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

[2024] SGHC 291

Companies Winding Up No 296 of 2024

In the matter of Section 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)

And

In the matter of Logistics Construction Pte Ltd

Between

Ellyn Tan Huixian (in her capacity as the judicial manager of Logistics Construction Pte Ltd (under judicial management))

… *Claimant*

And

Logistics Construction Pte Ltd (under judicial management)

… *Defendant*

And

Official Receiver

… *Non-party*

Originating Application No 1164 of 2023 (Summons No 2921 of 2024)

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)

And

Version No 2: 13 Nov 2024 (17:03 hrs)

In the matter of Section 91 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)

And

In the matter of Logistics Construction Pte Ltd

And

Logistics Construction Pte Ltd

… *Applicant*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Proper claimant to be named on winding-up petition — Section 124(1)(*h*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

TABLE OF CONTENTS

CLARIFICATION ABOUT THE PROPER CLAIMANT IN CWU 296 2

THE INITIAL DISAGREEMENT AND EVENTUAL AGREEMENT ABOUT THE PROPER CLAIMANT TO BE NAMED ON CWU 296 2

THE CORRECT ANALYSIS AS TO THE PROPER CLAIMANT 4

IT WAS NOT DIRECTLY RELEVANT WHETHER MS TAN WAS THE PROPER CLAIMANT BASED ON S 112(1)(B) OF THE IRDA 7

CWU 296 8

SUM 2921 11

CONCLUSION 19

Version No 2: 13 Nov 2024 (17:03 hrs)

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Tan Huixian Ellyn (in her capacity as judicial manager of Logistics Construction Pte Ltd (under judicial management))
v
Logistics Construction Pte Ltd (under judicial management) (Official Receiver, non-party) and another matter

[2024] SGHC 291

General Division of the High Court — Companies Winding Up No 296 of 2024 and Originating Application No 1164 of 2023 (Summons No 2921 of 2024)
Goh Yihan J
24 October 2024

13 November 2024

Goh Yihan J:

1 HC/CWU 296/2024 ("CWU 296") was an application by Ms Tan Huixian Ellyn ("Ms Tan") for a winding-up order against Logistics Construction Pte Ltd (the "Company"), along with the usual consequential orders. Ms Tan instituted CWU 296 in her capacity as the judicial manager of the Company. Ms Tan also filed HC/SUM 2921/2024 ("SUM 2921"), being a summons in the Company's HC/OA 1164/2023 ("OA 1164"), which was its earlier application for, among others, Ms Tan to be appointed as its judicial manager. SUM 2921 was an application for, among others, Ms Tan to be released from liability in respect of any act or omission of hers in the judicial management of the Company under ss 104(4) and/or 112(4) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA").

2 After hearing the parties, I allowed both CWU 296 and SUM 2921 on 24 October 2024. I provide these grounds primarily to clarify a procedural point that the parties addressed me about (but ultimately agreed on).

Clarification about the proper claimant in CWU 296

The initial disagreement and eventual agreement about the proper claimant to be named on CWU 296

3 Three days before the hearing of CWU 296 and SUM 2921, the solicitors for the Company, Withers KhattarWong LLP ("WKW"), informed me that the Official Receiver (the "OR") had raised a "technical issue" as to who ought to be named as the claimant in CWU 296.

4 From the parties' correspondence tendered to court, the OR took the view that Ms Tan should be named as the claimant in CWU 296 instead of the Company. The OR thought that Ms Tan had advanced two bases for the winding up of the Company in her affidavit. These were that (a) none of the purposes of judicial management mentioned in s 89(1) of the IRDA was capable of achievement as set out in s 112(1)(*b*) of the IRDA, and (b) based on her assessment, the Company was both cash flow insolvent and balance sheet insolvent and was unable to pay its debts within the meaning of s 125(1)(*e*) of the IRDA. Thus, in respect of the first basis, it should be Ms Tan, as the judicial manager, who must apply to court pursuant to s 112(1) for the Company to be discharged from judicial management and then wound up. In respect of the second basis, only Ms Tan had filed an affidavit in respect of CWU 296, attesting to the Company's insolvency. Since CWU 296 was based on Ms Tan's assessment of the Company's insolvency, she should be named as the claimant in CWU 296.

Version No 2: 13 Nov 2024 (17:03 hrs)

5 On the other hand, WKW took the view that the Company should be named as the claimant, as CWU 296 was made by Ms Tan for and on behalf of the Company pursuant to s 124(1)(*h*) of the IRDA. WKW thought that s 124(1)(*h*) provided that the winding-up application was made by "the judicial manager appointed under [the IRDA] *for the company*" [emphasis added]. As such, this section clarified that Ms Tan was making CWU 296 *for* the Company, and the Company remained the actual claimant in this case. Thus, in compliance with r 63(1)(*a*) and Form CIR-11 of the First Schedule to the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (the "CIR Rules"), the Company was rightly named as the claimant in CWU 296. Alternatively, to the extent that Ms Tan was procuring the Company to apply for its own winding up pursuant to s 124(1)(*a*) of the IRDA, the Company was also rightly named as the claimant in CWU 296.

6 One day prior to the hearing of CWU 296, WKW updated me that the parties had reached an agreement in respect of the identity of the proper claimant in CWU 296. In this regard, the parties agreed that (a) the Company shall be removed as the claimant in CWU 296, (b) Ms Tan shall be added as the claimant in CWU 296 in her capacity as judicial manager of the Company, and (c) the Company shall be added as the defendant in CWU 296. WKW therefore wrote that it would orally seek permission from the court to effect these amendments. In essence, WKW agreed with the OR that Ms Tan was the correct claimant in CWU 296.

7 WKW eventually made the oral application to effect these amendments at the hearing before me on 24 October 2024. I allowed these amendments because, in my view, the OR was correct that Ms Tan should be named as the claimant in CWU 296 pursuant to r 63(2) of the CIR Rules, which provides that, where an application to wind up a company is made by a person other than the

Version No 2: 13 Nov 2024 (17:03 hrs)

company, that person must be referred to in the application and all proceedings as the claimant. However, I reached this conclusion *via* a slightly different analysis from the OR, which I will now explain.

The correct analysis as to the proper claimant

8 To begin with, it is important to clarify that Ms Tan had provided only *one* legally recognised basis for the winding up of the Company. In this regard, Ms Tan's assessment, that none of the purposes of judicial management mentioned in s 89(1) of the IRDA was capable of achievement, is *not* a basis for winding up the Company. This is not among the specified grounds for winding up the Company, which are exhaustively set out in s 125(1) of the IRDA. Instead, that assessment is a basis for the Company to be discharged from judicial management (see s 112(1)(*b*) of the IRDA). But a discharge from judicial management does not automatically result in the Company being wound up, even if it is open for a court to take this into account when considering whether to order a winding up. This must be the case as a company could be discharged from judicial management because one or more of the purposes of judicial management mentioned in s 89(1) has been *fulfilled* (see s 112(1)(*a*) of the IRDA), in which case it would make little sense for that company to be wound up. It is therefore important to draw a conceptual distinction between a discharge from judicial management and a winding up; the former does not automatically lead to the latter, only that the latter leads to the former (see s 118(*b*) of the IRDA; see also at [13] below).

9 Thus considered, Ms Tan only advanced one valid basis to wind up the Company, which was that the Company was unable to pay its debts, pursuant to s 125(1)(*e*) of the IRDA. On this point, I agreed with the OR that the evidence of the Company's insolvency was based on Ms Tan's assessment as stated on

Version No 2: 13 Nov 2024 (17:03 hrs)

affidavit. It therefore followed that Ms Tan should be the claimant in CWU 296, subject to the following clarification. At the hearing before me, Mr Christopher Eng ("Mr Eng"), who appeared for the OR, clarified that the OR's position was not that a judicial manager, who makes an affidavit providing the reasons for the winding up, must always be the person named as the claimant in the winding-up application. Rather, in the present case, the OR opined that Ms Tan should be named as the claimant because there were no relevant shareholders' resolutions passed in a general meeting to authorise the Company to apply to wind itself up, and thereby confer standing on the Company pursuant to s 124(1)(*a*) (see the decision of the General Division of the High Court in *Re AAX Asia Pte Ltd (under judicial management) and another* [2023] SGHC 324 at [12]; see also s 160(1)(*b*) of the IRDA and s 184(1) of the Companies Act 1967 (2020 Rev Ed)). Accordingly, since the Company was not authorised to bring CWU 296, Ms Tan remained the only other person who could do so *qua* judicial manager. I agreed with this clarification.

10 The consequent question was whether Ms Tan, as the judicial manager of the Company, had standing to bring CWU 296. In this regard, pursuant to s 124(1)(*h*) of the IRDA, Ms Tan had standing as the judicial manager of the Company to bring CWU 296. This is clearly provided for by s 124(1)(*h*). For proper context, s 124(1) of the IRDA, which provides for the persons who have standing to apply for the winding up of a company, materially states as follows:

> **Application for winding up**
>
> **124.**—(1) A company, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application of one or more of the following:
>
> (*a*) the company;
>
> [Sections 124(1)(*b*)–124(1)(*f*) omitted]
>
> (*g*) the Minister, on any ground specified in section 125(1)(*b*), (*d*), (*l*), (*m*) or (*n*);

Version No 2: 13 Nov 2024 (17:03 hrs)

> (*h*) the judicial manager appointed under this Act for the company;
>
> [Section 124(1)(*i*) omitted]

11 As can be seen, s 124(1) confers standing on, among others, the company and a judicial manager to make an application for the winding up of a company. The words "for the company", as they appear in s 124(1)(*h*), do not mean that the judicial manager is making the application on *behalf* of the company, such that the company remains the true applicant. Instead, those words simply refer to a judicial manager who has been appointed *in respect of* the company concerned, to distinguish such a person from a judicial manager who has been appointed for another company. While this seems trite, it is necessary for s 124(1) to define the persons who have the requisite standing to bring a winding-up application with some specificity. This can be seen, for example, by how the "Minister" referred to in s 124(1)(*g*) is defined by s 2 to specifically mean, among others, "the Minister charged with the responsibility for registration of companies".

12 I therefore disagreed with WKW's prior position that, based on the words "for the company" in s 124(1)(*h*), the Company was the true applicant who should be named as the claimant in CWU 296. The correct analysis as to the identity of the proper claimant in CWU 296 was that Ms Tan had assessed, in her capacity as the judicial manager of the Company, that the Company was unable to pay its debts. This, pursuant to s 125(1)(*e*) of the IRDA, constituted a ground on which the court could order the winding up of the Company. In the absence of a resolution to authorise the Company to apply to wind itself up, Ms Tan was the proper claimant in CWU 296 as she was the judicial manager who had assessed the Company to be so unable to pay. She possessed the standing to bring CWU 296 pursuant to s 124(1)(*h*) of the IRDA.

Version No 2: 13 Nov 2024 (17:03 hrs)

It was not directly relevant whether Ms Tan was the proper claimant based on s 112(1)(b) of the IRDA

13 In the circumstances, it was unnecessary for Ms Tan to have separately submitted for the Company to be discharged from judicial management (although, to be fair, this was neither prayed for in CWU 296 nor SUM 2921). This was because should the Company be wound up in CWU 296 (as I found that it should be), then it would automatically be discharged from judicial management pursuant to s 118(*b*) of the IRDA as of the date that the winding up was ordered. For completeness, s 118(*b*) provides as follows:

> **Transition from judicial management to winding up**
>
> **118.** Where a judicial manager makes an application to wind up the company —
>
> [Section 118(*a*) omitted]
>
> (*b*) the company is discharged from judicial management on the date the winding up application is determined or withdrawn.

In the present context, the words "[w]here a judicial manager makes an application to wind up the company" refer to CWU 296, which is premised on the circumstance in which a company may be wound up by the court in s 125(1)(*e*). That said, I do note that, in practice, a prayer to be discharged from judicial management is routinely prayed for in conjunction with a winding-up application.

14 However, had Ms Tan brought a separate application pursuant to s 112(1)(*b*) for the Company to be discharged from judicial management, then it goes without saying that she would have been the proper claimant (or applicant) in *that* application. For proper context, s 112(1) of the IRDA materially states as follows:

Version No 2: 13 Nov 2024 (17:03 hrs)

> **Duty to apply for discharge from judicial management**
>
> **112.**—(1) The judicial manager of a company must apply to the Court for the company to be discharged from judicial management if it appears to the judicial manager that —
>
> [Section 112(1)(*a*) omitted]
>
> (*b*) none of the purposes of judicial management mentioned in section 89(1) is capable of achievement.

15 Section 112(1) clearly provides that it is the judicial manager who is the applicant when an application is made under the section. In this regard, s 112(1) provides that the "judicial manager of a company must apply to the Court". This can only be understood as the judicial manager being the person who must apply to the court, rather than the judicial manager making any such application on behalf of the company.

16 For all these reasons, I agreed with the OR that the Company had been wrongly named as the claimant in CWU 296. While this is a technical point, it is important that parties identify the right claimant for this can be salient to substantive questions, such as whether the application was properly brought. I therefore allowed the amendments sought in CWU 296 to make Ms Tan, in her capacity as the judicial manager of the Company, the claimant, and the Company, the defendant.

CWU 296

17 Having clarified who the proper claimant ought to be in CWU 296, I come to the substance of the application. By way of background, the Company was incorporated in Singapore on 25 April 1992. Its registered principal activity was "general contractors (building construction including major upgrading

Version No 2: 13 Nov 2024 (17:03 hrs)

works)".[1] The Company was a wholly-owned subsidiary of Boldtek Holdings Limited ("BHL"), a public company limited by shares, and which was ordered to be wound up on 21 October 2024 (see the order of court dated 21 October 2024 in HC/ORC 5535/2024, in HC/CWU 294/2024 rendered in respect of BHL).

18 On 17 November 2023, the Company filed an application in OA 1164 for it to be placed under judicial management. Ms Tan was appointed as the judicial manager of the Company following the granting of that application on 6 February 2024 (see the order of court dated 4 March 2024 in HC/ORC 1145/2024 in OA 1164).[2] By an ordinary resolution of the Company's creditors passed at the creditors' meeting held on 30 August 2024 pursuant to ss 111(3)(*b*)(ii) read with 111(5) of the IRDA, the end date of Ms Tan's term as judicial manager was extended from 31 August 2024 to 5 October 2024.[3]

19 As I mentioned above, Ms Tan's application in CWU 296 was really premised on the circumstance in s 125(1)(*e*), *viz*, that the Company was unable to pay its debts. In this regard, Ms Tan exhibited the Company's Statement of Affairs as of 29 February 2024. This showed that the Company had $25,968,510.74 in total assets but $80,134,367.83 in total liabilities. The Company was clearly unable to pay its debts and was insolvent on an application of the cash flow test laid down by the Court of Appeal in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478 at [51]–[69]. I therefore ordered that the Company be wound

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1 Ellyn Tan Huixian's Affidavit Supporting Winding Up Application in HC/CWU 296/2024 filed on 30 September 2024 ("Claimant's Supporting Affidavit") at para 6.

2 Claimant's Supporting Affidavit at para 8.

3 Claimant's Supporting Affidavit at para 9.

Version No 2: 13 Nov 2024 (17:03 hrs)

up on the basis that it was unable to pay its debts, along with the consequential orders prayed for.

20 In any event, I agreed with Ms Tan's assessment that the purposes of judicial management of the Company under s 89(1) of the IRDA were no longer capable of achievement. In short, while the Company had received some indications of interest from potential investors, these had not ultimately materialised into actual investments. As such, the Company was left only with its key asset, which was a factory in Singapore (the "Factory"). The realisation of the Factory could be pursued independently of any investment, whether in liquidation or under judicial management. In these circumstances, it was unlikely that the purpose in s 89(1)(*c*) of the IRDA, that is, a more advantageous realisation of the Company's assets or property than on a winding up, could be achieved. There was also no feasibility in pursuing the remaining purposes of judicial management set out in s 89(1)(*a*) and s 89(1)(*b*) of the IRDA, *viz*, (a) the survival of the Company, or the whole or part of its undertaking, as a going concern, and (b) the approval under the relevant statutory provisions of a compromise or an arrangement between the Company and any such persons mentioned in the applicable provisions. In this regard, the fact that the Company should be discharged from judicial management independently of a winding-up order was not a specified circumstance for the making of a winding-up order. However, as was alluded to by Ms Cheang Hui Xuan of WKW, who appeared for Ms Tan, the fact that it should be so discharged was a factor that militated in favour of the court exercising its discretion to order a winding up, pursuant to its residual discretion in s 125(1) of the IRDA.

Version No 2: 13 Nov 2024 (17:03 hrs)

SUM 2921

21 Turning to SUM 2921, which was Ms Tan's application for, among others, her release from liability in respect of any act or omission by her in the judicial management of the Company, Ms Tan relied on s 104(4) and/or s 112(4) of the IRDA. For completeness, these provisions materially state as follows:

> **Vacation of office and release**
>
> **104.**—(1) …
>
> (4) Where a person ceases to be a judicial manager of a company, from such time as the Court may determine, the person is released from any liability in respect of any act or omission by the person in the management of the company or otherwise in relation to the person's conduct as a judicial manager, but nothing in this section relieves the person of any of the liabilities mentioned in section 112(5).
>
> **Duty to apply for discharge from judicial management**
>
> **112.**—(1) …
>
> (4) Where a company is discharged from judicial management under this Part, or where a person ceases to be a judicial manager pursuant to section 104, the judicial manager or person may apply to the Court to be released, and the Court may, if the Court thinks fit, make an order releasing the judicial manager or person from liability in respect of any act or omission by the judicial manager or person in the management of the company or otherwise in relation to the judicial manager's or person's conduct as judicial manager.
>
> (5) Any release ordered by the Court under subsection (4) does not relieve the judicial manager or person from liability for any misapplication or retention of any money or property of the company or for which the judicial manager or person has become accountable, or from any law to which the judicial manager or person would be subject in respect of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

22 In my view, there is an apparent inconsistency between s 104(4) and s 112(4) of the IRDA. To begin with, s 104(4) provides that a judicial manager

Version No 2: 13 Nov 2024 (17:03 hrs)

is "released from any liability in respect of any act or omission by the person in the management of the company or otherwise in relation to the person's conduct as a judicial manager" where that person "ceases to be a judicial manager" of that company. There is some uncertainty as to what the expression "from such time as the Court may determine" refers to: it may refer to (a) the time a person ceases to be a judicial manager, or (b) the time when the person is released from liability (which, subject to the court's determination, may be subsequent to the cessation of his or her appointment as a judicial manager). The more natural and grammatically correct reading of the expression seems to militate towards meaning (a). In any event, s 104(4) seemingly contemplates that a person is released from liability where he or she ceases to be a judicial manager, leaving aside the time from which such release takes effect.

23 If this is correct, then it seems inconsistent for s 112(4) to provide that, among others, if a person ceases to be a judicial manager pursuant to that same s 104, then that person "may apply to the Court to be released, and the Court may, if the Court thinks fit, make an order releasing the judicial manager or person from liability in respect of any act or omission by the judicial manager or person in the management of the company or otherwise in relation to the judicial manager's or person's conduct as judicial manager". To be clear, save for the omission of the word "any" before the word "liability" in s 112(4) as compared with s 104(4), the scope of the liability being released from is the same in ss 104(4) and 112(4). Thus, unlike s 104(4), which seemingly contemplates an automatic release of liability upon the cessation of a person's appointment as a judicial manager, s 112(4) instead provides that the judicial manager may apply to court if he or she wishes to be released from such liability.

24 At the hearing before me, both Ms Cheang and Mr Eng offered helpful perspectives as to how to reconcile ss 104(4) and 112(4). In particular, Mr Eng

Version No 2: 13 Nov 2024 (17:03 hrs)

suggested that s 104(4) must be read in the overall context of s 104, which concerns a judicial manager's "[v]acation of office and release". In that context, Mr Eng submitted that s 104(4) contemplates that a person is released from liability at the point when he or she ceases to be a judicial manager of the company concerned, from such time as the court may determine, without the need for a further application for release. In contrast, s 112(4) is different and contemplates a judicial manager's "[d]uty to apply for discharge from judicial management". Thus, in that context, a judicial manager may, in addition to applying for discharge, also apply for release from liability. While I appreciate Mr Eng's point, I respectfully disagree because s 112(4) expressly refers to a person who "ceases to be a judicial manager pursuant to section 104", which *ex facie* is framed as being in contradistinction to the scenario "[w]here a company is discharged from judicial management under this Part", and s 112(4) further provides that such a person "may apply to the Court to be released [from liability]". Thus seen, that ss 104 and 112 may refer to different contexts does not answer the apparent inconsistency between them. In fact, s 112(4) expressly refers to a cessation under s 104(4) as falling within its governing ambit and more generally provides that it applies "[w]here a company is discharged from judicial management under this Part [*ie*, Part 7 on Judicial Management]".

25 If my reading of ss 104(4) and 112(4) is correct, then I would respectfully suggest that the relevant authorities consider how to make the two provisions consistent with each other. For present purposes, the only way to read the two provisions harmoniously is to read the expression "from such time as the Court may determine" in s 104(4) to mean that a court can decide when the (apparently) automatic release in s 104(4) starts to run, so that it can set a future date so distant that it effectively renders the release a matter of judicial discretion, much like in ss 112(2) and 112(4). This is clearly not the most natural

Version No 2: 13 Nov 2024 (17:03 hrs)

reading of s 104(4) as it is presently framed. However, this reading preserves the court's power to determine whether a judicial manager should be released from liability, which must surely be the case so that the court can exercise its supervisory authority over both the judicial manager and the judicial management process, who and which have come about through an order by the court in the first place. This better achieves a harmonious construction of various provisions within the same statute as a coherent whole (see, *eg*, the decisions of the General Division of the High Court in *Frontbuild Engineering & Construction Pte Ltd v JHJ Construction Pte Ltd* [2021] 4 SLR 862 at [43] and [47] and *Ng Yew Nam and others v Loh Sin Hock Anthony and others and another matter* [2024] 4 SLR 759 at [45]–[47]), bearing in mind the rule of construction that the text of a provision to be interpreted must be construed in light of its statutory context and situated within the written law *as a whole* (see the Court of Appeal decisions of *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [59(a)] (*per* Sundaresh Menon CJ) and *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37(a)] and [54(b)]).

26 For completeness, the relevant legislative history fortifies my view that this is how s 104(4) is meant to be read, despite its present framing. The predecessors to ss 104 and 112 of the IRDA were ss 227J and 227Q of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"), which materially provided as follows:

> **Vacation of office and release**
>
> **227J.**—(1) …
>
> (4) Where a person ceases to be a judicial manager of a company, he shall, from such time as the Court may determine, be released from any liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as a judicial manager but nothing in this

Version No 2: 13 Nov 2024 (17:03 hrs)

> section shall relieve him of any of the liabilities referred to in section 227Q(4).
>
> **Duty to apply for discharge of judicial management order**
>
> **227Q.**—(1) …
>
> (4) Where a judicial management order has been discharged under this Part or where a person ceases to be a judicial manager pursuant to section 227J, the judicial manager may apply to the Court for his release and the Court may, if it thinks fit, make an order releasing him from liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as judicial manager but any such release shall not relieve him from liability for any misapplication or retention of money or property of the company or for which he has become accountable or from any law to which he would be subject in respect of negligence, default, misfeasance, breach of trust or breach of duty in relation to the company.

Looking specifically at s 227J(4) of the Companies Act, the interposition of the words "from such time as the Court may determine" in the middle of the expression "he shall … be released from any liability" would suggest that these words were intended to refer to the time of a person's release from liability rather than the cessation of his holding the office of judicial manager. Importantly, there is no indication from the Explanatory Statement to the Insolvency, Restructuring and Dissolution Bill (Bill No 32/2018), or from the Second Reading thereof, that Parliament intended any substantive amendment to s 227J(4) of the Companies Act in re-enacting it (albeit in slightly modified terms) as s 104(4) of the IRDA.

27 Moreover, I would observe that s 104(4) has generally been interpreted in the academic commentaries as preserving the court's power to determine whether a judicial manager should be released from liability. In their discussion of s 104(4) at para 150.075, the contributors to *Halsbury's Laws of Singapore – Insolvency* vol 13 (LexisNexis Singapore, 2024) refer (in n 1) to the English High Court Chancery Division cases of *Re Sheridan Securities Ltd*

Version No 2: 13 Nov 2024 (17:03 hrs)

(1988) 4 BCC 200 and *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1992] 1 WLR 1253, in which the respective courts postponed the release of administrators pending investigations and the determination of a claim against them respectively. The commentary on s 104(4) in Harold Foo and Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) at para 09.254 likewise contemplates that a judicial manager's release from liability is ultimately subject to the discretion of the court:

> **Section 104(4).** This provision overlaps with section 112(4). This allows a former judicial manager to be released from liability in respect of any act or omission in the management of the company or conduct as judicial manager, *as the court determines*. However, such release does not relieve the person of any of the liabilities under section 112(5).
>
> [emphasis added in italics; emphasis in original in bold]

28 Thus, to be fair, the apparent inconsistency between s 104(4) and s 112(4) can be resolved as a matter of interpretation. However, this may not be entirely satisfactory as it is trite that legislation is to be interpreted as it is enacted, bearing in mind the legislative purpose. As a matter of framing, it seems to me that the problem with the current s 104(4) is that, unlike s 227J(4), it omits the words "he shall" before the expression "from such time as the Court may determine". This can best be illustrated when the two sections are placed side by side, with linguistic differences in bold:

Version No 2: 13 Nov 2024 (17:03 hrs)

104.—(4) Where a person ceases to be a judicial manager of a company, from such time as the Court may determine, **the person is** released from any liability in respect of any act or omission by **the person** in the management of the company or otherwise in relation to **the person's** conduct as a judicial manager, but nothing in this section relieves **the person** of any of the liabilities mentioned in section 112(5).	**227J.**—(4) Where a person ceases to be a judicial manager of a company, **he shall**, from such time as the Court may determine, **be** released from any liability in respect of any act or omission by **him** in the management of the company or otherwise in relation to **his** conduct as a judicial manager but nothing in this section shall relieve **him** of any of the liabilities referred to in section 227Q(4).

29 In my respectful view, the omission of the words "he shall" in s 104(4) creates an ambiguity as to the subject-matter which the expression "from such time as the Court may determine" is meant to apply to, *viz*, the time of the vacation of office or the release from liability. The presence of a comma before the expression "from such time as the Court may determine" does not, in my view, clarify matters. In contrast, under the old s 227J(4), the addition of the words "he shall" before the expression "from such time as the Court may determine" makes it clear that the latter expression is meant to apply to the words following it, *ie*, the release from liability. However, in the present s 104(4), there is some linguistic uncertainty as to the subject-matter that the expression "from such time as the Court may determine" is meant to apply to. This is not helped by the addition of the words "the person is" following that phrase, which suggests that the words following them are meant to be self-contained, and independent of the preceding expression "from such time as the Court may determine".

30 As such, I would respectfully suggest that the prior drafting in s 227J(4), perhaps updated with gender-neutral language, is clearer than the present

Version No 2: 13 Nov 2024 (17:03 hrs)

wording of s 104(4). Alternatively, the word "then" can be inserted after the first comma in the sub-section, followed by a subsequent comma. While I recognise that the academic commentaries all suggest that s 104(4) should be interpreted in the same manner as s 227J(4), any residual ambiguity can be put to rest by a slight amendment to the text of s 104(4). However, this is clearly a question more appropriately reserved for legislative as opposed to judicial intervention (see, *eg*, the Court of Appeal decision of *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 at [276]–[278]).

31 In the present case, I was satisfied that this was a proper case to release Ms Tan from any liability in respect of any act or omission by her in the management of the Company or otherwise in relation to her conduct as a judicial manager pursuant to s 112(4) of the IRDA. While there is no case law of which I am aware that addresses the factors a court should consider when deciding whether to release a judicial manager from liability, I would think that these would include whether there was any misconduct on the part of the judicial manager, and whether such release is broadly consistent with the interests of the company's creditors. In this case, there was no evidence that Ms Tan had misconducted herself in the judicial management of the Company. Nor was there any indication that the creditors of the Company would be prejudiced by her release, especially bearing in mind that the subject-matter of such release would be qualified in scope by s 112(5). I therefore allowed SUM 2921 with the consequential orders prayed for, pursuant to s 112(4) of the IRDA. Were it necessary for me to determine the matter under s 104(4), applying my construction of the provision at [25] above such that the "time" being determined under that provision is the time of the judicial manager's release from liability, I would have decided that the time for which such release (which

Version No 2: 13 Nov 2024 (17:03 hrs)

is not referred to in s 112(4)) would start to run was to be the date on which the Company was wound up, *viz*, 24 October 2024.

Conclusion

32 For all the reasons above, I allowed CWU 296 and SUM 2921.

Goh Yihan
Judge of the High Court

Justin Yip Yung Keong, Lam Zhen Yu and Cheang Hui Xuan (Withers KhattarWong LLP) for the claimant in HC/CWU 296/2024 and the applicant in HC/SUM 2921/2024;
The defendant in HC/CWU 296/2024 and the applicant in HC/OA 1164/2024 absent and unrepresented;
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Christopher Eng Chee Yang (Insolvency & Public Trustee's Office) for the non-party.

Version No 2: 13 Nov 2024 (17:03 hrs)