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

[2024] SGHC 238

Companies Winding Up No 121 of 2024

In the matter of Section 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of RegalRare Gem Museum Pte. Ltd.

Between

Kingsmen Exhibits Pte Ltd

… *Claimant*

And

RegalRare Gem Museum Pte. Ltd.

… *Defendant*

Companies Winding Up No 122 of 2024

In the matter of Section 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Kings Luxury Concepts Pte. Ltd.

Between

Kingsmen Exhibits Pte Ltd

… *Claimant*

And

Kings Luxury Concepts Pte. Ltd.

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Grounds for petition — Whether company deemed unable to pay its debts — Sections 125(1)(*e*) and 125(2)(*a*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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Kingsmen Exhibits Pte Ltd
v
RegalRare Gem Museum Pte Ltd and another matter

[2024] SGHC 238

General Division of the High Court — Companies Winding Up Nos 121 and 122 of 2024
Goh Yihan J
12 July, 7 August 2024

17 September 2024

Goh Yihan J:

1 These were two winding-up applications made by Kingsmen Exhibits Pte Ltd ("Kingsmen") against RegalRare Gem Museum Pte Ltd ("RegalRare") and Kings Luxury Concepts Pte Ltd ("Kings Luxury"). The applications were based on s 125(1)(*e*) read with s 125(2)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). RegalRare and Kings Luxury were represented by Mr Chang Yen Ping Ian ("Mr Chang") and Mr Chen Sheng Hans ("Mr Chen") of Cornerstone Law LLP ("Cornerstone").

2 The applications were first scheduled to be heard on 14 June 2024 but were refixed to 21 June 2024 on account of RegalRare's Chief Executive Officer suffering a family bereavement.[1] On 21 June 2024, the applications

[1] Claimant's letter in HC/CWU 121/2024 dated 13 June 2024 at Annex A.

were adjourned to 12 July 2024 on the basis that Cornerstone was just appointed as the defendants' solicitors and hence needed time to take instructions. I heard the parties on 12 July 2024, at which Mr Chang stated that the defendants intended to file reply affidavits to show that they were solvent on a cash flow basis. I allowed the defendants to do so by 26 July 2024. They never filed any reply affidavit. The applications were then fixed before me on 7 August 2024.

3 After hearing the parties on 7 August 2024, I allowed the winding-up applications. This was despite Mr Chen seeking yet another adjournment so that the defendants could negotiate with Kingsmen. In response, Kingsmen's counsel, Mr Terence Yeo ("Mr Yeo"), informed me that he had instructions that his client did not agree to further negotiations. I provide these grounds not only to explain the reasons why I allowed the winding-up applications, but also to emphasise that defendants to such applications should not seek adjournments solely to unduly delay matters.

The background facts

4 I begin with the background facts. RegalRare is the tenant of a commercial shop unit at the Paragon Shopping Centre ("Paragon"). RegalRare opened the RegalRare Gem Museum Gallery at the said unit.[2] Pursuant to a contract signed on 28 September 2022 (the "Agreement"), RegalRare engaged Kingsmen for fit-out and renovation works for a project known as "Build and Fabrication of RegalRare Gem Museum at Paragon" (the "Project").[3]

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2 Affidavit of Wong Kin Hoong in HC/CWU 121/2024 dated 10 May 2024 ("Claimant's Supporting Affidavit") at para 6.

3 Claimant's Supporting Affidavit at para 7.

5 Kingsmen and RegalRare later executed a supplemental agreement dated 26 July 2023 (the "Supplemental Agreement"). Further, Kingsmen and Kings Luxury entered into a Guarantee and Indemnity dated 28 July 2023 in favour of Kingsmen to secure the obligations of RegalRare (the "Guarantee and Indemnity"). Clause 2.2 of the Guarantee and Indemnity read with the definition of a "Guaranteed Sum" in cl 1.2 of the same provided that Kings Luxury had irrevocably and unconditionally guaranteed to, among others, pay Kingsmen immediately on demand, as a principal debtor and not as a surety, sums due and owing to Kingsmen at any given time under both the Agreement and the Supplemental Agreement.[4] Also, pursuant to cl 2.3, Kings Luxury irrevocably and unconditionally agreed, as a primary obligor and as a separate and independent obligation and liability from cl 2.2, to indemnify Kingsmen in full on demand against all losses, damages, liabilities, claims, costs, and expenses whatsoever suffered or incurred by Kingsmen in connection with, among others, a breach by RegalRare of the terms of the Agreement and the Supplemental Agreement.[5]

6 Pursuant to cl 4 of the Supplemental Agreement, Kingsmen served on RegalRare its Payment Claim No 8 dated 2 January 2024 ("PC 8") for works done up to 29 December 2023. The amount claimed was $144,745.68.[6] On 3 January 2024, Kingsmen served a statutory demand ("SD") on RegalRare at its registered address and at the shop unit at Paragon.[7]

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4 Claimant's Supporting Affidavit at pp 107-108.

5 Claimant's Supporting Affidavit at p 108.

6 Claimant's Supporting Affidavit at para 8.

7 Claimant's Supporting Affidavit at para 9.

7 When RegalRare did not provide a payment response to PC 8 by 16 January 2024, which was the last day of the dispute settlement period under s 12(6) read with s 11(1)(*a*) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) (the "SOPA"), Kingsmen commenced adjudication proceedings in SOP/AA023 of 2024 ("AA023") under the SOPA against RegalRare.[8] RegalRare did not provide any adjudication response. The appointed adjudicator therefore determined, in the adjudication determination for AA023 dated 7 February 2024 (the "Determination"), that RegalRare was to pay to Kingsmen the adjudicated amount of $142,045.68 (the "Adjudicated Amount"), as well as interest and costs.[9] On 9 February 2024, Kingsmen's solicitors issued a letter of demand to RegalRare for the sum of $150,689.38.[10]

8 Despite Kingsmen's demands for these sums to be paid, RegalRare failed to do so. Kingsmen therefore applied to enforce the Determination in HC/OA 172/2024, pursuant to O 36 r 2 of the Rules of Court 2021 and s 27 of the SOPA. On 27 February 2024, an order of court, HC/ORC 1017/2024 ("ORC 1017"), was made for RegalRare to pay to Kingsmen the Adjudicated Amount, as well as interest and costs.[11] On 6 March 2024, Kingsmen served a copy of ORC 1017 on RegalRare.[12] After RegalRare persistently failed to make payment to Kingsmen, Kingsmen served a SD on Kings Luxury at its registered address at Paragon on 15 March 2024 to demand that Kings Luxury make payment of the Adjudicated Amount, plus interest and costs, pursuant to the

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8 Claimant's Supporting Affidavit at paras 10-11.

9 Claimant's Supporting Affidavit at paras 11-12 and p 67.

10 Claimant's Supporting Affidavit at para 18 and p 100.

11 Claimant's Supporting Affidavit at paras 13-14.

12 Claimant's Supporting Affidavit at para 15 and pp 96-97.

Guarantee and Indemnity. The total amount due and owing was $153,749.43 as of that date.[13]

9 On 19 March 2024, RegalRare, jointly with Kings Luxury, replied to Kingsmen to state that they "recognise the total amount of S$153,749.43/- and will follow-up with a schedule of payments to account for this amount".[14] Relevantly, RegalRare also claimed that they had resisted payment because "[t]here are many instances where the quality and works done for the project were faulty" and that "many defects are still not done up and we cannot operate normally".[15]

10 Kingsmen did not agree to RegalRare's proposal of a schedule of payments due to RegalRare's previous failure to pay. It also believed that RegalRare had no contractual basis to deny payment. Thus, on 25 March 2024, Kingsmen reiterated that the outstanding sum of $153,749.43 was due and owing and that it was not agreeable to a proposal of a payment schedule.[16] To this, RegalRare, jointly with Kings Luxury, responded on 28 March 2024 to state that they "recognise the total amount of S$153,749.43/- and will follow-up with a schedule of payments to account for this amount plus arrange for an initial payment as a show of commitment". RegalRare also maintained that there were outstanding defects in the Project.[17]

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13 Claimant's Supporting Affidavit at para 19 and pp 102-104.

14 Claimant's Supporting Affidavit at p 125.

15 Claimant's Supporting Affidavit at p 125.

16 Claimant's Supporting Affidavit at p 137.

17 Claimant's Supporting Affidavit at pp 140-141.

11 On 3 April 2024, Kingsmen replied to state that it did not agree with RegalRare's request to make payments by instalments and reiterated that the sum of $153,749.43 remained outstanding and was to be paid immediately.[18] On 6 April 2024, RegalRare (jointly with Kings Luxury) repeated in their reply to Kingsmen that "we recognise the total amount of S$153,749.43/- and will follow-up with a schedule of payments to account for this amount plus arrange for an initial payment".[19] As with the previous round of correspondence, Kingsmen replied on 8 May 2024 to disagree with RegalRare's withholding of payment. Kingsmen also disagreed with RegalRare's position that there were outstanding defects in respect of their works on the Project. Further, Kingsmen pointed out that while RegalRare had stated on multiple occasions that it would follow up with a schedule of payments, Kingsmen never received any such schedule of payments.[20]

12 In the premises, Kingsmen stated that more than three weeks had elapsed between them serving the SDs on RegalRare and Kings Luxury, and Kingsmen's filing of the winding-up applications. In respect of RegalRare, Kingsmen also stated that more than three weeks had elapsed since its letters of 9 February 2024 and 25 March 2024 were served on RegalRare. However, RegalRare and Kings Luxury had failed to make payment or satisfy the outstanding sum, or any part thereof, or to secure or compound the same to Kingsmen's reasonable satisfaction.[21] Kingsmen therefore sought winding-up

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18 Claimant's Supporting Affidavit at para 26 and p 143.

19 Claimant's Supporting Affidavit at p 159.

20 Claimant's Supporting Affidavit at pp 162-163.

21 Claimant's Supporting Affidavit at para 29.

orders against RegalRare and Kings Luxury, respectively, pursuant to s 125(1)(*e*) read with s 125(2)(*a*) of the IRDA.

My decision: the winding-up applications were allowed

13 After hearing the parties, I made the winding-up orders sought against RegalRare and Kings Luxury for the following reasons.

RegalRare and Kings Luxury were deemed to be unable to pay their debts to Kingsmen

14 To begin with, it was clear that RegalRare and Kings Luxury were deemed to be unable to pay their debts to Kingsmen. The evidence was clear that Kingsmen had validly served written demands on RegalRare and Kings Luxury for sums then due and exceeding $15,000 each, pursuant to s 125(2)(*a*) of the IRDA. Since neither RegalRare nor Kings Luxury responded to the demands within three weeks of service, they were deemed to be "unable to pay [their] debts" pursuant to s 125(1)(*e*) read with s 125(2)(*a*) of the IRDA, which constitutes a ground on which a court may order their winding up.

15 Although Mr Chang did not make any legal submissions on behalf of RegalRare and Kings Luxury, he had, on 12 July 2024, sought an adjournment for the defendants to file reply affidavits to show that they were solvent on a cash flow basis. Mr Yeo had objected on the basis that it was not relevant whether the defendants were cash flow solvent since Kingsmen was relying on the presumption of insolvency under s 125(2)(*a*) of the IRDA. While I had some sympathy for Mr Yeo's objection, I nevertheless allowed the adjournment sought because it was not definitively irrelevant, whether the defendants were cash flow solvent or not. In the General Division of the High Court decision of *Chia Vui Khen Jason v HR Easily Pte Ltd* [2024] SGHC 116,

Christopher Tan JC pointed out (at [52]) that even if the presumption under s 125(2)(*a*) of the IRDA is engaged and remains in operation, the court still retains the discretion to deny the winding-up application. The learned judge held (at [57]–[58]) that, while he did not need to decide whether the presumption is technically rebuttable, any evidence that a company is able to pay its debts after all could affect how a court exercises its discretion to order a winding up.

16 Without deciding definitively whether evidence that a company is cash flow solvent would affect a court's discretion in a winding-up application premised on the presumption of insolvency in s 125(2)(*a*) of the IRDA, I did not think that such evidence could be said to be completely irrelevant. I therefore allowed the adjournment sought. However, the defendants never filed any reply affidavit in the end, which meant that the presumption under s 125(2)(*a*) of the IRDA stood and that there was nothing in relation to this for me to consider when exercising my discretion in a winding-up application filed on the basis of the ground set out in s 125(1)(*e*) of the IRDA.

17 For these reasons, I was satisfied that there was good cause for me to order the winding up of RegalRare and Kings Luxury pursuant to s 125(1)(*e*) read with s 125(2)(*a*) of the IRDA. There was no reason, in the factual matrix before the court, for me to exercise my discretion otherwise.

RegalRare's allegations of defective works were irrelevant

18 For completeness, in as much as the defendants sought to challenge the underlying debts by pointing to, among others, alleged defects in the works done by Kingsmen in relation to the Project, I would have found that this was irrelevant to the winding-up applications.

19 First, RegalRare had multiple occasions to raise the alleged defects with Kingsmen. However, it had not done so by the time these applications were heard. For example, RegalRare had signed and acknowledged Kingsmen's Handover Form dated 27 October 2023, stating that the completed works and the shop unit were handed over by Kingsmen to RegalRare. RegalRare had further signed off against the sole defects list set out in the Handover Form to acknowledge that the minor defective works listed therein had been satisfactorily addressed without any qualification or further dispute. Also, RegalRare could have raised these alleged defects in AA023, but it did not do so. It also did not apply to set aside the Determination. It was much too late for RegalRare to revisit these alleged defects at the hearing for the winding-up applications.

20 Second, and in any event, it is trite that an insolvency court does not generally go behind a court order underlying a judgment debt. The amounts in ORC 1017 are due and owing, not by virtue of the validity of the underlying contractual claims, but by virtue of its status as a court order that is legally in force and which has not been stayed or set aside. Indeed, in the High Court decision of *LKM Investment Holdings Pte Ltd v Cathay Theatres Pte Ltd* [2000] 1 SLR(R) 135, Judith Prakash J (as she then was) held, in relation to a judgment debt disputed by the debtor, which was the subject-matter of the winding-up application there (at [21]), that little weight would be accorded to the consideration that the judgment debtor had filed an appeal against the judgment and was still raising issues disputing the validity of that debt, as there was a court order in force respecting the debt, such that "*prima facie*, any further dispute over the debt would not be *bona fide*". Likewise, in the General Division of the High Court decision of *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd (Group Lease Public Co Ltd and another, non-parties)* [2024] SGHC 195,

Vinodh Coomaraswamy J reasoned in relation to the judgment debt which formed the subject-matter of the winding-up application there that (at [75]):

> A judgment is simply an order of court that adjudicates on the substantive rights of the parties before the court in a manner that effects a merger of the court's order with the underlying cause of action and gives rise to a *res judicata*. A judgment imposing on obligation [*sic*] on party towards another gives rise not merely to an undisputed obligation but to an indisputable obligation. The obligation arising from a judgment is indisputable simply because the state's coercive power compels the parties to accept the judgment as final and binding on them. They must accept it as final and binding regardless of the avenues of appeal available to the obligor under the judgment. That is so even if the obligor actually pursues one or more of those avenues. The judgment is final and binding unless and until the appellate court reverses the judgment. Further, the obligor comes under an immediate and present obligation to discharge the obligation as soon as judgment is pronounced and entered. That obligation is a present obligation unless and until the court grants a stay on enforcement of the obligation.

More specifically, in the context of an adjudication determination under the SOPA, the Court of Appeal in *Diamond Glass Enterprise Pte Ltd v Zhong Kai Construction Co Pte Ltd* [2021] 2 SLR 510 held that it would not be open to a judgment debtor to dispute a debt (arising from an adjudication determination) at the winding-up petition stage since "s 21(1) of the SOPA confers temporary finality on the [adjudication determination]" (at [32]). As I have previously noted, there were no legal proceedings afoot by RegalRare to invalidate or set aside the Determination (see at [19] above). As such, RegalRare was precluded from attempting to resist the present winding-up application against it by challenging the validity of the underlying judgment debt, in so far as it concerned the Adjudicated Amount in ORC 1017.

21 Third, and most importantly, RegalRare and Kings Luxury have, over multiple occasions, "recognised" the debts demanded of them by Kingsmen (see

at [9]–[11] above). The High Court case of *The "Banga Borat"* [2009] 2 SLR(R) 613 is instructive here. There, the owner of a vessel had, on multiple occasions, repeatedly accepted the validity of a debt owed to the bank, for which he had mortgaged the vessel as security (at [3]–[11]). However, when the bank applied for summary judgment for sale of the arrested vessel as the owner was late with his repayments, the owner belatedly raised defences such as waiver and estoppel (at [20]). Kan Ting Chiu J (as he then was) held that these defences plainly conflicted with the owner's prior conduct of acknowledging the validity of the debt claimed by the bank. In the words of Kan J (at [21]), "[t]hese representations made to the plaintiff would have raised serious questions over the merits of the defence", as "[t]he matters on which the defences of waiver and estoppel were based were within the defendant's knowledge at all times". While the High Court there was specifically concerned with whether the owner's prior conduct in court proceedings (*ie*, the arrest of the vessel) raised a question of *res judicata* and abuse of process (at [22]–[30]), it nevertheless underscores that, as a matter of common-sense, a court will be slow to entertain a belated dispute against the validity of a debt when the entire course of the debtor's prior conduct militates to the contrary.

22 For all these reasons, I did not find that RegalRare and Kings Luxury had any basis to resist the winding-up orders sought against them.

RegalRare's and Kings Luxury's repeated requests for adjournments

23 I end with a brief mention of RegalRare's and Kings Luxury's repeated requests for adjournments. In this regard, it is trite that a court hearing a winding-up application has the discretion to adjourn the matter. For example, in the High Court decision of *Ley Choon Constructions and Engineering Pte Ltd v Yew San Construction Pte Ltd* [2020] SGHC 108, Choo Han Teck J held

(at [9] and [11]) that the court has a residual discretion to adjourn winding-up proceedings notwithstanding a debtor's cash flow insolvency, taking into account the various economic and social interests that may be affected and to allow the debtor more time to resolve the issues at hand or seek alternative measures. In doing so, Choo J relied on the Court of Appeal's reasoning in *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 ("*BNP*") at [16] and [19]–[20]. This broad discretion to adjourn a winding-up application also flows from the draconian nature of a winding-up order (see *BNP* at [20], which acknowledged the "irreparable harm" that "could flow" from the presentation of a winding-up application), such that a defendant company should be afforded full opportunity to defend itself. However, it goes without saying that a court will only grant an adjournment if there are good reasons for it. Thus, albeit in a different but yet related context, Lai Siu Chiu J (as she then was) in the High Court decision of *United Overseas Bank Limited v Victor F A Fernandez* [2003] SGHC 246 (at [10]–[11]) held that, while the court had a residual discretion to adjourn bankruptcy proceedings to give the debtor reasonable time to settle his or her debts to the petitioning creditor, the debtor there had shown no good reason for the court to exercise such discretion in his favour, owing *inter alia* to the non-viability of his proposals to repay the debt to the creditor, on the evidence. This caution, with some modification, must surely apply in the winding up context.

24 In the present case, it was not satisfactory for the defendants to have sought an adjournment to tender reply affidavits which ultimately were not filed. While I understand that instructions can change, defendants should not make requests for adjournments based on reasons that they do not keep to. If it transpires that such reasons have changed, then it is incumbent on defendants to keep the counterparty and the court apprised. It was unsatisfactory that the

defendants decided not to file reply affidavits but then let the deadline quietly slip by, without so much as letting Kingsmen or the court know of their change of decision. It was also unsatisfactory for the defendants to instruct Mr Chen to seek a further adjournment on 7 August 2024 on the basis that they would like more time to negotiate with Kingsmen. While parties are certainly not precluded from making such requests, the totality of the circumstances here led me to infer that the defendants were seeking to delay matters with yet another reason that may well be unfounded. In any case, Kingsmen readily confirmed that it was not agreeable to any further discussions. More broadly, defendants should not drip-feed reasons to resist a winding-up application by way of a series of delays, each, as it turned out in the end, being procured or sought to be procured on meritless grounds.

Conclusion

25 For the reasons above, I granted the winding-up applications filed by Kingsmen in respect of RegalRare and Kings Luxury, pursuant to s 125(1)(*e*) read with s 125(2)(*a*) of the IRDA.

Goh Yihan
Judge of the High Court

Terence Yeo (TSMP Law Corporation) for the claimant;
Chang Yen Ping Ian and Chen Sheng Hans (Cornerstone Law LLP) for the defendants;

Lim Yew Jin and Goh Yin Dee (Insolvency & Public Trustee's Office) for the official receiver.
