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

[2023] SGHC 249

Originating Application No 130 of 2023

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 115 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Golden Mountain Textile and Trading Pte Ltd (in judicial management)

Between

PT Bank Negara Indonesia (Persero) TBK, Singapore Branch

… *Claimant*

And

(1) Farooq Ahmad Mann (in his capacity as judicial manager)
(2) Golden Mountain Textile and Trading Pte Ltd (in judicial management)

… *Respondents*

Originating Application No 184 of 2023

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 115 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Regulations 7(5) and 7(6) of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020

And

In the matter of Golden Mountain Textile and Trading Pte Ltd (in judicial management)

Between

Emirates NBD Bank (PJSC), Singapore Branch

… *Claimant*

And

(1) Farooq Ahmad Mann
In his capacity as the judicial manager of Golden Mountain Textile and Trading Pte Ltd (in judicial management)
(2) Golden Mountain Textile and Trading Pte Ltd (in judicial management)

… *Respondents*

Originating Application No 448 of 2023

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 107(3)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Golden Mountain Textile and Trading Pte Ltd (in judicial management)

Between

Farooq Ahmad Mann (in his capacity as the judicial manager)

… *Applicant*

And

Golden Mountain Textile and Trading Pte Ltd (in judicial management)

… *Respondent*

JUDGMENT

[Insolvency Law — Judicial management — Proof of debt]
[Insolvency Law — Judicial management — Duties of interim judicial manager]
[Insolvency Law — Judicial management — Extension of time]

TABLE OF CONTENTS

PT Bank Negara Indonesia (Persero) TBK, Singapore Branch
v
Farooq Ahmad Mann (in his capacity as judicial manager) and another and other matters

[2023] SGHC 249

General Division of the High Court — Originating Applications Nos 130, 184 and 448 of 2023
Goh Yihan JC
18 July 2023

6 September 2023 Judgment reserved.

Goh Yihan JC:

1 There are three applications before me that can be divided into two groups.

(a) First, HC/OA 130/2023 ("OA 130") and HC/OA 184/2023 ("OA 184") are applications brought by PT Bank Negara Indonesia (Persero) TBK, Singapore Branch ("BNI") and Emirates NBD Bank (PJSC), Singapore Branch ("Emirates"), respectively, pursuant to s 115 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). In these applications, BNI and Emirates seek several orders relating to the decision of the first respondent, Mr Farooq Ahmad Mann, to admit the proof of debts filed by Golden Legacy Pte Ltd ("GL") and AJCapital Advisory Pte Ltd ("AJCapital") for the purpose

of voting at a meeting of creditors convened under s 94(7) of the IRDA on 2 February 2023 (the "Pre-Appointment Meeting"). The first respondent is the interim judicial manager of the second respondent, Golden Mountain Textile and Trading Pte Ltd (in judicial management) (the "Company").

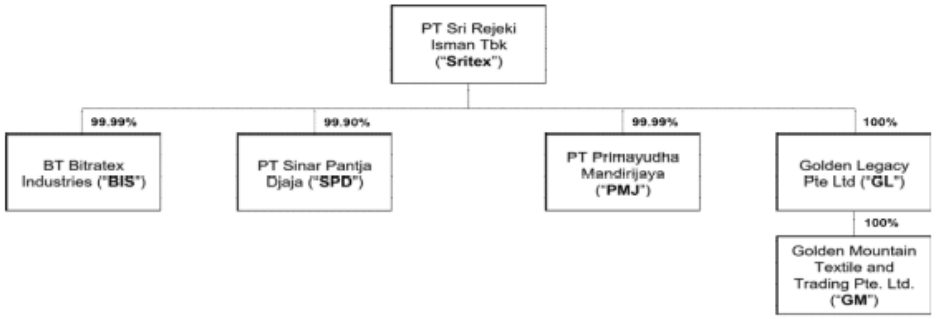
(b) Second, HC/OA 448/2023 ("OA 448") is an application brought by the first respondent in his capacity as the judicial manager of the Company, pursuant to s 107(3)(*a*) of the IRDA. In this application, the first respondent seeks an extension of time for him to put forward his statement of proposals for the Company.

2 Having taken some time to consider the applications, I dismiss OA 130 and OA 148, but allow OA 448. I provide the reasons for my decision below.

The background facts

The parties and other entities

3 I begin with the background facts, where I start by setting out the parties and other entities. The Company is incorporated under the laws of Singapore. Its parent company is GL. In turn, GL's parent company is an Indonesian company called PT Sri Rejeki Isman Tbk ("Sritex"). I reproduce an organisational chart of the Company's shareholding structure:



4 The Company is insolvent because it could not pay its debts when they fell due. It has three undisputed creditors, which are BNI, Emirates, and PT Peak Sekuritas Indonesia ("Peak Sekuritas"). BNI and Emirates each extended a loan to the Company under separate facility agreements. On the other hand, Peak Sekuritas took over a debt that the Company had owed to HSBC Bank ("HSBC"). Based on the Company's total debt to these three creditors, BNI is the majority creditor, as it is owed 63.99%, whereas Emirates is owed 25.093% and Peak Sekuritas is owed 10.917%.

Events prior to the Company's interim judicial management

5 Due to its financial difficulties, the Company made a number of court applications. According to BNI and Emirates, the affidavits filed by the Company in support of these applications are important. This is because the Company specifically listed out the above-mentioned three undisputed creditors without any mention of GL as a creditor. This is a point that I will return to below.

6 In April 2021, the Company and GL applied for moratoriums under s 64(1) of the IRDA (the "Moratorium Applications"). The Chief Financial Officer of Sritex, Mr Allan Moran Severino ("Mr Severino"), filed an affidavit

in support of these applications. Mr Severino swore that: (a) the Company's "only secured creditor is [BNI] in relation to the BNI Singapore Facility";[1] and (b) the Company's "unsecured creditors comprise of [Emirates] and HSBC".[2] Mr Severino also exhibited an excerpt of the Company's financial statements. In particular, the Company's Statement of Financial Position as of 31 December 2020 showed that GL was a net debtor of the Company for the sum of US$290,670,155, being US$321,620,209 less US$30,950,054.[3]

7 On 24 June 2022, Emirates applied by way of HC/CWU 139/2022 ("CWU 139") for the Company to be wound up. On 8 July 2022, the Company applied to restrain Emirates from taking any further steps in CWU 139 pursuant to s 210(10) of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act"). Mr Severino again filed an affidavit in support of this application. He swore that: (a) the Company's creditors as at the date of the affidavit (8 July 2022) were BNI, Emirates, and Peak Sekuritas;[4] and (b) BNI and Peak Sekuritas represented a majority in number of the Company's creditors.[5]

8 On 26 September 2022, the Company filed an application pursuant to s 71(1) of the IRDA to seek, among other reliefs, the court's sanction of a scheme of arrangement (the "Scheme Application"). BNI and Emirates objected

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1 Affidavit of Allan Moran Severino for HC/OS 389/2021 dated 22 April 2021 at para 59.

2 Affidavit of Allan Moran Severino for HC/OS 389/2021 dated 22 April 2021 at para 61.

3 Affidavit of Allan Moran Severino for HC/OS 389/2021 dated 22 April 2021 at p 804.

4 Affidavit of Allan Moran Severino for HC/CWU 139/2022 dated 11 July 2022 at para 10.

5 Affidavit of Allan Moran Severino for HC/CWU 139/2022 dated 11 July 2022 at para 33.

to this application. The Company was advised and represented by experienced professionals, including its restructuring advisor and proposed scheme manager, AJCapital. The Chief Executive Officer of AJCapital, Mr Geoff Simms ("Mr Simms"), filed an affidavit in support of this application. The Company and AJCapital listed only three creditors in terms of its "financial indebtedness", being BNI, Emirates, and Peak Sekuritas.[6] This is significant because, in order for the Company to succeed in its application for a pre-packaged scheme of arrangement, it had to show that a majority in number of the creditors representing three-fourths in value of the creditors present and voting agreed to the proposed compromise (see s 71(3)(*d*) of the IRDA read with ss 210(3AB)(*a*) and 210(3AB)(*b*) of the Companies Act). The Company asserted that this requirement was met because two of its three creditors, being BNI and Peak Sekuritas, agreed to the proposed compromise.

9 Further, in support of the Scheme Application, the Company was obliged to circulate a statement containing information about its assets and financial condition pursuant to s 71(3)(*a*)(i) of the IRDA. In his affidavit, Mr Simms exhibited AJCapital's Scenario Analysis Report dated 16 August 2022.[7] In that report, AJCapital observed that, as part of the Company's assets, the following amounts were due from or loaned to GL: US$176,301,770, US$58,010,000, and US$95,967,501.[8] The total amount due from GL is thus US$330,279,271.

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6 1st Affidavit of Geoff Simms for HC/OA 600/2022 dated 4 October 2022 at pp 37–38.

7 1st Affidavit of Geoff Simms for HC/OA 600/2022 dated 4 October 2022 at pp 99–110.

8 1st Affidavit of Geoff Simms for HC/OA 600/2022 dated 4 October 2022 at p 108.

The Company was placed under interim judicial management

10 On 2 November 2022, the directors and shareholders of the Company passed a resolution to place the Company under interim judicial management. By his account, the first respondent immediately took steps to familiarise himself with the Company. The first respondent characterises this as a complex and laborious task which required him to, among other things: (a) understand the Company's and Sritex's financials and businesses; (b) consider the circumstances relating to the various court applications; and (c) consult with the Company's former financial and international legal advisors, including Mr Simms.[9]

11 Subsequently, on 3 November 2022, which was a day before the Scheme Application was to be heard by the court, BNI received two letters from the Company's Singapore counsel. The first letter stated that the Company no longer desired to proceed with the Scheme Application in the light of the various objections raised.[10] The second letter stated, among other things, that the Company had appointed the first respondent as its interim judicial manager pursuant to s 94 of the IRDA.[11]

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9 1st Affidavit of Farooq Ahmad Mann for HC/OA 130/2023 dated 30 June 2023 at paras 44–45.

10 Affidavit of Laika Saputra Rudianto for HC/OA 130/2023 dated 15 February 2023 at para 35(1).

11 Affidavit of Laika Saputra Rudianto for HC/OA 130/2023 dated 15 February 2023 at para 35(2)(a).

Events after the Company was placed under interim judicial management

12 On 17 November 2022, the Company's directors informed the first respondent that they would need more time to prepare and properly lay the Statement of Affairs (the "SOA") before creditors. Since the first respondent also needed more time to familiarise himself with the Company, he wrote to the Official Receiver pursuant to s 94(6) of the IRDA for an extension of time for the interim judicial management until 3 January 2023.

13 On 23 November 2022, the Official Receiver informed the first respondent over a telephone call that it had no objections to the extension of time sought. However, the Official Receiver asked the first respondent to consider seeking a 60-day extension of the interim judicial management period in light of the various complexities involved. The first respondent agreed and applied on the same day for a further extension of time to 2 February 2023. On 29 November 2022, the Official Receiver granted this further extension of time.

14 On 19 January 2023, the first respondent wrote to the Company's creditors to inform them that the Pre-Appointment Meeting would be convened on 2 February 2023 (the "19 January 2023 Letter").[12] The first respondent also enclosed the SOA prepared by the Company's directors, as well as a list of the Company's creditors (the "List of Creditors") and the estimated amount of their claims based on information set out in the SOA. It is significant to note the following about the enclosures.

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12 Agreed Bundle of Cause Papers Volume 1 dated 3 July 2023 at pp 847–848.

(a) First, the List of Creditors included two additional creditors, being GL and AJCapital, in addition to the three creditors that the Company had previously listed. According to BNI and Emirates, this is crucial because if the two additional creditors voted alongside Peak Sekuritas, they would form the majority, thereby depriving BNI and Emirates of their majority status among the previous known list of three creditors.

(b) Second, it was pivotal that GL was recognised as a creditor for the sum of US$30,950,054 because this amount would constitute 46.354% of the Company's total debt. This means that GL's vote would be the "swing vote", *ie*, it is likely that no majority could be reached without voting together with GL.

15 Because of the potential impact caused by the recognition of GL as a creditor, BNI and Emirates submit that it is inexplicable for the first respondent to have concluded that GL was a creditor and therefore be entitled to attend and vote at the Pre-Appointment Meeting. In this regard, the SOA showed that, as part of the Company's assets, GL owed a sum of US$321,620,209 to the Company, while the Company owed a sum of US$30,950,054 to GL. As such, the SOA showed that GL was a net debtor of the Company in the sum of US$290,670,155.[13]

16 The first respondent received two responses to the 19 January 2023 Letter, namely, a letter from Emirates's solicitors dated 26 January 2023 and a letter from BNI's solicitors dated 30 January 2023. The first respondent was

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[13] Agreed Bundle of Cause Papers Volume 1 dated 3 July 2023 at pp 857–858.

given until 30 January 2023 and 31 January 2023, respectively, to respond to the letters. In these letters, BNI and Emirates took issue with the debts owed by the Company to GL as set out in the List of Creditors. In particular, BNI and Emirates based their objections on the fact that the Company had not identified GL as a creditor in the earlier court proceedings.[14] Moreover, BNI also questioned why the mutual debts between the Company and GL had not been set off.[15] The first respondent states that it was not possible for him to investigate the issues raised within the short response time given by BNI and Emirates.

17 Parenthetically, both BNI and Emirates had submitted their respective proxy forms to the first respondent before the Pre-Appointment Meeting, wherein they voted against the judicial management resolutions. GL had done the same on or about 30 January 2023, wherein it voted in favour of the judicial management resolutions. Therefore, before the Pre-Appointment Meeting, the first respondent knew the positions taken by BNI, Emirates, and GL, as well as the likely outcome of the vote.

18 Subsequently, at the Pre-Appointment Meeting on 2 February 2023, the first respondent decided to admit *all* the creditors' proofs of debts for the limited purpose of voting at the meeting. BNI objected only to the admission of GL's proof of debt, but not AJCapital's proof of debt. In response, the first respondent recorded BNI's objection and informed BNI that it could make an application to court after the meeting. According to the minutes of the Pre-Appointment

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14 Agreed Bundle of Cause Papers Volume 1 dated 3 July 2023 at pp 843–846; Agreed Bundle of Cause Papers Volume 2 dated 3 July 2023 at pp 5641–5643.

15 Affidavit of Laika Saputra Rudianto for HC/OA 130/2023 dated 15 February 2023 at para 52.

Meeting, Emirates did not raise any objection to GL's or AJCapital's proofs of debt.

19 As it turned out, a statutory majority was reached at the Pre-Appointment Meeting, and the Company was placed under judicial management. The first respondent was appointed as the judicial manager of the Company. On 10 February 2023, the first respondent applied successfully for CWU 139 to be dismissed given that the Company had been placed under judicial management. After some further correspondence between the first respondent, BNI, and Emirates, the latter two filed OA 130 and OA 184, respectively, on 15 February 2023 and 2 March 2023.

The parties' positions

20 It is against the background facts described above that BNI and Emirates have brought OA 130 and OA 184, respectively for, among other reliefs, the judicial management resolutions passed at the Pre-Appointment Meeting to be declared null and void, with the result being that the Company is discharged from judicial management and the first respondent is removed as the judicial manager.

21 The parties' positions may be stated briefly at this juncture. In essence, BNI and Emirates argue that their applications should be allowed because the first respondent's acts and omissions have caused them to suffer unfair harm in their capacities as the Company's creditors. In particular, they argue that the first respondent's approach to the adjudication of GL's and AJCapital's proofs

of debt was fundamentally flawed.[16] This is because there was a complete absence of legal or commercial justification for the first respondent to admit GL and AJCapital as creditors for the purposes of attending and voting at the Pre-Appointment Meeting.

22 The first respondent denies these allegations. He argues that: (a) there was no undue delay in calling for the Pre-Appointment Meeting;[17] (b) he fulfilled his legal duties in admitting GL's and AJCapital's proofs of debt;[18] and (c) he conducted the Pre-Appointment Meeting professionally.[19] In particular, in relation to the abovementioned proofs of debt, the first respondent submits that GL's proof of debt was supported by primary documentation, and that it was inappropriate to perform a mutual set-off against GL's claim for US$30,950,054.[20]

My decision: OA 130 and OA 184 are dismissed

The generally applicable principles

23 With the parties' positions in mind, I come to the generally applicable principles. I begin with the relevant statutory provisions. Before me, counsel for BNI, Mr Sim Chong ("Mr Sim") and counsel for Emirates, Mr Alexander Pang ("Mr Pang"), clarified that their respective applications were based on the

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16 BNI's Written Submissions dated 11 July 2023 ("BNIWS") at paras 61–67; Emirates's Written Submissions dated 11 July 2023 ("EWS") at paras 50–59.

17 Judicial Manager's Written Submissions dated 11 July 2023 ("JMWS") at paras 48–52.

18 JMWS at paras 53–75.

19 JMWS at paras 76–81.

20 JMWS at paras 58–75.

grounds set out in ss 115(1)(*a*), 115(*b*), and 115(*c*) of the IRDA. While this may be so, as I will explain later, their reliance on s 115(1)(*c*) is dependent on them successfully proving the grounds in ss 115(1)(*a*) and 115(1)(*b*), which I will focus on. In any event, ss 115(1)(*a*), 115(1)(*b*), and 115(1)(*c*) of the IRDA provide as follows:

> **Protection of interests of creditors and members**
>
> **115.**—(1) At any time when a company is in judicial management or interim judicial management, 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 or interim judicial manager in a manner that is or was unfairly prejudicial to the interests of —
>
> (i) its creditors or members generally;
>
> (ii) some part of its creditors or members (including at least the applicant); or
>
> (iii) a single creditor that represents at least one quarter in value of the claims against the company;
>
> (*b*) that any actual or proposed act or omission of the judicial manager or interim judicial manager is or would be prejudicial in the manner mentioned in paragraph (*a*);
>
> (*c*) in a case of interim judicial management or judicial management under section 94, that the interim judicial management or judicial management of the company should not have been commenced at all;
>
> …

For completeness, ss 115(2) and 115(3) set out the orders that a court can make on an application made pursuant to s 115(1). It suffices to say that these orders are wide-ranging enough to address the issues in the present applications.

24 There has not been a local decision that has interpreted s 115 of the IRDA substantively (although, see the High Court decision of *Re HTL International Holdings Pte Ltd* [2021] 5 SLR 586 ("*HTL (HC)*")). Therefore, it is appropriate to refer to the cases that have interpreted and applied its predecessor provision, which is s 227R of the Companies Act (Cap 50, 2006 Rev Ed) (the "2006 CA"). Indeed, Aedit Abdullah J observed in *HTL (HC)* (at [25]) that "[s]ections 115(1)(*a*) and 115(1)(*b*) IRDA are not materially different from ss 227R(1)(*a*) and 227R(1)(*b*) [of the 2006 CA]". Section 227R(1), which sets out the grounds for an application to be made, provided as follows:

> **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.

It should be noted that, notwithstanding the material similarities between ss 115(1)(*a*) and 115(1)(*b*) of the IRDA and ss 227R(1)(*a*) and 227R(1)(*b*) of the 2006 CA, the grounds in ss 115(1)(*c*) to 115(1)(*f*), which are new additions to the grounds in s 227R(1) of the 2006 CA, are apparently meant to bolster the protection of the interests of creditors and members when a company is placed under judicial management (see Singapore, Ministry of Law, *Report of the Insolvency Law Review Committee: Final Report* (2013) (Chairperson: Lee Eng Beng SC) at p 128).

25 For the present purposes, given BNI's and Emirates's primary reliance on ss 115(1)(*a*) and 115(1)(*b*) of the IRDA, it is sufficient to refer to the cases that have interpreted and applied ss 227R(1)(*a*) and 227R(1)(*b*) of the 2006 CA. It is instructive in this regard to refer to Abdullah J's observations in *HTL (HC)* (at [29]–[30]):

> 29 The applicant for an order under s 227R [of the 2006] 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*. …
>
> 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 [of the 2006] 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. …
>
> [emphasis added]

26 In *Yihua Lifestyle Technology Co, Ltd and another v HTL International Holdings Pte Ltd and others* [2021] 2 SLR 1141 ("*HTL (CA)*") (at [17]), the Court of Appeal agreed with Abdullah J's exposition of the relevant principles. The court held that a two-stage test should be applied "to determine whether a judicial manager has acted or proposed to act in a manner that would unfairly harm the interests of the applicant". This test is not materially different from Abdullah J's test in *HTL (HC)*. First, it must be shown that the action complained of has caused, or would cause, the complainant to suffer harm in his capacity as a member or creditor. Second, the harm caused by the action complained of must be unfair. In this regard, unfairness may stem from:

(a) conspicuously unfair or differential treatment to the disadvantage of the applicant (or applicant class); or (b) a lack of legal or commercial justification for a decision which causes harm to the members or creditors as a whole.

27 In my respectful view, these observations apply equally in the application of ss 115(1)(*a*) and 115(1)(*b*) of the IRDA. Therefore, for an applicant to establish the ground in s 115(1)(*a*), he must show that: (a) the act complained of has caused prejudice (or harm) to the interests of the creditors or members in the manner provided for in ss 115(1)(*a*)(i), 115(1)(*a*)(ii), and 115(1)(*a*)(iii); and (b) this prejudice (or harm) must be "unfair", so as to go beyond mere prejudice. Examples of such unfair prejudice were raised in *HTL (CA)* (at [17]), but I do not think the examples are exhaustive. And for an applicant to establish the ground in s 115(1)(*b*), in so far as s 115(1)(*b*) is dependent on s 115(1)(*a*), it should be interpreted in the same way.

28 Indeed, s 115(1)(*b*) is potentially wider than s 115(1)(*a*), in that it refers to "any" actual or proposed act or omission of the judicial manager or interim judicial manager, instead of being restricted to the management of the "company's affairs, business and property" referred to in s 115(1)(*a*). If this is correct, then s 115(1)(*a*) is actually not necessary and repetitive.

29 In addition to an applicant needing to show unfair prejudice, it is also important to consider the *standard* by which a court is to assess the decisions taken by the judicial manager or interim judicial manager. Again, Abdullah J in *HTL (HC)* had helpfully observed (at [32]) that, "[a]s a general rule, the court will not interfere with the decisions of the [judicial manager] unless it is shown that the [judicial manager] has committed plainly wrongful conduct, has been conspicuously unfair or has been perverse". In sum, drawing support from the

relevant English authorities, Abdullah J concluded (at [33]) that "the court will not normally second-guess the commercial decisions of the [judicial managers]". Indeed, Abdullah J emphasised (at [40]) that it is the judicial managers "who need to exercise their business acumen and rely on their business experience in their attempt to achieve the objectives laid down by statute". In this regard, since Parliament has imposed several criteria on individuals to be appointed as judicial managers, Abdullah J observed (at [40]) that "the courts should give [judicial managers] a wide discretion to employ their skills and expertise in attempting to resuscitate the company". The Court of Appeal in *HTL (CA)* agreed with this standard of assessment (at [16]). Of course, as will be seen in the present case, this standard will need to be applied to specific factual situations, which may, in turn, demand further elaboration of what is required of the judicial manager.

30 Turning then to s 115(1)(*c*) of the IRDA, BNI's and Emirates's argument in the present case is that because the first respondent had caused unfair prejudice to them by his conduct at the Pre-Appointment Meeting, the outcome of that meeting should be reversed. As such, pursuant to s 115(1)(*c*), BNI's and Emirates's case is that the judicial management of the Company should not have commenced at all. Given the manner in which BNI's and Emirates's reliance on s 115(1)(*c*) is framed, it is clearly dependent on them making out the grounds in ss 115(1)(*a*) and 115(1)(*b*). There is thus no need for me to consider s 115(1)(*c*) independently in the present case. However, in saying this, I do not intend to suggest that the ground in s 115(1)(*c*) will *always* be dependent on an applicant making out the ground in s 115(1)(*a*) or s 115(1)(*b*).

31 With these generally applicable principles in mind, I turn to the specific questions raised in the present case.

Whether the first respondent's decision to admit GL's proof of debt satisfies the ground in ss 115(1)(a) or 115(1)(b) of the IRDA

32 I first consider whether the first respondent's decision to admit GL's proof of debt satisfies the ground in ss 115(1)(*a*) or 115(1)(*b*) of the IRDA. In applying the two-stage test set out in *HTL (CA)*, I will assume that the first respondent's said decision has caused harm to the interests of BNI and Emirates, in that their objections against the Company being placed under judicial management was ineffective. This is because the first respondent does not really dispute that BNI and Emirates have suffered such harm, although I hasten to add that this should not be taken as an acceptance of this being factually true. Rather, the parties' submissions centre on the second stage of the test, that is, whether this harm must be "unfair" so as to go beyond mere prejudice. This requires me to consider the *standard* by which to assess the first respondent's decision to admit GL's proof of debt, and to decide whether the resulting prejudice is "unfair" in that, specifically, there has been a lack of legal or commercial justification for that decision.

The applicable standard of assessment

33 The parties understandably disagree on the applicable standard of assessment. Whereas the first respondent argues for a "light touch" standard, BNI and Emirates argue that the standard should be a more exacting one because the first respondent's decision to admit GL's proof of debt has the practical effect of placing the Company into judicial management. BNI and Emirates

argue that this is a fundamental issue that should be subject to tighter scrutiny, and which necessitates the court's intervention.

34 It is helpful to begin with the provisions that govern an interim judicial manager's duty to adjudicate a proof of debt for the limited purpose of voting at the pre-appointment meeting of creditors. Section 94(4)(*c*) of the IRDA provides that the interim judicial manager must adjudicate any proofs of debt filed by creditors for purposes of voting at the pre-appointment meeting. Regulation 7(3) of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020 (the "JMR") further provides that:

> (3) The interim judicial manager must examine every proof of debt filed by a creditor and the grounds of the debt, and must admit or reject the proof in whole or in part, or require further evidence in support of it, for the purpose of voting at the pre-appointment meeting of creditors.

Regulation 7(1)(*c*) also provides that the proof of debts that the interim judicial manager has to adjudicate is filed "solely for the purpose of entitling the creditor to vote at the pre-appointment meeting of creditors".

35 In my view, a less exacting standard should apply to an interim judicial manager who is adjudicating on a creditor's proof of debt for the limited purpose of voting at a pre-appointment meeting, in contrast to his adjudication of such a proof of debt in other situations. I have come to this view for the following reasons.

36 First, reg 11(2)(*e*) of the JMR provides that reg 12, which obliges a creditor to prove its debt in the usual manner, does not apply to a proof of debt filed by a creditor for the purpose of a pre-appointment meeting. This must be contrasted against the statutory regimes of judicial management, liquidation,

and scheme of arrangement, all of which require a creditor to prove its debt. Therefore, it can be inferred that an interim judicial manager's standard of adjudication must be less exacting than that of a judicial manager, liquidator, or scheme manager since these latter insolvency professionals are governed by statutory regimes that require creditors to prove their debts. This conclusion is also supported by the more limited scope of an interim judicial manager's appointment. For instance, pursuant to ss 88(1) and 89(1) of the IRDA, the judicial manager must achieve one or more of the purposes of judicial management, but the interim judicial manager has no corresponding obligation.

37 Thus, in the High Court decision of *Re KS Energy Ltd and another matter* [2020] 5 SLR 1435, Abdullah J (at [17]) compared the role of an interim judicial manager to that of a provisional liquidator. In the learned judge's view, both interim judicial managers and provisional liquidators are temporary appointees whose role is to ensure that the company concerned is properly run and its assets protected pending a final order of judicial management or liquidation. Likewise, in the High Court decision of *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid and another* [2023] SGHC 83 ("*Medora Xerxes*"), the court explained (at [59]) that it would not make sense in the early stages of liquidation for considerable work to be done in the adjudication of a proof of debt for the limited purpose of voting. This is because if there are no assets available for distribution, it would not be in the interest of the liquidation for costs and expenses to be spent on the unnecessary adjudication of debts. Therefore, given the temporal nature of an interim judicial manager's appointment, it would not be practical or realistic to expect such an individual to conduct a far-ranging and extension examination of each creditor's proof of debt.

38 Second, an interim judicial manager is not required to provide his grounds in writing when adjudicating on a proof of debt for the limited purpose of voting at a pre-appointment meeting, as is otherwise required when a judicial manager rejects a proof of debt (see reg 46(2) of the JMR). This is important because the Court of Appeal has said, in the context of a scheme manager's duty to provide his written grounds for rejecting a claim for the purpose of voting, that the duty to provide written grounds "puts the onus on [the scheme manager] to look at each proof more carefully in the proper exercise of his quasi-judicial function" (see *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 at [102]). As such, since an interim judicial manager is not required to provide written grounds for rejecting a proof of debt, it can be inferred that a less exacting standard is imposed on him in his adjudicating of such a proof for the limited purpose of voting at a pre-appointment meeting.

39 However, a less exacting standard does not mean that the interim judicial manager can do as he pleases. In this regard, in order to admit a proof of debt, a judicial manager needs to be satisfied that there is a *prima facie* case against the company concerned (see the English Court of Appeal decision of *Revenue and Customs Commissioners v Maxwell and another* [2011] 2 BCLC 301 at [65]). As such, at the most, an interim judicial manager need only be satisfied that there is a *prima facie* case against the company in order to admit a proof of debt for the limited purposes of voting at a pre-appointment meeting. Accordingly, coming back to the second stage of the test in *HTL (CA)*, any resulting prejudice will be "unfair" if, applying the less exacting standard of assessment set out above, it can be showed that there was conspicuously unfair or differential treatment to the disadvantage of the applicant, or that the interim judicial manager's decision is not justified by a legal or commercial basis.

40 In coming to this conclusion, I do not agree with BNI's and Emirates's argument that a more exacting standard should be imposed due to the fundamental questions that will be decided at a pre-appointment meeting. In the first place, I do not see how such a more exacting standard is supported by the relevant provisions. More fundamentally, such a standard would also be at odds with a lesser standard being applied in other instances where the judicial manager is required to adjudicate proofs of debt. If a high standard were applied to begin with, then it is logically inconsistent for lower standards to be applied subsequently because presumably most of the proofs of debts would already have been subject to more exacting scrutiny at the outset.

The first respondent's decision to admit GL's proof of debt cannot be impugned

41 Applying the less exacting standard of assessment to the first respondent's decision to admit GL's proof of debt for the limited purposes of voting at the Pre-Appointment Meeting, I do not think that his decision can be impugned.

42 First, it is clear that GL's claim is supported by primary documentation in the form of the intercompany loan agreement dated 27 March 2017 signed by both GL and the Company. Indeed, GL's claim was reflected in the Company's audited financial statements between 2017 and 2021, which is strong evidence of the correctness of the credit or debit balance so confirmed (see the High Court decision of *Re Ice-Mack Pte Ltd (in liquidation)* [1989] 2 SLR(R) 283 at [11] in *obiter dicta*, referred to in the Court of Appeal decisions of *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 at [56], and *SK Engineering & Construction Co Ltd v Conchubar Aromatics Ltd and another appeal* [2017] 2 SLR 898 at [83]). There is therefore at least a

prima facie case that GL had proven its claim against the Company for US$30,950,054.

43 Second, I agree with the first respondent that it is not appropriate to perform a mutual set-off in respect of the debt of US$30,950,054 owed by the Company to GL, against the purported debt owed by GL to the Company, which allegedly amounts to US$321,620,209. For set-off to apply, there must be mutuality of dealings in that: (a) each party is personally liable for the debt owed to the other party; and (b) each party beneficially owns the claim that is owed to him by the other party and his ownership interest is clear and can be ascertained without inquiry (see the Court of Appeal decision of *Good Property Land Development Pte Ltd (in liquidation) v Société-Générale* [1996] 1 SLR(R) 884 at [18]). I accept the first respondent's assessment that he required more time beyond the date of the Pre-Appointment Meeting to ascertain the validity of the debts supposedly owed by GL to the Company.

44 I also accept the first respondent's explanation that he suspects the Company is not a true creditor of GL, and as such, refused to perform a mutual set-off against GL's debts The first respondent raises the following reasons in support. First, from a review of the Company's historical financial performance, where it generated annual profits of between US$15m and US$17m, the Company did not appear likely to have the available cash flow to make such a sizeable loan to GL.[21] Second, the fact that the Company made a loan to GL, which is its parent company, is not consistent with usual commercial practice.[22] Therefore, although BNI and Emirates argue that the debt owed by GL to the

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21 JMWS at para 64.

22 JMWS at para 65.

Company has been "clearly and consistently recorded" in the Company's audited financial statements over the years,[23] I accept that it was reasonable for the first respondent to refuse to perform a mutual set-off, especially at the relatively early stage of the Pre-Appointment Meeting.

45 In any case, as Mr Sim conceded during the hearing before me, the doctrine of insolvency set-off in s 219 of the IRDA does not apply to a situation of interim judicial management. Thus, as a matter of law, the first respondent need not have performed the mutual set-off in any event. In this regard, ss 219(1) and 219(2) of the IRDA provides as follows:

> **Mutual credit and set-off**
>
> **219.**— (1) This section applies to —
>
> (*a*) a company in judicial management; and
>
> (*b*) an insolvent company that is being wound up.
>
> (2) Where there have been any mutual credits, mutual debts or other mutual dealings between a company and any creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings must be set off against each other and only the balance is a debt provable in the judicial management or the winding up of the company, as the case may be.

This must be read with s 217(2) of the IRDA, which states that a company "enters judicial management" within the meanings given to that term in s 88(2)(*a*) of the IRDA. In turn, s 88(2)(*a*) provides that a company is "in judicial management" while the appointment of a judicial manager of the company has effect. Because the term "judicial manager" does not, unless a contrary intention appears, include an interim judicial manager (see s 88(1) of

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[23] BNIWS at para 65.

the IRDA), this must mean that s 219 does not apply to interim judicial management. As such, over and above his explanations as to why he did not perform a mutual set-off in the present case, the first respondent need not have performed a mutual set-off in any event, as a matter of law.

46 Third, while I understand BNI's and Emirates's argument that the Company has consistently maintained that it only had three creditors and that did not include GL, it remains that the first respondent is entitled, as he is duty-bound to do, to come to an independent conclusion as to who the true creditors are, at least for the limited purposes of voting at the Pre-Appointment Meeting. Indeed, as an officer of the court (see s 89(4) of the IRDA), the first respondent could not simply rely on the affidavits previously filed by the Company to determine the creditors of the Company. To do so may result in an inaccurate determination of the creditors of the Company, which is contrary to the interim judicial manager's duty to the "interests of the company's creditors as a whole" (see s 89(2) of the IRDA). Indeed, while BNI and Emirates argue that the first respondent's decision to admit GL's proof of debt goes against the interests of the creditors as a whole,[24] I find that had the first respondent dismissed GL's claims too hastily by performing a mutual set-off, this would in fact go against the interest of GL as a creditor. Instead, the first respondent did what he was legally obliged to do, which was to come to an independent assessment of the validity of the proofs of debt.

47 For all these reasons, I conclude that the first respondent's decision to admit GL's proof of debt cannot be impugned under ss 115(1)(*a*) or 115(1)(*b*)

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[24] EWS at para 64.

of the IRDA. It follows that BNI and Emirates cannot succeed in their applications on this basis.

Whether the first respondent's decision to admit AJCapital's proof of debt satisfies the ground in ss 115(1)(a) or 115(1)(b) of the IRDA

48 Applying the less exacting standard above, I also find that the first respondent's decision to admit AJCapital's proof of debt cannot be impugned under ss 115(1)(*a*) or 115(1)(*b*) of the IRDA. This is because the first respondent had assessed, based on AJCapital's proof of debt for a claim of US$48,280, that it was apparent that AJCapital was claiming against the Company for the fees incurred in respect of the professional services rendered by AJCapital in relation to the scheme of arrangement that the Company had previously proposed.

49 In any event, even if the first respondent was wrong on this assessment, it would not have changed the outcome of the Pre-Appointment Meeting that the Company be placed under judicial management. This is because AJCapital's debt is small compared to the other debts, and AJCapital's vote would not have changed the outcome of the meeting. As such, the first respondent's decision in relation to AJCapital is, strictly speaking, not relevant to either BNI's or Emirates's respective applications because that decision would not have "caused" the harm that BNI and Emirates say they suffer now.

Whether the first respondent conducted the Pre-Appointment Meeting professionally

50 Finally, while it is not clear from BNI's and Emirates's submissions if they are alleging that the first respondent had conducted the Pre-Appointment Meeting unprofessionally, I find that the first respondent had not done so. First,

the first respondent was correct in not engaging BNI and Emirates in a lengthy exchange regarding GL's proof of debt. This is because a creditors' meeting is clearly not the forum to go into lengthy debates as to the exact status of a debt (see the English High Court decision of *Re a debtor (No 222 of 1990), ex parte the Bank of Ireland and others* [1992] BCLC 137).

51 Second, it would also have been impractical for the first respondent to adjourn the Pre-Appointment Meeting as suggested by BNI. This is particularly so given that Emirates was already concerned about the first respondent's seeking of the two extensions of time for the interim judicial management.

52 Accordingly, I find that BNI and Emirates have not satisfied the second stage of the two-stage test set out in *HTL (CA)* in respect of their applications under s 115 of the IRDA. I therefore dismiss OA 130 and OA 184.

Ancillary matters

Whether BNI and Emirates can seek personal costs against the first respondent

53 Given my decision to dismiss OA 130 and OA 184, it follows that the question of whether BNI and Emirates can seek personal costs against the first respondent does not arise. I will, however, make a few observations given that Emirates continued to maintain its entitlement to personal costs based on the first respondent's alleged misconduct at the hearing before me.

54 As a starting point, it is well established that a court will be slow to order personal costs against office holders. As the High Court held in *Medora Xerxes* (at [83]), a high threshold must be crossed for personal costs to be ordered against an insolvency practitioner. This high threshold would be crossed when

there is, for instance, corruption or maladministration (see the New South Wales Supreme Court decision of *SingTel Optus Pty Ltd and others v Weston* [2012] NSWSC 1002 at [7]).

55 Indeed, it is not appropriate for a court to award personal costs against an insolvency practitioner even if he has made an error of commercial judgment or failed to make inquiries and to report to a level of thoroughness made impracticable by urgent circumstances (see the New South Wales Supreme Court decision of *Cresvale Far East Ltd (in liq) v Cresvale Securities Ltd and others (No 2)* (2001) 39 ACSR 622 (at [83]). The rationale for this stance is clear. It is to enable the insolvency practitioner the space to exercise his commercial discretion and also to encourage persons to take on the heavy responsibility of, for example, the liquidation of companies. Thus, the English High Court observed in *Re Wilson Lovatt & Sons Ltd* [1977] 1 All ER 274 the following (at 285):

> I can quite see that there may be very powerful reasons of policy for a rule that a liquidator, when carrying out his functions and thus subjecting himself to the possibility of proceedings against him by parties who are discontented with the way in which he has carried out those functions, must be entitled to defend himself without being subjected to the risk of having costs awarded against him personally, because of course he cannot protect himself against claims being made. Unless there were some such rule it might be very difficult to get persons to take on the heavy responsibility of the liquidation of companies. …

There is no reason why these concerns should not apply to other office holders including, as is relevant in the present case, interim judicial managers.

56 In the present case, even if I had found that the first respondent's decisions to admit GL's or AJCapital's proofs of debt came within the ground under ss 115(1)(*a*) or 115(1)(*b*) of the IRDA, I still would not have ordered

personal costs against the first respondent. This is because the first respondent has clearly not committed any misconduct, nor did he act for a personal advantage. Indeed, neither BNI nor Emirates suggested he had done so.

57 In this regard, BNI and Emirates did suggest that the first respondent had engineered his own appointment as judicial manager because he had known how the various creditors would have voted at the Pre-Appointment Meeting. Thus, BNI and Emirates suggest that the first respondent had purposely recognised GL as a creditor so as to collate sufficient votes for him to be appointed as judicial manager. I dismiss these claims absolutely. These are mere conjectures that any party should be slow to advance against an insolvency practitioner, especially those who stand as officers of the court, without any solid evidence. It is not correct for BNI and Emirates to advance these arguments in the present case in the absence of any evidence. Neither was it necessary for them to have done so in order to advance their respective applications in OA 130 and OA 184. To be fair, both Mr Sim and Mr Pang clarified at the hearing before me that their clients had no intention of impugning the first respondent's character. However, in as much as Mr Pang maintained Emirates's claim for personal costs against the first respondent, that was still predicated on impugning the first respondent's character since only misconduct can ever justify an order of personal costs.

My decision: OA 448 is allowed

58 Finally, I allow OA 448 and grant the first respondent an extension of two months, from the date of this decision, to put forward his statement of proposal. I am satisfied that the first respondent has not been able to effectively engage with BNI and Emirates due to their applications against him.

59 The applicable legal principles can be stated briefly. Section 107 of the IRDA sets out the requirement for a judicial manager to put forward his statement of proposals within 90 days after the company's entry into judicial management. More specifically, s 107(3)(*a*) provides that "a judicial manager may obtain an extension of the period specified in subsection (1) or (2) — (*a*) by making an application at any time to the Court". This extension should be allowed where there is good reason (see the English High Court decision of *Re Bulb Energy Ltd* [2021] EWHC 3680 (Ch) ("*Re Bulb Energy Ltd*") at [47]). For instance, in *Re Bulb Energy Ltd*, the court (at [47]) raised the example of "when an administrator can point to events in complex inter-company and international seismic insolvencies to argue that he had good reason not to file the statement of proposals within the eight-week period". Also, in the English High Court decision of *Re V McGeown Wholesale Wines and Spirits Ltd's (in administration) Application* [1997] NIJB 190 (at 193), the court recognised that an administrator "must be live to the limited purpose of the administration and must not continue with the administration beyond the point when it is clear that the purpose or purposes specified cannot be achieved or have been achieved". In other words, a judicial manager may raise the inability to achieve the purpose of judicial management as a good reason for seeking an extension of time.

60 Turning to the present application, I am satisfied that the first respondent has not been able to effectively engage with BNI and Emirates due to their applications against him. As the first respondent explains, given the challenge to his appointment as the judicial manager of the Company, there was no chance that any statement of proposals he put forward will be accepted by BNI and Emirates. Therefore, any statement of proposals he prepared and put forward would have been nugatory and only result in the unnecessary expending of time and costs, which would not have served to advance the purpose of judicial

management of the Company. Accordingly, I find that there is good reason to grant the extension of two months, from the date of this decision, for the first respondent to put forward his statement of proposal.

Conclusion

61 For all the reasons above, I dismiss OA 130 and OA 184, and allow OA 448.

62 Unless the parties are able to agree on costs, they are to file their submissions on costs within 14 days of this decision, limited to seven pages each.

63 In closing, I record my thanks to Mr Sim, Mr Pang, and Mr Abraham Vergis SC, for all their helpful submissions.

Goh Yihan
Judicial Commissioner

Sim Chong and Chen Sixue (Sim Chong LLC) for the claimant in HC/OA 130/2023;
Pang Chong Ren Alexander and Chloe Chong Wei Shan (Tan Peng Chin LLC) for the claimant in HC/OA 184/2023;
Vergis S Abraham SC, Lau Hui Ming Kenny, Alston Yeong and Huang Xinli Daniel (Providence Law Asia LLC) for

the first respondent in HC/OA 130/2023 and HC/OA 184/2023 and the applicant in HC/OA 448/2023;
The second respondent in HC/OA 130/2023 and HC/OA 184/2023 and the respondent in HC/OA 448/2023 absent and unrepresented.
