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

[2024] SGHC 270

Originating Application No 533 of 2024

In the matter of Section 344(5) of the Companies Act 1967 (2020 Rev Ed)

And

In the matter of Concept Werk Pte Ltd

Between

Lye Yew Cheong

… *Applicant*

And

Accounting and Corporate Regulatory Authority

… *Respondent*

And

Xie Zhiyang Keith

… *Non-party*

JUDGMENT

[Companies — Striking off defunct companies — Power to order name of company be restored to register where company name struck off by Registrar as defunct company — Factors for court to consider in determining whether to

order company name be restored to register — Section 344(5) Companies Act 1967 (2020 Rev Ed)]

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Lye Yew Cheong
v
Accounting and Corporate Regulatory Authority (Xie Zhiyang Keith, non-party)

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General Division of the High Court — Originating Application No 533 of 2024
Goh Yihan J
16 September 2024

23 October 2024 Judgment reserved.

Goh Yihan J:

1 HC/OA 533/2024 is an application by Mr Lye Yew Cheong (the "applicant") for an order that the name of Concept Werk Pte Ltd (the "Company") be restored to the register of companies (the "Register") maintained by the Registrar of Companies of the Accounting and Corporate Regulatory Authority (the "ACRA"), pursuant to s 344(5) of the Companies Act 1967 (2020 Rev Ed) (the "CA"). Section 344(5) of the CA provides as follows:

> **Power of Registrar to strike defunct company off register**
>
> **344.**— …
>
> (5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 6 years after the name of the company has been so struck off may, if satisfied

> that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon a copy of the order being lodged with the Registrar the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

2 The respondent, the ACRA, has not raised any objections to the said application. However, I allowed Mr Xie Zhiyang Keith ("Mr Xie"), a former director of the Company prior to it being struck off the Register, to intervene as a non-party. Mr Xie objects to the present application.

3 After considering the parties' submissions, I allow the application for the detailed reasons in this judgment.

Background facts

4 I begin with the background facts. On or around 14 July 2021, the applicant engaged the Company to carry out renovation works at a HDB flat (the "Flat") belonging to him and his wife, Ms Hong Siew Kim Jennifer ("Ms Hong").[1] Mr Xie and Ms Tay Ming Hui Sonia ("Ms Tay") were the directors of the Company at that time.[2] They were also in charge of the said renovation works.[3] The applicant entered into an agreement with the Company

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1 1st Affidavit of Lye Yew Cheong dated 31 May 2024 ("1Aff LYC") at para 6.

2 1Aff LYC at para 5.

3 1Aff LYC at para 6.

(the "Contract") and made a 20% deposit payment for an invoice of $123,000, that corresponded to one of the Company's estimates for the renovation works.[4]

5 According to the applicant, Mr Xie and Ms Tay told him, prior to his signing the Contract, that there was no defect liability period and that all defects would be rectified. However, five months after the Contract was concluded, on or around 14 December 2021, Ms Tay informed the applicant of a one-year defect liability period (the "Defect Liability Period").[5] Despite this, the applicant says that he was assured by Ms Tay on 7 February 2022, even after having been informed about the Defect Liability Period, that "[a]ny items that are defects" would be rectified for free and without question.[6]

6 The Company issued several other fee estimates and invoices over the course of the renovation works.[7] All of the estimates and invoices totalled $144,656.00.[8] On or around 3 August 2021, Ms Tay, on behalf of the Company, and the applicant signed a document titled "Supply and Install Schedule" (the "Schedule").[9] The Schedule recognised both parties' agreement on certain timelines. By those timelines, the applicant and Ms Hong were to vacate the Flat by 13 September 2021.[10] This was to facilitate the commencement of the renovation works. Consequently, the applicant and Ms Hong rented an

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4 1Aff LYC at para 6.

5 2nd Affidavit of Lye Yew Cheong dated 9 September 2024 ("2Aff LYC") at para 9.

6 2Aff LYC at para 10 and pp 43–44.

7 1Aff LYC at pp 24–33.

8 1Aff LYC at para 7; 1st Affidavit of Xie Zhiyang Keith dated 20 August 2024 ("1Aff XZK") at para 8.

9 1Aff LYC at para 8.

10 1Aff LYC at para 8.

apartment elsewhere (the "Apartment"). The Schedule also provided that the official handover date in respect of the Flat, back to the applicant and Ms Hong, would be 30 November 2021.[11]

7 However, owing to what the applicant says is the Company's "unsatisfactory planning", there were allegedly multiple delays and defects in the renovation works.[12] These were said to render the Flat temporarily uninhabitable and prevented the applicant and Ms Hong from moving back on the original handover date.[13] In the end, the applicant and Ms Hong were compelled to move back into the Flat on 7 June 2022, due to rising rental costs of the Apartment and storage fees. The applicant believed that the Company had rectified most defects by that point and would continue to address the other delays and defects even after their moving back.[14]

8 The applicant and Ms Hong remained in contact with the Company after they moved back into the Flat. However, the Company's responses allegedly became more delayed after March 2023.[15] The applicant and Ms Hong remained in contact with the Company until in or around October 2023.[16] Being unable to seek recourse from the Company, the applicant incurred expenses to rectify the outstanding issues in relation to the Flat.[17]

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11 1Aff LYC at para 8.

12 1Aff LYC at para 9.

13 Claimant's Written Submissions dated 12 September 2024 ("LYC Submissions") at para 12.

14 LYC Submissions at para 13; 1Aff LYC at para 9.

15 LYC Submissions at para 14.

16 1Aff LYC at para 10.

17 LYC Submissions at para 14.

9 It later transpired that Ms Tay had resigned as a director of the Company since at least 27 October 2021.[18] Despite this, Ms Tay had continued to communicate with the applicant and Ms Hong in relation to the Flat.

10 On 31 December 2022, the Company is said by Mr Xie to have ceased its operations.[19] One month later, on 30 January 2023, Mr Xie applied to strike the Company off the Register. The Company was struck off the Register on 8 May 2023.[20]

11 The applicant commenced proceedings against the Company, Mr Xie, and Ms Tay in the Small Claims Tribunal (the "SCT") on or around 26 October 2023.[21] The applicant claimed for damages to recover for losses that were said to have been caused by the Company's failure to complete the renovation works satisfactorily. These damages included the rental for the Apartment. The applicant later withdrew his claim in the SCT on or around 22 January 2024, with the intention of pursuing fresh proceedings against the Company in the General Division of the High Court.[22] Given that the Company had already been struck off by then, the applicant commenced the present application for a court order that the name of the Company be restored to the Register under s 344(5) of the CA.[23]

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18 1Aff XZK at para 17.

19 1Aff XZK at para 27.

20 1Aff XZK at para 27.

21 1Aff LYC at para 10.

22 1Aff LYC at paras 10 and 13–14; LYC Submissions at para 18.

23 1Aff LYC at para 14.

The parties' arguments

12 Against the above background facts, the applicant's primary argument is that he has satisfied the requirements laid down by the General Division of the High Court in *Fu Zhihui Alvin and another v Accounting and Corporate Regulatory Authority* [2023] SGHC 177 ("*Alvin Fu*") in relation to an application under s 344(5) of the CA. First, the applicant is an "aggrieved person" as he had at least a *prima facie* contractual claim against the Company to recover damages at the time it was struck off.[24] Second, his application falls within the six-year time bar prescribed by s 344(5) of the CA, having been made within six years of the Company having been struck off the Register.[25] Third, it is just for the Company to be restored to the Register as it affords the applicant the practical benefit of pursuing his claim against it.[26]

13 Mr Xie, who objects to the application, makes the following arguments. First, the applicant is not an "aggrieved person" because his purported claim against the Company is shadowy.[27] According to Mr Xie, the applicant's potential claim comprises two components: (a) a claim for defects and the promise to refund, and (b) a claim for rental of the Apartment from 12 October 2021 to 7 June 2022.[28] If so, Mr Xie submits that the first claim can be set-off against the applicant's alleged indebtedness to the Company in the sum of $9,632.90.[29] As for the second claim, this is highly suspect because,

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24 LYC Submissions at paras 27–28.

25 LYC Submissions at para 29.

26 LYC Submissions at para 31.

27 Non-Party's Written Submissions dated 12 September 2024 ("XZK Submissions") at para 24.

28 XZK Submissions at para 21.

29 XZK Submissions at para 22.

among other things, the applicant had arranged for cleaners to clean the Flat on 31 January 2022. That implies that the applicant could have moved back into the Flat then, instead of waiting until after June 2022.[30]

14 Second, Mr Xie submits that the Company was not carrying on business or in operation when it was struck off on 8 May 2023.[31] In this regard, Mr Xie's evidence is that the Company had closed its bank accounts on 6 December 2022 and ceased all its operations on 31 December 2022.[32] Thus, the applicant has not shown that there existed any "incomplete business" as of 8 May 2023, as there were no then-existing obligations between a purported contingent creditor and contingent debtor.[33]

15 Third, it is not just to restore the Company to the Register. This is because there is no practical benefit arising from the restoration since the Company had no assets when it was struck off.[34] Thus, if the Company were restored, the applicant would only be able to enforce a paper judgment, if he succeeds, against a shell company. That would only lead to liquidation.[35] Further, the three reported Singapore decisions on s 344(5) of the CA, which include *Alvin Fu*, did not concern an applicant seeking to restore a company's name to the Register in order to bring an action against it.[36] Finally, Mr Xie would be prejudiced by the restoration of the Company as he would need to

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30 XZK Submissions at para 23.

31 XZK Submissions at para 27.

32 1Aff XZK at para 43.

33 XZK Submissions at paras 30–31.

34 XZK Submissions at para 34.

35 XZK Submissions at para 37.

36 XZK Submissions at paras 35–36.

incur the usual costs associated with reinstating and maintaining a company, such as filing annual returns.[37]

My decision: the application is allowed

The generally applicable law

16 As mentioned at [12] above, the General Division of the High Court in *Alvin Fu*, following the prior High Court decisions of *Re Asia Petan Organisation Pte Ltd* [2018] 3 SLR 435 ("*Re Asia Petan*") and *Ganesh Paulraj v Avantgarde Shipping Pte Ltd* [2019] 4 SLR 617 ("*Ganesh*"), laid down (at [15]) the following requirements which have to be satisfied before a company's name can be restored to the Register pursuant to s 344(5) of the CA:

(a) first, the applicant must be an "aggrieved person";

(b) second, the application must be made within six years after the defunct company was struck off; and

(c) third, the court must be satisfied that:

(i) at the time of the striking off, the company was carrying on business or in operation; or

(ii) it is just that the name of the company be restored to the Register.

17 It will be clear that Mr Xie's objection to the application centres on requirements (a) and (c), and he does not challenge that the applicant was not

[37] XZK Submissions at para 40.

time-barred.[38] However, in so far as Mr Xie's submissions suggest that requirements (c)(i) and (c)(ii) are conjunctive, he is mistaken. Indeed, as I made clear to Mr Alain Abraham Johns, who appeared on behalf of Mr Xie at the hearing before me on 16 September 2024, it is largely immaterial whether the Company was carrying on business or in operation at the time of the striking off because the applicant is relying on requirement (c)(ii) in this application. This is because s 344(5) of the CA uses the word "or" in the phrase "carrying on business or in operation *or* otherwise that it is just" [emphasis added]. This makes clear that these two requirements are disjunctive.

18 With this overview in mind, I turn to discuss each of the relevant requirements.

The applicant is a person who "feels aggrieved" by the striking off

The specifically applicable law

19 First, in order to establish that one has standing to bring an action seeking an order for the restoration of a company's name to the Register, the applicant has to show that he is a person who "feels aggrieved by the name of the company having been struck off", *per* s 344(5) of the CA.

20 A question arises as to whether the merits of the applicant's asserted interest in the company's restoration – *eg*, a prospective derivative action in the company's name or an intended cause of action against the company itself– may be considered in examining the standing of the applicant to bring that application. Here, the applicant's asserted reason for feeling "aggrieved", *per* s 344(5) of the CA, is his present inability to sue the Company over its handling

[38] 1Aff XZK at para 42.

of the renovation works at his and Ms Hong's Flat (see at [12] above). Mr Xie, in rebuttal, lodges attacks upon the merits of the applicant's intended cause of action against the Company (see at [13] above).

21 To begin with, there is no objection in principle to there being some degree of overlap between the merits of an applicant's intended action and an examination of his or her standing to bring an application. For example, in the insolvency context, it is not unusual for there to be an overlap between the assessments of standing and merits when the court inquires into whether an applicant presenting a winding-up application has the standing to bring that application *qua* creditor, requiring, in turn, an examination of whether the asserted debt to which the applicant is said to be a creditor is disputed by the debtor in good faith on substantial grounds (see the Court of Appeal decision of *Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 at [32]–[33]). Hence, the mere fact that requirement (a) is a question of standing does not mean that the merits of the applicant's intended cause of action are completely irrelevant or cannot be examined at all, in principle.

22 However, the court should certainly not delve too deeply into a full examination of the merits of an applicant's contemplated post-restoration action. This would cohere with the High Court's approach in *Re Asia Petan*, where it was held (at [31]) that an applicant would be an "aggrieved person" if he or she demonstrated "some proprietary or pecuniary interest arising from the company's restoration" which "must not be merely shadowy". The High Court in *Ganesh* held (at [17]) that the applicant had to show "some direct and tangible interest in the outcome" of the said restoration, and that the underlying rationale of the requirement of standing (at [18]) is "the need to sieve out unmeritorious

applications". Similarly, the General Division of the High Court reasoned in *Alvin Fu* that the standing requirement should be construed as having a broad ambit (at [24]), otherwise the risk is that the court "may inadvertently cut off otherwise meritorious cases" (at [25]).

23 I agree that, in assessing an applicant's standing, the court should not heavily scrutinise the applicant's intended post-restoration cause of action or delve too deeply into a full merits examination of the same. The court should not too readily shut out an applicant's intended cause of action, before a full trial or hearing of the substantive application, unless it is clearly or obviously meritless. Indeed, a similar rationale has often been adopted by the court in setting a high threshold for a striking out application to succeed (see, *eg*, the General Division of the High Court decisions in *Xia Zheng v Lee King Anne* [2021] SGHC 199 at [66] and *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 at [57]).

24 This low threshold for the applicant's standing to be made out is also supported by the language of s 344(5) of the CA, which speaks of an applicant being a person who "*feels* aggrieved" [emphasis added]. The description of an applicant as one who "feels" aggrieved would sit uneasily with a full-fledged scrutiny of the merits of that applicant's reasons for seeking the restoration of a company's name to the Register. Instead, the statutory language plainly contemplates an applicant with a real or material reason for believing that he or she has been prejudiced by the company's name having been struck off the Register.

25 A similar phrase can be found in s 353(6) of the UK's Companies Act 1948 (c 38) (the "UK CA 1948"), which concerns applications to restore a

company to the register brought by the company or a member or creditor thereof who "feels aggrieved" by the striking off. In applying that provision in the English High Court Chancery Division case of *In re Lindsay Bowman Ltd* [1969] 1 WLR 1443, Megarry J held (at 1448) that, assuming the "artificial and impersonal entity that we know as a limited company has been endowed with the capacity not merely of having feelings but also of feeling aggrieved", the applicant company there could not be said to feel aggrieved by its striking off. This was because there were no "real prospects of a surplus to be snatched from the fate of bona vacantia" and "no hope of a surplus", only "the most cautious of assertions in the petition that if it is granted 'some of' the assets 'may be' available for the benefit of creditors".

26 The phrases "real prospects of" and "no hope of" demonstrate the high bar that must be crossed before a court finds an applicant's intended post-restoration action to be so devoid of a real chance of a practical benefit actually materialising that that applicant is not one who "feels aggrieved" with a striking off, for the purposes of s 344(5) of the CA.

27 Similar reasoning was adopted by Megarry J in the English High Court Chancery Division case of *In re Wood and Martin (Bricklaying Contractors) Ltd* [1971] 1 WLR 293, which concerned an application under s 352(1) of the UK CA 1948 for an order of court declaring a dissolution of a company to be void by a person "interested" in such an order. For the purposes of finding if an applicant is "interested", Megarry J held that a person would be so "interested" if he or she held an interest "of a proprietary or pecuniary nature in resuscitating the company" (at 297). In appraising the prospect of such an asserted proprietary or pecuniary interest actually coming to fruition, he held that, "[i]t does not, I think, have to be shown that the interest is one which is

firmly established or highly likely to prevail: provided it is not merely shadowy, I think it suffices for the purpose of section 352" (at 297) (see also the English Court of Appeal Civil Division case of *Stanhope Pension Trust Ltd and another v Registrar of Companies and another* [1994] 1 BCLC 628 at 635).

28 Lastly, in *Re Blenheim Leisure (Restaurants) Ltd (No 2)* [2000] BCC 821 ("*Re Blenheim*") (and relied upon by the English High Court Chancery Division in *Witherdale Ltd and another v Registrar of Companies and others* [2008] 1 BCLC 174 at [26]–[27]), Neuberger J (as he then was), sitting in the English High Court Chancery Division, addressed an application for restoration brought under s 653 of the UK's Companies Act 1985 (c 6) (the "UK CA 1985"), that (similar to s 353 of the UK CA 1948) allowed the company or its members or creditors who "feels aggrieved" by a striking off to apply for restoration to the register. Neuberger J held that an application to restore a company is meant to be a "comparatively quick exercise"; hence, "it is normally wrong to consider the prospects of the company or its members establishing anything of value in great detail" (at 834–835). He held that the company "BLR does have a prospect of establishing anything of value", which "prospects are more than shadowy, but they are pretty speculative" (at 835). In the end, he granted the application, "taking into account the weak *but real prospect* of the company having a significant value if restored" [emphasis added] (at 836). *Re Blenheim* (at 835–836) demonstrates that a court should not too easily shut the door on a prospective post-restoration cause of action by denying an application to restore merely because the court is of the view that the applicant's intended action would have a "weak but real prospect" of yielding something of practical value to the applicant.

The applicant's intended post-restoration claim against the Company is not hopeless or obviously doomed to fail

29 I find, therefore, that the applicant would constitute a person who "feels aggrieved" within the meaning of s 344(5) of the CA if, for instance, he seeks the restoration of the Company to bring a claim against it which cannot be said to be hopeless or lacking in "real prospects" of success (see at [25]–[26] above). In that respect, I cannot find that the applicant's intended post-restoration claim against the Company is hopeless or obviously doomed to fail.

30 Mr Xie has levelled two attacks on the merits of the applicant's intended claim (see at [13] above). I am, however, unable to agree with them. First, the asserted set-off against debts allegedly owed to the Company by the applicant would hinge on the Company first proving the validity of those alleged debts on their merits and that the requirements of a set-off are satisfied. Second, the argument that the applicant and Ms Hong could have moved back into their Flat at an earlier date (instead of incurring further rental by staying at the Apartment) would require an assessment of the comparative credibility of the affidavit evidence of the applicant, on the one hand, and Mr Xie, on the other, regarding the relative conditions of the Flat at the material time. This involves granular assessments of factual and evidential issues which the court would have to engage in at a civil trial or a full merits hearing. It suffices for me to conclude that Mr Xie has not shown that the applicant's intended claims against the Company are hopeless or lacking in "real prospects" of success (see at [25]–[26] and [29] above).

31 Accordingly, I find that the applicant is a person who "feels aggrieved" by the Company having been struck off the Register and, consequently, that he has standing to bring an application under s 344(5) of the CA.

It is "just" that the Company's name be restored to the Register

The specifically applicable law

32 Given my finding at [31] above and given that the applicant has brought this application within six years of the Company having been struck off, requirements (a) and (b) are satisfied (see at [16(a)] and [16(b)] above). That leaves me to consider whether it is "just" to restore the Company's name to the Register *or* whether the company was carrying on business or in operation at the time it was struck off the Register, with these being disjunctive as opposed to conjunctive elements (see at [17] above). For the reasons that follow, I find that it is "just" to order the restoration of the Company.

Mr Xie's arguments that it is not "just" to order the restoration of the Company are rejected

33 Mr Xie levels several arguments against such a finding, which I address in turn. First, he levels arguments against the merits of the applicant's intended post-restoration cause of action against the Company. As I have held (see at [21] above), there is no objection, in principle, to there being some degree of overlap in the examination of the merits of the applicant's claim with regard to both the issue of standing and whether it is just to order restoration. The fact that an applicant wishes for the Company to be restored in order to institute a *prima facie* meritorious claim against it is clearly a relevant factor in assessing whether it is just to order restoration. For similar reasons as at [23] above, the court should not, at this juncture, heavily scrutinise the merits of the applicant's intended claim or delve too deeply into a full merits examination of the affidavit evidence adduced in an application under s 344(5) of the CA.

34 In *Re Asia Petan*, the court held (at [33]) that it only had to examine the merits of the applicant's intended post-restoration action on a *prima facie* standard. The standard applied in *Ganesh* was whether the claim that would be brought following restoration of the company "was hopeless or very likely to fail" (at [25]). And the court in *Alvin Fu* took the view that "only a more than 'merely shadowy' threshold is required to establish the Just Requirement" for an application under s 344(5) of the CA (at [35]).

35 I agree, and as I have held at [29] above, the applicant's intended cause of action which he seeks to institute against the Company after its restoration to the Register cannot be deemed to be hopeless or lacking in "real prospects" of success at this stage (see at [25]–[26] above). An application under s 344(5) of the CA is not the appropriate stage to dive too deeply into the facts and evidence and make fine-tuned assessments of the credibility of witnesses to establish whether the applicant's action is more likely to fail or succeed. The fact that restoration is required for the applicant to prosecute a legal claim before the courts which is not hopeless or obviously doomed to fail militates in favour of it being just to order such restoration. Whether the claim is finally made out on the merits is ultimately for the court to adjudicate *after* the claim has been instituted, at a trial or hearing on the merits.

36 Second, Mr Xie argues that there is no practical benefit to restoring the Company's name to the Register as it is an empty shell with no assets. Hence, even if the applicant prevails in his claim, he cannot recover anything of value. I disagree. Even if the Company was an empty shell at the time of its striking off, there are clawback mechanisms within the insolvency regime as part of the process for the winding up of an insolvent company unable to pay its creditors, including judgment creditors. Whether such mechanisms ultimately succeed is

not the applicable standard to be met here, provided that, as Neuberger J put it in *Re Blenheim* ([28] *supra*), there is a "real prospect of the [applicant] having a significant value if restored" or where the applicant has a "prospect", even if it is a "pretty speculative prospect, of benefitting from the restoration of the company" (at 836). Here, I disagree that there is no real prospect of the winding-up regime yielding *anything* for the applicant in the event that he succeeds in obtaining a judgment against the Company. It would be premature for this court to exclude that possibility altogether at this juncture.

37 Third, Mr Xie argues that the prior cases of *Re Asia Petan*, *Ganesh*, and *Alvin Fu* all involved applicants who sought the restoration of a company in order to institute an action in the company's name against another party or to use the company as a vehicle for investments and *not*, as here, to institute a cause of action *against* the company itself. In my view, this is a distinction without a difference. On the face of s 344(5) of the CA, the test is textually whether "it is just that the name of the company be restored to the register", and not whether it is in the best interests of the company for it to be restored. There is no basis to read an additional limitation into the text of the provision to *exclude* cases where an applicant wishes to bring a claim against the company. Nothing in the text of s 344(5) would compel the construction that such a factual scenario cannot render it "just" to order a company's restoration to the Register. The court should be slow to attempt to legislate on the scope of a provision which Parliament deliberately left open-ended (see *Re BCB Environmental Management Ltd (in liquidation)* [2020] 2 BCLC 525 at [22]).

38 For instance, in the case of *Standard Chartered Bank and another v Registrar of Companies* [2022] 1 BCLC 528, the English High Court Chancery Division (Business and Property Courts in Manchester) held (at [32]–[33] and

[40]) that it was "just" to order the restoration of four corporate entities under s 1029 of the UK's Companies Act 2006 (c 46) so as to enable the applicants to pursue causes of action against the restored entities for knowing receipts and breaches of constructive trusts. There, the applicants were held to be "persons with a potential legal claim against each of the restoration entities"; thus, "it would be just to restore each of the four entities to the Register of Companies to enable such claims to be pursued" (at [33]). Indeed, I can see no persuasive reason why such a factual matrix cannot form the basis of a claim by an applicant that it is "just" to order restoration, *per* s 344(5) of the CA. Nothing in the text nor the purpose of the CA would compel such a limiting construction of the phrase "it is just that the name of the company be restored to the register" as that urged by Mr Xie here.

39 Finally, Mr Xie argues that he would be prejudiced by the restoration of the Company's name to the register. However, the prejudice he asserts – *ie*, the administrative costs and burdens of reinstating and maintaining a company (see at [15] above) – is no more than the ordinary prejudice that would be occasioned when a restoration to the Register is granted. If that were sufficient to justify a refusal of restoration, no restoration could ever be granted as every order for restoration would invariably entail a similar degree of prejudice inherent in the nature of a restoration itself. A parallel may be drawn to the context of the grant of an extension of time to file a notice of appeal, where it has been held that the sort of prejudice that would justify a refusal of an extension would have to be more than the usual prejudice occasioned by having to defend an appeal that could not otherwise be lodged (see the Court of Appeal decision of *AD v AE* [2004] 2 SLR(R) 505 at [13]–[14]; see also the General Division of the High Court decision in *Tan Heng Khoon (trading as 360 VR Cars) v Wang Shing He* [2024] SGHC 243 at [10] and [28]–[30]). Here, Mr Xie can point to no

prejudice other than the ordinary administrative consequences of a company's name being restored to the Register.

40 As Neuberger J highlighted in *Re Blenheim*, where the party resisting the restoration can only point to prejudice flowing from the fact that they "will be back in the position that they would have been in if the company had not been struck off, plus some delay, uncertainty and nuisance" (at 836), that factor will not weigh very heavily when balanced against the other factors militating in favour of restoration, in particular, the prospect of practical benefit sought by the applicant from such restoration. Likewise, I find here that this factor is not a weighty one in militating against it being "just" to order the restoration of the Company's name to the Register, when balanced against the applicant's purpose for seeking such restoration, *viz*, to pursue a claim against the Company that is *prima facie* not unmeritorious.

41 For all these reasons, I find that it is "just" to order for the Company's name to be restored to the Register under all the circumstances. This, in addition to (a) my finding that the applicant is a person who "feels aggrieved" by the Company having been struck off the Register (see at [31] above); and (b) the fact that the application was made within six years of the Company having been struck off, would suffice to grant the application under s 344(5) of the CA (see at [17] above). However, as Mr Xie has made submissions on whether the Company had been carrying on business or was in operation at the time of the striking off, I proceed to consider that alternative ground for granting the restoration application.

In any event, the Company was "in operation" at the time of the striking off

The specifically applicable law

42 On the plain wording of s 344(5) of the CA, once the applicant has shown that he has standing to bring the application and that the application is not time-barred, an order for restoration may be made *either* where the company, at the time of the striking off, was "carrying on business or in operation" *or* it is "otherwise … just" to order restoration. The latter is a miscellaneous "catch-all" ground intended to encompass any *other* possible scenario in which ordering restoration is a fair outcome in the circumstances. In contrast, the fact that a company was carrying on business or in operation at the time of the striking off would form a *specific* ground to order restoration, provided the earlier two requirements of standing and the six-year time-bar have been satisfied.

43 The inclusion of this specific ground can be explained by the evident purpose behind the statutory power of the Registrar to strike off companies from the Register under s 344 of the CA, that being to strike off a company that is *defunct*. This purpose can be gleaned from the title of that provision: "Power of Registrar to strike *defunct* company off register" [emphasis added]. The trigger for the Registrar to exercise the striking off power under s 344(1) of the CA is that the Registrar "has reasonable cause to believe that a company is not carrying on business or is not in operation". Hence, where a company was in fact carrying on business or in operation at the time, that would afford a strong ground to order restoration to the Register because the purpose behind the striking off in the first place would be shown to have been non-existent at the time (although, on the plain text of s 344(5) of the CA, that fact *alone* is not sufficient *ipso facto* to obtain an order for the company to be restored to the

Register, as the foregoing two requirements of standing and the time-bar must also be satisfied).

44 Given that the purpose of the power in s 344(1) of the CA is, on the title of the provision, to strike off "defunct" companies, it follows that the threshold for a company to be found to have been "carrying on business" or "in operation" for the purposes of s 344(5) of the CA will not be a high one. It is trite law that the court applies a purposive construction to statutory provisions (see s 9A(1), Interpretation Act 1965 (2020 Rev Ed)). It is similarly axiomatic that, in discerning the purpose of a statutory provision, the court can ordinarily glean the purpose from the text of the provision placed in its statutory context (see the Court of Appeal decisions of *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [43] and [54(c)(ii)] and *Tan Seng Kee v Attorney-General and other appeals* [2022] 1 SLR 1347 ("*Tan Seng Kee*") at [172]). That statutory context can include the text used for the title of the provision at issue and related provisions (see, *eg*, *Tan Cheng Bock* at [56]–[58]) and the titles for divisions of the statute within which the provision has been grouped (see, *eg*, *Tan Seng Kee* at [173]).

45 Having regard to the text and statutory context of s 344, I find that the purpose of s 344(1) is to provide the Registrar with the power to strike off "defunct" companies from the Register, operationalised by way of the test of a company that is "not carrying on business or is not in operation" at the time. Accordingly, and construing the words of s 344(5) in furtherance of that purpose, the obverse to that power is the avenue accorded for an aggrieved applicant to seek the restoration of a company that was *not*, in fact, "defunct" at the material time, again operationalised by the same standard, *viz*, where the company was "carrying on business or in operation" at the time.

46 Thus, in essence, the fundamental inquiry when considering the *specific* ground to order restoration is whether the company was a "defunct" company at the time of the striking off, as that is the basis for a company to be struck off the Register under s 344(1) of the CA in the first place.

47 I would add, however, that the use of the word "may" in s 344(5) of the CA makes clear that the grant or refusal of the restoration order is subject to the discretion of the court (see, by way of analogy, the Court of Appeal's analysis on the similar use of the word "may" to confer a discretionary power on the court to order a winding up of a company, *per* ss 253 and 254 of the Companies Act (Cap 50, 2006 Rev Ed), in *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 at [4]–[5] and *Diamond Glass Enterprise Pte Ltd v Zhong Kai Construction Co Pte Ltd* [2021] 2 SLR 510 at [71]). Hence, even where it is shown that a company was carrying on business or in operation at the time of the striking off, the court still retains the discretion to refuse the restoration sought. Further, the same discretion would also apply to the ground for restoration of the company to the Register where it is "just" to do so, although it is difficult to see why a court would be justified in exercising its discretion to refuse a restoration order when it has ascertained that restoration would be "just" under all the circumstances.

48 I turn to consider how the phrase "carrying on business or in operation" is to be applied. The English High Court Chancery Division (Companies Court) decision in *Re Priceland Ltd* [1997] 1 BCLC 467 is instructive in this regard. There, Laddie J was concerned with an application for restoration brought under s 653(2) of the UK CA 1985 (see at [28] above), which allowed the struck off company or its members or creditors who "feels aggrieved" by the striking off to seek the company's restoration to the register where *inter alia* "the company

was at the time of striking off carrying on business or in operation" (at 471). In that context, Laddie J held that the company there was dormant at the time of its striking off, in the following terms (at 472):

> … Precisely what is covered by the words 'in operation' is unclear. This has been commented upon by Harman J in *Re Portrafram Ltd* [1986] BCLC 533. However both Mr Morgan and Mr Davis gave examples of activities which might be carried on by the company which are short of carrying on business yet still count as being in operation. For example a company may have ceased trading but still be engaged in trying to secure a tax refund for the benefit of its creditors. It seems to me that the purpose of the section is to *give the court the widest possible powers to restore*. The words 'carrying on business or in operation' in s 653(2) should be read together and *in the light of that purpose*. What the section is directing the court to do is to look back to the time of dissolution. If, at that time, the company was *completely dormant*, this particular avenue for giving jurisdiction to the court is not made out. On the other hand if the company was carrying on *any activity at all*, then the court's power to restore is brought into play. [emphasis added]

49 The above excerpt demonstrates that the words "in operation" bear a distinct meaning than the words "carrying on business": the latter envisages more specific trading or commercial activities, whereas "operation" is a wide enough word that it can embrace "any activity at all", *eg*, taking steps to secure a tax refund for creditors even after a company has closed down its business or ceased trading activities. The standard is therefore whether the company is "completely dormant". Hence, Laddie J held that if the applicant company there were found to have been taking steps to attempt to assign a lease of its premises to another party at the time of the striking off, that would have sufficed to show that the company was "in operation" at the time, notwithstanding that the company had ceased all trading activities. However, the evidence there was insufficient to make out that fact (at 472).

The objective evidence shows that the Company was "in operation" at the time of its striking off

50 Here, there is no evidence on affidavit to suggest that the Company was carrying on any trading or other business activities at the time of its striking off the Register on 8 May 2023. That leaves me only to consider if the Company was "in operation" at the time, *ie*, conducting "any activity at all", or not "completely dormant" (see at [48]–[49] above). Mr Xie avers on affidavit that the Company had ceased all operations on 31 December 2022.[39] That, by itself, is not conclusive, given *inter alia* that it rests on Mr Xie's own *subjective* interpretation of the notion of the Company having ceased its operations.

51 On the contrary, the *objective* evidence here shows that, from March to June 2023, Ms Tay remained in contact with the applicant and Ms Hong and communicated with them over WhatsApp on matters pertaining to their Flat and the renovation works thereon.[40] The affidavit evidence of Mr Xie is that Ms Tay had exited the Company on 27 October 2021 by resigning as a director and transferring her shareholding for nominal consideration.[41] Moreover, he avers that she was no longer an officer of the Company at the time of the exchange of messages with the applicant and Ms Hong in the period of March–June 2023, and that she was contacting Ms Hong on her own volition without his knowledge or approval.[42]

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39 1Aff XZK at para 43.

40 2Aff LYC at pp 69–71.

41 1Aff XZK at para 7.

42 1Aff XZK at para 30.

52 However, in these messages,[43] Ms Tay communicated on matters including repair works in relation to the Flat. She continued to communicate with the applicant and Ms Hong as if she were a representative of the Company competent to discuss matters such as the aftermath of the Company's renovation works on their Flat. It is not believable that Ms Tay was doing so without the knowledge or involvement of Mr Xie, since she had no personal incentive to continue assisting the Company in its dealings with its customers if she had truly disengaged from the Company altogether and had no further involvement in its business at that time. The more likely explanation for Ms Tay's continued dealings with the applicant and Ms Hong in the March–June 2023 period is that she continued to be involved in the Company's business and affairs at that time.

53 Under the circumstances, I find that Ms Tay continued to be involved in the Company's business as an officer, notwithstanding that she was no longer on the board of directors. Indeed, Mr Xie's own affidavit avers that, after 27 October 2021, she continued to perform acts such as informing the applicant that it would be a challenge to handover the premises to him on time in November 2021,[44] and informing the applicant that the renovation works were completed, and conducting a joint inspection of the Flat with the applicant, in December 2021.[45] It is clear therefore that, on Mr Xie's own evidence, Ms Tay continued to represent the Company in its dealings with the applicant and Ms Hong in relation to the Company's renovation works on their Flat even after she had resigned from the board. In the circumstances, Mr Xie's bare assertion that Ms Tay's messages to the applicant and Ms Hong about the renovation

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43 2Aff LYC at pp 69–71.

44 1Aff XZK at para 18.

45 1Aff XZK at paras 20–21.

works in March 2023 onwards were sent without his knowledge when she was *no longer* an officer of the Company (see at [51] above) is not believable given Ms Tay's pattern of conduct analysed thus far. The likelier and more probable explanation for the WhatsApp messages is that Ms Tay dealt with the applicant and Ms Hong *as if* she were still an officer of the Company because she *was* indeed an officer of the Company at the time (see at [52] above).

54 For completeness, recalling that I had held that, in an application under s 344(5) of the CA, the court should not normally delve too deeply into a full merits analysis of the parties' affidavit evidence (see at [22]–[23] above), this does not mean that the court is bound to accept all assertions on affidavit at face value. Indeed, an analogy may be drawn with the summary judgment context, where courts regularly reject assertions on affidavit where it is clear that they should be disbelieved, even in the context of making a summary determination of a dispute without the benefit of a full civil trial on the merits (see, *eg*, the High Court decisions of *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 at [19] and *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] 5 SLR 184 at [16]). Accordingly, there is no contradiction between my holding that the court should not delve into granular findings of fact in an application under s 344(5) of the CA (see at [22]–[23] above) and my rejection of Mr Xie's bare assertions on affidavit (see at [52]–[53] above). This is especially as the merits or eventual success of an applicant's prospective post-restoration cause of action is *not* a fact that must be demonstrated to the court's satisfaction in order to render a restoration order, *per* s 344(5) of the CA. In contrast, if the court seeks to grant a restoration order on the specific basis that a company was either "carrying on business" or "in operation" at the time of the striking off, it *must* be satisfied of that fact, based on the plain wording of that provision.

55 That being the case, an officer of the Company liaising with customers of the Company to handle their complaints or concerns about works done would certainly qualify as an "operation" of the Company. A company that continues to liaise and deal with its customers on matters concerning its business therewith, whether past or present, cannot sensibly be said to be a completely dormant or defunct entity. It is analogous to a company that had ceased its trading activities but continues to take steps to obtain tax refunds for creditors or to assign a lease of its premises to an assignee (see at [48]–[49] above). Given that Ms Tay continued to liaise with Ms Hong over WhatsApp in the period of March–June 2023 on matters relating to the Company's renovation works on their Flat and repair works in the aftermath thereof, it follows that the Company was still "in operation" at the time of its striking off on 8 May 2023. At the least, it cannot be said to have been a "completely dormant" (see at [48]–[49] above) or "defunct" company (see at [43]–[46] above) on 8 May 2023.

56 Consequently, even if the applicant had not shown it was "just" to order the restoration of the Company's name to the Register (see at [41] above), I would have granted the application on the alternative ground that the Company was "in operation" at the time that it was struck off the Register. There were no reasons, on the evidence before me, to exercise the court's discretion to refuse such a restoration order under the circumstances (see at [47] above).

Conclusion

57 For all the reasons above, I allow the applicant's application and order that the name of the Company be restored to the Register.

58 Unless the parties can agree on the costs of this application, they are to tender written submissions on the appropriate costs order, limited to seven pages each, within seven days of this decision.

Goh Yihan
Judge of the High Court

Mohamed Nawaz Kamil (August Law Corporation) for the applicant;
The respondent absent and unrepresented;
Alain Abraham Johns and Emira binte Abdul Razakjr
(Alain A Johns Partnership) for the non-party.