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

[2021] SGHC 86

Originating Summons No 425 of 2020 (Summons No 3963 of 2020)

In the matter of Sections 227B and 227R of the Companies Act (Cap 50)

HTL International Holdings Pte Ltd

… *Applicant*

GROUNDS OF DECISION

[Companies] — [Receiver and manager] — [Judicial management order] — [Protection of interests of creditors and members] — [Unfair prejudice]

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Re HTL International Holdings Pte Ltd

[2021] SGHC 86

General Division of the High Court — Originating Summons No 425 of 2020 (Summons No 3963 of 2020)
Aedit Abdullah J
9, 24 November 2020

15 April 2021

Aedit Abdullah J:

Introduction

1 The issue here concerned when the court should, under s 227R of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"), now s 115 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) ("IRDA"), intervene in and displace the decision and discretion exercised by judicial managers ("JMs") in choosing to sell assets of a company to one party rather than another. On the facts, there was nothing showing that the decision of the JMs was plainly wrongful, conspicuously unfair or perverse. Thus, it could not be said that the JMs' decision was unfairly prejudicial to the shareholders of the company. The application to set aside the JMs' decision was therefore refused.

Background Facts

2 HTL International Holdings Pte Ltd (the "Company"), a holding company of a group of corporations involved in the furniture trade (the "HTL

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Group"),[1] was initially put into interim judicial management in May 2020,[2] and then judicial management in July 2020.[3] The two persons appointed as interim judicial managers ("IJMs") previously continued on as JMs, with the addition of a third JM. The Company's sole shareholder, Ideal Homes International Ltd, was in turn wholly owned by Yihua Lifestyle Technology Co Ltd (collectively, the "Shareholders").[4]

3 Before the Company was placed under judicial management, the Company wholly owned 15 subsidiaries and one indirect subsidiary.[5] After the interim judicial management order was made, the IJMs, on behalf of the Company, entered into a share purchase agreement ("SPA") with Golden Hill Capital Pte Ltd ("Golden Hill Capital") on 28 May 2020, under which Golden Hill Capital would purchase the Company's interests in its subsidiaries for US$80m.[6] To facilitate the transfer of the Company's shares in all these subsidiaries, the IJMs carried out an internal restructuring by consolidating the Company's overseas subsidiaries under a new wholly-owned subsidiary of the Company, HTL Capital Pte Ltd ("HTLC").[7]

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1 Agreed Bundle of Documents Volume 1 ("ABOD-1"), Tab 4, 1st Affidavit of Liu Zhuangchao dated 1 July 2020 ("LZC-1") at paras 9–10.

2 ABOD-1, Tab 1, 1st Affidavit of Andrew Grimmett dated 29 June 2020, exhibiting the Interim Judicial Managers' Report ("IJM Report") at pp 36–37.

3 ABOD-1, Tab 2, 1st Affidavit of Tan Wei Cheong dated 12 August 2020, exhibiting the Judicial Managers' Report ("JM Report") at pp 27–29.

4 Agreed Bundle of Documents Volume 4 ("ABOD-4"), Tab 22, 3rd Affidavit of Tan Wei Cheong dated 7 September 2020 ("TWC-3") at para 5; JM Report at para 1.1.

5 TWC-3 at para 5.

6 IJM Report at paras 3.19–3.32 and Appendix 2, clause 3.1(a).

7 IJM Report at paras 3.58–3.64.

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4 After the internal restructuring, the Company owned two subsidiaries: HTLC and HTL Manufacturing Pte Ltd ("HTLM"). HTLM was the main operating subsidiary from which most of the revenue in HTL Group was generated. HTLM would contract with the other subsidiaries in the HTL Group, particularly those in China, for manufacturing and supplying furniture.[8] Post-restructuring, the object was to transfer the Company's shares in HTLM and HTLC (collectively, the "Asset") to Golden Hill Capital on the completion date.[9]

5 Subsequently, on 19 August 2020, there was an offer from Man Wah Holdings Ltd ("Man Wah") to purchase the Asset ("Man Wah's 19 August Offer").[10] Man Wah subsequently clarified its offer via an email dated 20 August 2020 ("Man Wah's 20 August Clarification").[11]

6 On 24 August 2020, the JMs invited Golden Hill Capital and Man Wah to provide "anything further" it wished to communicate in relation to their offers by 26 August 2020.[12] Upon Man Wah's request, the JMs pushed back this deadline to 31 August 2020.[13] Golden Hill Capital and Man Wah submitted their final, revised offers by that deadline,[14] and the JMs sold the Asset to Golden Hill Capital on 7 September 2020.[15]

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8 TWC-3 at para 11.

9 IJM Report at para 3.48.

10 TWC-3 at paras 60–63.

11 ABOD-4, Tab 21, 2nd Affidavit of Tan Wei Cheong dated 21 August 2020 ("TWC-2") at pp 28–32.

12 TWC-3 at para 73 and pp 204–205.

13 TWC-3 at para 73 and p 197.

14 TWC-3 at para 75.

15 TWC-3 at para 112.

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7 As Man Wah was the Shareholders' preferred buyer, the Shareholders brought this application to set aside the sale of the Asset to Golden Hill Capital, and to direct the JMs to accept Man Wah's offer.[16] Man Wah had an interest in the outcome, but remained off the stage as it had no standing.

Golden Hill Capital and its offer on 31 August 2020

8 The final offer from Golden Hill Capital on 31 August 2020 ("Golden Hill Capital's Final Offer") was US$100m, with an additional US$20m in working capital and a further draw down of the remaining US$3m under a bridging loan provided by Mr Phua Yong Tat.[17]

9 Golden Hill Capital was linked to the original founders of HTL Group, Mr Phua Yong Tat and Mr Phua Yong Pin (the "Phua Brothers").[18] HTLM's debts were assigned to Golden Hill Investments, an entity related to Mr Phua Yong Tat, Mr Phua Yong Pin and Golden Hill Capital (the "Phua Group").[19] Consequently, Golden Hill Investments became the largest external creditor of the Company and HTLM.[20] Mr Phua Yong Tat himself also became the Company's second largest external creditor as he extended bridging loans to the Company when it was in interim judicial management.[21]

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16 Agreed Bundle of Documents Volume 4 ("ABOD-3"), Tab 10, Summons No. 3963 of 2020 dated 14 September 2020.

17 TWC-3, exhibiting Golden Hill's letter dated 31 August 2020 at p 208.

18 ABOD-3, Tab 19, 2nd Affidavit of Phua Yong Tat dated 17 August 2020 ("PYT-2") at paras 4 and 10.

19 TWC-3 at para 16.

20 TWC-3 at para 16.

21 TWC-3 at para 17.

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Man Wah and its offer on 31 August 2020

10 Man Wah's offer dated 31 August 2020 ("Man Wah's 31 August Offer") was to purchase the Asset for US$100m,[22] with a promise of US$10m more than the offer from the Phua Group.[23] This was coupled with the provision of US$20m in post-completion working capital,[24] and an interest-free US$20m interim credit facility that would be set off against the consideration payable.[25]

11 However, the JMs assessed that the accounts of HTL Group would be qualified,[26] and on this basis obtained legal advice from Hong Kong counsel that Man Wah might require two to six months to complete the acquisition due to the need to convene a general meeting and comply with Hong Kong's listing rules.[27] Man Wah's transaction lawyers acknowledged that completion could take up to two months if a shareholders' meeting was required,[28] while the Shareholders' Hong Kong solicitors opined that it would take 91 days to complete.[29]

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22 TWC-3, exhibiting Gibson, Dunn & Crutcher LLP's letter dated 31 August 2020 at pp 210-212, para 2.

23 TWC-3, exhibiting Gibson, Dunn & Crutcher LLP's letter dated 31 August 2020 at pp 210-212, para 8.2.

24 TWC-3, exhibiting Gibson, Dunn & Crutcher LLP's letter dated 31 August 2020 at pp 210-212, para 4.

25 TWC-3, exhibiting Gibson, Dunn & Crutcher LLP's letter dated 31 August 2020 at pp 210-212, para 7.1.

26 TWC-3 at paras 96–99.

27 TWC-2, exhibiting Simmons & Simmons' letter dated 20 August 2020 at p 39, paras 3.1–3.3.

28 TWC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 20 August 2020 at p 31.

29 ABOD-3, Tab 15, 3rd Affidavit of Liu Zhuangchao filed under the cover of the 3rd Affidavit of Sim Ling, Renee dated 23 October 2020 ("LZC-3") at paras 19–21.

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Man Wah's revised offer on 8 September 2020

12 After the JMs informed the court on 7 September 2020 that they decided to proceed with Golden Hill Capital's Final Offer, Man Wah conveyed a further improved offer on 8 September 2020 ("Man Wah's September Offer"). In this revised offer, Man Wah also informed the JMs that there was a high chance that the acquisition would not be subject to its shareholders' approval.[30]

Previous disputes between the Shareholders and the Phua Group

13 There was a previous dispute between the Phua Brothers and the Shareholders, involving the Phua Brothers' attempt to complete a management buyout of the HTL Group from the Shareholders,[31] and allegations that the Phua Brothers engineered the insolvency of the HTL Group to purchase the Asset at an undervalue.[32] However, this was not directly material to the present proceedings.

14 An application had previously been made by the Shareholders in July 2020 for the court to direct the approach of the JMs in dealing with the offer from Golden Hill Capital.[33] It was argued that the JMs, when acting as IJMs previously, unfairly prejudiced the Shareholders by selling assets at an undervalue to the Phua Brothers and prioritising the interests of the Phua

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30 LZC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 8 September 2020 at p 67, para 6.

31 LZC-1 at paras 14–18.

32 LZC-1 at para 32.

33 ABOD-1, Tab 3, Summons No. 2583 of 2020 dated 1 July 2020; LZC-1 at paras 33–59.

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Brothers at the expense of the Company, its creditor and the Shareholders.[34] This application was dismissed.[35]

Summary of the Shareholders' Arguments

15 The Shareholders sought an order declaring that the sale of the Asset to Golden Hill Capital was null and void, a direction requiring the JMs to accept the offer from Man Wah, as well as an order to restrain the JMs from proceeding with any steps to wind up the company.[36]

16 In interpreting the term "unfairly prejudicial" in s 227R CA, the Shareholders cited *In re Meem SL Ltd (in administration)*; *Goel and another v Grant and others* [2018] Bus LR 393 ("*In re Meem*") for the proposition that unfair harm can arise from a decision to sell at an undervalue.[37] On the facts, the sale to Golden Hill Capital could not be justified as the shareholder returns from the sale to Man Wah was much superior.[38] It was also argued that the JMs' general conduct lacked transparency, was unfair to the Shareholders, and was thus perverse.[39]

Summary of the JMs' Arguments

17 The JMs defended their decision to sell to Golden Hill Capital, as one that would ensure full payment to all creditors with shareholder returns that was

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34 LZC-1 at paras 54–57 and 68.

35 Agreed Bundle of Documents Volume 2 ("ABOD-2"), Tab 9, Order of Court No. 3858 of 2020 dated 13 July 2020.

36 ABOD-3, Tab 10, Summons No. 3963 of 2020 dated 14 September 2020.

37 Shareholders' Written Submissions dated 2 November 2020 ("SWS") at para 10(2).

38 SWS at para 11.

39 SWS at paras 12 and 53.

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not negligible, and in fact, even greater than the returns under Man Wah's 31 August Offer.[40] The JMs made this commercial decision fairly and in good faith.[41]

18 Relying on English cases to interpret s 227R CA, it was submitted that courts should not intervene in a decision by JMs (or their English equivalent, administrators) unless the decision was wrong in law, conspicuously unfair or one that did not withstand logical analysis.[42] Clear, wrongful conduct by the JMs was required.[43] Various English decisions including *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760 ("*Re Charnley Davies*"), *In re Meem* and *Lehman Bros Australia Ltd v MacNamara and others* [2020] 3 WLR 147 ("*Lehman Bros*") were cited.[44]

19 On the facts, the JMs emphasised that Man Wah had no standing, and could not complain about any alleged unfairness.[45] The Shareholders also could not rely on such a complaint as a basis for obtaining the orders they sought.[46] In any event, the JMs acted fairly to Man Wah.[47] The consideration of the sale was done fairly to the Shareholders too.[48] In particular, the JMs took into account the potential shareholder returns and the time to complete each deal, and found that

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40 Judicial Managers' Written Submissions dated 2 November 2020 ("JMWS") at paras 3 and 95.

41 JMWS at paras 5-6 and 31.

42 JMWS at paras 52-53, 56a and 57d.

43 JMWS at paras 51 and 57d.

44 JMWS at paras 49, 53 and 54.

45 JMWS at paras 58-59.

46 JMWS at para 59.

47 JMWS at paras 60-61.

48 JMWS at para 112.

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Man Wah's 31 August Offer was less attractive as it could only be completed after two to six months,[49] and the returns was not greater or better than what the Shareholders would receive under Golden Hill Capital's Final Offer.[50] Further, Man Wah's 31 August Offer also required the Company to take on additional liabilities, which was to draw down the US$20m interim financing offered by Man Wah. This may result in a lower return for the Shareholders.[51] As the transaction with Golden Hill Capital was more certain and could be completed quickly,[52] the JMs acted justifiably in choosing Golden Hill Capital's Final Offer given the risk of the subsidiaries collapsing without a deal in the months it would take to complete the sale to Man Wah.[53]

Summary of Golden Hill Capital's arguments

20 Golden Hill Capital argued that it was they who had cause to complain since the completion of the SPA was delayed because of the Shareholders' demands, which the JMs tried to accommodate.[54] The Shareholders could not be unfairly prejudiced as the JMs acceded to Man Wah's requests for time extensions and repeatedly allowed Man Wah, the Shareholders' preferred buyer, to put in multiple revised offers.[55] A previous application on similar grounds failed.[56] Golden Hill Capital's Final Offer was not inadequate,[57] and in fact,

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49 JMWS at paras 77 and 110b.

50 JMWS at paras 95-96 and 110c.

51 JMWS at para 110c.

52 JMWS at paras 78, 110a and 110e.

53 JMWS at para 110d.

54 Phua Group's Written Submissions dated 3 November 2020 ("PGWS") at paras 32 and 37.

55 PGWS at para 40.

56 PGWS at paras 33–34.

57 PGWS at paras 41–46.

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there had been a turnaround in HTL Group's finances since the Phua Group made their investment.[58] Furthermore, s 227R(2) CA would typically provide forward-looking remedies that regulate present or future conduct rather than past transactions,[59] and court orders under s 227R CA should only be made against the JMs instead of third parties such as Golden Hill Capital and the Phua Brothers.[60]

The decision

21 I concluded that it was not made out that the JMs had been conducting the affairs of the company in a manner that was unfairly prejudicial to the interests of the creditors or members generally, or some part thereof. Great leeway ought to be given to JMs to exercise their commercial judgment, which should only be impugned upon evidence of exceptional circumstances, such as plainly wrongful conduct, or conduct that was conspicuously unfair, or perverse.

22 In the present case, the JMs were justified in assessing that Golden Hill Capital's Final Offer promised greater shareholder returns. Even if the price obtained was not the best, as noted by the JMs citing *Re Charnley Davies* at 775,[61] this on its own would not conclusively establish unfair prejudice.

23 I was satisfied that given the circumstances, particularly the need for a swift injection of funds in light of the subsidiaries' precarious financial position, the JMs made a decision in the exercise of their commercial judgment which did not show any perverse, conspicuously unfair or plainly wrongful conduct.

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58 PGWS at para 50.

59 PGWS at paras 56 and 59.

60 PGWS at para 58.

61 JMWS at para 49.

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24 The JMs also fairly evaluated both offers. It did not lie in the mouth of the Shareholders to complain that the JMs should have asked Man Wah to clarify the scope of their offer by way of a meeting. Given the commercial pressures, the onus lay on the offeror to be clear, and if they were not clear, the JMs could not be faulted for going ahead with what they considered was the more appropriate offer. Nor was there any other misconduct by the JMs that would justify an order being made under s 227R CA. The application in Summons 3963 was thus dismissed.

Analysis

The operation of s 227R CA

25 The Shareholders' application in Summons 3963 was made under s 227R CA, since the application to put the Company into judicial management was made before the commencement of IRDA. Sections 115(1)(*a*) and (*b*) IRDA are not materially different from ss 227R(1)(*a*) and (*b*) CA.

26 Section 227R CA reads:

> **Protection of interests of creditors and members**
>
> 227R.—(1) At any time when a judicial management order is in force, a creditor or member of the company may apply to the Court for an order under this section on the ground —
>
> > (*a*) that the company's affairs, business and property are being or have been managed by the judicial manager in a manner which is or was unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at least himself) or of a single creditor that represents one quarter in value of the claims against the company; or
> >
> > (*b*) that any actual or proposed act or omission of the judicial manager is or would be so prejudicial.
>
> (2) On an application for an order under this section, the Court may make such order as it thinks fit for giving relief in respect

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> of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
>
> (3) Subject to subsection (4), an order under this section may —
>
> > (*a*) regulate the future management by the judicial manager of the company's affairs, business and property;
> >
> > (*b*) require the judicial manager to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained he has omitted to do;
> >
> > (*c*) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the Court may direct;
> >
> > (*d*) discharge the judicial management order and make such consequential provision as it thinks fit.
>
> (4) An order under this section shall not prejudice or prevent the implementation of any composition or scheme approved under section 210 or 211I.
>
> (5) Where the judicial management order is discharged, the judicial manager shall immediately send to the Registrar a copy of the order effecting the discharge.
>
> (6) If the judicial manager, without reasonable excuse, fails to comply with subsection (5) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Unfair prejudice

27 Section 227R CA does not stipulate any specific test beyond unfair prejudice, and there is no reported decision in Singapore on the scope of s 227R CA.

28 Assistance may be derived from English case law interpreting s 27 UK Insolvency Act 1986, now paragraph 74 of Schedule B1 of the same Act ("Paragraph 74"). Both these provisions govern administrators, the English equivalent to JMs, and are in *pari materia* to s 227R CA.

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29 The applicant for an order under s 227R CA must show the court that there has been unfair prejudice. That term is not defined further, but the plain words require that (a) the act complained of has caused prejudice to the interests of its creditors or members generally or part thereof, and (b) this prejudice must be "unfair" (see *Four Private Investment Funds v Lomas and others* [2009] 1 BCLC 161 ("*Four Private Investment Funds*") at [34] and [37]). There must be something more than bare prejudice. This stands to reason since most, if not all, commercial decisions of a company in judicial management will probably cause detriment or prejudice to one or other of the members and creditors. It will be very rare indeed for a commercial decision in respect of such a company to be one that is uncontroversial or spares everyone pain and loss.

30 The process of weighing the costs and benefits of a particular course of action will inevitably call for loss to be borne more by some than by others. The resulting decision, even if it has caused unequal or differential treatment, will not be second-guessed or revisited by the court unless the pain to the applicant (for an order under s 227R CA) is wholly unrequired, or the JMs' decision is one that is not at all commercially justifiable, that is, the pain caused to one is out of whack with the reward to others. In the process of weighing costs and benefits, the JM is justified in weighing the interests of creditors more than that of the members or shareholders.

31 Apart from unequal or differential treatment, unfair prejudice can also arise in situations where the JM's unfair conduct has affected everyone within a class. A sale at an undervalue will prejudice all creditors, and can constitute unfair prejudice if the decision to sell that asset is not logical (*ie*, perverse). However, a sale at undervalue alone will not necessarily show any perversity, and the court will not generally look behind the JM's determination, unless there is something particularly lacking on the surface.

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32 As a general rule, the court will not interfere with the decisions of the JM unless it is shown that the JM has committed plainly wrongful conduct, has been conspicuously unfair or has been perverse (see *Four Private Investment Funds* at [48]; *BLV Realty Organization Ltd & Anor v Batten & Ors* [2009] EWHC 2994 (Ch) ("*BLV Realty*") at [22]; *In re Meem* ([16] *supra*) at 407).

33 Thus, the court will not normally second-guess the commercial decisions of the JMs. This position flows from English case law.

Guidance from English case law

34 English courts, as argued by the JMs,[62] take a restrictive approach in reviewing the decisions made by administrators, the English equivalent to JMs.

35 Various English decisions exemplify the reluctance of the courts to second-guess the decision of JMs. In *Re Charnley Davies* ([18] *supra*) at 775, it was held that an administrator has no duty to obtain the best possible price, but only to take reasonable care to obtain the best price that circumstances, as the administrator reasonably perceived them to be, permitted. An administrator is not liable simply because his perception was wrong, unless it was unreasonable. *In re Meem* at 405 noted that courts only interfere with a liquidator's decision if it is "so utterly unreasonable and absurd that no reasonable man would have done it, simply by selling an asset of the company without taking into account the possibility that a third party might well have made a better offer", and that the threshold to interfere with an administrator's decision regarding the sale of an asset is at least as high as it is in the case of a liquidator since administrators are appointed to achieve speedy results.

62 JMWS at para 57a.

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Blackburne J in *Four Private Investment Funds* at [47]–[48] noted that management of the company is vested in the administrator and therefore the administrator must be given a wide measure of latitude.

36 There was, however, a rare example of intervention by the English courts in *Lehman Bros Australia* ([18] *supra*), as noted by the JMs here.[63] Notably, what was at issue there was the JMs' refusal to correct an admitted clerical error (at [17]). Given the uncontroversial and obvious nature of that clerical error, it is not surprising that the court intervened when the JMs were unable to put forward legitimate reasons for their refusal to correct that error (at [95]). In the face of such an obvious clerical mistake, the court will normally intervene if the JMs refuse to remedy it, unless some form of prejudice will result from the court's intervention.

37 In exercising their powers, JMs may have to treat the applicant (for an order under s 227R CA) less favourably than others. Unequal or differential treatment to the disadvantage of the applicant may prejudice the applicant, but this prejudice will not be "unfair" unless there is no cogent rational explanation for the different treatment (*BLV Realty* at [22]), or the differential treatment to the prejudice of the applicant cannot be justified by reference to the interests of the creditors and members as a whole, or to achieving the statutory objective of judicial management (see *In re Meem* at 407).

38 The Shareholders relied on the decision in *In re Meem* at 404 as authority that unfairness can result from unfair conduct affecting everyone within a class, and is not limited to unequal treatment.[64] Apart from that, *In re Meem*, which

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63 JMWS at para 54.

64 SWS at para 10.

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interpreted Paragraph 74, also stands for the proposition that if there is no differential treatment, the court will not interfere unless the decision is not logical, and this is taken to be the same as perversity (*In re Meem* at 407). A sale at undervalue will cause harm to all creditors, and can fall within the concept of "unfair harm" within the meaning of Paragraph 74 (*In re Meem* at 407).[65]

39 In any event, the Shareholders' position did not appear to differ significantly from that of the JMs on the law. I did not consider that *In re Meem* stands for a proposition that contradicts the other English cases considered. What the Shareholders were relying on was the fact that unfairness need not result from differential treatment.[66] I did not think there could be much taken against that proposition. *Hockin and others v Masden and another* [2014] 2 BCLC 531 at [19]–[20] and *Lehman Bros* at [83] also echo this position when interpreting "unfair harm" under Paragraph 74. It is certainly possible that a sale at an undervalue may indicate perversity, if there is nothing to justify such loss being caused. However, this proposition must also be taken alongside the position that: (a) a sale at undervalue alone will not necessarily show any perversity, and (b) the court will not generally look behind the JM's determination, unless there is something particularly lacking on the surface. This flows from the need to give a wide measure of latitude to the JM, as emphasised in *In re Meem* at 405 itself (in the context of administrators).

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65 SWS at para 10.

66 SWS at para 10.

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Guidance from local materials

40 Indeed, it is the JMs who need to exercise their business acumen and rely on their business experience in their attempt to achieve the objectives laid down by statute. During the Third Reading of the Companies (Amendment) Bill, the Minister for Finance said (*Singapore Parliamentary Debates, Official Report* (26 March 1987) vol 49 at cols 1194–1195 (Richard Hu Tsu Tau, Minister for Finance)):

> The Member for Whampoa has also asked why are companies and their directors not allowed to nominate anyone other than approved auditors whereas the Court and the Minister have such discretion. This is because we have to be very careful that people who are nominated to be judicial managers have the qualifications, knowledge and expertise to do the job properly, and we believe that approved auditors will normally have these necessary qualifications. …

Hence, restrictions have been imposed on the appointment of JMs, and those that meet the criteria are deemed by Parliament to have the requisite qualifications, knowledge and expertise to undertake this role. Since Parliament trusts that an appointed JM will possess the necessary skills and experience for the job, the courts should give JMs a wide discretion to employ their skills and expertise in attempting to resuscitate the company.

41 While exercising this wide discretion, JMs will be justified in weighing the interests of creditors more than those of the members or shareholders. Previous cases held that the greater the concern over a company's financial health, the more weight the directors must accord to the interests of creditors over those of the shareholders (*Parakou Shipping Pte Ltd (in liquidation) v Liu Cheng Chan and others* [2017] SGHC 15 at [62], citing *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 at [34]). This principle should also apply when the company had been put into

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judicial management and the JMs had displaced the directors in managing the company's affairs. Indeed, in a company that is insolvent or perilously close to being insolvent, creditors' interests should come to the fore because in a practical sense, it will be the creditors' assets and not the shareholders' assets that, through the medium of the company, will be under the management of the JM (see *Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 at [50] and [52]). If anything, as between creditors and shareholders, it would have been incumbent on the latter to take action earlier to avoid judicial management in the first place.

42 It was argued by Golden Hill Capital that the court's powers under s 227R CA are only forward-looking.[67] I could not see that the court's powers are so circumscribed under this section. Section 227R(1)(*a*) CA speaks of the company's affairs "being or have been managed" by the JMs in a manner which "is or was unfairly prejudicial", while s 227R(1)(*b*) CA refers to a "proposed act or omission" by the JMs which would be so prejudicial. Clearly, the language in s 227R(1) CA is wide enough to cover past, present and proposed acts (or omissions). As for the orders that may be made by the court, s 227R(2) CA is very broad, specifying that the court can make such order as it thinks fit. Subsection (3) includes various possible orders, and while subsection (3)(*a*) specifies that the orders may regulate the future management, it does not follow that the orders are in fact so restricted. The language of subsection (3) is permissive and inclusive: it does not purport to lay down a closed list. The only restriction is under subsection (4), which ensures that any order made will not prevent or prejudice the implementation of a scheme under ss 210 or 211I of the CA. There was no such prejudice here.

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67 PGWS at paras 56 and 59.

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The court's determination of the legal rule

43 In sum, the formulation of the appropriate rule is that which was argued for by the JMs.[68] The court will not interfere with a decision of the JM unless it can be shown that the JMs has committed plainly wrongful conduct, has been conspicuously unfair or has been perverse. The various alternative phrases in use do not add to or detract from this formulation.

Application to the Facts

44 Turning to the facts, the Shareholders focused primarily on the point that the sale to Golden Hill Capital could not be justified as the Man Wah alternative was superior.[69] The JMs' conduct also lacked transparency and was unfair to the Shareholders.[70] For instance, the JMs were intent on choosing an offer from Golden Hill Capital regardless of what Man Wah's offer might be, the JMs did not seek to clarify Man Wah's offer,[71] and court approval concerning their decision to sell to Golden Hill Capital was absent.[72] Further, the JMs' failure to accede to Man Wah's numerous requests for the latest financial statements deprived the Company of the chance of being offered a more attractive credit facility from Man Wah.[73]

45 In response, the JMs argued that Man Wah's 31 August Offer was not in fact more attractive in terms of shareholder returns,[74] and that they had dealt

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68 JMWS at para 57d.

69 SWS at paras 11 and paras 13–25.

70 SWS at paras 12 and 53.

71 SWS at paras 53(2) and 53(3).

72 SWS at para 53(4).

73 SWS at paras 55 and 62.

74 JMWS at para 95.

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fairly with Man Wah.[75] It was emphasised that there was great urgency in completing the sale as the Company was in a dire financial situation and its key manufacturing subsidiaries were at risk of collapse.[76] While the Man Wah deal required more time for completion,[77] Golden Hill Capital's Final Offer provided greater certainty and could be completed quickly because there was already a contractually binding SPA in place.[78]

46 The issues that needed to be confronted in dealing with the application were thus:

(a) whether the JMs' decision to prefer a sale to Golden Hill Capital instead of Man Wah caused prejudice to the Shareholders in terms of diminished shareholder returns; and

(b) whether the prejudice caused to the Shareholders (if any) was unfair, and in this regard, the following sub-issues had to be addressed:

(i) the urgency of the sale and time taken to complete the acquisition; and

(ii) whether there was fair consideration of the competing offers.

47 In terms of shareholder returns, I found that the JMs had good reasons to find that Golden Hill Capital's Final Offer was at the least comparable or

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75 JMWS at paras 58-59.

76 JMWS at paras 16–17, 44f, 77 and 110d.

77 JMWS at paras 35–37 and 110b.

78 JMWS at paras 78, 110a and 110e.

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equal to Man Wah's 31 August Offer, if not better. In any event, there was nothing plainly wrongful, conspicuously unfair or perverse in the JMs' decision to sell the Asset to Golden Hill Capital. The sale was in the interests of the creditors and shareholders as a whole, especially given the circumstances, such as the pressures coming up against the subsidiaries and the limited time available. I also determined that the JMs had fairly considered the competing offers from Man Wah and Golden Hill Capital.

Shareholder returns

48 The Shareholders relied on expert evidence and argued that Man Wah's 31 August Offer promised superior shareholder returns.[79] The return on Man Wah's 31 August Offer was US$59.8m while the return on Golden Hill Capital's final offer was only US$46.8m.[80] The JMs were wrong in assessing that the return under Man Wah's 31 August Offer was only US$39.8m.[81]

49 In particular, the Shareholders raised two main issues concerning the JMs' assessment of shareholder returns:

(a) whether the US$20m interim credit facility under Man Wah's 31 August Offer would be depleted during the two to six months pending completion; and

(b) whether the US$20m that the Company loaned to HTLM, upon receiving Man Wah's credit facility, would be waived.

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79 SWS at para 11.

80 SWS at para 18(6).

81 SWS at para 18(5).

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50 I found that the JMs' assessment was justified for both issues, and accordingly, the JMs had good grounds to find that Golden Hill Capital's Final Offer was at the least comparable or equal to Man Wah's 31 August Offer, if not better.

(1) Whether the full US$20m interim financing would be drawn down

51 The Shareholders argued that the JMs could not assume that the full US$20m interest-free credit facility in Man Wah's 31 August Offer would be depleted during the two to six months pending completion.[82] In response, the JMs argued that based on past cashflow forecasts and the parlous financial state of the Chinese subsidiaries, it was very likely that the US$20m interim financing would be drawn down in the two to six months prior to completion.[83]

52 I accepted the JMs' submissions on this point. As will be elaborated upon subsequently at [73], the estimate that Man Wah would take two to six months to acquire the Asset was justifiable. In light of the subsidiaries' financial distress (see [67(a)] below), the JMs were entitled to assume that Man Wah's US$20m credit facility would be completely drawn down by the Company in the two to six months pending completion. This was also consistent with HTL Group's 2020 cashflow forecast, which revealed that HTL Group's average monthly fixed cost was approximately US$5m and its average monthly variable cost was roughly US$13m.[84]

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82 SWS at para 18(2).

83 JMWS at paras 96 and 98–100.

84 ABOD-2, Tab 8, 2nd Affidavit of Chew Kwang Yong dated 13 July 2020 at para 46.

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(2) Whether the Waiver applied to the US$20m loan from the Company to HTLM

53 I accepted the JMs' evidence that if Man Wah loaned the US$20m interim financing to the Company, the Company would loan the US$20m to HTLM, which would in turn transfer the same to the subsidiaries based in China.[85] It was not disputed that the Company would be loaning the US$20m it received to its subsidiaries for their operational needs pending completion.[86]

54 However, parties differed on the issue of whether this US$20m loan between the Company and HTLM would be waived, such that HTLM did not need to repay the Company the same. The JMs took the view that this debt was discharged because Man Wah had agreed to waive all indebtedness owed between the Company and HTLM (the "Waiver"), including this US$20m loan, as a precondition to completion.[87] On the other hand, the Shareholders argued that the US$20m loan from the Company to HTLM would not be waived, and accordingly, the US$20m loan would be refunded to the Company, and the Company's cash reserves would return to US$110m, *ie*, the original consideration under Man Wah's 31 August Offer.[88]

55 I was not, however, persuaded by the Shareholders' arguments, and preferred the arguments of the JMs. From the documents and the history of the discussions between the Company and Golden Hill Capital on the one hand and

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85 ABOD-3, Tab 13, 6th Affidavit of Tan Wei Cheong dated 9 October 2020 ("TWC-6") at para 41.

86 JMWS at para 105; SWS at para 18(5).

87 JMWS at paras 105-107.

88 SWS at paras 18(5) and 20-22.

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the JMs and Man Wah on the other, it was clear that the Waiver would apply to the US$20m loan from the Company to HTLM.

56 The Waiver was first mentioned in Clause 4.1(d) of the SPA between Golden Hill Capital and the Company, which were the purchaser and vendor respectively:[89]

> **4.1 Conditions Precedent**
>
> Completion of the sale and purchase of the [Asset] is conditional upon the following (unless waived by the Party expressed herein to be entitled to do so):
>
> …
>
> (d) the Vendor having received a deed executed by and between the Vendor and HTL Manufacturing Pte Ltd which provides for the irrevocable and unconditional release, discharge and waiver of all loans, indebtedness and/or other liabilities owed between them (whether by or to).

57 This Waiver was not included in Man Wah's 19 August Offer, but when the JMs sought clarification in respect of its offer, Man Wah mentioned the Waiver in its 20 August Clarification:[90]

> … Similar to the offer by the Phuas, [Man Wah] is also willing to agree to the release, discharge and waiver of all loans, indebtedness or other liabilities owed between HTLI and HTLM (the "Waiver") as a condition precedent to the completion of the Acquisition. We understand from paragraph 3.57 of the Interim Judicial Managers' Report dated 29 June 2020 that the JMs have been working on a deed to be executed by HTLI and HTLM to implement the Waiver and we would be grateful if you could extend a copy of the same to us.

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89 IJM Report at paras 3.19–3.32 and Appendix 2, clause 4.1(d).

90 TWC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 20 August 2020 at p 29, para 1a.

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58 In its letter dated 31 August 2020, Man Wah revised its offer and expressed that it was prepared to offer an interest-free US$20m interim credit facility to the Company:[91]

> …[O]ur client is prepared to offer an interest-free US$20 million interim credit facility to HTLI to support the Target Group's business prior to Completion. Any amount disbursed will be set off against the Consideration payable on Completion…

It was evident that Man Wah contemplated that the Company would channel the US$20m to the subsidiaries within the group for their business operations pending completion.

59 Notably, Man Wah's 31 August Offer was provided in response to the JMs' invitation on 24 August 2020 to put forward "anything further" it wished to communicate with respect to its offer.[92] In such circumstances, Man Wah's 31 August Offer must be read together with Man Wah's 19 August Offer, accompanied with its 20 August Clarification. It followed that the JMs were justified in comprehending that the US$20m loan from the Company to its subsidiaries, as contemplated in its 31 August offer, would also be subject to the Waiver expressed in Man Wah's 20 August Clarification. Had this not been Man Wah's intention, Man Wah would have expressly stated that it would not waive the US$20m loan from the Company to HTLM, especially since it was allegedly an advantageous feature in its favour, the JMs had indicated to Man Wah that they would be making a decision upon receipt of Man Wah's revised offer,[93] and Man Wah clearly knew there was stiff competition between Man Wah and Golden Hill Capital.

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91 TWC-3, exhibiting Gibson, Dunn & Crutcher LLP's letter dated 31 August 2020 at p 211, para 7.1.

92 TWC-3, exhibiting PRP Law LLC's email dated 24 August 2020 at p 204.

93 TWC-3, exhibiting PRP Law LLC's email dated 24 August 2020 at p 204.

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60 Therefore, it was reasonable for the JMs to proceed on the basis that the Company's US$20m loan to its subsidiaries would be waived. In which case, the full US$20m credit facility from Man Wah would be offset against Man Wah's consideration, and due to the Waiver, this US$20m would not flowing back to the Company from HTLM. The JMs were thus justified in assessing that shareholder returns would be less under the Man Wah deal.

61 I noted that the Shareholders also relied on the evidence of their financial expert to contend that the offer made by Man Wah was more advantageous.[94] Regarding the core question of whether Man Wah's 31 August Offer was better by virtue of the US$20m interim financing, the expert's conclusion that it was, ran into the substantive difficulty that the interim financing was in fact to be spent and was not recoverable because of the operation of the Waiver. The expert seemed to have concluded that this interim financing would be repaid by its subsidiaries,[95] but this was not the case because as set out above at [59], the Waiver did apply to the US$20m loan between the Company and HTLM. As noted by the JMs, [96] it might be that the Shareholders' expert came to a different conclusion because she was hampered by the limited documents that appeared to have been given to her. In particular, she did not seem to have sight of Man Wah's 20 August Clarification.[97]

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94 SWS at para 19; ABOD-3, Tab 11, 2nd Affidavit of Adeline Ng Cheah Chen dated 14 September 2020 ("ANCC-2"); ABOD-3, Tab 16, 3rd Affidavit of Adeline Ng Cheah Chen dated 24 October 2020 ("ANCC-3").

95 ANCC-2 at p 15.

96 TWC-6 at para 37; ANCC-2 at p 19.

97 ANCC-2 at p 19.

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62 While the expert subsequently attempted to cast some doubt on whether the Waiver would apply to this US$20m,[98] I was not convinced by her attempt. In any event, the expert herself did not come to a firm conclusion, observing that it was only a "plausible scenario" that the Waiver did not apply to the US$20m.[99]

(3) Conclusion on the JMs' assessment of shareholder returns

63 Given my finding that the JMs were entitled to take the view that the US$20m interim financing under Man Wah's 31 August Offer would be used up in the two to six months prior to completion, and the full US$20m would not be refunded to the Company from its subsidiaries, the JMs were justified in deciding that Man Wah's 31 August Offer would yield lower shareholder returns than Golden Hill Capital's Final Offer.

64 As for the fact that Man Wah offered US$10m more than any other offer, this had to be weighed against the exigencies of the situation, and the need for an expediency as noted below at [67]–[70]. Given the pressures, it would not be unreasonable to conclude that any benefit from the additional US$10m would be offset by the fact that Man Wah's 31 August Offer would require a longer period for completion (see below at [70] and [73]).

65 Even if there was some ambiguity about what was offered by Man Wah, in particular whether the US$20m loan between the Company and HTLM would be waived, as discussed below at [79], any such uncertainty should have been resolved by the offeror, namely Man Wah, and not by the JMs.

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98 ANCC-3 at paras 8-11.

99 ANCC-3 at para 8.

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66 It must also be emphasised that even if Man Wah's 31 August Offer was close to or better than Golden Hill Capital's Final Offer, the JMs were not required to get the best price, as noted by *Re Charnley Davies* ([18] *supra*) at 775. The point is that JMs are entitled to exercise their commercial expertise and judgment in the particular circumstances, and the court will rarely second guess their decision, if there are exigencies and other factors present. In this case, the key factor that played on the minds of the JMs was the urgency of the sale.

Urgency of the sale and time taken to complete the acquisition

67 I accepted that the exigencies of the situation facing the Company were such that the JMs had to make a decision that would resolve the problems sooner rather than later. These circumstances included the following.

(a) The COVID-19 pandemic triggered the onset of the Chinese subsidiaries' financial distress,[100] and since then, the Chinese subsidiaries had been in a dire financial situation.

(i) As of 27 August 2020, due to legal action, approximately RMB 690,000 across 11 different bank accounts owned by four of the Chinese subsidiaries were frozen.[101]

(ii) In light of unpaid debts, various suppliers, including a key supplier, refused to supply raw materials to four of the

100 LZC-3 at para 8; Chew Kwang Yong's 1st Affidavit dated 27 April 2020 at paras 28–33.

101 JMWS at para 16c; TWC-2 at para 8; TWC-3 at paras 40–41.

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Chinese subsidiaries, thereby causing production by all four subsidiaries to come to a halt as of 1 September 2020.[102]

(iii) Three Chinese banks demanded repayment of the loans they made to the Chinese subsidiaries.[103]

(b) Interim funding from the Phua Group had been largely used up.[104]

68 The precarious financial position of the Chinese subsidiaries was not in any event contested by the Shareholders.

69 Significantly, HTL Group's Chinese subsidiaries played a crucial role in manufacturing goods, without which goods could not be produced, revenue could not be generated and liabilities to customers would accumulate.[105] With the subsidiaries' cessation of production, it would not be long before creditors would initiate winding up action as they would have lost confidence in the subsidiaries' ability to repay. Realistically, HTL Group was close to losing its manufacturing arm.

70 That meant in turn that a rescue was imperative, and time was of the essence. Should the Chinese subsidiaries collapse prior to the acquisition of the Asset, the value of the Asset would plummet substantially. This would in turn impact the returns to creditors and shareholders. I accepted the arguments of the

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102 JMWS at paras 16d–16e; TWC-3 at paras 23–26.

103 JMWS at para 16h; TWC-3 at paras 42–46.

104 JMWS at paras 17 and 50–51.

105 JMWS at paras 10 and 16f; TWC-3 at para 11; TWC-3 at para 36.

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JMs on this issue.[106] While Golden Hill Capital's Final Offer could be implemented swiftly given that a legally binding SPA had already been entered into on 28 May 2020,[107] Man Wah's 31 August Offer required several weeks, if not several months, as Man Wah needed to obtain its shareholders' approval for the deal.

71 The JMs were entitled to consider that Man Wah had to obtain its shareholders' approval at a general meeting prior to its acquisition of the Asset. The JMs had assessed that the accounts would be qualified since HTLM was insolvent and Ernst & Young LLP had issued a disclaimer of opinion in the latest audited financial statements of HTLM.[108] On this basis, Hong Kong counsel advised the JMs that it was necessary for Man Wah to convene a general meeting to approve the acquisition under Hong Kong's listing rules.[109] This was corroborated by Man Wah's correspondences on 20 August and 26 August 2020, which stated that it had to convene a shareholders' meeting if HTL Group's accounts were qualified.[110] Even though Man Wah's September Offer expressed that there was a "high chance" that the acquisition would not be subject to shareholders' approval,[111] this was only brought to the JM's attention after the 31 August 2020 deadline to put in further communication had long

106 JMWS at paras 76–87 and 110b.

107 IJM Report at paras 3.19–3.32 and Appendix 2, clause 3.1(a).

108 TWC-3 at paras 96–99.

109 TWC-2, exhibiting Simmons & Simmons' letter dated 20 August 2020 at p 39, paras 3.1–3.2.

110 TWC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 20 August 2020 at p 31, para 3b. TWC-3, exhibiting Davinder Singh Chambers LLC's letter dated 26 August 2020 at p 181, para 7.

111 LZC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 8 September 2020 at p 66, para 6.

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passed,[112] and by then, the JMs already informed the court on 7 September 2020 that they had decided to proceed with Golden Capital Hill's offer.[113] In any event, in its September Offer, Man Wah was not able to state with certainty that a shareholders' meeting was not necessary. Therefore, the JMs were entitled to rely on their Hong Kong counsel's legal advice that Man Wah had to convene a shareholders' meeting to approve the acquisition.

72 The JMs, Man Wah and the Shareholders each obtained legal advice on the time required for Man Wah to complete the acquisition of the Asset. The evidence differed, but all fall within the range of two to six months. The Hong Kong counsel advising the JMs opined that the acquisition would take two to six months to complete.[114] Separately, Man Wah's transaction lawyers, stated that approval would take up to two months if a shareholders' meeting was required.[115] The Shareholders also obtained an opinion stating that 91 days, which was about three months, would be needed.[116] As it was, the time required for the Man Wah deal remained unsettled and uncertain. Given that uncertainty, and the imperatives in favour of a faster resolution, the JMs were entitled to give preference to Golden Hill Capital, even if everything else was equal.

73 Furthermore, it was reasonable for the JMs to have relied on their Hong Kong counsel's legal advice estimating a two to six-month period, and to prefer that to Man Wah's stance that it would only take up to two months. Man Wah's

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112 TWC-3 at para 73.

113 TWC-3 at para 112.

114 TWC-2, exhibiting Simmons & Simmons' letter dated 20 August 2020 at p 39, para 3.3.

115 TWC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 20 August 2020 at p 31.

116 LZC-3 at paras 19-21; SWS at para 60.

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assertion was not backed by further elaboration,[117] whereas the JMs' Hong Kong counsel undertook an extensive analysis[118] and there was nothing that would put their advice into doubt. The Shareholders' opinion that it would take 91 days was only made known after the JMs have communicated to the court their decision to proceed with Golden Hill Capital's offer, and in any case, was predicated on multiple assumptions.[119]

74 The fact that Man Wah's 31 August Offer would take a longer time to complete than Golden Hill Capital's was not really taken issue with by the Shareholders, who merely noted that the expected timeframe for completion should be 91 days and not two to six months.[120]

Fair consideration

75 While the Shareholders alleged that the JMs were biased towards Golden Hill Capital,[121] I found that there was fair consideration by the JMs of the various alternatives. Certainly, any bias or unfairness in selecting between competing offers would probably point to a perverse outcome, but I found nothing of that nature or degree.

76 The Shareholders argued that even though Man Wah's 31 August Offer was clearly superior, the JMs were intent on choosing the deal with Golden Hill

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117 TWC-2, exhibiting Gibson, Dunn & Crutcher LLP's email dated 20 August 2020 at p 31, para 3c.

118 TWC-2, exhibiting Simmons & Simmons' letter dated 20 August 2020 at pp 42–44, para 4.3.

119 LZC-3, exhibiting Michael Li & Co's letter dated 21 October 2020 at pp 22 and 24.

120 SWS at para 60.

121 SWS at para 53.

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Capital whatever Man Wah's offer was because there was a binding SPA with Golden Hill Capital.[122]

77 The allegation that the JMs were bent on dealing with Golden Hill Capital regardless of the merits of Man Wah's offers, was not borne out on the facts. The JMs seriously considered Man Wah's 19 August Offer, as demonstrated by the detailed list of clarifications sought by the JMs from Man Wah on 19 August,[123] and the fact that the JMs took it upon themselves to obtain legal advice twice on the issue of shareholders' meeting under Hong Kong listing rules and how long Man Wah would take to complete the acquisition.[124] The JMs also gave an equal opportunity to both Man Wah and Golden Hill Capital to put in "anything further" in respect of their offers by 26 August 2020 before making their final decision.[125] Even when the Phua Group emphasised the urgency in completing the SPA and that the SPA had a completion date of 28 August 2020,[126] the JMs nevertheless agreed to Man Wah's request to extend the deadline to put in further matters from 26 August to 31 August 2020.[127] Finally, the JMs carefully weighed the two options upon receiving Man Wah's 31 August Offer and Golden Hill Capital's Final Offer, taking into account relevant factors such as shareholder returns and time for completion, before

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122 SWS at para 53(1).

123 TWC-2, exhibiting PRP Law LLC's email dated 19 August 2020 at pp 34–35.

124 TWC-2, exhibiting Simmons & Simmons' letter dated 20 August 2020 at pp 37–45; TWC-3, exhibiting Simmons & Simmons' letter dated 2 September 2020 at pp 256–263.

125 TWC-3, exhibiting PRP Law LLC's emails dated 24 August 2020 at pp 204–205.

126 PYT-3, exhibiting Rajah & Tann Singapore LLP's letter dated 24 August 2020 at p 31, paras 3 and 5.

127 TWC-3, exhibiting Gibson, Dunn & Crutcher LLP's email dated 25 August 2020 at pp 188–189; TWC-3, exhibiting PRP Law LLC's letter dated 26 August 2020 at pp 195–197.

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reaching the view that Golden Hill Capital's Final Offer was preferable.[128] It was apparent, on the whole, that the JMs seriously evaluated Man Wah's offers and gave Man Wah sufficient opportunity and time to revise its offer despite the urgent need to complete the sale. The JMs could not be faulted for not considering Man Wah's September Offer since it was put in way after the deadline, and after the JMs had reported to the court that it had decided to go with Golden Hill Capital.

78 There was also nothing objectionable with the JMs taking into account the contractually binding SPA with Golden Hill Capital. It would have been appropriate to consider what would have happened if there was breach of that SPA, as well as the impact on the relationship with Mr Phua Yong Tat. Mr Phua Yong Tat was behind Golden Hill Capital and Golden Hill Investments, which was the largest external creditor of the Company and HTLM.[129] He was also, in his personal capacity, the second largest external creditor of the Company.[130] This was not an abdication of decision-making or judgment by the JMs; it was part of a holistic consideration of commercial implications that might arise from their decision to pick one deal over the other.

79 As to the Shareholders' argument that the JMs should have clarified,[131] it was for Man Wah to clarify what their position was, particularly where time was pressing and there was an alternative on the table. The JMs had no duty, in the circumstances, to uncover and clarify all ambiguities; it should have been for the putative purchaser to be clear.

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128 TWC-3 at paras 84–112.

129 TWC-3 at para 16.

130 TWC-3 at para 17.

131 SWS at paras 53(2) and 53(3).

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Other complaints

80 The Shareholders put some store on the reminder given by the court that JMs should consider all proposals fairly,[132] but this was only a reminder by the court. The Shareholders (and Man Wah previously) put far too much emphasis on this reminder than was warranted or intended. The direction to the JMs to fairly consider all offers did not necessitate obtaining a court sanction for the sale. Directions from the court could be applied for under s 227G(5) CA or s 99(5) IRDA, but this was not mandatory.

81 Another complaint by the Shareholders concerned the JMs' persistent refusal to accede to Man Wah's requests for HTL Group's financial statements[133] – had the financials been provided, it was possible that Man Wah would increase the credit facility offered.[134] As with any commercial decision, the JMs had to balance the costs and benefits of undertaking a course of action. Here, any potential benefit arising from the disclosure of financial statements to Man Wah must be weighed against the risk of further delay, which the JMs assessed to be a real concern. The JMs were justified in determining that it was best, particularly in view of the subsidiaries' financial exigencies, to push the sale forward on limited information to avoid what in their view was a real risk that that the provision of these accounts would spawn further requests for supporting documents.[135] As emphasised above at [69]–[70], any further delays in the sale would increase the risk that the subsidiaries would collapse in the meantime, thereby reducing returns to creditors and shareholders as a whole.

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132 SWS at para 53(4).

133 SWS at paras 54–55.

134 SWS at para 62.

135 TWC-3, exhibiting PRP Law LLC's letter dated 26 August 2020 at pp 196–197, para 11.

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Thus, it was not untoward for the JMs to withhold financial statements from Man Wah in these circumstances. In any event, there is no duty to obtain the absolute best price in the market: doing so would entail a much more intricate and prolonged process. While there may be some situations where that level of obligation would exist, the Court would be wary of imposing that on JMs exercising *bona fide* commercial judgment, in the face of pressing circumstances. The obligation of JMs may indeed be different in other contexts.

82 The Shareholders also referred to the JMs knowing about the Phua Group's manipulation of suppliers' and customers' sentiments,[136] but I could not see that there was anything untoward in what was done by the Phua Group. It would be good to gain the support of vendors and customers, one would have thought.

Conclusion

83 The JMs were justified in their assessment that Golden Hill Capital's Final Offer was at the least comparable or equal to Man Wah's 31 August Offer, if not better, in terms of shareholder returns. Therefore, the Shareholders did not establish that the JMs had caused it any prejudice, much less unfair prejudice. In any event, the JMs could not be faulted for any plainly wrongful, conspicuously unfair or perverse conduct – they acted justifiably in light of financial exigencies and gave fair consideration to both offers. Consequently, the Shareholders failed to make out a basis for the court to declare the sale to Golden Hill Capital null and void, or to direct the JMs to effect the sale to Man Wah instead.

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136 SWS at paras 64–65.

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84 As for costs, I ordered the Shareholders to pay costs of S$25,000 and disbursements of S$773.48 to the JMs, and costs of S$18,000 to the Phua Group.

Aedit Abdullah
Judge of the High Court

Pillai Pradeep G, Lin Shuling Joycelyn, Wong Shi Rui Jonas, Lek Hao Kai (PRP Law LLC) for the applicant;
Tan Tee Jim SC, Gan Theng Chong, Melissa Ng, Vanessa Claire Koh (Lee & Lee) (instructed), Sharon Chong, Amanda Chen, Nandhu, Renee Sim (RHTLaw Asia LLP) for the non-party shareholders;
Harpreet Singh Nehal SC, Jordan Tan, Victor Leong (Audent Chambers LLC) (instructed), Cheng Wai Yuen Mark, Chew Xiang, Ho Zi Wei, Tan Tian Hui (Rajah & Tann Singapore LLP) for the non-parties Mr Phua Yong Tat, Mr Phua Yong Sin and Golden Hill Capital Pte Ltd.

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