JM Order for a further six months until 12 March 2018.⁴ The reasons for this fourth extension were as follows:

- (a) The judicial managers were in negotiations with potential buyers for the shares in Urbanise.com.
- (b) CNAV failed to pay the balance of the intercompany loan and the judicial managers were in negotiations with the purchasers of CNAV.
- (c) The Dubai Proceedings were resolved but receipt of the balance payment pursuant to the settlement of the Qatar Proceedings was pending clearance of withholding tax.
- (d) The judicial managers had terminated the MOU with the Munsang Group because due diligence suggested that the Munsang Group may not be suitable. However, in April and May 2017, the judicial managers had received expressions of interest in the Company’s listing status, from De Run International Resources (“De Run”) and Treasure Capital Group (“Treasure”). Treasure represented a group of Malaysian investors. In early July 2017, De Run withdrew as it was

⁴ Summons No 4067 of 2017.

unable to meet the judicial manager's deadline of 15 July 2017 (which was the deadline for the Company to submit the Resumption Proposal). On 13 July 2017, the Company entered into an Implementation Agreement with the Malaysian investors. On 14 July 2017, the judicial managers submitted an application to SGX-ST to further extend the deadline for submission of the Resumption Proposal, to 15 July 2018.

10 By order of court dated 26 January 2018, one of the judicial managers was given leave to resign. The remaining judicial manager continued as the sole judicial manager of the Company.

11 On 12 March 2018, I granted the judicial manager's application to extend the JM Order for a further six months until 12 September 2018.⁵ The reasons for this fifth extension were that one of the Malaysian investors had withdrawn and the remaining investors had procured funding from a third party and were working out the conditions for the drawdown of the loan. It was estimated that they could draw down on the loan by late March or early April 2018. In the meantime, the SGX-ST had extended the deadline for the submission of the Resumption Proposal to 15 July 2018.

12 On 19 September 2018, I granted the judicial manager's application to further extend the JM Order for a further six months until 12 March 2019.⁶ The reasons for this sixth extension were that the funding arrangements for the Malaysian investors were formalised in April 2018, the Company had shortlisted PrimePartners Corporate Finance Pte Ltd ("PPCF") to act as financial adviser and full sponsor for the listing Assets, and PPCF had shortlisted a number of valuers. The judicial manager had also applied to SGX-

⁵ Summons No 949 of 2018.

⁶ Summons No 3827 of 2018.

ST for a further extension of one year until 15 July 2019 for submission of the Resumption Proposal.

13 By way of SUM 655/2019, the Company applied to extend the JM Order for a further six months until 12 September 2019. The supporting affidavit stated that this seventh extension was necessary because the Implementation Agreement with the Malaysian investors had lapsed and been terminated. The reason for this was that the investors could not satisfy the conditions precedent by the long-stop date of 28 November 2018. However, the judicial manager had entered into a non-binding term sheet with another potential investor, Berlitz Marine Pte Ltd (“Berlitz”), pursuant to which the transfer of the listing status of the Company would be effected by way of a scheme of arrangement.

14 On 5 March 2019, I heard the Company’s application. The Company’s solicitor informed me that on 22 February 2019, Berlitz had also withdrawn from proceeding further. According to the Company’s solicitor, the judicial manager was now following up with two other potential investors.

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. I noted as well that the judicial manager has an obligation

to apply to court for the JM Order to be discharged if it appears to him that the remaining purpose specified in the order is incapable of achievement: s 227Q(1) of the Act.

16 In the present case, the JM Order was made because it was considered that the making of the order would be likely to achieve one or more of the purposes set out in s 227B(1)(b): see [3] above. However, by 12 March 2018, the only purpose remaining for the JM Order, was to achieve a more advantageous realisation of the Company's assets than would be effected on a winding up. The only asset left was the Company's listing status. It was incumbent on the judicial manager to satisfy this court that extending the JM Order was likely to achieve a more advantageous realisation of the Company's listing status. However, all that was placed before me was the Company's solicitor's statement that the judicial manager was following up on two other potential investors. At best, this was no more than an expression of hope. In my view, it was insufficient basis to justify an extension of the JM Order.

17 In addition, the judicial manager(s) has had more than ample opportunity during the last three and a half years to try to sell the Company's listing status. The Company was placed under judicial management in September 2015. Since then, the JM Order has been extended six times. The judicial manager(s) has courted no less than six potential suitors (from SCR to Berlitz) for the Company's listing status. Each of these courtships have failed, the last at a very early stage. The Company cannot expect to keep extending the JM Order based on nothing more than hope.

18 In my judgment, there was no reason for me to conclude that further extending the JM Order in this case would be likely to achieve a more advantageous realisation of the Company's listing status than on a winding up.

In the circumstances, the right thing to do, in my view, was to bring the judicial management to an end. Accordingly, I dismissed the Company's application to further extend the JM Order.

Chua Lee Ming
Judge

Lim Hui Li Debby, Goh Keng Huang and Jason Leong
(Shook Lin & Bok LLP) for the applicant.