

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

[2022] SGHC 209

Originating Application 451 of 2022 (Summons No 3011 of 2022)

In the matter of Part 7 of the
Insolvency, Restructuring and
Dissolution Act (No 40 of 2018)

And

In the matter of Sections 91, 92 and
99 of the Insolvency, Restructuring
and Dissolution Act (No 40 of 2018)

Hodlnaut Pte Ltd

... Applicant

BRIEF REMARKS

[Insolvency Law — Judicial management — Interim judicial management]

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Re Hodlnaut Pte Ltd

[2022] SGHC 209

General Division of the High Court — Originating Application 451 of 2022
(Summons No 3011 of 2022)

Aedit Abdullah J

22, 26, 29 August 2022

31 August 2022

Aedit Abdullah J:

1 These are brief remarks issued on the application of Hodlnaut Pte Ltd (the “Company”) for the appointment of interim judicial managers. It is published primarily for the benefit of the unsecured creditors as well as for the guidance of lawyers and insolvency practitioners.

2 At the initial hearing on 26 August 2022, some other orders not examined here were made, including the recognition of the standing of one of the non-parties, Samtrade Custodial Limited (under judicial management) (“Samtrade”), as a contingent creditor. The Company had disputed Samtrade’s status as a creditor, but after hearing arguments, I was of the view that Samtrade had made out enough to be recognised at least as a contingent creditor for the moment. This set the stage for competing nominations for appointment as interim judicial managers from the Company and Samtrade. I then invited the other creditors present at this initial hearing to put forward other nominations. At the further hearing, I determined that an interim judicial management

(“IJM”) order should be made, and that two insolvency practitioners from Ernst & Young be appointed as interim judicial managers.

3 There are two issues the Court had to consider in deciding the application. Firstly, whether an IJM order should be made, and secondly, whom should be appointed by the Court to serve as interim judicial managers.

4 There was no opposition at the hearing to the making of the IJM order. Rather, the focus was on the persons to be appointed under that order. Nonetheless, the Court had to weigh this issue.

5 The criteria and rationale for the making of an order for IJM were considered in *Re KS Energy and another matter* [2020] 5 SLR 1435 at [14] and [15]: there must be a *prima facie* case for the making of a full judicial management order, though not all criteria for the grant of a full order need be met; and usually there must be some danger to the assets of the company. Some sort of urgency or exigency must be shown.

6 Reliance was placed by the Company on the development of a plan for recovery for its business. However, this by itself was not enough. It had to be shown that the recovery plan would be endangered if interim judicial managers were not brought in. What was before me fell short of this. On the creditor’s side, there were some aspersions cast against the Company’s management, but these were not made out at this point.

7 In the end what mattered to my mind was that on present evidence, the assets were probably in some jeopardy and that the directors and management of the Company would not be able to function without being liable for insolvent trading at this time. I thus determined that the grant of an IJM would help to

preserve the assets of the Company until the hearing of the application for the judicial management order proper.

8 As for the persons to be appointed, issue was taken with the Company's nominee, as well as the nominees proposed by Samtrade: each side had concerns about the independence of the nominee from the other side. I should emphasise that neither side had any doubts about the expertise or the competence of the nominees *per se*; the concerns were about how things may appear to third parties. It was against that context that I asked the other creditors present to send in further nominations.

9 At the further hearing, the Company raised the Malaysian decision of *Jepak Holdings Sdn Bhd v TNB Repair and Maintenance Sdn Bhd & Ors* [2021] 11 MLJ 625 ("*Jepak Holdings*") for the proposition that a mere perceived notion of there being a position of conflict is not sufficient to disqualify the proposed nominee's appointment: [39]. There, the court found that the allegations of conflict or bias against the nominee based on his prior close connection to the applicant (as the nominee had assisted in the preparation for the application for judicial management) were not made out.

10 With respect, I did not think that *Jepak Holdings* assisted in the present case; the exercise of the power of appointment is fact dependent, and I did not understand *Jepak Holdings* to be laying down a general rule. If it went further than a factual determination, I respectfully declined to follow it.

11 There is something to be said for the proposition that significant weight should be given to the choice made by the largest creditor or group of creditors: here, though, there was some doubt raised by the Company against the creditor claiming that status by value, *ie*, Samtrade, and there were conversely some

doubts expressed about the mechanism used by the Company to determine the views of what it said were a substantial number of creditors supporting the Company's choice. I also accepted the Company's arguments that other creditors may have some doubts about the perceived independence of judicial managers (interim or otherwise), who may have to rule on the status of that creditor.

12 I was concerned that in the present context, discomfort may be felt by different groups of creditors about the nominees from the Company and Samtrade. I had no doubt that any of the nominees from the Company and Samtrade would be able to discharge the functions of an interim judicial manager well and they would be able to operate independently and fulfil the duties owed under statute. But in the context of preserving and safeguarding assets where a large number of unsecured creditors are involved, it was to my mind best to have an appointment that would avoid as best as possible any concerns about independence: the process will be likely be complicated enough as it is.

13 This is also not to say that any nominee by an applicant company or by a contingent or contested creditor will be rejected out of hand. It will be a fact sensitive exercise, with the court having to consider different factors from case to case. In many cases, where there is no dispute on the status of the largest creditor, that creditor's choice would probably be favoured. On other occasions, the company's nominee may be preferred instead; in others, that of a contingent or contested creditor; or as here, on some occasions, recourse may be had to other nominees. I should also note that the fact that the Company's nominee may have had some briefings could not be significant as the Company clarified in arguments that this was only of a preliminary nature and thus not likely to confer much greater familiarity or efficiency.

14 There was little to separate the two sets of nominees put forward today by the other creditors; both sets of persons are experienced and extremely qualified to act as judicial managers, and would have had the appropriate technical support. There would also not be substantial differences in costs incurred. In the end, I chose Ms Angela Ee and Mr Aaron Loh from Ernst and Young; this should not be taken as any slight by the other set of nominees.

Aedit Abdullah
Judge of the High Court

Ong Ziying Clement, Ning Jie, Darius Malachi Lim Wen Hong,
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LLC) for the applicant;
Olivia Low and Clement Lim (Attorney-General's Chambers) for the
Attorney-General (on watching brief);
Patrick Ang and Ho Ziwei (Rajah & Tann Singapore LLP) for the
Judicial Managers of S.A.M. Fintech Pte Ltd (under judicial
management) and Samtrade Custodian Limited (under judicial
management) (non-parties);
Daniel Chan and Levin Low (WongPartnership LLP) for the
Algorand Foundation Ltd (non-parties);
Mato Kotwani, Gerard Quek and Glenn Chua (PDLegal LLC) for
Kong Xie Shern (non-parties);
Abraham Vergis SC and Lim Mingguan (Providence Law Asia LLC)
for Brian Gothong Tan (non-parties).
