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

**[2025] SGHC 99**

Originating Application No 1090 of 2024

Between

Aryan (SEA) Private Limited

… *Applicant*

And

Pure Group (Singapore) Pte. Ltd

… *Respondent*

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# JUDGMENT

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[Companies — Winding up — Disputed debt — Arbitration agreement — Applicable standard of review — Whether application to injunct winding up application raised a dispute that *prima facie* fell within the scope of an arbitration agreement or was an abuse of process]

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# Aryan (SEA) Pte Ltd
# v
# Pure Group (Singapore) Pte Ltd

**[2025] SGHC 99**

General Division of the High Court — Originating Application No 1090 of 2024
Philip Jeyaretnam J
20 February, 25 April, 9 May 2025

27 May 2025 Judgment reserved.

**Philip Jeyaretnam J:**

1 More haste, less speed. When the performing party to a contract does the paying party a favour by procuring something urgently out of the scope of the contract, and the paying party then does not pay for it despite having plenty of money to do so, it is tempting to issue a statutory demand for payment, thereby using the insolvency process to pressure the recalcitrant debtor to pay quickly. However, even if the debtor has no substantial defence, it may raise a cross-claim which is more than the claim against it. Where that cross-claim is *prima facie* subject to an arbitration clause, the court is not able to evaluate the merits of that cross-claim. Unless putting forward that cross-claim is an abuse of process (a very high bar indeed), then the statutory demand will not lead to payment and its service will only have delayed the performing party's recovery of its claim.

2 This matter illustrates the counter-productive nature of invoking the insolvency process by service of a statutory demand where there is an arbitration agreement. It concerns the application of Aryan (SEA) Private Limited ("Aryan") against Pure Group (Singapore) Pte Ltd ("Pure") to set aside a statutory demand ("SD") served on 22 July 2024 and to injunct Pure from filing a winding up application against Aryan. This application was filed on 17 October 2024. It is well-established that an injunction will lie to restrain the filing of an application for winding-up where there is a substantial cross-claim that equals or exceeds the debt: see *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 (*"Metalform*"). Following the decision in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 ("*AnAn v VTB*"), the standard of review for such a cross-claim which is subject to an arbitration agreement is the *prima facie* standard of review.

3 As I explain below, the presence of an arbitration agreement and an asserted cross-claim means that I grant the injunction sought and Pure may not file a winding up application in reliance on the SD. Parties should take appropriate steps to expedite the arbitration, which was belatedly filed under the Arbitration Act 2001 (2020 Rev Ed) ("Arbitration Act") on 2 April 2025. Such expedition would include agreeing on an arbitrator who would conclude the arbitration within a reasonable time. Indeed, parties could choose to waive the arbitration clause and have the matter dealt with under the court's express track set out in the Rules of Court 2021 O 46A.

**Facts**

4 The SD is for S$307,807.87 pursuant to three invoices issued by Pure to Aryan for services said to have been provided under an agreement entered into on 13 June 2023, by which Pure agreed to perform project management

services for Aryan in respect of the renovation of its ZARA boutique at the ION Orchard shopping mall (the "Agreement").[1] Invoice r3 was for $96,664.14, invoice 7 was for $127,099.67 and invoice 9 was for $84,044.06.[2] Aryan paid invoice 7 (avowedly by mistake) leaving S$180,708.20 unpaid.

5 Aryan does not admit liability on the invoices and asserts *bona fide* and substantial cross-claims alleging breach by Pure of its obligations under the Agreement.

6 Aryan contends that the Agreement contains an arbitration clause and accordingly so long as it can show that there is a genuine dispute that *prima facie* falls within the scope of a valid arbitration agreement, then Pure would not be entitled to rely on the SD for the purpose of an application to wind up Aryan. Aryan relies on the decision in *AnAn v VTB*. Aryan has also provided evidence that it is a going concern, solvent and has more than sufficient resources to meet the claim, having more than $2.37 million in its bank account as of 8 August 2024.[3]

7 Pure has three principal contentions in response:

(a) The court should decline to apply *AnAn v VTB* given the Privy Council decision in *Sian Participation Corpn (in liquidation) v Halimeda International Ltd* [2024] 3 WLR 937 ("*Sian*") which has been applied to England and Wales. Instead, the triable issues standard should apply.[4]

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1 Liu Yuting's 1st Affidavit filed 16 October 2024 at p 85.

2 Liu Yuting's 1st Affidavit filed 16 October 2024 at pp 87–89.

3 See Aryan's written submissions dated 13 February 2025 at paras 71 to 74.

4 Pure's written submissions dated 17 February 2025 at para 19.

(b) There is no valid arbitration agreement covering the dispute and hence the triable issues standard should apply.

(c) There are no triable issues, nor is there *prima facie* a dispute that falls within the scope of an arbitration agreement, because:

(i) The invoices largely related to manpower supply – an item of work not under the Agreement – urgently requested by Aryan to assist the contractor in its work, with a 10% handling fee.

(ii) The so-called cross-claims are for alleged delay by Pure in its provision of services, but no evidence or even particulars have been provided for this.

8 This matter was first heard by me on 20 February 2025. In the course of his submissions, counsel for Aryan sought an adjournment in order to provide greater detail as to why the invoices were disputed. The matter resumed hearing on 25 April 2025. In the interim, Aryan served a notice of arbitration under the Arbitration Act on 2 April 2025.

## Analysis

### *AnAn v VTB*

9 This court is bound by the decision of the Court of Appeal in *AnAn v VTB*, a position which is unaffected by the Privy Council decision in *Sian*.

10 In *AnAn*, there was in substance an agreement for VTB to extend a loan to AnAn backed by collateral, which AnAn had to maintain at a certain level to avoid triggering an event of default. The loan was made. AnAn allegedly failed to maintain the requisite level of collateral, entitling VTB to provide notice of

default and bring forward the repayment date. VTB did so, and served AnAn with a statutory demand for the sum of approximately US$170m. When AnAn failed to repay, VTB applied to wind up AnAn on the basis of the statutory demand. AnAn resisted the winding-up application, disputing the debt that was claimed by VTB. AnAn argued *inter alia* that the agreement was frustrated, and that the amount allegedly owing to VTB had been overstated. Whereas a debtor seeking to resist a winding-up application would ordinarily be required to raise triable issues relating to the disputed debt, AnAn argued that because the agreement contained an arbitration agreement, the applicable standard was to demonstrate a *prima facie* dispute which fell within the scope of that arbitration agreement.

11 The Court of Appeal, sitting in a five-member *coram*, agreed that the *prima facie* standard was applicable. Under this standard, winding-up proceedings will be stayed or dismissed as long as (a) there is a valid arbitration agreement between the parties; and (b) the dispute falls within the scope of the arbitration agreement, provided that the dispute is not being raised by the debtor in abuse of the court's process (at [56]). This standard of review applies equally to disputed debts and cross-claims (at [58]). The Court reasoned that: (a) this lower standard of review would promote coherence in the law concerning stay applications, so that parties to an arbitration agreement are not encouraged to present a winding-up application as a tactic to pressure an alleged debtor to make payment on a debt that is disputed or which may be extinguished by a legitimate cross-claim (at [60]); (b) the triable issue standard offends the principle of party autonomy in arbitration (at [75]); and (c) the *prima facie* standard would promote certainty in the law and costs savings (at [86]).

12 In arriving at its conclusion, the Court considered the position in other jurisdictions, including England, where the issue appeared to have been first

squarely considered. In *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2015] Ch 589 ("*Salford Estates*"), the English Court of Appeal had applied a standard similar to that eventually adopted in *AnAn v VTB*. The English Court of Appeal held that where a winding up petition is grounded on an unadmitted debt, and the creditor had agreed to refer any dispute relating to that debt to arbitration, the court should exercise its discretion consistently with the legislative policy embodied in the Arbitration Act 1996 (c 23) (UK) ("UK Arbitration Act"), and dismiss or stay the petition "save in wholly exceptional circumstances which [the court found] difficult to envisage" (at [39]–[41]).

13 In *Sian*, the Privy Council held that the correct test is whether the debt is disputed on genuine and substantial grounds, and that this test applies whether the debt on which the application is based is subject to an arbitration agreement or an exclusive jurisdiction clause (at [99]). The Board considered *Salford Estates* and its subsequent judicial and academic treatment, with a brief observation that the courts of Malaysia and Singapore had largely followed *Salford Estates* on the basis of similarly worded legislation (at [80]). The Board held that *Salford Estates* should be overruled, because a winding up petition "does not seek to, and does not, resolve or determine anything about the petitioner's claim to be owed money by the company" (at [88]). Thus, the presentation of a winding up petition is not something which the creditor has agreed not to do under a typical arbitration agreement (at [89]). For this reason, party autonomy and *pacta sunt servanda* are not offended, nor is the court interfering with the resolution of any dispute about the debt. To require the creditor to go through the arbitration where there is no genuine or substantial

dispute as a prelude to seeking liquidation would add delay, trouble and expense for no good purpose (at [92]).

14 While Pure may, if this matter goes further, properly invite the Court of Appeal to revisit the interaction between the public policy in support of arbitration and the public policy concerning recourse to the insolvency process, it is not correct for counsel for Pure to suggest that I could follow *Sian* in preference to *AnAn v VTB* and I decline to do so.

***Arbitration clause***

15 Clause 16.1(c) provides that "either party may refer such Dispute to arbitration in accordance with the procedure set out in Clause 17".[5] Dispute is defined as "any dispute, controversy, claim or disagreement arising out of or relating to this Agreement".

16 When one turns to Clause 17 however there is no procedure for reference to arbitration. Clause 17 instead contains three sub-clauses. Clause 17.1 contains a choice of Singapore law as the governing law. Clause 17.2 states that any "[d]ispute that is not resolved in accordance with the procedure set out in or agreed pursuant to Clause 16 shall be finally settled by the courts of Singapore". The numbering then jumps to Clause 17.8 which provides for Clause 17 to survive the expiry or termination of the Agreement and take effect as an independent arbitration agreement. The drafting is unclear and confusing.

17 When it comes to the interpretation of a dispute resolution clause however, once it is clear that the parties intended arbitration, the courts strive to give effect to that intention as far as possible. Minor inconsistencies between or

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5 Liu Yuting's 1st Affidavit filed 16 October 2024 at p 105.

within clauses would not nullify that intention or be read to as to make the clause unworkable or ineffective. As explained by Steven Chong JA in *BXH v BXI* [2020] 1 SLR 1043 at [60], "a generous and harmonious interpretation should be given to the purportedly conflicting clauses such as to give effect to the parties' true intention". Chong JA's exhortation followed a discussion of the English case of *Paul Smith Ltd v H&S International Holding Inc* [1991] 2 Lloyd's Rep 127 ("*Paul Smith*") where Steyn J (as he then was) adopted the principle of effective interpretation of arbitration agreements, by which the court upholds the clear intent to arbitrate disputes where this is expressed in a commercial contract.

18 Counsel for Aryan contended that the harmonious interpretation of Clauses 16 and 17 was that either party could elect to refer any dispute to arbitration but that if neither party wanted arbitration then the dispute would be resolved in the courts of Singapore.

19 I would note that an alternative interpretation would be along the lines of that adopted by Steyn J in *Paul Smith* where he read a clause similar to Clause 17.2 (albeit not framed as a multi-tiered dispute resolution clause) as referring not to jurisdiction to decide the substantive dispute but to the supervisory jurisdiction of the seat court.

20 However, it is not necessary for me to decide between these two interpretations as either suffices in establishing an arbitration agreement

between the parties concerning disputes arising out of or relating to the Agreement.

21 There is however a further question which is whether the supply of tools and manpower to assist the contractor comes within the arbitration agreement.

22 I gave the example during oral argument of a client who engages a project manager and then while the project is underway also requests the project manager to be the private chef for the client's opening function. After the hearing concluded, I invited submissions from counsel on this point which were received on 8 and 9 May 2025.

23 Pure submits that the supply of tools and manpower was a separate contract even though it concerned the same project. Such supply was not within the scope of services listed in the Agreement. Indeed, such supply was not part of its ordinary business.[6]

24 Aryan submits that the words "arising out of or relating to" used in the arbitration agreement should be given a generous interpretation.[7] Aryan relied on the discussion of the relevant case law in the Court of Appeal decision in *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2024] 3 SLR 332 at [110]–[111].

25 I agree that the words "relating to" are broad and expansive. Here, the supply of manpower and tools was for the project for which Pure was engaged under the Agreement as Project Manager. Even though on the face of it this supply of manpower and tools was of a wholly different nature from the services

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6 Pure's written submissions dated 9 May 2025.

7 Aryan's written submissions dated 8 May 2025 at para 8.

and anticipated further services that the Agreement covered, and therefore could be said to arise under a separate contract, the fact that the supply was for the same project *and* was part of progressing the project toward completion would mean that the dispute concerning payment for that supply relates to the Agreement and falls within the arbitration agreement.

### *Applicable standard of review*

26 Where there is no arbitration agreement, "the applicable standard for determining the existence of a substantial and *bona fide* dispute … [is] no more than that for resisting a summary judgment application, *ie*, the debtor-company need only raise triable issues in order to obtain a stay or dismissal of the winding-up application": *per* the Court of Appeal in *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 at [23].

27 However, the presence of the arbitration agreement means that the approach established in *AnAn v VTB* applies. Aryan has not admitted the debt and it remains *prima facie* disputed. I am not to evaluate the merits of the claim (or of the cross-claim). The only question would be whether Aryan has acted in abuse of process.

28 The Court of Appeal in *AnAn v VTB* emphasised at [99] that abuse of process is not "a backdoor to argue on the merits of the dispute".

### *Is Aryan's application for an injunction to restrain reliance on the unpaid SD an abuse of process?*

29 Unfortunately for Pure, the only foundation it has to assert abuse of process is that Aryan's defence to its claim and its cross-claim are obviously without merit. Pure certainly has grounds for grievance, given that the correspondence supports their view that Aryan sought help from Pure for

something out of scope and of a different kind from the contractual scope to help Aryan solve its own problem with delay. The fact that this new and different item of work was undertaken by Pure only after requiring and receiving a 50% downpayment supports its case that there was no question of the delay until then being Pure's fault. Moreover, the price for the supply of manpower and tools was agreed to be at cost with only a 10% handling fee. Pure had to expend money to obtain the supply of manpower and tools and essentially sought only to pass that expenditure along to Aryan which was receiving immediate benefit from that supply. It is not hard to infer that Pure would not have done this favour for Aryan if it had known that years later it would still be waiting for payment. Moreover, no serious attempt was made to explain how Pure is responsible for the delay in the project, and indeed Aryan's counsel confirmed at the oral hearing that it is making a claim for the same delay against the contractor. All in all, Aryan's refusal to pay has left Pure out-of-pocket in a way that may not comport with commercial standards of fair dealing.

30 However, in my judgment this falls short of an abuse of process. Refusing to pay an obvious debt and putting the creditor to the trouble and expense of commencing and pursuing arbitration is not in itself an abuse of process especially if there is a cross-claim. While the circumstances concerning Pure's helping Aryan at its request suggest that everyone anticipated prompt payment, this is not quite the same as a full admission of the debt which is one of the examples given in *AnAn v VTB* of a potential abuse of process: at [99(a)]. That Aryan is also claiming against the contractor does not of itself make pursuing a claim against Pure for the same delay an abuse of process. Under the approach outlined in *AnAn v VTB*, it is not for the court to wind up a company on the basis that its defences or cross-claims are unmeritorious, and in effect take the place of the arbitral tribunal against the parties' agreement, *presuming* that the tribunal would have arrived at the same result (*AnAn v VTB* at [77]–

[78]). It is worth recalling that Aryan is in fact perfectly able to pay the debts and might even be described as flush with cash: see [6] above. As stated on the Agreement, it is a member of the Al-Futtaim Group. This ready ability to pay makes its refusal to pay inexcusable if its defence and cross-claim are indeed without merit but also demonstrates that the insolvency process is not needed in this case. Interest will run on the debt. There are no third parties who could be harmed by an insolvent company continuing to trade while the arbitration is pursued. Indeed, unlike in *AnAn v VTB*, the alleged debtor is solvent even if the disputed debt is brought into account. Thus, this case does not come within the situation described in [111]–[112] of *AnAn v VTB* where there are legitimate concerns in relation to the alleged debtor's solvency. For avoidance of doubt, I am only stating what appears to be obvious on the face of the materials and am not making any finding. The merits are for the arbitration.

**The appropriate form of relief**

31 I turn to the appropriate form of relief to be granted.

32 As mentioned above at [2], Aryan prays that the SD issued by Aryan be set aside, and that Aryan be restrained from presenting a winding up petition based on the SD.

33 Counsel for Pure submits that there is no provision in Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) or regulations made thereunder for a company (as opposed to an individual) to set aside a statutory demand served on it, and accordingly only the prayer for an injunction was properly sought. I agree. I would endorse the proposition set out in Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation* (Law Practice Series) (Academy Publishing, 2023) at para 10.074 which puts it succinctly as follows:

> There is no express provision to enable a company to apply to set aside a statutory demand that has been served. This is unlike the situation in personal bankruptcy. The appropriate course of action, where the company's indebtedness is in dispute, is for the company to apply for an injunction restraining the creditor from presenting a winding-up application pending resolution of the substantive dispute.

34 The jurisdiction of the court to grant an injunction restraining a creditor from presenting a winding-up application is well-established. Prior to *AnAn v VTB*, the court would do so where the debtor disputes the debt on *bona fide* and substantial grounds, or where the debtor has a serious cross-claim based on substantial grounds equal to or exceeding an undisputed debt (*Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 (*"Metalform*") at [62] and [82]). This is because in such cases, firstly, the *locus standi* of the petitioner as a creditor is put in doubt and it is an abuse of process for the petitioner to seek to enforce the debt via the insolvency process (*Metalform* at [59] and [62]), and secondly, the commercial viability of a company should not be put in (potentially irreparable) jeopardy by the premature presentation of a winding-up petition (*Metalform* at [59] and [82]). Likewise, it is an abuse of process for a creditor file a winding-up petition to enforce a debt against a company that is not insolvent or unable to pay its debts, such as when the company offers to secure the creditor's claim before it has been adjudicated, and the court will grant an injunction to restrain the creditor from doing so (*BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 at [7] and [21]).

35 Since the Court of Appeal's decision in *AnAn v VTB*, the triable issues standard has been replaced by the *prima facie* standard in cases where the dispute underlying the debt is covered by an arbitration agreement (see [11] above). *AnAn v VTB* itself concerned a debtor resisting a winding-up application. The Court of Appeal held that where the *prima facie* threshold is crossed, the court should ordinarily dismiss the entire winding-up application,

and the Court did so in *AnAn v VTB* (at [103] and [113]). In rare situations, such as where the debtor-company is potentially insolvent and raises a *prima facie* but not a triable dispute, the court can grant a stay instead, with liberty given to the creditor to apply to court to proceed with the winding up (*AnAn v VTB* at [111]). The principles established in *AnAn v VTB* apply equally to a case where the alleged debtor-company is seeking to *restrain* a purported creditor from presenting a winding-up application (*Fastfreight Pte Ltd v Bulk Trident Shipping Ltd* [2022] SGHC 210 at [29]). It may be appropriate for the court to grant the injunction subject to certain conditions. Where there are similar legitimate concerns about the solvency of the debtor-company, the court may grant an injunction with liberty for parties to apply (for instance, to lift the injunction) (*BWG v BWF* [2020] 1 SLR 1296 at [131]). In the present case, there are no such concerns. Accordingly, I grant the injunction sought and order that the costs of this matter be costs in the cause of the arbitration. Rather than leaving the quantum to be assessed after the arbitration concludes and having regard to Appendix G, as well as the efficient use of court resources I fix the amount of costs at $22,000 all-in regardless of who turns out to be the paying party. As discussed during the oral hearing, the order is to be framed to be in place only until the making of the award in the arbitration.

Philip Jeyaretnam
Judge of the High Court

Sim Chong and Teh Chon Chung Gabriel (Sim Chong LLC) for the applicant;
Mohamed Nawaz Kamil and Rajagopal Muralitharan (August Law Corporation) for the respondent.

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