IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 87

Civil Appeal No 1 of 2021

Between

(1) Yihua Lifestyle Technology Co, Ltd
(2) Ideal Homes International Limited

… *Appellants*

And

(1) HTL International Holdings Pte Ltd
(2) Phua Yong Tat
(3) Phua Yong Pin
(4) Golden Hill Capital Pte Ltd

… *Respondents*

In the matter of 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*

EX TEMPORE JUDGMENT

Version No 1: 09 Sep 2021 (09:33 hrs)

[Companies] — [Receiver and manager] — [Judicial management order]

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Yihua Lifestyle Technology Co, Ltd and another
v
HTL International Holdings Pte Ltd and others

[2021] SGCA 87

Court of Appeal — Civil Appeal No 1 of 2021
Judith Prakash JCA, Steven Chong JCA
8 September 2021

8 September 2021

Steven Chong JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 When or under what circumstances can the shareholders or creditors of a company apply to court for relief in respect of a decision made by the company's judicial managers ("JMs") in the exercise of their discretion? That is the central question that arises in the present appeal.

2 The appellants (collectively, "the Shareholders") are the direct and ultimate shareholders of HTL International Holdings Pte Ltd ("the Company"), which is presently under judicial management. In HC/SUM 3963/2020 ("SUM 3963"), the High Court Judge ("Judge") dismissed the Shareholders' application 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)) for the court to displace the discretion exercised by the JMs of the

Company in choosing to sell the Company's interests in its subsidiaries ("the Asset") to the first respondent, Golden Hill Capital Pte Ltd ("Golden Hill Capital"), instead of another prospective buyer.

3 In our judgment, there is no merit in the Shareholders' appeal. We briefly elaborate on the grounds of our decision below.

Facts

4 The background facts are set out in the Grounds of Decision below – *Re HTL International Holdings Pte Ltd* [2021] SGHC 86 ("GD"). It suffices to highlight the material facts for the purpose of the appeal.

5 The Company was the holding company of a group of companies involved in the furniture trade (collectively, "the HTL Group"). The Company's subsidiaries consisted of HTL Manufacturing ("HTLM") as well as a number of PRC-incorporated subsidiaries ("PRC subsidiaries").

6 The original founders of the Company were the second and third respondents, Mr Phua Yong Tat and Mr Phua Yong Pin, who are the beneficial owners of Golden Hill Capital. In or around September 2016, the second appellant, which is a wholly-owned subsidiary of the first appellant, acquired 100% of the shares in the Company.

7 On 5 May 2020, the Company was placed under interim judicial management. Thereafter, the interim judicial managers ("IJMs"), on behalf of the Company, entered into a share purchase agreement ("SPA") with Golden Hill Capital on 28 May 2020 to sell the Asset to Golden Hill Capital for US$80m. To facilitate the transfer of the Asset to Golden Hill Capital, the IJMs

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transferred all of the Company's shares in its PRC subsidiaries to a newly incorporated wholly-owned subsidiary of the Company known as HTL Capital Pte Ltd ("HTLC"). Mr Phua Yong Tat also extended two bridging loans to the Company to help alleviate its cashflow issues.

8 On 1 July 2020, the Company was placed under judicial management. Between 20 and 29 July 2020, Mr Phua Yong Tat and Mr Phua Yong Pin procured the assignment of the Company's bank creditors' claims against the Company to Golden Hill Investments, the parent company of Golden Hill Capital.

9 On 19 August 2020, nine days before the SPA's completion date, another entity, Man Wah Holdings ("Man Wah"), made an offer ("Man Wah's 19 August Offer") to purchase the Asset for US$100m. As part of this offer, Man Wah also agreed to provide an additional working capital facility of US$20m to HTLC and HTLM post-completion. Man Wah subsequently clarified its 19 August Offer via an e-mail dated 20 August 2020 ("Man Wah's 20 August Clarification").

10 On 24 August 2020, the JMs invited both Golden Hill Capital and Man Wah to provide "anything further" they wished to communicate in relation to their respective offers by 26 August 2020. Man Wah then wrote to court to seek an order for the JMs to provide it with a full set of the Company's financial accounts ("Financials") and requested for an extension of the 26 August 2020 deadline. The JMs did not accede to Man Wah's request to provide the Financials but agreed to extend the deadline to 31 August 2020.

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11 On 31 August 2020, Golden Hill Capital submitted a revised offer ("Golden Hill Capital's 31 August Offer") of US$100m, with an additional US$20m working capital facility to be made available to HTLM and HTLC post-completion. Man Wah, for its part, also submitted a revised offer ("Man Wah's 31 August Offer"), the salient terms of which were as follows:

(a) Man Wah maintained its offer of US$100m for the Asset. However, Man Wah also stated that it was prepared to offer US$10m more than any offer made by Golden Hill Capital. Thus, Man Wah's offer was effectively US$110m.

(b) Man Wah also maintained that it would provide US$20m in post-completion working capital to HTLC and HTLM.

(c) In addition to the above, Man Wah was prepared to provide interim financing of US$20m up front, to be set off against the consideration payable on completion.

12 After considering the parties' respective offers, the JMs accepted Golden Hill Capital's 31 August Offer and the sale of the asset to Golden Hill Capital was completed on 7 September 2020. The next day, on 8 September 2020, Man Wah conveyed a further improved offer for the Asset ("Man Wah's 8 September Offer"). The JMs did not accept Man Wah's 8 September Offer.

13 As Man Wah was the Shareholders' preferred buyer, the Shareholders commenced SUM 3963 seeking the following relief under s 227R of the CA on the basis that the JMs had acted in a manner that was "unfairly prejudicial" to their interests:

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(a) an order to declare the Company's sale of the Asset to Golden Hill Capital null and void;

(b) an order to direct the JMs to accept Man Wah's 31 August or 8 September Offer; and

(c) an order to restrain the JMs from proceeding with any resolution and/or taking steps to wind up the Company.

14 There are two principal planks to the Shareholders' case. First, the JMs had acted perversely by selecting Golden Hill Capital's 31 August Offer over Man Wah's 31 August Offer even though Man Wah's 31 August Offer was *superior in terms of shareholder returns*. Second, the JMs' refusal to disclose the Financials had caused Man Wah to suffer unfair prejudice, as Man Wah might well have been able to submit an improved offer (entailing a shorter acquisition time and/or higher shareholder returns) if it had been provided with the Financials.

15 We briefly examine the principles governing s 227R of the CA before addressing the Shareholders' arguments.

The test for unfair prejudice under s 227R of the CA

16 In the decision below, the Judge held, drawing guidance from English authorities interpreting para 74 to Schedule B1 of the Insolvency Act 1986 (UK) (which is *in pari materia* with s 227R of the CA), that the court would only interfere with the JMs' decision if it could be shown that their conduct had been plainly wrongful, conspicuously unfair or perverse: see GD at [32]. The Judge was of the view that this high threshold was consistent with Parliament's intention that appointed JMs be given a wide discretion to employ their skills

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and expertise in performing their functions (GD at [40]). The Judge further held that, in exercising this wide discretion, JMs would be justified in weighing the interests of creditors over those of the members or shareholders of the company (GD at [41]).

17 We broadly agree with the Judge's exposition of the relevant principles which, in any event, is not seriously challenged by any of the parties in this appeal. In our view, a two-stage test ought to be applied to determine whether a judicial manager has acted or proposed to act in a manner which would unfairly harm the interests of the applicant: see *Four Private Investment Funds v Lomas and others* [2008] EWHC 2869 (Ch) at [34] and [37].

(a) 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: see *BLV Realty Organization Ltd and another v Batten and others* [2009] EWHC 2994 (Ch) at [24].

(b) Second, the harm caused by the action complained of must be unfair. In this regard, unfairness may stem from the following (see *In re Meem SL Ltd (in administration); Goel and another v Grant and others* [2018] Bus LR 393 at [44]):

(i) conspicuously unfair or differential treatment to the disadvantage of the applicant (or applicant class) which cannot be justified by reference to the objective of the judicial management or the interests of the members or creditors as a whole; or

(ii) a lack of legal or commercial justification for a decision which causes harm to the members or creditors as a whole. This

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might include, for example, a decision to sell the company's assets at an undervalue, or a course of action that is based on a wrong appreciation of the law. However, in such cases, the court will not interfere with the JMs' decision unless it is perverse (*ie*, unable to withstand logical analysis).

Whether the JMs acted in a manner that was unfairly prejudicial to the interests of the Shareholders

18 Since the Shareholders do not claim to be the subject of differential treatment, the threshold for intervention in the present case is that of perversity. We do not think that this threshold has been crossed, for the reasons that follow.

19 First, the Shareholders assert that the JMs erred in concluding that Golden Hill Capital's offer would yield higher shareholder returns than Man Wah's offer. In this connection, the Shareholders allege that the JMs' calculations were flawed in the following respects:

(a) The consideration offered by Golden Hill Capital ought to have been stated as US$88m, not US$100m, to reflect the US$12m due to Mr Phua Yong Tat under the bridging loans which he had extended to the Company.

(b) The JMs had no basis to assume that the US$20m interim facility provided by Man Wah would be fully drawn down by the Company.

(c) The JMs had failed to consider that, under Man Wah's offer, the Company would have loaned the entire US$20m from the interim facility to HTLM, and that the Company's cash reserves would thus

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have been US$110m and not US$90m after HTLM's repayment of this loan.

(d) The JMs had failed to account for the possible generation of earnings from the use of the US$20m interim facility provided by Man Wah.

(e) The JMs had failed to consider that Man Wah had offered an additional sum of US$20m in post-completion working capital, which could have been used to set off the Company's liabilities if necessary.

20 In our view, the abovementioned contentions are entirely without merit. In relation to the issue as to whether the consideration offered by Golden Hill Capital ought to be reflected as US$88m or US$100m, we see no reason to doubt the JMs' explanation that the Company's debt of US$12m to Mr Phua Yong Tat had already been accounted for as part of the Company's liabilities. In this connection, we note that even the Shareholders' expert ("Crowe") was unwilling to challenge the JMs' assessment of the shareholder returns generated by Golden Hill Capital's 31 August Offer, as it accepted that the JMs were more familiar with the terms of that offer as well as the bridging loans provided by Mr Phua Yong Tat.

21 In relation to the issues as to (a) whether the US$20m interim facility would have been fully drawn down and (b) whether the use of the US$20m interim facility could have generated revenue for the HTL Group, the JMs disclosed advice from their Hong Kong legal counsel which showed that Man Wah's 31 August Offer would likely take between two and six months to complete. The JMs also adduced documentary evidence of, *inter alia*, the HTL Group's substantial average monthly fixed and variable costs and its precarious

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financial condition. This was made known to Man Wah prior to its 31 August Offer. Given the Company's circumstances, it was entirely reasonable for the JMs to take the view that the entire US$20m facility would be completely drawn down within the time required for the completion of Man Wah's offer, and that, furthermore, it would not be able to generate income for the Company in the interim. The Shareholders, for their part, were unable to adduce any compelling evidence to the contrary and merely asserted that the JMs had not produced any accounts to support their financial projections. We disagreed with that assertion as it would constitute an impermissible reversal of the burden of proof to the JMs.

22 In relation to the issue of whether the US$20m loan would have been returned to the Company's cash reserves, we agree with the Judge's finding that Man Wah had agreed, as part of its offer, to waive all debts between the Company and HTLM ("the Waiver"), with the effect that HTLM would not have had to repay the sum of US$20m to the Company. The Waiver had been explicitly provided for in Man Wah's 20 August Clarification, and continued to form part of Man Wah's 31 August Offer. The Shareholders' argument that the sum of US$20m mentioned in the Clarification did not refer to the US$20m interim facility is, with respect, misconceived as the nature and purpose of the US$20m is irrelevant to the existence of the Waiver. We add that the Shareholders' case that Man Wah's offer was superior to Golden Hill Capital's in terms of shareholder returns was predicated on the fact that the Waiver did not apply to the US$20m interim facility. Quite apart from the fact that Man Wah's 20 August Clarification would have put paid to this allegation, we find it significant that no affidavit was filed by Man Wah, the author of both the 20 August Clarification and the 31 August Offer, to state otherwise.

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23 Finally, the Shareholders' contention that the post-completion working capital of US$20m could be set off against the Company's liabilities was also clearly without merit as Man Wah had clearly stated that the working capital facility was to be provided to HTLC and HTLM, not to the Company.

24 Consequently, we see no reason to disagree with the Judge that the JMs correctly assessed that Golden Hill Capital's 31 August Offer yielded a higher shareholder return than Man Wah's 31 August Offer.

25 We turn now to the second principal plank of the Shareholders' case, which is that the JMs' refusal to provide Man Wah with the Financials prevented Man Wah from improving its offer. The Shareholders argue that, first, the provision of the Financials would have enabled Man Wah to confirm whether it could obtain approval for the purchase of the Asset without holding a shareholder meeting. If a shareholder meeting was not required, the time to completion could be shortened to five business days. Second, if Man Wah had been provided with the Financials, it was "entirely possible that Man Wah would [have] increase[d] the amount of the credit facility, given its commitment and the large amount of money that it was prepared to offer".

26 In our view, both arguments are speculative and without basis. In relation to the time to completion, we note that Man Wah's position, as stated in its 20 August Clarification, was that the only information that it required to determine the time to complete its offer was information as to whether the Financials were qualified or unqualified. Given that the JMs had already clarified (by way of a letter from its solicitors dated 26 August 2020) that the Company's accounts were indeed qualified, it is not clear how or why the

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provision of the Financials continued to be necessary or relevant in so far as the issue of timing was concerned.

27 In response to this, the Shareholders contend in their Appellants' Case that Man Wah, being a listed entity, could not simply rely on the JMs' statements that the accounts of the Company were qualified. However, this assertion appears to be an afterthought as the Shareholders are raising it for the first time on appeal. Furthermore, it would have been open to Man Wah to request for documentary evidence of the accountant's disclaimer (instead of the full set of Financials) if indeed it had been of the view that the JMs' representation could not be relied upon. Tellingly, no such request was made.

28 The Shareholders also point to Man Wah's 8 September Offer, in which Man Wah alleged for the first time that it required the Financials for another purpose: namely, to determine whether HTL Group's aggregate revenue was less than 25% of Man Wah's last audited revenue, in which event shareholder approval could also be dispensed with. However, the 8 September Offer was conveyed to the JMs only *after* the JMs had already communicated their decision to accept Golden Hill Capital's 31 August Offer. The Shareholders' reliance on Man Wah's 8 September Offer is therefore misplaced.

29 For the above reasons, we reject the Shareholders' argument that the provision of the Financials would have enabled it to make an offer with a shorter completion time. We are similarly unpersuaded by the Shareholders' bare and speculative assertion that Man Wah could potentially have increased the amount of the US$20m interim facility if it had been provided with the full set of Financials. The Shareholders have not provided any substantiation whatsoever for this claim.

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Conclusion

30 For the above reasons, we agree with the Judge that the JMs did not act in an unfairly prejudicial manner by selecting Golden Hill Capital's 31 August Offer over Man Wah's 31 August Offer. We note, for completeness, that Golden Hill Capital, Mr Phua Yong Tat and Mr Phua Yong Pin (collectively, "the Phua Group") have devoted a substantial part of their submissions on the argument that the Shareholders should not be awarded the relief they seek in any event because it would be impossible and/or unjust to rescind the SPA at this juncture. We do not think it necessary to set out our views on those arguments, given our conclusion above that the conditions under s 227R of the CA were not satisfied to begin with.

31 The appeal is thus dismissed with costs. We order the appellants to pay the JMs and the Phua Group costs fixed at S$50,000 and S$25,000 respectively inclusive of disbursements as well as the costs for CA/SUM 61/2021. The usual consequential orders will apply.

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Tan Tee Jim *SC*, Gan Theng Chong, Melissa Ng and Tan Sher Meen (Lee & Lee) (instructed), Sharon Chong Chin Yee, Nandhu and Sim Ling Renee (RHTLaw Asia LLP) for the appellants;
Pradeep Pillai, Joycelyn Lin, Jonas Wong and Lek Haokai (PRP Law LLC) for the first respondent;
Harpreet Singh Nehal *SC*, Jordan Tan and Victor Leong (Audent Chambers LLC) (instructed), Cheng Wai Yuen Mark, Chew Xiang, Ho Zi Wei and Tan Tian Hui (Rajah & Tann Singapore LLP) for the second to fourth respondents.

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