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

[2025] SGHC 77

Originating Application No 1041 of 2024

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 91 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Liberty House Group Pte Ltd

Between

ArcelorMittal Holdings AG

… *Claimant*

And

Liberty House Group Pte Ltd

… *Defendant*

Originating Application No 49 of 2025

In the matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Liberty House Group Pte Ltd

Between

Liberty House Group Pte Ltd

… *Applicant*

And

ArcelorMittal Holdings AG

… *Non-party*

GROUNDS OF DECISION

[Companies — Receiver and manager — Judicial management order]
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v
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Hri Kumar Nair J
10 February, 24 March, 21 April 2025

28 April 2025

Hri Kumar Nair J:

Introduction

1 These are my grounds of decision in respect of:

(a) HC/OA 1041/2024 ("OA 1041"), which was an application by ArcelorMittal Holdings AG ("ArcelorMittal") for Liberty House Group Pte Ltd ("Company") to be placed in judicial management and to appoint as judicial managers Mr Cameron Lindsay Duncan and Mr David Dong-Won Kim (collectively, "JMs") pursuant to s 91(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"); and

(b) HC/OA 49/2025 ("OA 49"), which was an application by the Company seeking (among other things) a four-month moratorium pursuant to s 64(1) of the IRDA.

2 I first set out the facts common to both applications. I then deal with OA 49 – if it were allowed, OA 1041 must be dismissed.

Background

3 The Company was the ultimate holding company for the Liberty House Group ("Group"), a group of companies engaged in manufacturing and trading steel and steel products. The Group was in turn part of the Gupta Family Group Alliance ("GFG"), an international group of companies whose business interests include mining, aluminium, steel, energy and engineering. The GFG was ultimately beneficially owned and controlled by Mr Sanjeev Gupta ("Mr Gupta").

4 The Company's financial difficulties were precipitated by, amongst others, the collapse in March 2021 of Greensill Capital (UK) Limited (in administration) ("Greensill Capital") and Greensill Bank AG (in insolvency) (collectively, "Greensill"), who were key sources of funding and working capital for the GFG and the Group. This led to claims by counterparties against companies within the GFG and the Group which had defaulted on their payment obligations due to the loss of financing from Greensill.

5 Against this backdrop, the GFG and the Group commenced global restructuring efforts, including what was known as the Delta/Vienna Restructuring. The Delta/Vienna Restructuring was an attempt to restructure liabilities claimed against different entities of the GFG, including claims by Greensill and Credit Suisse Asset Management (Schweiz) AG ("Credit Suisse

AG"). Importantly, the Company was a guarantor of various debts that were the subject of the Delta/Vienna Restructuring.[1]

6 The genesis of these proceedings were two arbitral awards for a total sum of more than €240m issued against the Company in favour of ArcelorMittal on 24 January 2023 ("Partial Final Award") and 5 July 2024 in LCIA Arbitration No. 214327. The Company failed to make payment due under these awards.

7 On 15 September 2023, ArcelorMittal filed HC/OA 947/2023 ("OA 947"), seeking the court's recognition of the Partial Final Award as a judgment of the General Division of the High Court. Concurrently and in aid of this application, ArcelorMittal also filed HC/SUM 2818/2023 seeking a freezing injunction against the Company's assets. On 19 September 2023, Lee Seiu Kin J allowed both the application to recognise the Partial Final Award ("Recognition Order") and the application for a freezing injunction ("Freezing Order"). Subsequently, the Company made several (unsuccessful) attempts to set aside the Freezing Order.

8 On 18 November 2023, ArcelorMittal filed HC/EO 145/2023, seeking an order authorising the Sheriff to seize and sell the Company's assets, namely its shares in two direct subsidiaries, Liberty Industries Holding Pte Ltd and Liberty Steel France Pte Ltd ("Execution Shares"), which was granted on 1 December 2023 ("Execution Order"). On 5 February 2024, the Company applied to stay the Execution Order viz HC/SUM 333/2024 relying on, *inter alia*, the ground that the Company had a potential rescission claim in arbitration

[1] Sanjeev Gupta's 1st affidavit filed in HC/OA 49/2025 on 23 January 2025 ("Gupta 1 OA 49") at para 52.

against ArcelorMittal which might overturn the basis of the Partial Final Award. This application was dismissed by the learned Assistant Registrar. At the time I heard the Company's appeal on 23 September 2024 (and to date), there had been no meaningful progress in the recission claim. I dismissed the appeal without prejudice to the Company filing a fresh application for a stay if there was a material change in circumstances, but on condition that the Company satisfied all cost orders that had been made against it. Those costs, amounting to S$75,000, remained unpaid.

9 The sale of the Execution Shares has not been carried out by the Sheriff. On 8 October 2024, ArcelorMittal filed OA 1041. On 17 January 2025, a few days before OA 1041 was scheduled to be heard, the Company filed OA 49. As a result, OA 1041 was automatically stayed pending the disposal of OA 49: s 64(8)(b) of the IRDA.

10 The Company was indisputably insolvent. From its management accounts for the year ended March 2023 produced by Mr Gupta in OA 947, its total current liabilities (of US$3.5m) far exceeded its total current assets (of US$8.3m).[2] These figures were later updated in Mr Gupta's third affidavit filed in OA 49 under solicitor's cover on 8 March 2025 ("Gupta 3") and confirmed the Company insolvent status. According to Mr Gupta, as at 31 December 2024, the Company's total current liabilities had increased to US$39.6m while its total current assets remained at US$8.3m.[3]

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2 Charity Rachel Kirby's 1st affidavit filed in HC/OA 1041/2024 on 8 October 2024 at para 42.

3 Sanjeev Gupta's 3rd affidavit filed under Alston Yeong's 2nd affidavit in HC/OA 49/2025 on 8 March 2025 ("Gupta 3 OA 49") at Tab 3.

11 In Mr Gupta's first affidavit filed in OA 49 on 24 January 2025 ("Gupta 1"), he stated that the Company proposed to restructure the claims against it via a scheme of arrangement ("Scheme"), which contemplated that:

(a) there would be a single class of creditors (all unsecured) which would receive a cash payout in the aggregate amount of US$42.5m ("Scheme Consideration");[4] and

(b) the Scheme Consideration would be provided by way of a cash injection from Liberty Primary Metals Australia Pty Ltd ("LPMA") or its subsidiary, One Steel Manufacturing Pty Ltd ("OSM")[5]. Both LPMA and OSM were companies within the GFG.[6]

12 As at 31 March 2024, the Company had total liabilities of about US$4.2b, including contingent, disputed and prospective claims against it.[7] The Scheme therefore envisaged a recovery rate of only 1% for the Company's creditors.[8] While miniscule, it was the Company's position that this represented a superior return for creditors as compared to a liquidation scenario, which would likely result in a return of 0.05%.[9] In essence, Mr Gupta was proposing to raise funds from entities he ultimately owned and controlled to enable the Company to discharge its debts entirely by paying one cent to the dollar, while

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4 Gupta 1 OA 49 at para 88(a).

5 Gupta 1 OA 49 at para 88(d).

6 Gupta 1 OA 49 at paras 36, 88(d) and p 124.

7 Gupta 1 OA 49 at para 66.

8 Gupta 1 OA 49 at para 89.

9 Gupta 1 OA 49 at para 89.

retaining (beneficial) ownership and control of the Company and the Group. Mr Gupta did not explain how he determined the amount of the Scheme Consideration, and importantly, whether LPMA and OSM had the financial ability to pay the same given the financial difficulties the GFG was facing.

13 At the first hearing of OA 49 on 10 February 2025, I directed the Company to file further affidavits dealing with various matters, including the ability of LPMA and OSM to fund the Scheme Consideration.

14 On 8 March 2025, the Company filed Gupta 3 and Mr Gupta's fourth affidavit under solicitor's cover ("Gupta 4"), which updated that OSM was no longer able to provide the Scheme Consideration because it had been placed in special administration in Australia on 19 February 2025.[10] However, Mr Gupta claimed that this would not impact the Company's ability to raise funds for the Scheme Consideration – LPMA would raise the funding required by "monetising" Tahmoor Coal Pty Ltd ("Tahmoor"), its wholly-owned Australian subsidiary which owned and managed an underground coal mining operation in New South Wales, Australia ("Mine").[11] But it was unclear how LPMA would do so, and, even if LPMA did manage to raise funds, whether it would be able to channel the monies to the Company to fund the Scheme Consideration.

15 In this regard, Mr Gupta updated that, leading up to OSM being placed in administration, the GFG had agreed with its creditors on key commercial terms on the Delta/Vienna Restructuring and had even signed a non-binding

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10 Gupta 3 OA 49 at para 16.

11 Gupta 3 OA 49 at para 16; Sanjeev Gupta's 4th affidavit filed under Alston Yeong's 3rd affidavit in HC/OA 49/2025 on 8 March 2025 ("Gupta 4 OA 49") at paras 29–34.

"commercial principles term sheet".[12] But the developments in respect of OSM led the GFG to conclude that it could no longer commit to make payments in the amounts and at the times envisaged in the term sheet.[13] This set the restructuring efforts back and, since then, parties had been engaging in "without prejudice" negotiations.[14]

16 At the second hearing of OA 49 on 24 March 2025, the Company explained that OSM had been placed in special administration pursuant to special legislation introduced in the South Australian Parliament ("Whyalla Bill") – it was a sudden and surgical step taken by the South Australian government which the Company was not given notice of. Nonetheless, the Company insisted that the Scheme remained viable. In particular, the Company claimed that the Scheme Consideration could be obtained from Tahmoor as there was sufficient value there – this was purportedly reflected in a report of an independent valuer, RSM Australia Pty Ltd ("RSM"), which was issued for investment purposes ("RSM Report"). However, the Company did not disclose the RSM Report as it claimed that it did not have RSM's consent to do so. I directed the Company to file further affidavits, *inter alia*, disclosing the RSM Report and to deal with various concerns raised at the hearing, including the Company's ability to secure the Scheme Consideration.

17 On 14 April 2025, the Company filed Mr Gupta's fifth and sixth affidavits under solicitor's cover ("Gupta 5" and "Gupta 6"), which disclosed

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12 Gupta 3 OA 49 at para 9.

13 Gupta 3 OA 49 at para 10.

14 Gupta 3 OA 49 at para 11.

the RSM Report and outlined the Company's plan to obtain the Scheme Consideration.

OA 49

Applicable law

18 In assessing whether an applicant company should be given breathing space to undertake restructuring efforts, the court must be satisfied that, on a broad assessment, there is a plan that has a reasonable prospect of working and being acceptable to the general run of creditors: *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 at [65]–[66].

19 In making this assessment, the court looks at whether the moratorium application is made *bona fides* and is not an attempt to game the system by companies seeking the benefit of restraint orders without putting forward a serious proposal: *Re Conchubar Aromatics Ltd and other matters* [2015] SGHC 322 at [14]. In assessing the company's *bona fides*, the court will look at whether the proposal is sufficiently particularised, since the lack of particularisation may show the absence of serious intent and thought: *Re Pacific Andres Resources Development Ltd and other matters* [2018] 5 SLR 125 at [64].

Key issue

20 I accepted the Company's argument that, at this stage, it was premature to scrutinise the mechanics of the Scheme, including the proposed classification of creditors, since the court should only engage in a "broad-brush" assessment of whether the Scheme would be feasible and merit consideration by the creditors: *Re IM Skaugen SE and other matters* [2018] SGHC 259 ("*IM Skaugen*") at [58].

21 However, where there was no realistic prospect of a scheme receiving the requisite approval, the court should not act in vain: see *Re Ng Huat Foundations Pte Ltd* [2005] SGHC 112 ("*Ng Huat Foundations*") (at [9]), which was subsequently affirmed by the Court of Appeal in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 (at [64]). In *Ng Huat Foundations*, which involved an application for leave to convene a meeting for creditors to consider a scheme, the person who was to provide the funds for the proposed scheme was disclosed to be subject to bankruptcy applications. In light of this, and other reasons, the court dismissed the application.

22 While the present application was seeking a moratorium pursuant to s 64(1) of the IRDA, and therefore at an early stage of the proposed restructuring exercise, the court must nonetheless still satisfy itself that there are reasonable prospects of a meaningful scheme being presented to the creditors. This is in line with the legislative intention undergirding s 64(1). As observed in *IM Skaugen* (at [57]), in an application under s 211B(1) of the Companies Act (Cap 50, 2006 Rev Ed) (which was substantially *in pari materia* with s 64(1) of the IRDA), "the court undertakes a balancing exercise between allowing the applicant the requisite breathing space and *ensuring that the interests of creditors are sufficiently safeguarded*" [emphasis added].

23 In this regard, and in my view, matters relating to the *funding* of the proposed scheme should be subject to a higher level of scrutiny where the viability of the scheme is entirely dependent on that funding being available. That is not an issue to be left to the creditors, who are concerned with matters relating to the *merits* and *reasonableness* of the scheme, including "whether the returns under the proposed scheme of arrangement [are] greater than what they [can] expect in a liquidation": see *Wah Yuen Electrical Engineering Pte Ltd v*

Singapore Cables Manufacturers Pte Ltd [2003] 3 SLR(R) 629 at [37]; see also *Re Babel Holding Ltd (Parastate Labs, Inc and others, non-parties*) [2023] SGHC 329 at [8(d)(i)]. In *Re Aaquaverse Pte Ltd* [2023] SGHC 29*,* the High Court dismissed an application for an extension of moratoria under ss 64 and 65 of the IRDA as the source of funding for the proposed scheme was an award of damages from an ongoing inquiry into damages before the English courts but there was insufficient evidence evaluating the likelihood of such an award – the applicant had therefore failed to demonstrate a reasonable prospect of the scheme working.

24 The applicant should be expected to provide, with reasonable specificity, the source of funding and assurance that such funds would be available at the relevant time. It would be contrary to the legislative intention to require creditors to go through the scheme process only for it to collapse when the promised funding does not materialise. It would also open an avenue for abuse where an applicant is able to delay creditor action by making vague statements about how the scheme will be funded and insist that is sufficient to satisfy a "broad-brush" assessment.

25 As at 31 March 2024, the Company only had cash of approximately US$59,088 and had no ability to raise funds on its own.[15] The Scheme was therefore entirely dependent on the Company securing the Scheme Consideration from entities within the GFG or elsewhere. It was therefore necessary to consider whether the Company had furnished sufficient and credible details of their plan to secure that funding, particularly given the

[15] Gupta 1 OA 49 at para 65(e).

revisions as to the source of the funds and the financial challenges faced by the GFG.

26 I was not satisfied that the Company had put forward an adequate plan to secure the Scheme Consideration. Further, the Company's conduct, including its sudden and unexplained reduction of the Scheme Consideration, raised significant concerns as to the *bona fides* of the Scheme, and whether the application was an attempt to delay enforcement proceedings. I elaborate below.

The Scheme Consideration was not likely forthcoming

27 As a preliminary observation, I noted that the Company had not committed to the figure of US$42.5m as the Scheme Consideration. As stated above, Mr Gupta did not explain how he arrived at that figure. Significantly, while the figure of US$42.5m was stated without qualification in Gupta 1,[16] the draft term sheet of the Scheme exhibited to Gupta 3, it was stated that LPMA "will contribute, or procure the contribution, the sum of USD [42.5 million, *or such other sum* as determined by an updated liquidation analysis commission by the Company]" [emphasis added].[17] This important qualification was not highlighted in the text of Gupta 3. Further, no "updated liquidation analysis" has to date been produced by the Company and the amount of the Scheme Consideration therefore remained unknown. In fact, as discussed below, the Company subsequently, and again without explanation, substantially reduced the Scheme Consideration to US$30m. Even that figure remained tentative.

16 Gupta 1 OA 49 at para 88.

17 Gupta 3 OA 49 at p 39.

28 The terms of the Scheme were relatively straightforward – it involved a *pari-passu* distribution of the Scheme Consideration to all creditors. While I accepted the Company's argument that "the mechanics" through which the Scheme Consideration would be injected into the Company may be subject to finalisation,[18] as discussed above (at [23]), whether the Company was able to identify and secure the funds was a different matter. It therefore behoved the Company to provide satisfactory evidence as to how the Scheme Consideration would be raised. But that evidence was sorely lacking:

(a) It was undisputed that the Company and LPMA did *not* have the funds available to fund the Scheme Consideration.

(b) As stated above, Mr Gupta initially claimed that the Mine could be "monetised" to raise the funds. That was vague and provided no insight as to how this would be done, how long it would take and what approvals would be needed, or what conditions would have to be met, and whether such approvals and/or conditions were likely to be satisfied. This final point was especially important given that the GFG was in long-drawn restructuring discussions with its creditors (see above at [15]), who might insist that any funds raised from the "monetising" of the Mine be channelled to them instead.

(c) Recent evidence suggested that Tahmoor was in serious financial difficulties. Various news articles published between 7 and 14 February 2025 reported that production at the Mine had slowed and workers had been stood down for four weeks. This was because Tahmoor had been

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[18] Liberty House Group Pte Ltd's Written Submissions filed in HC/OA 49/2025 on 6 February 2025 at paras 50 and 55.

struggling to pay its suppliers, which led to a shortage of critical supplies.[19] In this regard, Mr Gupta confirmed (but only belatedly in Gupta 5) that operations at the Mine had halted since **January 2025** and were only expected to recommence fully at the end of May 2025 – but this depended on external funding (discussed below).[20]

29 OA 49 had been heard twice on 10 February 2025 and 23 March 2025, and I had given the Company several opportunities to address these concerns. But Gupta 5 and Gupta 6 only raised more questions and underscored the weakness and lack of specificity in the Company's plans to obtain the Scheme Consideration. More troublingly, the Company continued to exhibit a lack of candour.

30 Gupta 5 and Gupta 6 introduced a new source of funds. According to Mr Gupta, Tahmoor had signed a term sheet ("Term Sheet") with (an unidentified) private lender ("Lender") for a loan of US$110m ("Loan"), to be disbursed in two tranches of US$65m (in April 2025) and US$45m (in June 2025). He envisaged that approximately US$80m would be earmarked for Tahmoor's operational needs, including the repayment of current liabilities, whilst the balance of US$30m (from the second tranche of loan disbursement) would be available to fund the Scheme Consideration.[21] However:

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19 Charity Rachel Kirby's 2nd affidavit filed in HC/OA 49/2025 on 12 March 2025 at pp 22-49.

20 Sanjeev Gupta's 5th affidavit filed under Alston Yeong's 4th affidavit in HC/OA 49/2025 on 14 April 2025 ("Gupta 5 OA 49") at para 29(c).

21 Sanjeev Gupta's 6th affidavit filed under Alston Yeong's 5th affidavit in HC/OA 49/2025 on 14 April 2025 ("Gupta 6 OA 49") at paras 13, 14.

(a) Mr Gupta did not produce the Term Sheet, and did not explain why he could not produce a redacted version if there were concerns of confidentiality.

(b) The loan facility documents had not been finalised and signed, and the terms of the Loan were therefore unknown. Although counsel for the Company informed that the documents were expected to be executed in the coming week, I was sceptical. In his affidavits, Mr Gupta was careful not to provide any assurances, preferring to make vague statements that the loan facility documents were at an "advanced stage of development" and "capable of being finalised very shortly".[22] Further, given that the loan documents had not been signed even nearing the end of April 2025, the indicative date for the drawdown of the first tranche of April 2025 appeared unrealistic.

(c) Mr Gupta stated that the second tranche of the Loan would only be released upon the satisfaction of certain conditions precedent,[23] but did not disclose what these were or how they would be satisfied. This made it unclear whether the second tranche (which would be the source of the Scheme Consideration) would be disbursed at all.

(d) According to Mr Gupta, the Loan was to be "to deployed in funding the re-start of mining operations at the [Mine]"[24]. In the circumstances, the ability to channel part of the second tranche to the Company was dependent on there being surplus funds not required for

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22 Gupta 6 OA 49 at para 13.

23 Gupta 6 OA 49 at para 13.

24 Gupta 6 OA 49 at para 13.

the Mine's operations and other liabilities. This was uncertain and would depend on a number of factors, including some beyond Tahmoor's control.

(e) Most importantly, Mr Gupta acknowledged that the Lender would have to consent to any part of the Loan being used to fund the Scheme Consideration. While Mr Gupta expressed confidence that the Lender would consent, he provided no basis for this. Neither was it explained why a commercial lender would likely consent to its loan proceeds being used to settle the debts of another company in which it did not have any interest. The Company's argument that there would be sufficient cash from the Mine operations to support such use of the loan proceeds was not supported by its own documents. The projected cash flow of Tahmoor exhibited to Gupta 5 showed that, on Tahmoor's own assessment, it would only have a cash balance of A$45.7m (equivalent to about US$30m) by December 2025 *after* the full loan injection from the Lender.[25] In other words, transferring US$30m of the loan proceeds to the Company would leave Tahmoor with no cash. It was inconceivable (or at least highly unlikely) that the Lender would consent to this.

(f) Given that it was incumbent on the Company to demonstrate the viability of the Scheme, it was surprising and troubling that the Company did not raise with the Lender the proposed use of the loan proceeds to fund the Scheme Consideration. It was not the Company's position that it could not raise the issue with the Lender. This suggested that Mr Gupta did not raise the point because he was aware that the

[25] Gupta 6 OA 49 at Tab 3.

Lender's refusal would scuttle his plan. But the Company could not improve the prospects of obtaining a moratorium by avoiding dealing with potential difficulties.

(g) In the circumstances, as matters stood, even if the Loan was secured – and that itself was unclear – there was no basis for the Company to assert that the second tranche would be available to fund the Scheme Consideration.

31 As an alternative, the Company proposed raising funds "through a sale of some or all of [LPMA's] shares in [Tahmoor], should that turn out to be more expedient" and that such sale would be completed "within 4-6 months of the commencement of the marketing process".[26] However:

(a) This option was dependent on the Loan being agreed and disbursed – since (according to Mr Gupta) LPMA could only launch a targeted marketing process after the operations at the Mine restart in full[27] – which was uncertain (see above at [30]).

(b) The proposal was vague, using tentative language such as "LPMA *could* launch a targeted marketing process"[28] [emphasis added]. It also did not indicate how many shares would be sold, only that funds would be raised through the sale of "some or all of [LPMA's] shares"[29]. Nor did it indicate how much funds the Company intended to raise, only

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26 Gupta 6 OA 49 at para 20.

27 Gupta 6 OA 49 at para 20.

28 Gupta 6 OA 49 at para 21.

29 Gupta 6 OA 49 at para 20.

that "more than sufficient funds"[30] would be raised. This suggested that little thought had been given to embarking on such a sale.

(c) LPMA had not started any marketing process, and it was unclear when it proposed to do so. It appeared that LPMA would only consider that option if its first proposal was not viable i.e., that Tahmoor was unable to use part of the Loan to fund the Scheme Consideration. It was therefore unclear when the sale process would begin and when it would likely conclude.

32 Further, the Company's claim that LPMA would fund the Scheme Consideration from the sale proceeds of the Tahmoor shares was premised on LPMA being in a healthy financial position. In this regard, the Company relied on LPMA's draft management accounts for the nine-month period ending 31 March 2025,[31] which stated that LPMA had a net equity value of A$551m. But the evidence suggested otherwise:

(a) LPMA's financial position was unclear. The audited accounts provided by Mr Gupta were outdated – its most recent audited account was for the financial year ended 30 June 2023. Significantly, these accounts were qualified by the auditor, who stated that there was "significant doubt on [LPMA's] ability to continue as a going concern and, therefore, whether it will realise its assets and discharge its liabilities in the normal course of business"[32]. This qualification was not mentioned anywhere in Mr Gupta's affidavits.

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30 Gupta 6 OA 49 at para 21.

31 Gupta 6 OA 49 at Tab 4.

32 Gupta 4 OA 49 at p 402.

(b) Even on the face of LPMA's draft (and incomplete) unaudited accounts for the financial year ended 30 June 2024 – which appeared to have been prepared on 21 November 2024 i.e., before the Mine's operations were halted (see above at [28(c)]) – LPMA had made a net loss of A$40.1m and had a net current liability position of A$206m.[33] It also only had cash amounting to A$19.8m, substantially down from A$92.8m for the preceding year, which underscored its financial difficulties.[34]

(c) LPMA's draft management accounts, which the Company relied on, reflected that LPMA's current assets comprised mainly of loans to related parties of A$489m. This included loans amounting to A$195m extended to OSM, which was now in administration.[35] Given the state of the GFG, there was a serious risk that such loans might not be recoverable. In Gupta 6, Mr Gupta noted that "it [was] not clear to what extent LPMA or Tahmoor Coal [would] be able to make a recovery from OSM in respect of their creditor claims" and "LPMA and Tahmoor Coal [would] certainly maintain their creditor claims against OSM and take whatever action they deem necessary to recover them".[36] But this only downplayed the risk, without explaining *how* the loans would be recovered.

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33 Gupta 4 OA 49 at pp 411, 413.

34 Gupta 4 OA 49 at p 413.

35 Gupta 6 OA 49 at para 34(b).

36 Gupta 6 OA 49 at para 41.

33 Further, the draft management accounts did not include LPMA's contingent liabilities:

(a) Mr Gupta disclosed that LPMA had unrelated contingent creditors, specifically (i) a guarantee it gave to Golding Contractors Pty Ltd ("Golding"), a mining contractor engaged by OSM which was owed about A$103 million by OSM; and (ii) a cross-guarantee it had given to OSM's creditors pursuant to the ASIC Corporations (Wholly-Owned Companies) Instrument 2016/785 guaranteeing them payment in full of any debt in the event of the winding up of OSM. Although Mr Gupta asserted that neither guarantee had been called upon,[37] that was a serious risk given OSM's financial difficulties and that LPMA was proposing to sell its main asset. Mr Gupta also did not explain how the calling of either or both guarantees would affect LPMA's ability to fund the Scheme Consideration.

(b) I was unimpressed by Mr Gupta's bald claim that Golding had "alternative sources of security and recourse for its claims against OSM which it *[might] find easier to monetise* than its guarantee claim against LPMA"[38] [emphasis added]. This downplayed without basis the risk that Golding would pursue the cash LPMA would receive from the sale of the Tahmoor shares, which would be easier for Golding to do. Tellingly, Mr Gupta himself recognised that the sale of the Tahmoor shares would have to be structured to provide for LPMA's contingent liabilities.[39]

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37 Gupta 5 OA 49 at para 32.

38 Gupta 6 OA 49 at para 37.

39 Gupta 6 OA 49 at paras 38, 39.

34 Notably, the Company did not produce any binding commitment from LPMA to use the proceeds from a sale of the Tahmoor shares to fund the Scheme Consideration. Although the Company furnished a letter from LPMA dated 7 March 2025, all that it said was that LPMA was "confident that, should the need arise, [it] would be able to monetise the [Mine] (whether through financing, sale or other disposition of that asset) in order to source the funding for the Scheme Consideration". These vague promises and expressions of confidence were plainly inadequate given LPMA's own financial position. Further, as noted above (at [15]), the GFG was currently in negotiations with its other creditors, the earlier tentative deal having been derailed by the placement of OSM in administration.[40] There was no assurance in Mr Gupta's affidavits that creditors of the GFG would not insist on the proceeds of any sale of Tahmoor to be disbursed to, or shared with, them, or that the sale proceeds would be earmarked for the Company without objections by those creditors. All Mr Gupta stated was those creditors of the GFG had no *legal* right over the proceeds, but this missed the point.

35 Counsel for the Company argued that the draft management accounts understated LPMA's value as it only ascribed a value of A$170m to the Mine although (a) the RSM Report valued Tahmoor in the range of US$406m to US$479m; and (b) there was a non-binding offer of US$450m received by LPMA for its shares in Tahmoor and its subsidiary Bargo Collieries Pty Ltd for. But this did not take the Company very far:

(a) It was unclear what the figure of A$170m, which was described as "Investments",[41] referred to or comprised. The assertion by counsel

40 Gupta 3 OA 49 at para 10.

41 Gupta 6 OA 49 at p 87.

for the Company that it likely represented the book value of the Mine was speculative.

(b) The RSM Report was dated before the Mine's operations were halted. Further, it was based on information provided by Tahmoor's management, which meant that the valuers would not have conducted due diligence or an independent analysis.

(c) The non-binding offer was also issued before the Mine's operations were halted. Further, in the copy produced in court, the conditions to which the offer was subject were redacted.

(d) In any event, this did not overcome the concerns with *LPMA's* finances highlighted above (at [32]–[33]).

The reduction of the Scheme Consideration

36 Separately, and important to my assessment of the Company's case, was its conduct in relation to the quantum of the Scheme Consideration. As noted above, the Company did not commit to the figure of US$42.5m, which was subject to an "updated liquidation analysis" that was not produced. The Company's latest position in Gupta 5 and Gupta 6 was that a sum of US$30m would be paid from the second tranche of the Loan to fund the Scheme Consideration. Surprisingly, there was no reference to the earlier figure of US$42.5m in Gupta 5 or Gupta 6 or any explanation as to why the Scheme Consideration was being substantially reduced.

37 Counsel for the Company suggested that the US$30m figure was derived from the "headroom" or surplus from the Loan, but that did not explain the reduction. Indeed, the Company's insistence that there was more than sufficient

equity in Tahmoor to fund the Scheme Consideration begged the question why it was necessary to substantially reduce the sum. This reinforced my earlier point that there was no transparency as to how the Scheme Consideration was determined. Counsel for the Company then argued that US$30m was still superior to what creditors would receive in the event of liquidation – but that assumed the willingness and ability of the Company to fund the Scheme Consideration and that it did not continue to be a moving target, both of which I harboured grave doubts given the Company's conduct. Further, as noted above, the quantum of the Scheme Consideration was "subject to the updated liquidation analysis", which meant that the Company was still reserving the right to alter that figure. In that regard, the figure of US$30m was based on Mr Gupta's *estimate* of requiring US$80m of the Loan for the Mine's operations and other liabilities,[42] which underscored how tentative that figure was.

38 The above evidence raised serious concerns about the Company's ability and intention to secure funding for the Scheme.

The Company's lack of candour

39 Further, the Company owed a duty to make full and frank disclosure in its moratorium application: *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786 at [21]. Its lack of candour cast serious doubts on its *bona fides* and exacerbated the concerns stated above.

40 First, OSM's financial woes leading up to it being placed in special administration must have been known to the Company when Mr Gupta filed Gupta 1 on 24 January 2025 identifying OSM as a potential funder of the

[42] Gupta 6 OA 49 at para 14.

Scheme Consideration, and at least when the parties appeared before me at the hearing on 10 February 2025. While the Company might have been taken by surprise by the Australian Government placing OSM under administration, the reasons for this must have been known to Mr Gupta. Mr Gupta admitted that the Whyalla steelworks (owned by OSM) were facing financial and operational difficulties at the time.[43] Further, according to the extract from Hansard where the South Australian Minister explained the Whyalla Bill, it was disclosed that "the Crown was owed millions of dollars in mining royalties and water debts by [OSM]"[44]. Yet, OSM's financial difficulties were not disclosed by the Company, which gave the contrary impression that OSM's finances were healthy enough for it to fund the Scheme Consideration.

41 In fact, the Company had asserted that there was no basis for ArcelorMittal's concerns that the GFG's "Australian operations [were] also saddled with debt"[45] and even claimed that OSM was "expected to be able to provide the necessary cash in order to facilitate the rehabilitation of the [Group]"[46] and that the GFG's "Australian business [was] significant and [was] capable of providing the Scheme Consideration".[47] As it turned out, ArcelorMittal's concerns were well-placed – in particular, that the Whyalla steelworks and mining operations were debt-ridden which led to OSM being placed in special administration.

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43 Gupta 5 OA 49 at para 23.

44 Gupta 5 OA 49 p 80.

45 ArcelorMittal's Written Submissions filed in HC/OA 49/2025 on 17 March at para 33(d).

46 Gupta 1 OA 49 at para 88(d).

47 Sanjeev Gupta's 2nd affidavit filed in HC/OA 49/2025 on 6 February 2025 at para 17.

42 Second, the matters relating to the difficulties with the operations of the Mine and its closure (see above at [28(c)]) were not disclosed in Gupta 3 and Gupta 4, but brought to my attention by ArcelorMittal. Mr Gupta attempted to justify his failure to disclose these matters, but this only underscored the Company's lack of candour. He claimed that (a) "the Company's evidence had been focussed on demonstrating the value of the Tahmoor coal mine and its potential to be monetised"[48]; (b) "it was considered that providing detail regarding temporary disruptions at the Tahmoor coal mine would not be relevant to a broad-brush assessment of the Company's Scheme Proposal"[49]; and (c) "[t]he temporary disruption at the Tahmoor coal mine had been reported in the press as well, and there could not have been any basis on which the GFG or the Company could have suppressed this information"[50]. I found this explanation weak and contrived. Over and above the fact that the Company had been directed to disclose "the evidence of the source of the [US$42.5m], or such other sum, proposed to be paid out under the Scheme, and the *current financial position* of that paying party"[51] [emphasis added], Mr Gupta himself claimed that both the plan to upstream funds from Tahmoor and the plan to sell the Tahmoor shares rested on the operations at the Mine being restored fully. It therefore followed that these disruptions ought to have been disclosed.

43 Third, as explained above, there was no transparency as to how the Scheme Consideration of US$42.5m was arrived at, and why it was, within a short time, substantially reduced to US$30m, which reduction was not

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48 Gupta 5 OA 49 at para 27.

49 Gupta 5 OA 49 at para 27.

50 Gupta 5 OA 49 at para 28.

51 Minute Sheet on 10 February 2025 in HC/OA 49/2025 at p 3.

highlighted in Mr Gupta's affidavits much less explained. Such explanation was particularly important as Mr Gupta was effectively both the debtor and rescuer and would personally benefit from the discharge of the Company's debts.

44 Fourth, the Company failed to highlight in its affidavits that the quantum of the Scheme Consideration was subject to an updated liquidation analysis and, therefore, further downward revision.

45 Fifth, while claiming that it would fund the Scheme Consideration from the second tranche of the Loan, the Company failed to disclose the condition precedents for the disbursement of the second tranche and failed to discuss with the Lender whether it would give consent for such use.

46 Sixth, the Company failed to be transparent about LPMA's financial position and its ability to fund the Scheme Consideration.

Conclusion

47 I therefore found that the Company had failed to demonstrate a reasonable prospect of securing the Scheme Consideration. Further, its lack of candour compelled me to give little or no weight to its vague assertions of being able to raise monies to fund the Scheme.

48 ArcelorMittal's debt had been outstanding for more than two years and OA 49 was, on the Company's own evidence, filed in response to the application in OA 1041 for the appointment of the JMs. While that was not by itself objectionable: see *Re Dasin Retail Trust Management Pte Ltd* [2025] SGHC 6 at [56], it was notable that the Company took no steps to address its financial situation after the Execution Shares were seized but only when OA 1041 was filed. The suggestion was that it was only or mainly concerned about the loss of

management control of the Company – this called into question its willingness to repay its creditors.

49 In any event, the Company was expected to present a viable proposal to address its debts, and to make full disclosure of material facts which may affect its proposal. The Company had failed to do both.

50 When the Company filed OA 49 on 17 January 2025, it sought a moratorium of four months, which it had since obtained by reason of the adjournments granted. At the hearing on 21 April 2025, it sought a further two months of reprieve. But it was not any closer to proposing a viable scheme despite being given ample time and opportunities to do so.

51 I also noted that the Company had not produce strong support from creditors for the extended moratorium. It had previously produced a letter dated 6 February 2025 from the solicitors for the administrators of Greensill Capital offering support for a three-month moratorium, which expired on 17 April 2025. At the hearing, the Company again relied on the same support – but counsel for the administrators of Greensill Capital explained that while they "in principle" supported the additional two months, that support was qualified as the administrators had not obtained instructions from their creditors' committee.

52 I therefore dismissed OA 49 with costs.

OA 1041

Applicable law

53 Pursuant to s 91(1) of the IRDA, the court has the discretion to make an order for judicial management if it is satisfied that (a) the company is or is likely

to become unable to pay its debts; and (b) the making of the order would be likely to achieve one or more of the purposes mentioned in s 89(1) of the IRDA:

> **89**.—(1) The judicial manager of a company must perform the judicial manager's functions to achieve one or more of the following purposes of judicial management:
>
> (a) the survival of the company, or the whole or part of its undertaking, as a going concern;
>
> (b) the approval under section 210 of the Companies Act 1967 or section 71 of a compromise or an arrangement between the company and any such persons as are mentioned in the applicable section; [or]
>
> (c) a more advantageous realisation of the company's assets or property than on a winding-up.

Key issue

54 It was not in dispute that the Company was unable to pay its debts. The sole issue was therefore whether judicial management would likely achieve one or more of the purposes stated above (at [53]).

55 Given that I had dismissed the Company's application in OA 49, this assessment essentially involved a comparison between the prospects of judicial management and the only other alternative, which was liquidation. That judicial management is likely to produce an outcome no worse than liquidation and that there are reasonably possible circumstances in which judicial management can, in fact, produce a better outcome is a significant factor weighing in favour of making an order for judicial management: *Auto Management Services v Oracle Fleet* [2008] BCC 761 at [3]. Counsel for the Company, while objecting to the application, could not point to any evidence or other matters which suggested that liquidation offered a better outcome than judicial management, and said that he was not offering arguments on this issue.

Judicial management was likely to produce an outcome better than liquidation

56 As a starting point, placing the Company under judicial management would at least ensure that it remained a going concern. This was relevant given that other entities in the Group ("Group Entities") – in particular, Liberty Liege Dudelange (BE) S.A.,[52] Liberty Steel East Europe (Holdco) Limited[53] and Liberty Steel East Europe (Midco) Limited[54] – were also undergoing administration and the GFG continued to be in talks with its creditors.

57 More importantly, as things stood, the Execution Shares would be disposed by the Sheriff by way of a public auction: O 22 r 7(4) of the Rules of Court 2021, which, given the complexity of the Group and its financial difficulties, might not be the most effective way to realise value for the Company's creditors. In contrast, the JMs – who would be conferred extensive powers – would be able to obtain all necessary information to understand the business of the Group, ascertain the fair value of the Execution Shares and determine the best way to realise the same. The JMs would also not be duty-bound to sell the Execution Shares, but to retain them and determine the best way to obtain value for the creditors.

58 In addition, the JMs would be able to obtain information on the current restructuring efforts in respect of the Group and the GFG and how that may affect the value of the Company and the creditors' interests. In particular, the creditors would be interested in the progress of the Delta/Vienna Restructuring,

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52 Gupta 1 OA 49 at para 24.

53 Gupta 1 OA 49 at para 117.

54 Gupta 1 OA 49 at para 63(b).

in respect of which there had been little or no transparency from the Company. The Delta/Vienna Restructuring would be relevant insofar as it affected Company's obligations as guarantor for debts owed by Group Entities to Greensill and Credit Suisse AG – which were, as a result of these guarantees, creditors of the Company – and whether the Group Entities could be rehabilitated to the point where distributions might flow upwards to the benefit of the Company and its creditors.[55]

59 The Company argued that placing the Company under judicial management would have a "destabilising effect on the wider Group", because:

(a) customers and counterparties would have a massive loss of confidence in the Group Entities, such that existing contracts might be terminated and potential contracts might be lost;[56]

(b) the loss of control over the Group Entities would compromise their value since their success had been reliant on the existing management's understanding of the commercial landscape and ability to leverage on established relationships with major players in the mining, metals and engineering industries;[57]

(c) the GFG would cease funding to the Group;[58] and

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55 Liberty House Group Pte Ltd's Written Submissions filed in HC/OA 1041/2024 on 17 March 2025 ("CWS OA 1041") at para 32.

56 Gupta 1 OA 49 at para 119(a).

57 Gupta 1 OA 49 at para 20.

58 Gupta 1 OA 49 at para 119(c).

(d) there would be uncertainty around the Group's ability to deliver broader ongoing restructurings such as the Delta/Vienna Restructuring,[59] which would in turn spur creditors involved these restructuring efforts to take steps to enforce their debts or wind-up relevant obligors, resulting in the liquidation of various Group Entities and the value-destructive disintegration of the Group.[60]

60 I was not persuaded that these were sufficient reasons to decline making a judicial management order:

(a) First and foremost, this submission was made in the context of comparing a judicial management order with the Scheme. As stated above (at [55]), the real comparison should be with the liquidation of the Company, which, as matters stand, was the only alternative. The severe consequences which the Company insisted would visit upon the Group would, on its own case, be equally if not more damaging should the Company be wound up.

(b) No evidence or detail was given of "existing contracts [which might] be terminated, and potential contracts [which might] be lost".[61]

(c) As stated above (at [56]), various Group Entities, including operating ones, had already been placed in administration. Further, the entry of OSM into special administration had apparently also

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59 Gupta 1 OA 49 at para 119(d).

60 CWS OA 1041 at para 29.

61 Sanjeev Gupta's 1st affidavit filed in HC/OA 1041/2024 on 18 December 2024 at para 73.

undermined the Delta/Vienna Restructuring efforts.[62] Yet, the consequences the Company foretold (at [59]) had not materialised.

(d) The consequences alleged by the Company therefore appeared to be overstated, and were, in any event, not substantiated. The Company was only a holding company of the Group Entities. The appointed JMs would not assume control of the Group Entities. Further, it would also be possible for the Company's existing management to co-operate and work together with the JMs, which would be less destabilising to the Group as compared to liquidation.

(e) It was the GFG's prerogative to suspend its funding to the Group Entities. But to carry out this threat appeared to be against its own interests, given its claimed efforts to rehabilitate the Group. In any event, unless the GFG offered a meaningful proposal to save the Company – which it had not – this threat was a hollow one as far as the Company was concerned.

61 The Company also argued that:

(a) ArcelorMittal had not provided any answer as to how the JMs would be able to obtain the necessary funding to deliver a restructuring of a debt as large as the Company's;[63] and

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62 Gupta 3 OA 49 at paras 9–11.

63 CWS OA 1041 at para 30.

(b) ArcelorMittal had ulterior motives for wanting to place the Company under judicial management – it was seeking to install judicial managers who would advance its own agenda.[64]

62 I was also unpersuaded by these arguments:

(a) Even with the JMs in place, it would remain open to the GFG (or any other "white knight") to make a proposal to the JMs for their assessment, and if reasonable, for the JMs to propose this to the creditors and initiate a scheme. In the circumstances, should Mr Gupta be able to raise funds and offer a plan acceptable to the Company's creditors, he would be able to take the Company out of judicial management.

(b) Having the JMs oversee the negotiations for a scheme would give greater confidence to the creditors, given that the JMs – as officers of the court – would act under the court's supervision and in the creditors' best interests: ss 89(2) and 89(4) of the IRDA; see also *Re Lim Oon Kuin and other matters* [2024] SGHC 328 at [13]. They would be expected to deal with the GFG (or any "white knight") at arms-length. This was in contrast with the Scheme contemplated in OA 49, where Mr Gupta was effectively determining how much he would pay for the release of all of the Company's debts for his own benefit, without any transparency as to the amount proposed.

63 The Company also alleged that ArcelorMittal sought to install JMs only because it wanted to "obtain information relating to whether the assets of the Company's directly or indirectly owned subsidiaries were, in fact, beneficially

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64 CWS OA 1041 at paras 45–52.

owned by the Company" for the purposes of acquiring the Company's assets and subsidiaries.[65] For the same reason above (at [62(b)]), the allegations that ArcelorMittal would use the JMs to advance its own agenda were misplaced. The JMs are officers of the court, are obliged to act in the best interests of all the Company's creditors and may be removed or replaced if found to have acted improperly: s 104(1)(a) of the IRDA; see also *Tay Lak Khoon v Tan Wei Chiong (as Judicial Manager of USP Group Ltd) and others* [2024] SGHC 312 at [38]–[40].

Conclusion

64 For these reasons, I allowed OA 1041, ordering the Company to be placed under judicial management and for the JMs to be appointed jointly and severally.

Hri Kumar Nair
Judge of the High Court

Chua Sui Tong, Wong Wan Chee and Ng Tse Jun Russell (Rev Law LLC) for the claimant in HC/OA 1041/2024 and the non-party in HC/OA 49/2025;
Vergis S Abraham SC, Lau Hui Ming Kenny, Alston Yeong and Huang Xinli Daniel (Providence Law Asia LLC) for the defendant in HC/OA 1041/2024 and the applicant in HC/OA 49/2025.

[65] CWS OA 1041 at paras 47–51.