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

[2023] SGHC 88

Originating Application No 250 of 2023

In the Matter of Section 71 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Pte Ltd

… *Applicant*

Originating Application No 251 of 2023

In the Matter of Section 71 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Asia Pte Ltd

… *Applicant*

Originating Application No 252 of 2023

In the Matter of Section 71 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Australia Pty Ltd

… *Applicant*

Version No 1: 06 Apr 2023 (14:06 hrs)

Originating Application No 381 of 2022 (Summons No 754 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Company Limited

… *Applicant*

Originating Application No 382 of 2022 (Summons No 755 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Pte Ltd

… *Applicant*

Originating Application No 383 of 2022 (Summons No 756 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Asia Pte Ltd

… *Applicant*

Originating Application No 384 of 2022 (Summons No 757 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Australia Pty Ltd

… *Applicant*

Version No 1: 06 Apr 2023 (14:06 hrs)

Originating Application No 385 of 2022 (Summons No 758 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

PT Zipmex Exchange Indonesia

… *Applicant*

BRIEF GROUNDS

[Insolvency Law — Schemes of arrangement — Classification of creditors]

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Re Zipmex Pte Ltd and other matters

[2023] SGHC 88

General Division of the High Court — Originating Application No 250 of 2023, Originating Application No 251 of 2023, Originating Application No 252 of 2023, Originating Application No 381 of 2022 (Summons No 754 of 2023), Originating Application No 382 of 2022 (Summons No 755 of 2023), Originating Application No 383 of 2022 (Summons No 756 of 2023), Originating Application No 384 of 2022 (Summons No 757 of 2023) and Originating Application No 385 of 2022 (Summons No 758 of 2023)
Aedit Abdullah J
30 March 2023

6 April 2023

Aedit Abdullah J:

1 These brief remarks encapsulate my decision allowing the present applications for the Court's sanction of "pre-packaged" schemes of arrangement ("the Sanction Applications") under s 71 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") and the accompanying applications for extension of time of moratoria to allow for post-sanction administrative steps to be completed. The focus of these remarks is on the question of whether, for the purposes of voting on the "pre-packaged" schemes of arrangement ("the Schemes"), the Court may approve the creation of an administrative convenience class ("the Administrative Convenience Class") comprising low value creditors which is intended to reduce the administrative burden on the restructuring entities.

Background

2 The Sanction Applications were made by three companies in the Zipmex Group: Zipmex Asia Pte Ltd (the group holding company incorporated in Singapore) ("Zipmex Asia"), Zipmex Pte Ltd (a Singapore subsidiary) ("Zipmex Singapore"), and Zipmex Australia Pty Ltd ("Zipmex Australia"). The applications for extension of moratoria were made by these companies as well as Zipmex Company Limited and PT Zipmex Exchange Indonesia. The Zipmex Group operates a cryptocurrency platform, accessible through an application known as the "Zipmex App", on which various cryptocurrencies are traded.

3 The applicants previously came before this Court on 2 December 2022 to ask for an extension of time of the moratoria. At that hearing, they raised the proposal for the Administrative Convenience Class to be formed for the purposes of the voting exercise on the Schemes.[1] I approved the applications for extension of time but indicated that it was premature then to determine the permissibility of the creation of this class.[2] Nevertheless, I highlighted to the applicants my concerns regarding the existence of a juridical basis for the Court to grant such an order.[3] At the present hearing, since the voting exercise had been completed and the applicants were bringing the Sanction Applications for the Court's approval, it was appropriate to face this issue squarely.

4 In the voting exercise, the Scheme creditors of Zipmex Asia voted in one class whilst the Scheme creditors of Zipmex Singapore and Zipmex Australia voted in two classes: the "Vendor Creditors" and the "Customer

[1] Applicants' Joint Written Submissions ("AJWS") at para 29.

[2] *Re Zipmex Co Ltd* [2022] SGHC 306 at para 9 ("*Re Zipmex Co Ltd*").

[3] *Re Zipmex Co Ltd* at para 7.

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Creditors" classes.[4] The outcome of the voting exercise for all classes was overwhelmingly in favour of approving the Schemes.[5] However, under the "Customer Creditors" class, the applicants had created the Administrative Convenience Class, which was a separate class of Customer Creditors comprising 67,130 customers whose withheld assets were below US$5,000 in value.[6] In exchange for receiving the same benefits under the Schemes as the other Customer Creditors, *ie*, full access to their withheld assets following an investment in Zipmex Asia, members of the Administrative Convenience Class were by default excluded from the voting exercise unless they indicated their desire to participate in it.[7] The rationale for doing so was to lessen the administrative burden on the applicants in conducting the voting exercise.[8]

Creation of an administrative convenience class

5 The applicants argued that the concept of the Administrative Convenience Class arose from United States ("US") jurisprudence; namely, jurisprudence concerning s 1122(b) of the US Bankruptcy Code, which permits the proponent of a plan to designate a separate class, "as reasonable and necessary for administrative convenience", for all unsecured claims less than a specified dollar amount.[9] The applicants argued that s 1122(b) codified the practice in pre-Code case law of providing a separate class for small claims so as to permit their payment in full and thus relieve the restructuring company

[4] AJWS at paras 9, 33–38.

[5] AJWS at paras 11 and 12.

[6] AJWS at paras 27, 28 and 31.

[7] AJWS at paras 10, 31 and 36.

[8] AJWS at para 31(b).

[9] AJWS at para 49; Applicants' Bundle of Authorities ("ABOA") at Tab 6 p 25.

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from the administrative burden of soliciting the relevant claimants' consent to the plan.[10]

6 In support of these arguments, the applicants referred to the Senate Report that accompanied the 1978 enactment of the Bankruptcy Code (S Rep No 989, 95th Cong, 2d Sess 118 (1978)), which stated that s 1122(b) was a "codification of existing practice"[11] and that payment in cash of small claims in full was common practice in reorganisation.[12] The applicants also referred to several pre-Code US cases which illustrated the practices of either paying low value creditors in full prior to the approval of a reorganisation plan or stipulating in the plan itself for full payment to low value creditors despite other creditors receiving only partial payment.[13]

7 From these authorities, the applicants sought to distil the principle that pre-Code, US courts had recognised that the payment of administrative convenience claims would benefit the debtor's estate and other creditors by streamlining administration of the estate.[14] They argued that this pre-Code practice of creating an administrative convenience class would be consistent

[10] AJWS at para 50.

[11] ABOA at Tab 6 p 25; Tab 18 p 809.

[12] AJWS at para 55; ABOA at Tab 18 p 809.

[13] AJWS at paras 55–58.

[14] AJWS at para 58.

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with the practice in Singapore where in schemes of arrangement, debtor companies may choose to exclude low value creditors by paying them in full.[15]

8 With respect to the juridical basis for the Court's power to authorise the creation of the Administrative Convenience Class, the applicants cited the following legislative provisions:[16]

(a) Section 3 of the IRDA, which establishes the High Court's jurisdiction in corporate insolvency, winding up and related matters under the IRDA.

(b) Section 6(1) of the IRDA, which gives the Court the power to decide all questions of law or fact that may arise in any case or matter under the IRDA coming within the cognizance of the Court, or that the Court considers expedient or necessary to decide for the purpose of doing justice or making a complete distribution of property in that case or matter.

(c) Alternatively, O 3 rr 2(2) and 2(3) of the Rules of Court 2021 ("ROC 2021"), which permit the Court to do whatever it considers necessary in a case to ensure that justice is done and to impose any appropriate condition in exercising any power.

The decision

9 I granted approval for the pre-packaged Schemes, including the use of the administrative class. I was satisfied that the requirements under s 71 IRDA had been met, namely (a) the disclosure of information, and (b) the satisfaction

[15] AJWS at para 59.

[16] AJWS at para 62.

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of the statutory majority requirements in the notional counting of votes, which requires proper classification of the scheme creditors in accordance with case law on s 210 of the Companies Act 1967 (2020 Rev Ed) ("CA"): *Re DSG Asia Holdings Pte Ltd* [2021] SGHC 209 at [28], [29] and [44].

10 These brief grounds will focus primarily on the use of the Administrative Convenience Class. I was satisfied that categorising some of the applicants' creditors in a class here, and taking their approval of the Schemes as deemed, was appropriate.

11 While in *Re Zipmex Co Ltd and other matters* [2022] SGHC 306 I invited submissions on the pre-Bankruptcy Code cases in the US, it would seem from what the applicants have located that there is not much to be gleaned from their reasoning that would be of use in the Singapore context. What the US approach pre-Code does illustrate is that some compromise of strict rights and equitableness is sometimes required for the sake of efficacy and feasibility. A poll of all 70,000 or so creditors here would not be workable for the applicants, at least in a reasonable amount of time and at reasonable cost.

12 But the Court must always need to ensure that there is no undue prejudice. This is best catered for by some quid pro quo for the deemed consent to be taken from the Administrative Convenience Class, such as full payment. In addition, the mechanism introduced by the applicants allowing those in the Administrative Convenience Class to still vote if they want to, gives further strength to there being no prejudice arising here.

13 As for the statutory mechanism, I am doubtful that the ROC 2021 can be invoked in the manner argued for by the applicants, since class creation and composition are matters of substantive law under the IRDA and the CA. Rather,

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I would found it on the words of s 210 CA itself, which allows leeway to the Court to redefine the majority required for approval. Specifically, section 210(3AB) sets out the conditions under which a compromise or an arrangement is binding:

> (3AB) The conditions referred to in subsection (3AA) are as follows:
>
> (*a*) *unless the Court orders otherwise*, a majority in number of —
>
> (i) the creditors or class of creditors;
>
> (ii) the members or class of members; or
>
> (iii) the holders of units of shares or class of holders of units of shares,
>
> present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;
>
> (*b*) the majority in number referred to, *or such number as the Court may order*, under paragraph (*a*) represents three-fourths in value of —
>
> (i) the creditors or class of creditors;
>
> (ii) the members or class of members; or
>
> (iii) the holders of units of shares or class of holders of units of shares,
>
> present and voting either in person or by proxy at the meeting or the adjourned meeting, as the case may be;
>
> (*c*) the compromise or arrangement is approved by order of the Court.
>
> [emphases added]

14 That to my mind can be then imported into s 71 IRDA, by its opening words in s 71(1) that "[d]espite section 210 of the Companies Act but subject to this section … the Court may, on an application made by the company, make an order approving the compromise or arrangement, even though no meeting of

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the creditors or class of creditors has been ordered under section 210(1) of that Act or held."

15 The Administrative Convenience Class was thus a proper class created under the IRDA and the deemed approval fulfilled the requirements of s 71(3)(*d*) IRDA.

Aedit Abdullah
Judge of the High Court

Daniel Chia Hsiung Wen, Tang Yuan Jonathan and Charlene Wee Swee Ting (Morgan Lewis Stamford LLC) for the applicants.

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