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

[2024] SGHC 60

Originating Application No 1296 of 2023

In the matter of Section 144(1)(f) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Eye-Biz Pte Ltd (in compulsory liquidation)

(1) Timothy James Reid
In his capacity as joint and several liquidators of Eye-Biz Pte Ltd

(2) Ng Yau Yee Theresa
In her capacity as joint and several liquidators of Eye-Biz Pte Ltd

… *Applicants*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Liquidator — Whether liquidator may be given leave to appoint solicitor]
[Civil Procedure — Inherent powers]

Version No 1: 08 Mar 2024 (11:51 hrs)

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Re Eye-Biz Pte Ltd (in compulsory liquidation)

[2024] SGHC 60

General Division of the High Court — Originating Application No 1296 of 2023
Choo Han Teck J
27 February 2024

8 March 2024

Choo Han Teck J:

1 The applicants are the liquidators of Eye-Biz Pte Ltd ("the Company"), a company that was a supplier of optical products until it was wound up, on the application of its creditor, Johnson and Johnson Pte Ltd ("Johnson & Johnson"), on 23 May 2023. The liquidators believe that the Company may have claims against its former directors and other persons. They believe that if the claims are successful, the assets of the company may be enlarged to pay off its creditors.

2 This application was made by the liquidators for leave from the court to allow the liquidators to appoint Drew & Napier LLC ("Drew & Napier") as solicitors for the purpose of "bringing and defending any action or legal proceeding in the name and on behalf of the Company". The liquidators say that they have written to the creditors about this application and the legal proceedings that may follow should this application be allowed. There were no objections received by any creditor at the time of the hearing of this application.

3 This application was made under s 144(1)(f) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("the Act"). This provision provides as follows:

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

4 Mr Andrew Chua, counsel for the liquidators, submitted that the concerns raised in *Re Kirkham International Pte Ltd (in compulsory liquidation)* [2023] SGHC 19 ("*Re Kirkham*") have been addressed. Counsel submitted that although Drew & Napier acted for the creditor Johnson & Johnson, there was nothing to suggest that there might be a conflict of interest. Counsel submitted that Drew & Napier was not being appointed to advise the liquidators on the administration of the liquidation and so there was no question of bias in the distribution of assets.

5 I accepted counsel's submission that the legal fees involved in this case would be subject to the Court's and/or the committee of inspection's approval under s 139(3) of the Act. Every case must be determined on its facts, and in the present case, given that counsel is from Drew & Napier itself, it will thus lie ill in his mouth were he to subsequently dispute fees.

Version No 1: 08 Mar 2024 (11:51 hrs)

6 Ms Theresa Ng, one of the liquidators, stated in her affidavit that the decision to notify the creditors was not a legal obligation but an act in excess of caution. I agree that it was prudent to do so. However, I would suggest that more details ought to be stated, if not for the creditors' benefit, then for the court's. The amount that is owed to all the creditors, and the amount that is being sought from the debtors, as well as a statement as to the likelihood of success, would be useful to determine whether expenses should be incurred in pursuit of those claims.

7 The liquidators applied for the appointment of Drew & Napier to be ratified from the date of appointment, namely 28 December 2023. Counsel brought to my attention that the court in *Re Kirkham* was hesitant in ratifying an appointment made before the application. Counsel submitted, rightly, that liquidators would require legal advice before presenting an application of this or any other nature. It is therefore necessary that the court be empowered to ratify the appointment of the solicitors.

8 I do not know the full facts and arguments in *Re Kirkham*, but the court there is right that the word 'after' in s 144(1) of the Act suggests that a liquidator may only appoint a solicitor after it has applied for leave to appoint one. But that section does not limit the court's power to specify the date when such appointment may be made. To this end, the use of the word 'ratify' may have been misleading.

9 Generally, a court has the power to ratify an act, even an error that had occurred but rectified. Even if no provision is expressly provided, this is the sort of situations that fall within a court's inherent powers. That power is discretionary, and the court will not exercise that power if there are reasons not

Version No 1: 08 Mar 2024 (11:51 hrs)

to do so. In the present case, Mr Chua submitted that no specific action had been taken other than the making of this application.

10 Section 144(1) of the Act permits the court to grant leave to appoint a solicitor but there is no express provision as to when the appointment is to take effect. In the wide and diverse applications before the court, the court has the discretion to decide when the order is to take effect. I am thus satisfied that, in the circumstances of this case, leave to appoint Drew & Napier be given, and that the appointment is to take effect from 28 December 2023.

11 I made no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Andrew Chua Ruiming and Ng Jun De, Andrew (Drew & Napier LLC) for the applicants.

Version No 1: 08 Mar 2024 (11:51 hrs)