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

[2024] SGHC 257

Companies Winding Up No 94 of 2023 (Summons No 1917 of 2024)

In the matter of s 144(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Hodlnaut Pte Ltd (in compulsory liquidation)

Between

(1) Aaron Loh Cheng Lee
(2) Ee Meng Yen Angela

… *Claimants*

And

Hodlnaut Pte Ltd (in compulsory liquidation)

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Liquidator]

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v
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General Division of the High Court — Companies Winding Up No 94 of 2023 (Summons No 1917 of 2024)
Aidan Xu @ Aedit Abdullah J
17 September 2024

11 October 2024

Aidan Xu @ Aedit Abdullah J:

1 The joint and several liquidators of Hodlnaut Pte Ltd (in compulsory liquidation) (the "Company") applied for authorisation under s 144(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA") to commence an originating application on behalf of the Company for directions under s 145(3) of the IRDA.[1]

2 This decision is published to provide guidance as to the relevant factors for the court's determination of whether to grant authorisation of a liquidator's exercise of his or her powers under s 144(1)(*e*) of the IRDA.

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[1] Written Submissions of the Joint and Several Liquidators of Hodlnaut Pte Ltd dated 10 September 2024 ("LWS") at para 1.

Background facts

3 The Company is a Singapore incorporated private company. Its main business is the provision of a cryptocurrency trading platform, which allows its users to deposit digital assets to earn interest.[2]

4 Hodlnaut Trading Limited (under creditors' voluntary liquidation) ("Hodlnaut HK") is a wholly owned subsidiary of the Company.[3] The Company and Hodlnaut HK are part of the Hodlnaut group of companies (the "Hodlnaut Group").[4]

5 The Company was placed under interim judicial management pending the hearing of the judicial management application.[5] On 22 May 2023, the then interim judicial managers of the Company applied to wind up the Company and discharge the interim judicial management order concerning the Company.[6] On 10 November 2023, the court granted a winding up order against the Company, and appointed Mr Aaron Loh Cheng Lee and Ms Ee Meng Yen Angela as the liquidators of the Company.[7]

The application sought

6 The Company's liquidators applied for authorisation, under s 144(1)(*e*) of the IRDA, to seek directions on two questions arising from the winding up

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2 Bundle of Documents of the Joint and Several Liquidators of Hodlnaut Pte Ltd (Volume 1 of 4) dated 10 September 2024 ("BOD-1") at p 10 para 6.

3 BOD-1 at p 10 para 7.

4 BOD-1 at p 10 para 7.

5 BOD-1 at p 10 para 8.

6 BOD-1 at p 11 para 10.

7 BOD-1 at p 11 para 11.

of the Company, namely: (a) which digital assets within the Hodlnaut Group belong to the Company; and (b) which users of the Hodlnaut Group constitute creditors of the Company (collectively, the "Issues").[8]

7 The Company's directors, Mr Simon Eric Lee and Mr Zhu Juntao (collectively, the "Directors") alleged, during the judicial management application, that: (a) all the digital assets deployed on Centralised Exchanges were assets of the Company, while all digital assets deployed on DeFi Protocols were assets of Hodlnaut HK; and (b) the Singapore users were creditors of the Company while the foreign users were creditors of Hodlnaut HK.[9]

8 The interim judicial managers conducted a preliminary review of the Company's financial position and observed that there was poor maintenance of the Company's accounting and financial records, and that there was a lack of basic accounting records.[10] There was an expressed difficulty in verifying the Directors' positions.[11]

9 Since the grant of the winding up order, the liquidators conducted further internal investigations into the two aforesaid Issues and came to the conclusion that: (a) all digital assets of the Hodlnaut Group belonged to the Company; and (b) all users of the Hodlnaut Group were creditors of the Company.[12] The liquidators contended that the available evidence did not support the Directors' position that the digital assets on DeFi Protocols belonged to Hodlnaut HK or

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8 LWS at paras 2 and 4.

9 BOD-1 at p 11 para 12.

10 BOD-1 at p 12 para 15.

11 BOD-1 at p 13 para 16.

12 LWS at para 8; BOD-1 at p 14 para 18.

that the foreign users were creditors of Hodlnaut HK.[13] According to the liquidators, there was evidence that the digital assets were generally deposited by all users regardless of where they were based, and all of the wallets operated by the Hodlnaut Group were owned by the Company.[14] The liquidators argued that if they were correct that all the digital assets belonged to the Company, by extension, all users, regardless of where they were based, ought to be creditors of the Company.[15]

10 The liquidators alleged that there were difficulties in determining what portion of the Hodlnaut Group's assets belonged to the Company and what portion belonged to Hodlnaut HK, as well as in distinguishing the creditors of the Company from those of Hodlnaut HK.[16] This was due to the manner in which the Hodlnaut Group was set up and operated, the commingling of digital assets,[17] and the lack of documentary evidence of the alleged shift in ownership of the digital assets placed on DeFi Protocols from the Company to Hodlnaut HK.[18] The liquidators also raised the possibility of Hodlnaut HK simply acting as an agent for the Company.[19]

11 Given these concerns, which the liquidators said were fundamental questions arising in the winding up of the Company, the liquidators applied,

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13 LWS at para 7.

14 LWS at para 9.

15 LWS at para 12.

16 LWS at para 4.

17 LWS at para 10.

18 LWS at para 11.

19 LWS at para 12.

under s 144(1)(*e*) of the IRDA, for authorisation to seek directions on the Issues pursuant to s 145(3) of the IRDA.[20]

The decision

12 This decision concerns only the authorisation application pursuant to s 144(1)(*e*) of the IRDA and not a determination of the Issues.

13 Section 144 of the IRDA sets out the powers of the liquidator and states that:

> 144.—(1) The liquidator may, after authorisation by either the Court or the committee of inspection —
>
> …
>
> (*e*) bring or defend any action or other legal proceeding in the name and on behalf of the company;
>
> *(f)* appoint a solicitor —
>
> (i) to assist in the liquidator in the liquidator's duties; or
>
> (ii) to bring or defend any action or legal proceeding in the name and on behalf of the company …

The scope of s 144(1)(e) of the IRDA

14 At the outset, there was a need to ascertain whether s 144(1)(*e*) is the appropriate provision relied upon for the Company's application. This concern arose because of an observation, *in obiter*, in *Re Kirkham International Pte Ltd (in compulsory liquidation)* [2023] 5 SLR 635 ("*Re Kirkham*") which suggested that s 144(1)(*e*) may only be relied upon when the liquidator of a company sought to bring or defend any action or legal proceeding without legal

[20] LWS at para 14.

representation. In the present case, the liquidators and the Company are represented by counsel. The court stated that (at [14]):

> … I pause here to note that s 144(1)(*e*) appears to contemplate the liquidator bringing or defending any action or legal proceeding in the name and on behalf of the company *without* any legal representation, in contrast to s 144(1)(*f*)(ii) which governs the situation where the liquidator wishes to appoint a solicitor for that purpose. While the situation contemplated in s 144(1)(*e*) may be uncommon in practice, it must be assumed that Parliament does not legislate in vain and so ss 144(1)(*e*) and 144(1)(*f*)(ii) must each be taken to contemplate different scenarios.
>
> [emphasis in original]

15 Respectfully, I found this interpretation of s 144(1)(*e*) too narrow. Looking at both the language and the context of both ss 144(1)(*e*) and 144(1)(*f*), I am of the view that the better interpretation is that s 144(1)(*f*) goes only towards an authorisation for the appointment of solicitors (either to assist the liquidator in the liquidator's duties or to bring or defend any action or legal proceeding), while s 144(1)(*e*) is specifically concerned with an authorisation to bring or defend any action or legal proceeding.

16 Under this approach, in a situation where solicitors have yet to be appointed to represent the liquidator and/or company, and the liquidator seeks to bring or defend legal proceedings in the name and on behalf of the company with the assistance of legal counsel, then authorisation under ss 144(1)(*f*)(ii) *and* 144(1)(*e*) for the appointment of solicitors and to bring or defend legal proceedings is required. The scope of s 144(1)(*e*) therefore goes beyond situations where the liquidator contemplates bringing or defending any action or legal proceeding without any legal representation. This interpretation does not lead to any significant overlap between ss 144(1)(*e*) and 144(1)(*f*) or render either of the provisions otiose.

17 This approach is also supported by *Re Kirkham* itself. In *Re Kirkham*, the liquidator sought retrospective authorisation from the court to appoint solicitors to assist him in his duties as the company's liquidator. The focus of the inquiry in that case was whether the appointment of solicitors was allowed. The court set out the relevant factors for the court's determination of whether authorisation should be granted under s 144(1)(*f*) (at [24]). However, these factors pertained generally to whether there was a need to appoint the solicitor, the impact of the appointment on the assets of the estate and whether the solicitor was in a position of conflict. If the suggestion in *Re Kirkham* (at [14] above) was correct, that would mean that when a liquidator seeks to appoint a solicitor to bring or defend any action or legal proceeding, the court would only have oversight over the suitability of such appointment, but not whether the liquidator can bring or defend such action. Conversely, when a liquidator does not wish to appoint a solicitor, they will be subject to a wholly different inquiry and/or set of factors which will scrutinise the appropriateness of bringing or defending the legal proceedings in question. This cannot be the case. There is no reason why the court should not consider whether the liquidator's purported act of bringing or defending legal proceedings should be authorised in situations when legal representation is present.

18 The commentary in Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) ("*Annotated Guide to the Singapore Insolvency Legislation*") appears to support the view that s 144(1)(*e*) relates to the authorisation for the course of action specifically while s 144(1)(*f*)(ii) relates only to the authorisation for the appointment of solicitors. The learned authors state at para 10.274 that:

> *Sections 144(1)(e) and 144(1)(f)(ii)*: New sections 144(1)(*e*) and 144(*f*)(ii) clarify that prior sanction is required, before bringing or defending any action or other legal proceeding in the name

> and on behalf of the company, and before appointing a solicitor in this regard …
>
> [emphasis in original]

19 For the avoidance of doubt, the suggested distinction drawn between ss 144(1)(*e*) and 144(1)(*f*) (at [15]–[16] above) is not intended to, and does not, contradict my decision in *Re Mingda Holding Pte Ltd and another matter* [2024] SGHC 130 ("*Re Mingda*"). If the liquidator seeks to bring or defend an action or legal proceeding in the name and on behalf of the company with legal representation, but only obtains approval under s 144(1)(*e*) and not s 144(1)(*f*)(ii), the court does not have the power to grant a retrospective authorisation of the liquidator's appointment of solicitors. Nonetheless, as s 144(1)(*f*) merely operates to limit the liquidator's ability to charge the costs of the solicitor's appointment to the company's estate, the liquidator's appointment of the solicitors would not be invalid: *Re Mingda* at [41]–[42].

20 I therefore took the view that s 144(1)(*e*) may be relied upon in the present application, which was centred around the authorisation to bring legal action on behalf of the Company.

Whether authorisation under s 144(1)(e) of the IRDA should be granted

21 Under s 144(1), authorisation by the court or committee of inspection ("COI") is required for the liquidator's exercise of the stipulated powers. This would differ from the powers provided for under s 144(2), which do not require authorisation of the court or the COI. As correctly pointed out by the liquidators,[21] and acknowledged in cases such as *Re Kirkham* (at [11]), the IRDA is silent as to the applicable principles in determining when authorisation should be granted under s 144(1).

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[21] LWS at para 33.

22 The liquidators argued that the authorisation application should be granted for various reasons:

(a) A directions application pursuant to s 145(3) of the IRDA was appropriate. Section 145(3) states that "[t]he liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up". In accordance with s 145(3), the Issues arose in the course of the Company's winding up.[22] Section 145(3) was the relevant provision where the liquidator's decision-making may be subject to criticism and was likely to be contested: *Yap Cheng Ghee Bob (in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd) and others v Envy Asset Management Pte Ltd and other matters* [2024] 4 SLR 746 ("*Bob Yap*") at [30].

(b) The Singapore court was the natural forum for the determination of the Issues.[23]

(c) There would be serious negative consequences if the liquidators' conclusions on the Issues were incorrect, including the wrongful deprivation of assets from their rightful owners and the wrongful distribution of assets to non-creditors of the Company.[24]

23 The Company's liquidators took steps to inform creditors of their intention to commence the application for directions and the present authorisation application.[25] There were no objections received, or reply

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22 LWS at para 16.

23 LWS at para 17.

24 LWS at paras 18 and 19.

25 LWS at para 22.

affidavits filed, from the creditors in relation to either application.[26] After the authorisation application was filed, the liquidators circulated the relevant legal documents by way of email to Hodlnaut HK's liquidators.[27]

24 The liquidators of Hodlnaut HK did not participate in the hearing but conveyed by way of a letter (dated 30 July 2024) to the Company's liquidators that they took the view that s 145(3) of the IRDA did not extend to allowing substantive orders to be sought against third parties.[28]

25 This concern could be disposed of briefly. As argued by the applicants, the cases in Singapore show otherwise. In *Bob Yap*, the court held that ss 145(3) and 181 of the IRDA should be interpreted in the same manner: *Bob Yap* at [30]. Section 181(1)(*a*) provides for the liquidator or any creditor or contributory to apply to the court "to *determine any question* arising in the winding up of a company" [emphasis added]. This would conceivably cover substantive determinations, which may affect third parties. I agreed that no distinction should be drawn between ss 145(3) and 181(1)(*a*). Indeed, in *Re PCChip Computer Manufacturer (S) Pte Ltd (in compulsory liquidation)* [2001] 2 SLR(R) 180 ("*Re PCChip*"), the court granted a substantive order (*ie*, ordering the liquidators to pay the bank back the amount which had been mistakenly disbursed to the company in liquidation) under the equivalent provision of s 145(3) in the Companies Act (Cap 50, 1994 Rev Ed) (*ie*, s 273(3)).

26 The learned authors of *Annotated Guide to the Singapore Insolvency Legislation* have similarly observed that s 135 is parallel to s 181(1)(*a*), and

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26 LWS at para 23.

27 LWS at para 25.

28 LWS at para 27(e); Bundle of Documents of the Joint and Several Liquidators of Hodlnaut Pte Ltd (Volume 4 of 4) dated 10 September 2024 ("BOD-4") at p 250.

allows for directions to be sought in relation to any matter arising in the winding up (at para 10.285):

> … Section 145 provides, in general terms, for exercise and control of the liquidator's powers, particularly through: … application by the liquidator to court to seek directions in relation to any matter arising in the winding up. This is a parallel to section 181(1)(*a*) below, which allows the court's directions to be sought in relation to any question arising in a voluntary winding up. The principles and authorities on these two provisions are relevant to each other.

27 The liquidators of Hodlnaut HK also expressed other concerns with the application for directions, namely, that: (a) a bulk of the relevant assets in question were situated in Hong Kong; (b) absent a recognition order, a decision by a foreign court would not be effective in Hong Kong; (c) there may be much time spent on serving the directions application in Hong Kong; and (d) only money judgments for a fixed sum could be recognised and enforced in Hong Kong.[29] Hodlnaut HK's concerns essentially pertained to potential difficulties with enforcement and recognition. The liquidators of Hodlnaut HK also suggested that it would be more advantageous for the Company to adjudicate the Issues in Hong Kong, as this would compel Hodlnaut HK to be a party to the process and both parties would be bound by the Hong Kong court's decision,[30] According to Hodlnaut HK, this was the "obvious and more cost-effective route".[31] On the other hand, the liquidators of the Company said that this was not a concern for the court when deciding whether leave to proceed

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29 LWS at para 27.

30 BOD-4 at pp 231–232 and 250.

31 BOD-4 at p 250.

should be granted;[32] and that in any event, Singapore was the appropriate forum to hear the directions application.[33]

Relevant factors for a grant of authorisation under s 144(1)(e)

28 In considering whether authorisation should be granted under s 144(1), various factors can be gleaned from the cases of *Re Kirkham*, *Lavrentiadis, Lavrentios v Dextra Partners Pte Ltd (in liquidation) and another matter* [2023] 5 SLR 1288 ("*Lavrentiadis*") and *Re Seshadri Rajagopalan and another and another matter* [2021] 3 SLR 1344 ("*Re Seshadri*"). The court would generally look to the following factors:

(a) the need for such authorisation in the context;

(b) the impact of granting or not granting such authorisation; and

(c) other facts germane to the specific context, including undue prejudice.

29 Of particular relevance was the decision of *Re Kirkham*, which concerned an application for the authorisation of the liquidator's appointment of solicitors under s 144(1)(*f*) of the IRDA. In his decision, Judicial Commissioner Goh Yihan also made remarks, in *obiter*, on the principles in relation to s 144(1)(*e*). Goh JC observed that while the IRDA does not set out the principles which the court or COI should consider in its grant of authorisation, the decision should be made in a principled manner. For an authorisation application pursuant to s 144(1)(*f*), the relevant factors were said to be: (a) the general need to appoint a solicitor; (b) the impact of legal fees on

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32 LWS at para 28.

33 LWS at para 29.

the assets of the estate; (c) whether the proposed solicitor was in a position of conflict; and (d) any objections raised by the COI or creditors: *Re Kirkham* at [24]. Further, it was accepted that the threshold required for the liquidator to cross before authorisation to exercise the powers under ss 144(1)(*e*) and 144(1)(*f*) is granted is "not a high one": *Re Kirkham* at [25].

30 I agreed with the approach taken in *Re Kirkham*, and adopted the following factors in deciding whether authorisation should be granted under s 144(1)(*e*) of the IRDA:

(a) the need for the course of action to be authorised;

(b) the impact of the proposed course of action on the estate and the liquidators; and

(c) whether any undue prejudice is caused to the other creditors or the company.

31 In addition, the court should also consider any other facts which may come into play depending on the circumstances of the case at hand. Such facts could include concerns of futility, the *bona fides* of the liquidator's actions and/or any conflict with public policy or written law: see, *eg, Lavrentiadis* at [19]; *Re Seshadri* at [28] where the considerations of the liquidator's *bona fides* and/or public policy were relevant factors.

32 The court aims to strike a balance between allowing the liquidators the opportunity to bring or defend any action or legal proceeding that they have assessed to be beneficial and material to the liquidation, *vis-à-vis* any potential adverse effect to the liquidation, the company or the creditors.

Application to the facts

33 There was a need for the directions application to be authorised. Without such authorisation, the liquidators would be unable to proceed with the winding up of the Company. As submitted by the liquidators, there was uncertainty over the scope of the Company' assets as well as its creditors, which were fundamental questions in the Company's liquidation.[34] The delineation of a company's assets and the determination of its creditors are crucial aspects of the liquidation process. The former goes towards assessing the assets of the company which are available for distribution to its creditors, while the latter impinges upon the extent of the company's liabilities. There was some concern that if the liquidators' independent investigations, although conducted in good faith, were incorrect, there might be significant negative repercussions and complicated remedial measures required.[35] Given the substantial discrepancy between the Directors' and the Company's liquidators' positions,[36] there was some concern that there might be challenges to the liquidator's subsequent actions if no directions were obtained from the court.[37] I concluded that a determination of the questions posed in the directions application would be required for the liquidation to proceed.

34 As for the impact of the directions application, I found that it was in the best interests of the liquidation and the Company's creditors. It would allow greater clarity and certainty, thereby enabling the winding up of the Company to proceed. It would prevent the erroneous disbursement of assets from the

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34 LWS at para 50.

35 LWS at para 51.

36 BOD-1 at pp 16–17 para 24(c).

37 LWS at para 51.

Company's estate and would be in the interests of the fair and just administration of the liquidation.

35 There was, however, a question of whether any authorisation granted in the present instance would be eventually rendered futile. While there might be potential issues in enforcement or recognition, as suggested by Hodlnaut HK, I did not see that any directions application granted would be clearly doomed to fail or futile. The Company's liquidators submitted that any steps of enforcement or recognition in Hong Kong were unlikely to be too time-consuming or costly. The liquidators also indicated that while the recognition proceedings in Hong Kong were based on the common law instead of the UNCITRAL Model Law on Cross-Border Insolvency (30 May 1997), the legal principles were similar and would not be difficult to satisfy. As for enforcement, the liquidators suggested that it would not be difficult to obtain enforcement in Hong Kong if necessary. The Company's liquidators were advised by their Hong Kong solicitors that a binding judgment could be obtained in Hong Kong for the return of any assets declared to belong to the Company.[38] Even if the directions application might not yield that much return due to the potential enforcement or recognition issues, I found that there was still enough potential returns such that the court should not shut down the liquidators' attempt.

36 In any event, in considering whether to grant authorisation for the liquidators' exercise of powers to bring or defend any proceedings in Singapore, the court would generally not go into any question about how another jurisdiction might choose to treat a Singapore judgment or order. The issue of whether the court can, or will, exercise its adjudicatory jurisdiction (over the

[38] LWS at para 57(f).

proceedings brought by the liquidators) can be separated from the question of whether the order or judgment will be enforceable in a foreign court. At the stage where the court is simply asked to determine whether the liquidators should be authorised to bring or defend proceedings under s 144(1)(*e*), "the threshold for the liquidator to cross before authorisation is granted for him to exercise the powers … is not a high one": *Re Kirkham* at [25]. The court should therefore not overly scrutinise the likelihood of enforcement when deciding whether to grant authorisation.

37 Additionally, there was some difference over whether Singapore was the natural forum. Hodlnaut HK appears to be trying to make the case that the dispute proper should be heard in HK, but "accept[ed] that the Singapore court is the supervisory court with respect to the liquidation of [the Company]".[39] In the circumstances, I could not see that there was really anything that showed that authorisation granted under s 144(1)(*e*) would prove completely futile.

38 Although no other party had taken an active part in the proceedings, I did not see any undue prejudice arising.

[39] BOD-4 at p 249.

Conclusion

39 I was satisfied that the court's authorisation of the application for directions was warranted in the circumstances and granted the authorisation as prayed for.

Aidan Xu
Judge of the High Court

Leo Zhen Wei Lionel, Li Yiling Eden and T Abirami
(WongPartnership LLP) for the claimants.