IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 287

Originating Summons No 1139 of 2016

In the matter of

Gulf Pacific Shipping Limited (in creditors' voluntary liquidation)

And

(1) Wong Teck Meng

And

(2) Stephen Briscoe

… *Applicants*

GROUNDS OF DECISION

[Insolvency law] — [Cross-border insolvency] — [Recognition of foreign insolvency proceedings]

Re Gulf Pacific Shipping Ltd (in creditors' voluntary liquidation) and others

[2016] SGHC 287

High Court — Originating Summons No 1139 of 2016
Aedit Abdullah JC
29 December 2016

30 December 2016

Aedit Abdullah JC:

1 These are brief grounds of decision in respect of an *ex parte* application for recognition of foreign liquidators of a Hong Kong company, which was put into creditors' voluntary winding up, as well as for orders empowering these foreign liquidators to obtain information in relation to accounts belonging to the company. These grounds are issued to record the decision for the benefit of insolvency practitioners.

Background

2 The company in question, Gulf Pacific Shipping Limited ("the Company"), was incorporated and registered in the Hong Kong Special Administrative Region in the People's Republic of China. It was the wholly-owned subsidiary of STX Pan Ocean (Hong Kong) Co Ltd, ("STX HK"). The Company and STX HK were part of the Pan Ocean Group, which was involved in shipping of dry bulk cargo. The ultimate holding company, Pan

Ocean Co Limited, a Korean entity, was eventually put into rehabilitation by the Seoul District Court in 2013. STX HK itself was ordered to be wound up compulsorily by the High Court of Hong Kong in November 2013. One of the liquidators of STX HK was appointed a director of the Company in 2016. In 2016, the Company was put into creditors' voluntary winding up, with the appointment of the two applicants, Wong Teck Meng and Stephen Briscoe, as liquidators of the Company. The only claims lodged in the liquidation were by STX HK and the Hong Kong Commissioner of Inland Revenue.

3 The Company appeared to have had a bank account with ABN AMRO Bank NV Singapore Branch ("ABN Singapore"). The account was apparently closed in 2013. The applicants sought copies of bank statements from 2011 to 2013. ABN Singapore requested that the liquidators obtain a court order giving sanction to their appointment and request. That request led to the present application for recognition of the liquidators.

The Application

4 The applicants cited a number of decisions in support of their application, including *Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (deugro (Singapore) Pte Ltd, non-party*) [2014] 2 SLR 815, *Re Lee Wah Bank Ltd* [1958] 2 MC 81, *Re Cosimo Borelli* Originating Summons No 762 of 2010, and *Re Opti-Medix Ltd (in liquidation) and another matter* [2016] 4 SLR 312 ("*Re Opti-Medix*").

5 Here, recognition was sought by liquidators appointed in the place of incorporation; no question in relation to the identification of the common law

centre of main interest ("COMI") thus arose. That COMI would have been Hong Kong in any event as the activities and management of the company were centred in that territory. No prejudice would appear to arise in respect of Singapore persons or entities, as indicated by the supporting affidavit of the Singapore solicitors for the applicants: cause book searches turned up empty and advertisements, which were placed in local papers inviting creditors to contact the solicitors, received no response. As I earlier stated in *Re Opti-Medix* (at [28]), such a supporting affidavit from the Singapore solicitors would be given due weight – certainly more than mere assertions from the foreign liquidators – and was thus useful and desirable in applications of this nature.

The Decision

6 On the evidence presented, I was satisfied that recognition should be granted. Specifically, I noted that no prejudice would likely arise as there were apparently no assets in Singapore and no creditors. Recognition was sought because of the need for information about the closed bank account with ABN Singapore, rather than to realise assets here. Some of the orders sought and granted were fairly wide, but I was satisfied that this was justified as information may be needed on the outflow of funds from the account.

7 The only issue that required some deliberation was whether recognition should be denied as the company was liquidated through a voluntary winding-up. Counsel for the applicants, in the discharge of his duty to the Court, noted the view of Lord Sumption in the Privy Council advice in *Singularis Holdings Ltd v PricewaterhouseCoopers (PC)* [2015] AC 1675

("*Singularis*") (at [25]) that common law powers of assistance to foreign liquidation did not extend to voluntary winding up. This position appears to have been born out of a reluctance to encourage what Lord Sumption described as "the promiscuous creation of … powers to compel production of information". Voluntary winding up was characterised by His Lordship as an essentially private arrangement, and not of the same nature as insolvency involving officers of a foreign court. Lord Clarke agreed with Lord Sumption on these points.

8 Counsel for the Applicants argued that Lord Sumption's observations were dicta, that they arose out of different facts, and that insufficient justification was given for drawing such a distinction. Lord Neuberger's differing stance in *Singularis* (at [158]) was to be preferred. A US bankruptcy court decision interpreting the UNCITRAL Model Law, *In re Betcorp Limited (In Liquidation)* 400 BR 266 (Bankr. D. Nev. 2009) ("*In re Betcorp*") was cited as authority for not distinguishing between voluntary winding up and compulsory winding up.

9 *Singularis* was indeed concerned with a different factual situation, in which documents were sought from auditors of a company. In contrast, in the present case, the information and documents sought were in respect of assets of the company. But in any event, I did not, with the greatest respect, adopt the distinction drawn by Lord Sumption between voluntary and compulsory liquidation. The difficulties with the distinction were noted by Lord Neuberger in *Singularis*, who described it (at [158]) as potentially arbitrary. However, I would note that Lord Neuberger was on the whole cautious about common law

assistance to foreign liquidators (see [154], [160] and [161]). I suspect *Re Opti-Medix* would not have attracted His Lordship's approval.

10 Be that as it may, in my view, as stated in *Re Opti-Medix* (at [17]), the foundational doctrine in the recognition of foreign insolvency proceedings is the promotion and facilitation of the orderly distribution of assets, as well as the orderly resolution and dissolution of the affairs of entities being wound up. The traditional, territorial focus on the interests of local creditors no longer has primacy over more internationalist concerns. Thus, the precise mode of the winding up would not generally be material, and no distinction should be drawn between voluntary and compulsory processes, or between in court and out of court dissolution. That, I believe, was the philosophical basis of the approach in *In re Betcorp Ltd*, in which Judge Markell considered a broader approach to the interpretation of the relevant provisions of the US Bankruptcy Code, international usages and the UNCITRAL Model Law.

11 US Bankruptcy Court cases are of course largely concerned with a regime that, at present, has few parallels to our own statutes. The relevance of US cases may increase should the Model Law be adopted. Even without that development, however, the jurisprudence of the US Bankruptcy Courts has much to offer a Singapore court faced with an insolvency case which engages issues of either philosophical approach (at one end) or practical solutions (on the other).

12 I should also note that there are, no doubt, other aspects of the decision in *Singularis* which may require fuller argument and consideration as and when the occasion presents itself. Since those aspects did not need to be

considered for the disposal of the present application, I did not (and shall not) dwell on them further.

13 The application was thus granted, with liberty to apply extended to any affected party.

Aedit Abdullah
Judicial Commissioner

Ashok Kumar, Samuel Ng and Kenneth Lim (BlackOak LLC) for the applicants.
