IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 24

Court of Appeal / Civil Appeal No 36 of 2025

Between

Singapore Commodities Group Co., Pte. Ltd.

… *Appellant*

And

Founder Group (Hong Kong) Limited (in liquidation)

… *Respondent*

In the matter of Companies Winding Up No 120 of 2022

In the matter of Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Singapore Commodities Group Co., Pte. Ltd.

Between

Founder Group (Hong Kong) Limited (in liquidation)

… *Claimant*

And

Version No 1: 08 May 2026 (14:33 hrs)

Singapore Commodities Group
Co., Pte. Ltd.

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Agreement]
[Insolvency Law — Winding up — Disputed debt]
[Insolvency Law — Winding up — Standing]

Version No 1: 08 May 2026 (14:33 hrs)

TABLE OF CONTENTS

BACKGROUND TO THE APPEAL **4**

DECISION BELOW **11**

THE PARTIES' CASES **13**

ISSUE TO BE DETERMINED **16**

APPLICABLE LEGAL FRAMEWORK **17**

THE LEGAL FRAMEWORK IN WINDING-UP APPLICATIONS GENERALLY 18

THE TREATMENT OF DISPUTED DEBTS IN WINDING-UP APPLICATIONS 19

Where the dispute is not subject to a valid arbitration agreement *20*

Where the dispute is subject to a valid arbitration agreement *26*

THE RESPONDENT FAILED TO ESTABLISH ITS STANDING AS A CREDITOR OF THE APPELLANT **36**

THE SCOPE OF THE ABUSE OF PROCESS INQUIRY 38

Abuse of process by resiling from an admission of the debt *39*

(1) First Stage: Whether there is a clear and unequivocal admission of liability and quantum 42

(2) Second stage: Whether there is a clear and convincing reason for resiling from the admission 47

THE APPELLANT DID NOT ACT IN ABUSE OF PROCESS 49

The appellant did not make any clear and unequivocal admission of the Alleged Debt *49*

The appellant had a clear and convincing reason for resiling from any admission of the Alleged Debt *56*

The appellant's conduct as a whole did not constitute an abuse of process *63*

Version No 1: 08 May 2026 (14:33 hrs)

Conclusion.....*65*

THE RESPONDENT WAS NOT A CONTINGENT CREDITOR OF THE APPELLANT.....66

CONCLUSION.....71

COSTS AND CONSEQUENTIAL ORDERS 71

THE RESPONDENT WAS ORDERED TO PAY COSTS ON AN INDEMNITY BASIS.....71

THE RETURN OF THE SUM TO THE APPELLANT.....77

Version No 1: 08 May 2026 (14:33 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Singapore Commodities Group Co, Pte Ltd
v
Founder Group (Hong Kong) Ltd (in liquidation)

[2026] SGCA 24

Court of Appeal — Civil Appeal No 36 of 2025
Steven Chong JCA, Ang Cheng Hock JCA and Kannan Ramesh JAD
13 February 2026

8 May 2026

Ang Cheng Hock JCA (delivering the grounds of decision of the court):

1 This was the second appeal to come before us involving these parties. The respondent applied for the appellant to be wound up on the basis of an unpaid debt arising from a sale and purchase contract for copper cathodes. The appellant, however, disputed the debt on the basis that the contract was a sham and that the respondent had not delivered any copper cathodes to it. The parties proceeded to arbitrate the dispute over the debt which resulted, perhaps unexpectedly, in a stalemate as the tribunal found that the debt had been neither disproven by the appellant nor proven by the respondent. This unusual result spawned two new areas of disputes that were the subject of a previous appeal and the one before us here.

2 The first appeal we heard last year concerned whether the respondent was entitled to payment out of a sum of money that had been paid by the appellant into court pending the resolution of the dispute in the arbitration and

the disposal of the winding-up application. We answered this in the negative as the respondent had not established the existence of the debt in the arbitration. We thus set aside the payment out order that had been made by a Judge of the General Division of the High Court ("Judge"), reinstated the respondent's winding-up application which had been withdrawn following the payment out order, and remitted the winding-up application to the Judge: see *Singapore Commodities Group Co, Pte Ltd v Founder Group (Hong Kong) Ltd* [2025] SGCA 35 ("*SG Commodities (No 1)*").

3 In *SG Commodities (No 1)*, we highlighted that the Judge would have to consider, in light of the result of the earlier arbitration, whether the winding-up application could be maintained based on the principles laid down in the decisions of this court in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 ("*AnAn*") and *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd Ltd* [2023] 2 SLR 554 ("*Founder Group (CA)*"). What these decisions broadly establish is that parties to an arbitration agreement cannot bypass their agreement to resolve disputes over the existence or otherwise of a debt through arbitration by presenting a winding-up application based on that alleged debt. Thus, while a court hearing a winding-up application will generally engage in a light-touch review of the merits of a dispute over the existence of the debt to the extent of inquiring if there is a triable issue over the debt, an arbitration agreement that governs any disputes over the debt would generally preclude *any* form of merits review of the dispute. Accordingly, if the debtor raises a dispute over the debt that is subject to arbitration, the general rule is that the winding-up application will be dismissed as the applicant will be precluded by the arbitration agreement from establishing the debt in the winding-up proceedings and hence its standing as a creditor to

Version No 1: 08 May 2026 (14:33 hrs)

apply for the winding-up of the debtor, although a stay of the application may exceptionally be ordered.

4 This appeal arose from the Judge's decision on remittal in which he ordered the appellant to be wound up. The Judge arrived at this conclusion despite finding, given the outcome of the earlier arbitration, that there remained a dispute over the existence of the debt that was subject to a valid arbitration agreement between the parties. While this would ordinarily have led to the dismissal of the winding-up application based on the general rule as described above, the Judge held that this case fell within the scope of a limited exception, recognised by this court in *AnAn*, that allowed the court to decide the dispute over the existence of the debt in the usual way if it was satisfied that the dispute had been raised by the debtor in abuse of process. The Judge found that the appellant's conduct constituted an abuse of process as it had resiled from certain past admissions of the debt. The appellant's main contention in this appeal was that the Judge had erred in finding that it had acted in abuse of process.

5 After hearing the parties, we allowed the appeal. As we briefly explained at the hearing, we were satisfied that the Judge had erred in his finding that the appellant had acted in abuse of process. The result was that the general rule in *AnAn* and *Founder Group (CA)* applied and the respondent was unable to establish its standing as a creditor to bring a winding-up application against the appellant, given the absence of a finding by the arbitral tribunal that the debt was indeed due to the respondent. We thus set aside the winding-up order made by the Judge and dismissed the winding-up application. We also made certain consequential orders on costs and ordered that the money paid into court by the appellant be returned to it.

Version No 1: 08 May 2026 (14:33 hrs)

6 We now provide our full grounds of decision, in which we take the opportunity to clarify: (a) the general approach to disputed debts in winding-up applications; (b) the ambit of the abuse of process exception in *AnAn*; and (c) the circumstances in which a defendant to a winding-up application will be found to have disputed the debt in abuse of the process of the court by resiling from a previous admission of the debt.

Background to the appeal

7 The appellant, Singapore Commodities Group Co, Pte Ltd, and the respondent, Founder Group (Hong Kong) Ltd, were previously part of a group of companies that were owned and controlled by Peking University Founder Group Company Ltd ("PUFG"). However, after reorganisation proceedings were commenced against PUFG in the Beijing First Intermediate People's Court, the appellant fell under the ownership and control of a consortium of strategic investors, while the respondent remained under the ultimate ownership of PUFG.

8 The dispute between the parties concerned an alleged debt due from the appellant to the respondent under a contract entered into in December 2015 for the sale of copper cathodes from the respondent to the appellant ("Purchase Contract"). The Purchase Contract contained a multi-tiered dispute resolution clause which provided that the parties were to attempt to resolve all disputes in connection with the Purchase Contract or the performance of the Purchase Contract through friendly discussion, failing which the controversy or claim should be submitted to arbitration under the auspices of the China International Economic and Trade Arbitration Commission ("CIETAC"). The clause further provided that the governing law of the Purchase Contract was that of the People's Republic of China ("PRC").

Version No 1: 08 May 2026 (14:33 hrs)

9 The respondent was wound up on 19 July 2021 by a Hong Kong court and placed under the control of liquidators. According to the respondent, its liquidators discovered upon review of the respondent's books that there was an outstanding debt of US$14,117,585.50 owing to the respondent from the appellant ("Alleged Debt"). The Alleged Debt was said to be originally evidenced in three audit confirmation letters from the appellant's auditors to the respondent ("Audit Confirmation Letters"). Although the Audit Confirmation Letters were dated from 2018 to 2022, it appeared that the first Audit Confirmation Letter was erroneously dated as 2018, given that it concerned the appellant's financial period ended 31 December 2018 and must logically have been issued in 2019. This discrepancy is, however, immaterial for the purposes of the present appeal.

10 On 18 February 2022, the respondent proceeded to issue a statutory demand to the appellant for the amount of the Alleged Debt pursuant to s 125(2)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") to be paid within 21 days. The respondent later agreed to grant the appellant an extension of time until 21 March 2022 to respond to the statutory demand.

11 Instead of paying the Alleged Debt, the appellant commenced a CIETAC arbitration against the respondent ("Arbitration") on 12 April 2022. In the Arbitration, the appellant sought a negative declaration that it did not owe the Alleged Debt to the respondent. The appellant argued that the Alleged Debt did not exist as:

(a) the Purchase Contract was "null and void" under Art 146 of the Civil Code of the PRC because the Purchase Contract was solely for

Version No 1: 08 May 2026 (14:33 hrs)

accounting and bookkeeping purposes since the parties did not have an intention to buy or sell copper cathodes at the time the Purchase Contract was signed; and

(b) the respondent had never delivered any copper cathodes to the appellant under the Purchase Contract.

12 The respondent objected to the jurisdiction of the arbitral tribunal ("Tribunal") on the basis that, on the appellant's own case that the Purchase Contract was null and void, the arbitration clause contained within the Purchase Contract had to be invalid. Critically, however, the respondent did not mount a counterclaim for the Alleged Debt in the Arbitration, although it did lead some evidence to prove the existence of the Purchase Contract and the Alleged Debt.

13 Despite the commencement of the Arbitration by the appellant, the respondent filed a winding-up application against the appellant on 27 May 2022 in HC/CWU 120/2022 ("CWU 120"). The respondent relied on two grounds to seek a winding up of the appellant in CWU 120: (a) first, that the appellant was unable to pay its debts within the meaning of s 125(1)(*e*) of the IRDA ("Insolvency Ground"); and (b) second, that it was just and equitable for the appellant to be wound up within the meaning of s 125(1)(*i*) of the IRDA ("Just and Equitable Ground").

14 What transpired next has been detailed in *SG Commodities (No 1)*. In brief, the material facts are as follows.

15 The appellant contested CWU 120. It relied on, among other things, the existence of a dispute over the Alleged Debt that fell within the scope of the CIETAC arbitration clause. The respondent took the position that the appellant

Version No 1: 08 May 2026 (14:33 hrs)

had admitted the Alleged Debt in terms of both liability and quantum by way of the Audit Confirmation Letters and the appellant's books which recorded the Alleged Debt from Financial Years ("FY") 2016 to 2021. The respondent thus argued that the appellant was acting in abuse of process in trying to get a stay or dismissal of CWU 120 based on the CIETAC arbitration clause.

16 The appellant subsequently applied to pay a sum equivalent to the Alleged Debt ("Sum") into court, pending the determination of CWU 120 and the ongoing Arbitration. The respondent agreed to the payment in of the Sum and for CWU 120 to be stayed pending the outcome of the Arbitration. It is noteworthy that, at this juncture, the respondent did not press the point that the appellant was acting in abuse of process and that the court should proceed with CWU 120 and order that the appellant be wound up.

17 The Judge then granted the appellant leave to provide "security for [the respondent's] claim" by payment of the Sum into court pending the determination of CWU 120 and the Arbitration ("Payment In Order"). As a consequence, CWU 120 was stayed until further order. The terms of the Payment In Order were as follows:

> … **IT IS ORDERED THAT:**
>
> 1. Pursuant to Section 130(1) of the [IRDA], the [appellant] be and is hereby granted leave to provide security for the [respondent's] claim of US$14,117,585.50, by way of payment of an equivalent sum of monies into Court [(*ie*, the Sum)], pending the determination of [CWU 120] and the ongoing arbitration proceedings at the [CIETAC] [(*ie*, the Arbitration)] arising from or related to such claim.
>
> …

18 Sometime later, the Tribunal issued its award following the Arbitration ("Award"). The Tribunal rejected the respondent's jurisdictional objections,

Version No 1: 08 May 2026 (14:33 hrs)

holding that the Purchase Contract was a valid contract that could be used as the basis for the Tribunal's determination of the rights and obligations of both parties, and that the respondent in fact believed this to be the case. In any event, the doctrine of separability applied pursuant to Art 19 of the Arbitration Law of the PRC, enabling the appellant to invoke the arbitration agreement regardless of the validity of the Purchase Contract.

19 Turning to the substantive merits of the case, the Tribunal declined to grant the negative declaration sought by the appellant. The Tribunal found that the appellant had failed to provide sufficient evidence to prove that the Purchase Contract had been entered into for accounting and bookkeeping purposes without a genuine intention to perform the Purchase Contract. However, the Tribunal also expressed reservations as to whether the respondent had fulfilled its delivery obligations under the Purchase Contract based on the evidence that had been put before it. In particular, the Tribunal noted that the respondent had not submitted any relevant evidence of its delivery of copper cathodes to the appellant under the Purchase Contract, such as the bill of lading and waybill related to the delivery of the goods. The respondent had also not provided any evidence of the terms of delivery including the delivery location, the country of origin of the goods and the quality of goods. Moreover, although the respondent had relied on the Audit Confirmation Letters as establishing that it was "highly probable that there [was] a real creditor-debt[or] relationship" between the parties, the Tribunal was unpersuaded as it found that the Audit Confirmation Letters "[could not] be used as direct evidence to determine the relationship between [*sic*] creditor's rights and debts" and were insufficient to prove the positive existence of the Alleged Debt. This was because, under PRC law, an audit confirmation letter was based solely on the corporate accounting records and could include confirmation data that was not reflective of the actual state of

Version No 1: 08 May 2026 (14:33 hrs)

affairs. It therefore could not be equated to an account confirmation letter issued by the company itself. Accordingly, despite rejecting the appellant's claim for a declaration that the Alleged Debt did not exist, the Tribunal expressly caveated its decision by stating that it had not made any finding or ruling as to whether the Alleged Debt did or did not exist. In this regard, the Tribunal noted that the respondent had not mounted a counterclaim in the Arbitration for the Alleged Debt. Presumably, the Tribunal adverted to this omission as the reason it refrained from definitively deciding if the Alleged Debt did or did not exist.

20 After the issuance of the Award, the respondent applied to court for the stay of CWU 120 to be lifted. The Judge lifted the stay by consent of the parties.

21 The respondent then applied for the Sum to be paid out to it or, alternatively, for an order that the appellant be wound up in CWU 120 if the Sum was not paid out to it. The appellant contested this application and asked that CWU 120 be dismissed, and the Sum be returned given that the Arbitration had not established the existence of the Alleged Debt. What is notable is that, for the purposes of its payment out application, the respondent took the position that the appellant was ostensibly cash flow solvent based on its latest financial statements. This was in response to the Judge's concern that ordering payment of the Sum to the respondent would be prejudicial to the appellant's unsecured creditors, if the appellant was indeed insolvent. However, at the same time, the respondent maintained that the appellant was unable to pay its debts and should be wound up on the Insolvency Ground if payment out of the Sum was not ordered.

22 Eventually, the Judge ordered that the Sum be paid out to the respondent and granted it leave to discontinue CWU 120. In so doing, the Judge noted,

Version No 1: 08 May 2026 (14:33 hrs)

among other things, that both parties agreed that the appellant was solvent and able to pay its debts as they fell due, and that the interests of its other creditors would not *prima facie* be engaged if the Sum was paid out to the respondent: see *Founder Group (Hong Kong) Ltd v Singapore Commodities Group Co, Pte Ltd* [2024] SGHC 280 ("*SG Commodities (No 1) (HC)*") at [158]–[159].

23 The appellant appealed against the order for payment out and this led to the parties' first appearance before us in CA/CA 47/2024. We issued our judgment for that appeal in *SG Commodities (No 1)*. We allowed the appeal, holding that the Payment In Order could only be read to mean that the respondent would be *prima facie* entitled to payment out of the Sum to it if it had established in the Arbitration that it was legally owed the Alleged Debt. Since the respondent had failed to establish that it was a creditor of the appellant in the Arbitration, the condition for payment out was not fulfilled, and there was thus *prima facie* no basis for the Sum to be paid out to the respondent: *SG Commodities (No 1)* at [73]–[74]. We also found that the appellant had not abandoned its primary position before the Judge that the Sum should not be paid out to the respondent: *SG Commodities (No 1)* at [79]–[88].

24 As mentioned above, we set aside the payment out order and reinstated CWU 120, given our decision that the respondent was not entitled to have the Sum paid out to it. CWU 120 was remitted to the Judge for his decision. We indicated that the Judge should do so in accordance with the principles in *AnAn* and *Founder Group (CA)*. Thus, if the Judge were to conclude that the arbitration agreement in the Purchase Contract was valid and the dispute over the Alleged Debt fell within the scope of the arbitration agreement, CWU 120 should be dismissed unless the appellant had abused the process of the court. In this regard, we also observed that the Award had not resolved the dispute over

Version No 1: 08 May 2026 (14:33 hrs)

the existence of the Alleged Debt and that the Tribunal had rejected the respondent's challenge to the validity of the arbitration agreement: see *SG Commodities (No 1)* at [92]–[93].

Decision below

25 In the remitted CWU 120 proceedings, the parties disagreed on two main points, namely, whether the respondent had the requisite standing to pursue CWU 120 and, if so, whether there were sufficient grounds for the appellant to be wound up.

26 Both parties accepted that the requirements in *AnAn* applied to the question of the respondent's standing to pursue CWU 120 and that there was a *prima facie* dispute concerning the Alleged Debt that was referable to arbitration. Although this would usually mean that the respondent had no standing as a creditor of the appellant to pursue CWU 120, the respondent submitted that the appellant had acted in abuse of process by disputing the Alleged Debt in the face of its earlier admissions of the Alleged Debt in the Audit Confirmation Letters, its audited financial statements from FY2016 to FY2021 and a confirmation of balance request purportedly signed by the appellant and affixed with the appellant's seal ("Confirmation Request"). Accordingly, the respondent invited the court to "exercise its discretion and decide for itself whether the [respondent was] a creditor of the company within the meaning of s 124(1) of the IRDA". In this regard, the respondent submitted that it had standing either as an actual creditor or contingent creditor of the appellant.

27 The appellant disagreed that it had acted abusively by disputing the Alleged Debt. The appellant emphasised that the Tribunal had deliberately

Version No 1: 08 May 2026 (14:33 hrs)

stopped short of finding that the Alleged Debt existed (see [19] above). Moreover, the appellant had also demonstrated that it was disputing the Alleged Debt in good faith by, among other things, voluntarily applying to pay the Sum into court and taking active steps to pursue a determination of the Alleged Debt in the Arbitration. As there was a dispute over the Alleged Debt that fell within the scope of the arbitration agreement and the appellant had not raised the dispute in abuse of process, the respondent did not have standing to pursue CWU 120 and it should therefore be dismissed.

28 As for the grounds for winding up, the respondent argued that the appellant should be wound up on either the Insolvency Ground or Just and Equitable Ground. On the former, the appellant was presumed insolvent due to its failure to satisfy the respondent's statutory demand within the three-week period under s 125(2)(*a*) of the IRDA; and, in any event, the appellant was cash flow insolvent due to material uncertainties and discrepancies regarding the company's ability to pay its debts as and when they fell due, its trading operations and cash flow projections, and the veracity of its financial and accounting records. The respondent also argued that it was just and equitable for the appellant to be wound up due to a clear lack of probity in the conduct of the appellant's present management. The appellant disagreed that the Insolvency Ground or Just and Equitable Ground had been made out.

29 The Judge held that the respondent had standing as a creditor. Applying the approach set out in *AnAn*, the Judge found that there was a valid arbitration agreement between the parties and assumed that the dispute over the Alleged Debt fell within the scope of the parties' arbitration agreement. However, the Judge accepted the respondent's submission that the appellant was acting in abuse of process by resiling from its prior admissions of the Alleged Debt in the

Version No 1: 08 May 2026 (14:33 hrs)

Audit Confirmation Letters. Although it is not entirely clear, the Judge appeared to have considered that there was no *bona fide* and substantial dispute over the Alleged Debt as he went on to consider if there were grounds for winding up the appellant. In this regard, the Judge held that the Insolvency Ground was established in light of the appellant's failure to satisfy the statutory demand issued by the respondent for the Alleged Debt and its cash flow insolvency based on the evidence before the court. However, the Judge rejected the respondent's case on the Just and Equitable Ground.

30 The appellant applied to the Judge for a stay of execution of the winding-up order pending its intended appeal. The Judge granted a partial stay that allowed the winding-up order to take effect subject to several qualifications on the powers of the appellant's liquidators with a view to generally preserving the appellant's rights and liabilities. The appellant subsequently filed its notice of appeal against the winding-up order, and an application to this court for a complete stay of execution of the winding-up order pending the appeal. We granted this application, but on the condition that the appeal be expedited.

The parties' cases

31 On appeal, the appellant's primary submission was that the Judge erred in finding that the respondent had standing to maintain CWU 120. The dispute over the Alleged Debt fell within the scope of the arbitration agreement between the parties and had in fact been referred to arbitration, but the Arbitration had not conclusively resolved the dispute as to whether the debt existed. Applying the principles in *AnAn* and *Founder Group (CA)*, this meant that the respondent had no standing as a creditor to present a winding-up application against the appellant based on the Alleged Debt. The Judge should have dismissed CWU 120 on this basis.

Version No 1: 08 May 2026 (14:33 hrs)

32 To the extent that the Judge relied on the abuse of process exception in *AnAn* to decide the dispute over the Alleged Debt, the appellant submitted that the Judge was wrong to find that it had acted in abuse of process by resiling from its earlier admissions of the Alleged Debt in the Audit Confirmation Letters. Given that the Tribunal had already determined that the Audit Confirmation Letters did not amount to confirmations of debt under PRC law, it was not open to the Judge to revisit the issue and find, on the contrary, that the Audit Confirmation Letters did amount to admissions of the Alleged Debt from which the appellant had improperly resiled. In the circumstances, there was no basis to find that the appellant had acted in abuse of process, and the Judge should have dismissed CWU 120.

33 In any event, the appellant argued that the Insolvency Ground was not made out. The presumption of insolvency arising from the appellant's failure to satisfy the statutory demand would have been rebutted by the payment of the Sum into court by the appellant. In any event, it was also clear on the face of the appellant's financial statements that it was solvent and able to pay its debts as they fell due. The appellant also made several further arguments that the respondent was precluded from relying on the Insolvency Ground because it had: (a) agreed that CWU 120 should be stayed for the dispute to be referred to arbitration and thereby waived its right to rely on the deemed insolvency of the appellant based on the statutory demand; and (b) later taken the position that the appellant was solvent in support of its application for payment out of the Sum.

34 The respondent accepted that the Arbitration did not conclusively determine the existence of the Alleged Debt and that there remained a *prima facie* dispute over the Alleged Debt that fell within the scope of a valid arbitration agreement. However, this did not preclude a finding that the

Version No 1: 08 May 2026 (14:33 hrs)

respondent had the requisite standing to pursue CWU 120 because, adopting the reasoning of the Privy Council in *Sian Participation Corpn v Halimeda International Ltd* [2025] AC 1321 ("*Sian Participation*"), the question of an applicant's standing to bring a winding-up application was a distinct inquiry from a determination of the existence of the debt. As we explain at [70]–[72] below, this was inconsistent with the reasoning of this court in *AnAn* and *Founder Group (CA)*. But, at the hearing before us, counsel for the respondent, Ms Hoang Linh Trang ("Ms Hoang"), confirmed that she was not asking this court to revisit the correctness of its decisions in *AnAn* and *Founder Group (CA)*. We elaborate on the implications of this below.

35 In any event, the respondent submitted that the Judge was correct to find that the appellant had abused the process of the court in resiling from the admissions of the Alleged Debt in the Audit Confirmation Letters. Despite the Tribunal's observation that the Audit Confirmation Letters did not constitute confirmations of the Alleged Debt, the Judge was entitled to find that the Audit Confirmation Letters were admissions of the debt because the status of the Audit Confirmation Letters fell to be determined under Singapore law as part of the question of whether the appellant had acted in abuse of process based on the legal framework in *AnAn* and *Founder Group (CA)*. This was a distinct inquiry from the Tribunal's comments on the effect of the Audit Confirmation Letters as a matter of PRC law. In this regard, it was well-established under Singapore law that audit confirmations and the unqualified recognition of a debt in a company's books constituted out-of-court admissions of that debt. Apart from the Audit Confirmation Letters, the appellant had also admitted the Alleged Debt in its audited financial statements for FY2016 to FY2021 and the Confirmation Request. It was therefore incumbent on the appellant to provide

Version No 1: 08 May 2026 (14:33 hrs)

a clear and convincing explanation for its change in position to now disputing the Alleged Debt.

36 In this regard, the respondent submitted that the appellant had failed to provide a cogent explanation. The appellant was not entitled to maintain that the Audit Confirmation Letters, its financial statements and the Confirmation Request had reflected the Alleged Debt only for accounting or bookkeeping purposes as this had been rejected by the Tribunal in the Award. In any event, even if the appellant could take the point, it was nonetheless not an acceptable explanation for disputing the Alleged Debt given the "importance of [ensuring] proper corporate governance and bookkeeping" and the need to uphold accounting standards in Singapore.

37 In the event that it did not have standing as an actual creditor due to the dispute over the Alleged Debt, the respondent argued in the alternative that it had standing as a contingent creditor of the appellant given that the Tribunal had found that the Purchase Contract was valid and binding under PRC law and the parties' remaining dispute only related to whether the contingency that crystallised the Alleged Debt under the Purchase Contract had occurred.

38 As for the grounds for winding-up, the respondent reiterated its submissions below on the Insolvency Ground and the Just and Equitable Ground (see [28] above).

Issue to be determined

39 In our view, the outcome of this appeal turned in the first instance on the issue of whether the respondent had standing as a creditor of the appellant to apply for the appellant to be wound up based on the principles established in

Version No 1: 08 May 2026 (14:33 hrs)

AnAn and *Founder Group (CA)*. This was an anterior issue of dispositive significance because, if the respondent was unable to establish that it had standing to apply for an order that the appellant be wound up, the court would decline to wind up the appellant in the absence of another creditor with standing to invoke its winding-up jurisdiction. A finding that the respondent did not have standing would be a sufficient ground for the appeal to be allowed and the winding-up application to be dismissed.

40 It was only if this anterior issue of standing was answered affirmatively that the question of whether a ground for winding up the appellant – namely, the Insolvency Ground or the Just and Equitable Ground relied on by the respondent – had been made out would arise. Ultimately, as we decided that the respondent did not have standing as a creditor of the appellant, it was not necessary for us to determine if either the Insolvency Ground or the Just and Equitable Ground had been established on the facts. We observe, however, that, in so far as the respondent had relied on the statutory demand issued in respect of the Alleged Debt, the dispute over the Alleged Debt not only meant that the respondent did not have standing but also meant that the respondent could not rely on the statutory demand to establish the Insolvency Ground. Nevertheless, we confine our reasons below to the issue of the respondent's standing to apply as a creditor for the winding up of the appellant.

Applicable legal framework

41 We begin with an overview of the principles governing the treatment of disputed debts in winding-up applications.

Version No 1: 08 May 2026 (14:33 hrs)

The legal framework in winding-up applications generally

42 When a claimant ("*C*") brings a winding-up application against a defendant ("*D*"), three conditions must be met for the court to make a winding-up order on the application:

(a) First, *C* must have standing as a person with a statutory right to apply for the winding up of *D* under s 124(1) of the IRDA.

(b) Second, *C* must establish one or more of the grounds for winding up under s 125(1) of the IRDA.

(c) Third, there must be no reason for the court to exercise its discretion to decline to make a winding-up order notwithstanding that a ground for winding up has been established.

43 The first and second conditions above can be seen as going towards the court's jurisdiction to wind up a company. Thus, if *C* does not have standing to apply for the winding up of *D* as *C* does not fall within the class of persons listed in s 124(1) of the IRDA, or *C* fails to establish any of the statutory grounds for winding up under s 125(1) of the IRDA, the winding-up application would be dismissed on the basis that the court simply lacks jurisdiction to wind up the company.

44 The third condition, on the other hand, is a residual discretion which comes into play once the court's winding-up jurisdiction has been enlivened by establishing the first and second conditions. This follows from how s 125(1) of the IRDA is framed in permissive terms – "[t]he Court *may* order the winding up of a company" [emphasis added] – although the general rule is that a creditor who establishes the first and second conditions is *prima facie* entitled to a

Version No 1: 08 May 2026 (14:33 hrs)

winding-up order *ex debito justitiae*: *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 at [61]; *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 ("*BNP Paribas*") at [15]; *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] 2 SLR 478 at [84].

45 It is worth emphasising that the first (standing) and second (operative ground for winding up) conditions are disjunctive. Thus, *C*'s failure to meet one condition cannot be compensated for by however strong a case it may have on the other: *Mann v Goldstein* [1968] 1 WLR 1091 ("*Mann v Goldstein*") at 1094–1095. We clarify this as Ms Hoang suggested before us that, even if the dispute over the Alleged Debt should be resolved in arbitration, the court should nonetheless order the winding up of the appellant as it was insolvent and there had been a loss of confidence in the appellant's management due to "serious allegations of misconduct", such that an "independent investigator" should be appointed while the parties arbitrated the dispute over the Alleged Debt. However, as we explained to Ms Hoang, this argument was circular as considerations of insolvency or impropriety in the appellant's affairs went towards establishing grounds for winding up the appellant and would only become relevant after the respondent had crossed the hurdle of having standing to apply for the winding up of the appellant: *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] SGHC 159 ("*Founder Group (HC)*") at [102]–[103]; *Founder Group (CA)* at [24].

The treatment of disputed debts in winding-up applications

46 The issue of the respondent's standing was thus the main sticking point in this appeal. In this regard, it is well-established that if *D* disputes the debt on which *C*'s winding-up application is based, this may result in the application being dismissed on the basis of *C*'s lack of standing. This is because *D*'s

Version No 1: 08 May 2026 (14:33 hrs)

assertion that it does not owe the debt claimed by *C* is an assertion that *C* is not a "creditor" of *D* under s 124(1)(*c*) of the IRDA and therefore has no standing to present a winding-up application against *D*: *Tallington Lakes Ltd v Ancasta International Boat Sales Ltd* [2012] EWCA Civ 1712 ("*Tallington*") at [5]; Derek French, *Applications to Wind Up Companies* (Oxford University Press, 4th Ed, 2021) ("*Applications to Wind Up Companies*") at para 7.344. In turn, *C*'s lack of standing will mean that the court has no jurisdiction to make a winding-up order against *D*, as the power to wind up a company is conferred by statute and "the court has no jurisdiction to exercise a statutory power except on the application of a person qualified by the statute to make it": *Deloitte & Touche AG v Johnson* [1999] 1 WLR 1605 at 1611B.

47 The case law has established two approaches that govern how the court responds to the situation where *D* raises a dispute to the debt claimed by *C* in a winding-up application brought by *C* against *D*. The two approaches are differentiated: (a) first, by the circumstances in which they apply; and (b) secondly, by what they represent in terms of the court's power and willingness to resolve the dispute over the debt. We elaborate on the two approaches and the differences between them.

Where the dispute is not subject to a valid arbitration agreement

48 The general approach that applies when the dispute raised by *D* is not subject to any valid arbitration agreement is that the court will consider if *D* is disputing the debt claimed by *C* on *bona fide* and substantial grounds. The mere assertion of a dispute by *D* will therefore not suffice; instead, *C*'s standing as a creditor of *D* will only be called into question if *D* establishes something that "satisfies the Court that there is something which ought to be tried, either before the Court itself, or in an action, or by some other proceeding": *In re Great*

Version No 1: 08 May 2026 (14:33 hrs)

Britain Mutual Life Assurance Society (1880) 16 Ch D 246 at 253. In practice, what this means is that the court will consider if *D*'s defence to *C*'s claim for the debt raises a *triable issue* that would have resulted in the court giving *D* leave to defend if *C* had brought an application for summary judgment for the debt: *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [23].

49 If the court finds that *D* has failed to raise a triable issue on the debt, *C*'s standing to apply for the winding up of *D* will not be affected. The court will then proceed to determine the winding-up application by considering if *C* has established a ground for winding up and if there is any reason to exercise its discretion not to make a winding-up order if a ground for winding up exists.

50 If, on the other hand, the court finds that *D* has raised a triable issue on the debt, the starting point is that *C* will have no standing to apply as a creditor to wind up *D*, unless the court decides the dispute in the winding-up proceedings and does so in *C*'s favour. In this regard, the general rule is that the court will *not* decide such a dispute in a winding-up application. This means that, in most cases, the winding-up application will be dismissed on the ground that *C* has no standing to apply as a creditor of *D*: *Mann v Goldstein* at 1098H–1099B; *Stonegate Securities Ltd v Gregory* [1980] Ch 576 ("*Stonegate Securities*") at 579F–580C. But one should not lose sight of the fact that this is a rule of *practice* that is underpinned by pragmatic and policy-based justifications, which we discuss at [56] below, as opposed to a jurisdictional bar against deciding a dispute in a winding-up application: *Founder Group (HC)* at [31].

51 At the same time, it is important that the extent of the court's discretion where *D* disputes the debt on *bona fide* and substantial grounds is not taken too

Version No 1: 08 May 2026 (14:33 hrs)

far. In this regard, it is necessary not to conflate two distinct issues that arise once *D* successfully establishes a triable issue on the debt. The first is that, as a matter of law, the existence of a *bona fide* and substantial dispute on the debt will be sufficient to deny *C* of standing as a creditor of *D*, and in turn, the court's jurisdiction to make a winding-up order against *D*. The second is that, as a matter of practice, the court will decline to decide a *bona fide* and substantial dispute raised by *D* in the winding-up proceedings: *Applications to Wind Up Companies* at para 7.352. The consequence of this rule of practice is that the court will dismiss or, in rare cases, stay, the winding-up application on the basis of *C*'s lack of standing.

52 We emphasise this distinction because it appears to have been suggested on occasion that the court has jurisdiction to make a winding-up order against *D* even if the debt is disputed on *bona fide* and substantial grounds. For example, in *RCMA Asia Pte Ltd v Sun Electric Power Pte Ltd* [2020] SGHC 205 ("*Sun Electric (HC)*"), the High Court said that "the dismissal of winding-up petitions involving disputed debts was a rule of *practice*, rather than a rule of *law*" [emphasis in original] (at [82]), and held that "the court has the discretion to order a winding-up notwithstanding that there is a substantial and *bona fide* dispute in respect of the debt", albeit "this discretion should only be exercised in exceptional circumstances" (at [86]). The High Court referred, in this connection, to this court's decision in *BNP Paribas* for the proposition that "the court's power to order a winding-up is a discretionary one" (at [87]).

53 To the extent that the High Court in *Sun Electric (HC)* suggested that the court has the power to wind up *D* where *D* disputes the debt claimed by *C* on *bona fide* and substantial grounds *without resolving the dispute on the debt*, we think this overstates the scope of the court's discretion and elides the two

Version No 1: 08 May 2026 (14:33 hrs)

issues set out at [51] above. As we have explained, the effect of a *bona fide* and substantial dispute as to the debt claimed by *C* is to deprive *C* of standing to apply for *D* to be wound up as *C* will not be a "creditor" of *D* under s 124(1)(*c*) of the IRDA. The result of this is that the court simply has no power to make a winding-up order against *D* as one of the two conditions for enlivening its winding-up jurisdiction is absent. It is therefore incorrect to say that the court has a discretion to make a winding-up order against *D* where there remains a *bona fide* and substantial dispute in respect of the debt because no such discretion exists; in such circumstances, the court does not make a winding-up order because it *cannot* do so and not because it has *elected* not to do so. We reiterate that, in such circumstances, the court's winding-up jurisdiction is simply not engaged.

54 What the court has discretion over is the issue of whether it will invoke its general civil jurisdiction to resolve a dispute over the debt in the winding-up application rather than dismissing (or exceptionally, staying) the application. Thus, while the default position is that the court will have no jurisdiction to wind up *D* where *D* disputes the debt on *bona fide* and substantial grounds, the court has a discretion to decide the dispute in the exercise of its general civil jurisdiction and can, in so doing, cure the deficiency in its winding-up jurisdiction in the event that it decides the dispute in *C*'s favour such that *C*'s standing as creditor is established. But it is one thing to say that the court has a discretion to decide a dispute in the exercise of its general civil jurisdiction and thereafter make a winding-up order against *D*, and quite another to say that the court has a discretion to make a winding-up order against *D without deciding the dispute*. The former is not inconsistent with the rule that the court cannot exercise a power that is granted by statute – here, the power to wind up a company – outside the terms prescribed by the statute (see [46] above), but the

Version No 1: 08 May 2026 (14:33 hrs)

latter is. If the court decides to exercise its general civil jurisdiction and goes on to decide the dispute on the debt in the winding-up proceedings, and finds that the debt exists, *ex hypothesi* there will no longer be a *bona fide* and substantial dispute and accordingly no impediment as to *C*'s standing and the court's jurisdiction to wind up *D*, subject to there being an operative ground for winding up under s 125(1) of the IRDA.

55 Nothing in this court's decision in *BNP Paribas* supports the existence of a discretion to wind up *D* where the debt claimed by *C* is disputed on *bona fide* and substantial grounds without the court going on to exercise its general civil jurisdiction to decide the dispute. In *BNP Paribas*, the discretionary element of the court's power to wind up *D* that this court was concerned with was the *residual* discretion that arises after the court's jurisdiction to wind up *D* has been enlivened by: (a) *C* establishing its standing to petition; and (b) *C* establishing a ground for winding up *D* (see [44] above). This is a very limited discretion, which is quite different from whether the court will exercise its general civil jurisdiction in a winding-up application to decide whether the debt is owed, and which only arises *after* the court has chosen to exercise its civil jurisdiction to decide a dispute over the debt (and does so in *C*'s favour).

56 However, it is also well-established, as mentioned above, that the court will generally decline to exercise its general civil jurisdiction to decide a dispute on the debt in the winding-up proceedings. This practice is underpinned by two main reasons. First, practically speaking, the procedure in winding-up proceedings is generally ill-suited for determining disputes of fact that may require pleadings, production of documents and cross-examination of witnesses: *Coilcolor Ltd v Camtrex Ltd* [2016] BPIR 1129 at [32]. That said, this is not an insurmountable hurdle as the court may adopt such procedures as

Version No 1: 08 May 2026 (14:33 hrs)

it thinks necessary to resolve the dispute over the debt if it decides to do so: *Pacific Recreation* at [20]–[22]. The second reason is thus the more pertinent one, and it is that, as a matter of policy, the court is keen to guard against the risk of the threat or pendency of winding-up proceedings being abused as a means of exerting improper pressure against a company that genuinely disputes the debt: *Tallington* at [5]; *Parmalat Capital Finance Ltd v Food Holdings Ltd* [2009] 1 BCLC 274 at [9]. This was neatly explained by Chadwick J in *Re a company (No 006685 of 1996)* [1997] 1 BCLC 639 as follows (at 642b–d):

> … The true rule, which has existed for many years, is that this court will not allow a winding-up petition to be used for the purpose of deciding a substantial dispute raised on bona fide grounds. It will not do so, as a matter of practice, because the effect of presenting a winding-up petition and advertising that petition is to put upon the company a pressure to pay (rather than to litigate) which is quite different in nature from the effect of an ordinary writ action. The pressure arises from the fact that once the existence of the petition is known amongst those having dealings with the company, they are likely to withdraw credit or refuse to continue to trade with the company on the ground that, if the company is wound up on the petition, their dealings with it will be subject to the provisions in s 127 of the Insolvency Act 1986. In those circumstances, it may well be commercially necessary for the company to pay a debt which is disputed on substantial grounds rather than to run the risk that the whole of the company's business will be destroyed.

The same concern about the coercive use of winding-up proceedings also underpins the general rule that, instead of staying the winding-up proceedings pending the resolution of the dispute over the debt in another forum, the court will dismiss the winding-up application outright: *In re JN 2 Ltd* [1978] 1 WLR 183 at 187H.

57 To summarise, the general approach is characterised by two features:

Version No 1: 08 May 2026 (14:33 hrs)

(a) first, a limited inquiry into the merits of the dispute to determine if the debt is disputed on *bona fide* and substantial grounds (*ie*, the triable issue standard); and

(b) second, upon the identification of a *bona* fide and substantial dispute over the debt, the existence of a discretion to exercise the court's general civil jurisdiction to decide the dispute in the winding-up proceedings, even if this would be very rarely exercised in practice.

Where the dispute is subject to a valid arbitration agreement

58 Neither of the two features which we have just referred to are applicable where the dispute raised by *D* is subject to a valid arbitration agreement between *C* and *D*. The short reason is that the agreement between the parties to resolve disputes over the debt in arbitration significantly curtails the court's discretion to inquire into the merits of the dispute and, in turn, *C*'s standing to apply for a winding-up order. The arbitration agreement circumscribes the discretion of the court to exercise its general civil jurisdiction to decide the dispute in the winding-up proceedings, as to do so would be contrary to their agreement as to their choice of forum to resolve their differences. The upshot of this is that the general approach, which essentially entails a triable issue standard of review (as applied in a summary judgment application), is not appropriate where the parties have agreed to resolve their disputes through the process of arbitration, and not through court proceedings.

59 This was first recognised in the decision of the English Court of Appeal in *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* [2015] Ch 589 ("*Salford Estates*"). There, Sir Terence Etherton C (as he then was) held (at [40]) that the intention as manifested in the arbitration legislation – in England and Wales, the

Version No 1: 08 May 2026 (14:33 hrs)

Arbitration Act 1996 (c 23) (UK) – was to "exclude the court's jurisdiction to give summary judgment" and thus:

> … It would be anomalous, in the circumstances, for the Companies' Court to conduct a summary judgment type analysis of liability for an unadmitted debt, on which a winding up petition is grounded, when the creditor has agreed to refer any dispute relating to the debt to arbitration. …

As his Lordship noted, any other approach would encourage parties to present a winding-up petition as a means to circumvent the arbitration agreement (at [40]):

> … Exercise of the discretion otherwise than consistently with the policy underlying the [arbitration legislation] would inevitably encourage parties to an arbitration agreement – as a standard tactic – to bypass the arbitration agreement and the [arbitration legislation] by presenting a winding up petition. The way would be left open to one party, through the draconian threat of liquidation, to apply pressure on the alleged debtor to pay up immediately or face the burden, often at short notice on an application to restrain presentation or advertisement of a winding up petition, of satisfying the Companies Court that the debt is bona fide disputed on substantial grounds. That would be entirely contrary to the parties' agreement as to the proper forum for the resolution of such an issue and to the legislative policy of the [arbitration legislation].

60 In *AnAn*, we broadly agreed with the decision in *Salford Estates* and held that an arbitration agreement will displace the general approach taken by the court in relation to disputed debts in winding-up applications if the dispute is subject to the arbitration agreement. We further held that, in assessing if there is a valid arbitration agreement between *C* and *D* and whether the dispute raised by *D* falls within the scope of the arbitration agreement, the court should adopt a *prima facie* standard of review (at [56] and [92]). This aligned with the approach taken in applications for a stay of court proceedings in favour of arbitration under s 6 of the Arbitration Act 2001 (2020 Rev Ed) and s 6 of the

Version No 1: 08 May 2026 (14:33 hrs)

International Arbitration Act 1994 (2020 Rev Ed) (at [61]). As we explained, such alignment promoted coherence in the law and, echoing the concern expressed by Etherton C in *Salford Estates*, prevented the outflanking of an arbitration agreement by the simple device of reframing a claim for a debt in the form of a winding-up application (at [63]):

> In our judgment, there is no principled basis to apply differing standards to what is essentially the *same* disputed debt. Under the present dichotomy of standards, the applicable standard of review would depend solely on the creditor's arbitrary or tactical choice – if the creditor pursues an ordinary claim for debt, the *prima facie* standard would apply; if the creditor applies, on the basis of the *same* disputed debt, for the debtor to be wound up, the higher triable issue standard would apply. This would in turn encourage the abuse of the winding-up jurisdiction of the court, which is not the appropriate forum to adjudicate on disputed claims that are subject to arbitration … [emphasis in original]

61 In short, if the parties have agreed to resolve disputes over the debt in arbitration, it would be inappropriate for the court to review the merits of the dispute because this would be inconsistent with the parties' agreed mode of dispute resolution. Given the *kompetenz-kompetenz* principle (*ie*, that the arbitral tribunal has jurisdiction to determine its own jurisdiction), the court should not consider the questions of whether there exists a valid arbitration agreement between *C* and *D* and whether the dispute falls within the scope of such an agreement at a degree of scrutiny above the *prima facie* threshold: *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 at [29] and [67]; *Founder Group (CA)* at [28(c)]. It follows *a fortiori* that, if the court will not generally examine the merits, it cannot exercise the discretion it has to decide a dispute as part of its general civil jurisdiction in the winding-up proceedings; that discretion is, as a general rule, displaced by the parties' agreement to arbitrate. Given that the court will not decide the merits of the dispute over the debt where there is an arbitration agreement, *C* will in turn be

Version No 1: 08 May 2026 (14:33 hrs)

unable to establish its standing as a creditor of *D*, and as a result, the court will not have jurisdiction to wind up *D*.

62 But, at the same time, we also recognised in *AnAn* the need for a safety valve to "check against abuses of [the *prima facie*] standard of review" as it may be all too convenient for *D* to obtain a dismissal of the winding-up application by asserting a dispute that appears *prima facie* to be subject to a valid arbitration agreement between *C* and *D*: *AnAn* at [93]. A safety valve was necessary because dismissing (or exceptionally staying) the winding up proceedings was ultimately an exercise of discretion by the court, and not a case of the court ordering an automatic or mandatory stay or dismissal upon it being shown that there was a *prima facie* dispute that is subject to arbitration: *AnAn* at [94]. Instead, it was necessary to strike an appropriate balance between enforcing the parties' agreement to arbitrate and preventing an abuse of process of the court on the other: *AnAn* at [96]. Thus, we held that the *prima facie* standard of review should be subject to an "overarching restriction" that the court will not stay or dismiss the winding-up application where to do so would amount to an abuse of the process of the court: *AnAn* at [97]. While the threshold of abusive conduct was "very high" and the categories of conduct that could meet this threshold were not closed, we noted that one example where an abuse of process may be found is when *D* raises a dispute to the debt in the face of an earlier admission of it as regards both liability and quantum: *AnAn* at [99]. As the abuse of process exception, and this specific type of abuse in the form of *D* resiling from a previous admission of the debt, formed the crux of the respondent's case in this appeal, we will elaborate on this in our analysis below.

63 Following our decision in *AnAn*, it has been settled that, rather than applying the general approach of assessing if the debt is disputed by *D* on *bona*

Version No 1: 08 May 2026 (14:33 hrs)

fide and substantial grounds and potentially going on to decide that dispute, the court will ordinarily dismiss or, in exceptional cases, stay, a winding-up application brought by *C* if:

(a) there is *prima facie* a valid arbitration agreement between *C* and *D*;

(b) *D* has raised a dispute in relation to the debt claimed by *C* which *prima facie* falls within the scope of the arbitration agreement; and

(c) *D* has not raised the dispute in relation to the debt in circumstances constituting an abuse of the process of the court.

64 Subsequently, in *Founder Group (CA)*, we clarified how the principles in *AnAn* tied into the question of *C*'s standing as a creditor of *D* to apply for *D* to be wound up. As we have explained earlier, under the general approach, a *bona fide* and substantial dispute (or the existence of a triable issue as to the debt) would deprive *C* of standing to apply as a "creditor" of *D* under s 124(1)(*c*) of the IRDA, the result of which is that the court will have no basis to exercise its winding-up jurisdiction to make such an order against *D*: *Founder Group (CA)* at [32]–[33]. The same applies, with appropriate modification for the lower *prima facie* standard of review, where *D* raises a dispute over the debt that is subject to an arbitration agreement. To put it simply, where *D* raises a dispute that is *prima facie* within the scope of an arbitration agreement, the effect of this is that *C* will have no standing to apply as a creditor to have *D* wound up until the dispute has been resolved in arbitration; unless *C* has standing, the court will have no basis to exercise its winding-up jurisdiction to make such an order against *D*, and the winding-up application will be ordinarily dismissed. This is, however, subject to the abuse of process safeguard established in *AnAn* which,

Version No 1: 08 May 2026 (14:33 hrs)

if engaged on the facts, would exceptionally allow the court to apply the general approach to winding-up applications notwithstanding the arbitration agreement: *Founder Group (CA)* at [36], [37] and [63].

65 This suffices as a restatement of the current position under our law. But, at this juncture, we pause to observe that, while *AnAn* and *Founder Group (CA)* remain authoritative in this jurisdiction on the effect of an arbitration agreement on the treatment of disputed debts in winding-up applications, the courts of other jurisdictions have taken a different view of the matter. More specifically, unlike *AnAn* and *Founder Group (CA)* which establish that an arbitration agreement will displace the general approach of identifying if the dispute raises a triable issue (and the court potentially going on to decide that dispute as part of its general civil jurisdiction), the apex courts of the British Virgin Islands (the Judicial Committee of the Privy Council) and Malaysia (the Federal Court of Malaysia) have held that the general approach should apply regardless of whether there is an arbitration agreement between the parties.

66 In *Sian Participation*, the Privy Council held that the correct approach in a winding-up application involving a disputed debt was to consider if the debt was disputed on genuine and substantial grounds, and this was unaffected by whether the debt on which the application had been brought was subject to an arbitration agreement or an exclusive jurisdiction agreement (at [99]). In this regard, the Board repudiated the reasoning in *Salford Estates* (which this court had broadly adopted in *AnAn*) that the court's approach to disputed debts in winding-up applications should be aligned with that in stay applications, as having been based on an illegitimate extension of the policy underlying the arbitration legislation (at [94]). While the appeal came before the Board from the Eastern Caribbean Court of Appeal and not as an appeal to the UK Supreme

Version No 1: 08 May 2026 (14:33 hrs)

Court, the Board issued a direction that *Salford Estates* should no longer be followed by the courts of England and Wales (at [124]–[125]). *Sian Participation* thus represents the current position under English law as well.

67 At the heart of the Board's decision and its rejection of *Salford Estates* was its view that, where *C* brings a winding-up application against *D*, a dispute over the debt claimed by *C* arising in that setting does not fall within the scope of an arbitration agreement between *C* and *D* as the court in a winding-up application "does not seek to, and does not, resolve or determine anything about the petitioner's claim to be owed money by the company". Thus, the presentation of a winding-up application by *C* on a debt that is disputed by *D* does not breach the negative obligation imposed by an arbitration agreement not to have disputes over the debt resolved in any forum other than arbitration: *Sian Participation* at [88]–[89]. The Board considered that the proposition that a winding-up application does not involve the adjudication of *C*'s claim to be a creditor either as to liability or quantum was supported by how: (a) a winding-up order does not create a *res judicata* as between *C* and *D* over the debt; and (b) the liquidator of *D* is free to reject *C*'s proof of debt even if the debt claimed by *C* was the debt upon which a winding-up order had been made against *D*: *Sian Participation* at [33].

68 In its recent decision of *V Medical Services M Sdn Bhd v Swissray Asia Healthcare Co Ltd* [2025] 2 MLJ 744 ("*Swissray*"), the Federal Court of Malaysia also had occasion to consider the position and to decide if Malaysian law should adopt the approach in *AnAn* or the approach in *Sian Participation*. The court ultimately decided in favour of the latter and held that a court hearing a winding-up application should consider if the debt was "genuinely disputed on substantial grounds" even if there was an arbitration agreement between the

Version No 1: 08 May 2026 (14:33 hrs)

parties (at [162]). Notably, instead of focusing on how the winding-up application did not decide a dispute over the debt like the Board did in *Sian Participation*, the Malaysian court preferred to emphasise two other points:

> (a) First, the importance of drawing a clean separation between the spheres of operation of the arbitration and insolvency regimes in light of their different underlying policies, which meant that there should no alignment of the approach to disputed debts in winding-up applications with the approach in stay applications (at [138]–[140], [147]–[150] and [162(a)]).
>
> (b) Second, the collectivist nature and purpose of winding-up proceedings as involving the determination of whether *D* was insolvent in the interests of *D*'s creditors, which distinguished a dispute over the debt in a winding-up application from a simple bilateral dispute between *C* and *D* over the debt (at [146], [162(d)]–[162(f)] and [162(h)]).

69 As prefaced at [34] above, the issue of whether the current approach in *AnAn* and *Founder Group (CA)* should be reconsidered in light of these developments in other jurisdictions did not arise in this appeal as Ms Hoang confirmed before us that the respondent was not seeking to challenge the correctness of the prevailing Singapore position and was arguing its case based on the existing state of the law. We had put this question directly to Ms Hoang as it appeared to us that the respondent had drawn some inspiration from *Sian Participation* based on some aspects of its case below and in this appeal. We say this because, in the respondent's written submissions and during Ms Hoang's arguments at the hearing, *Sian Participation* was relied on for the proposition that a winding-up application did not involve an adjudication of any dispute raised by *D* over the debt on which *C* claimed standing to apply for *D*'s

Version No 1: 08 May 2026 (14:33 hrs)

winding up, as a means of getting around certain findings or statements that the Tribunal had made in the Award as to whether the Alleged Debt was owed to the respondent. It was not satisfactory that, despite confirming early on in her submissions that the respondent was not inviting this court to revisit *AnAn* and *Founder Group (CA)*, Ms Hoang went on to rely on the aforesaid proposition in *Sian Participation* without appreciating that it was inconsistent with the existing law as laid down in *AnAn* and *Founder Group (CA)*.

70 In light of this, we take the opportunity to state that, until a party mounts a successful challenge against *AnAn* and *Founder Group (CA)* before this court, the position under Singapore law continues to be as set out in those cases. We also take the opportunity to make clear that, although *Sian Participation* and *Swissray* may not necessarily be inconsistent in all respects with *AnAn* and *Founder Group (CA)*, care must be taken when referring to the former pair of decisions as certain lines of reasoning or propositions articulated therein are fundamentally inconsistent with the current approach of our courts. We provide two examples of this.

71 First, the view taken in *Sian Participation* that a dispute over a debt in a winding-up application is not caught by an arbitration agreement between the parties is inconsistent with this court's decision in *AnAn*. The Board's approach appears to be based on interpreting the obligation imposed by an arbitration agreement as an obligation of a more limited scope that prevents the parties from obtaining a *final* adjudication on the merits of their dispute in a forum other than arbitration. On this view, it would not be inconsistent with the parties' agreement to arbitrate for the court to assess if the debt is disputed on *bona fide* and substantial grounds. However, the approach in *AnAn* adopts the opposing perspective and considers that the court should not engage in *any* form of merits

Version No 1: 08 May 2026 (14:33 hrs)

review as that is a matter which the parties have reserved to the arbitral tribunal (at [1]). This underlies the rejection of the triable issue standard where there is an arbitration agreement between the parties in *AnAn* (see [58]–[61] above).

72 Second, in contrast to our decision in *Founder Group (CA)*, the decisions in *Sian Participation* and *Swissray* do not appear to have considered the anterior question of whether a dispute over the debt will affect *C*'s standing to apply for the winding-up of *D* as a creditor of *D*. As explained above, under the general approach, the effect of a *bona fide* and substantial dispute as to the debt is to deprive *C* of standing to invoke the winding-up jurisdiction of the court. The court has a discretion, however, to exercise its general civil jurisdiction to decide the dispute, and if it chooses to do so, the deficiency in *C*'s standing would be cured if the dispute is decided in its favour. In the context of arbitration agreements, the position is modified to accommodate the lower *prima facie* threshold of review, but the point remains that a *prima facie* dispute over the debt falling within the scope of an arbitration agreement will deprive *C* of standing. As the arbitration agreement would also generally prevent the court from exercising any discretion pursuant to its general civil jurisdiction to decide the dispute in the winding-up application, *C* will be required to establish its standing by obtaining a resolution of the dispute in arbitration as the parties' agreed forum. Although the Board in *Sian Participation* and the Malaysian Federal Court in *Swissray* held that the general approach should apply even where there exists an arbitration agreement, neither appears to have considered the effect of a dispute as to *C*'s standing to invoke the court's winding-up jurisdiction to make a winding-up order against *D*.

73 We highlight these differences only to make the point that *Sian Participation* and *Swissray* do not appear wholly reconcilable with *AnAn* and

Version No 1: 08 May 2026 (14:33 hrs)

Founder Group (CA). Given Ms Hoang's confirmation that the respondent was content to argue this appeal on the basis of the present state of the law in Singapore, as stated in *AnAn* and *Founder Group (CA)*, that was the approach upon which our analysis of the merits of this appeal was based. However, this also meant that, in so far as certain of the respondent's arguments drew on aspects of *Sian Participation* that were inconsistent with *AnAn* and *Founder Group (CA)*, those arguments necessarily had to be rejected, as we point out below.

The respondent failed to establish its standing as a creditor of the appellant

74 Based on the legal framework as set out above, the question of the respondent's standing as a creditor to apply to wind up the appellant fell to be determined by an application of the approach in *AnAn* and *Founder Group (CA)*. Accordingly, CWU 120 ought to be dismissed or stayed based on the respondent's lack of standing if the following three conditions were present:

(a) first, there was *prima facie* a valid arbitration agreement between the parties;

(b) second, the appellant had raised a dispute in relation to the Alleged Debt which *prima facie* fell within the scope of the arbitration agreement; and

(c) third, the appellant's dispute as to the Alleged Debt was not an abuse of process.

75 The first two conditions were not in issue in this appeal. It was common ground before us that there was a valid arbitration agreement between the parties and that the dispute over the Alleged Debt fell within the scope of the arbitration

Version No 1: 08 May 2026 (14:33 hrs)

agreement. This was also consistent with the Judge's decision below. It thus followed that, unless the appellant had acted in abuse of process in disputing the Alleged Debt (as the Judge found), in which case the general approach would be applied to assess if there was a triable issue as to the existence of the Alleged Debt, CWU 120 should be dismissed on the basis that the respondent did not have standing to apply for the appellant's winding up as a creditor of the appellant. No issue of a stay of CWU 120 arose as the respondent did not suggest, either before us or before the Judge that, even if the court should find that the appellant had not acted in abuse of process, a stay of CWU 120 should be ordered instead of dismissing it outright (see [78] below).

76 As mentioned, this was an unusual case because the parties had already proceeded to arbitration over the Alleged Debt and obtained the Award. However, the Arbitration did not conclusively resolve the dispute over the Alleged Debt. As explained above, while the appellant failed to obtain a declaration as to the non-existence of the Alleged Debt in the Arbitration, the Tribunal also made it clear in the Award that it was not deciding that the respondent was owed the Alleged Debt. To reiterate, this was because the Tribunal had concerns about whether the respondent had performed the Purchase Contract, as the respondent was unable to produce even basic trade documents to substantiate its claim that it had delivered the copper cathodes to the appellant under the Purchase Contract (see [19] above). As we pointed out in *SG Commodities (No 1)* (at [92]), this meant that the Award did not establish the existence of the Alleged Debt and provided no basis for the respondent to assert that it was a creditor of the appellant. The respondent accepted this.

77 Given that the Arbitration failed to resolve the dispute over the Alleged Debt, as we pointed out to Ms Hoang, there seemed to be nothing to stop the

Version No 1: 08 May 2026 (14:33 hrs)

respondent from commencing a fresh arbitration to obtain an award affirming the existence of the Alleged Debt and its standing as a creditor of the appellant. Indeed, both parties confirmed before us that it was common ground that there was nothing under PRC law in terms of a doctrine akin to *res judicata* or the rule in *Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson*") that might preclude the respondent from commencing a fresh arbitration to establish the Alleged Debt.

78 Despite this, the respondent informed the Judge below that it did not intend to commence a fresh arbitration and was thus not seeking a stay of CWU 120 for that purpose. Similarly, before us, Ms Hoang stated that while the respondent was reserving its right to commence a new arbitration, it intended to press on with its arguments that the Judge below was right in granting a winding-up order against the appellant in CWU 120. Based on the approach in *AnAn* and *Founder Group (CA)*, the only way the respondent could possibly achieve this was by establishing that the appellant had acted in abuse of process in disputing the Alleged Debt, such that the court should apply the general approach and determine the issue of the respondent's standing for itself. In this regard, the respondent argued that the appellant's conduct constituted an abuse of process as its dispute of the Alleged Debt was an attempt to resile from prior admissions of the Alleged Debt in the Audit Confirmation Letters and its audited financial statements from FY2016 to FY2021. Thus, the only real issue was whether the appellant had acted in abuse of process.

The scope of the abuse of process inquiry

79 As mentioned at [61] above, the application of the *prima facie* standard means that a winding-up application will be dismissed or stayed as long as there *exists* a dispute over the debt that is referrable to arbitration, regardless of

Version No 1: 08 May 2026 (14:33 hrs)

whether the defences put forth by the defendant company are valid or credible. As the court does not engage in any form of merits review, there is the risk that a defendant will conjure up a dispute over what is in truth an undisputed debt for the sole purpose of staving off a winding-up application. The court in *AnAn* was alive to this and therefore introduced the abuse of process exception as a safeguard to curb against such abuses of the *prima facie* standard of review: *AnAn* at [93].

80 However, the abuse of process safeguard must be applied in a manner that is consistent with the underlying premise of the approach in *AnAn*. It would be incongruous for the court to reject any inquiry into the merits of the parties' dispute based on the application of the *prima facie* standard of review (and the rejection of the triable issue standard), only to engage in a back-door review of the merits under the guise of considering if there has been an abuse of process. Thus, we emphasised that "the abuse of process control mechanism cannot be used as a gateway for parties to introduce arguments on the merits"; in particular, the fact that the defendant's defence may be plainly unmeritorious would not be grounds for a finding of abuse of process: *AnAn* at [99]–[100].

Abuse of process by resiling from an admission of the debt

81 Although abuse of process can manifest in a number of forms and the categories of abusive conduct are not closed, a paradigm example of abuse is where a defendant resiles from an earlier admission of the debt: *BWG v BWF* [2020] 1 SLR 1296 ("*BWG*") at [55]. Where this occurs, there is the possibility that the defendant has contrived a dispute that did not previously exist for the sole purpose of playing for time. This is because the law treats a "dispute" referable to arbitration and an "admission" by the defendant as two sides of the same coin, in that a "dispute" would exist for the purposes of triggering an

Version No 1: 08 May 2026 (14:33 hrs)

arbitration agreement so long as the defendant *does not admit* the claim: *Tjong Very Sumito v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong Very Sumito*") at [56]. Thus, if the defendant has at any point in time before the winding-up application against it made an admission of the claim, it will mean that there was no dispute between the parties until the time of the winding-up application. A subsequent change of tune when the defendant is faced with a winding-up application gives rise to the suspicion that it is acting cynically in disputing the debt. Thus, in *AnAn* we held that absent a "clear and convincing" reason for the defendant's change of position, the court would generally find that there has been an abuse of process (at [94]).

82 However, an applicant creditor may attempt to engage in an improper back-door review of the merits of the defence under the abuse of process inquiry. In our view, that was exactly what the respondent did in the present case.

83 First, there was the anterior question of whether the admissions that the respondent claimed the appellant had resiled from were even proper admissions to begin with. The respondent had relied on the Audit Confirmation Letters as admissions of the Alleged Debt by the appellant. But, as we explain below, a significant difficulty with this was that it ran contrary to findings the Tribunal had made in the Award about the legal effect of the Audit Confirmation Letters under PRC law. The respondent nonetheless attempted to persuade this court that we could *reconsider* the effect of the Audit Confirmation Letters as a matter of Singapore law and find that the appellant had previously admitted the Alleged Debt such that it had to provide a clear and convincing explanation for its change of position, failing which the appellant should be found to be acting abusively.

Version No 1: 08 May 2026 (14:33 hrs)

84 Second, it appeared to us that the respondent had interpreted the reference to a "clear and convincing" reason as an invitation to delve into the merits of the appellant's explanation for disputing the Alleged Debt, despite the court having expressly cautioned against such a backdoor merits review through the abuse of process safeguard. We say this because the respondent repeatedly stated in its written submissions for this appeal that the appellant had failed to give a "cogent explanation" or "cogent reason" for its "manifestly inconsistent positions" of denying the Alleged Debt in the face of admissions of it in the Audit Confirmation Letters, its financial statements and the Confirmation Request. By this, what the respondent was saying was not that the appellant had failed to give an explanation for disputing the Alleged Debt, but that the appellant had failed to give a *satisfactory* explanation. This was clear in the respondent's submission that the appellant's claim – that the appellant did not owe the Alleged Debt as the Purchase Contract had been entered into and the Audit Confirmation Letters had been issued for the purposes of "accounts processing" – should be rejected as it would otherwise "greatly undercut the importance of proper corporate governance and bookkeeping" and "make a mockery of the accounting standards and the independent audit confirmation process in Singapore" (see [36] above). With respect, we did not think that arguments such as these fell within the proper scope of inquiry under the abuse of process exception in *AnAn* as it was not targeted at the existence of an explanation for the appellant's position, but the merits of the explanation that the appellant had given. As mentioned, the abuse of process exception was never intended to be an avenue for the court to hear arguments on the merits of the parties' dispute.

85 In light of these issues, before turning to the specific facts of the case, we first clarify the approach to be taken where the defendant (or putative debtor)

Version No 1: 08 May 2026 (14:33 hrs)

is alleged to have abused the process of the court in disputing a debt on which the winding-up application is brought despite having made a prior admission of the debt. To state our conclusion upfront, we think that the analysis should be approached in two stages:

(a) First, there must have been a clear and unequivocal admission by the defendant as to liability and quantum for the claimed debt.

(b) Second, the defendant must have resiled from the admission without a clear and convincing reason for its change in position.

It is only where both elements are present, and having regard to the totality of the circumstances, that the appellant may be found to have acted in abuse of process.

(1) First Stage: Whether there is a clear and unequivocal admission of liability and quantum

86 Although the abuse of process crystallises upon the defendant's change in position, a defendant can only be found to have changed its position in an abusive manner if, in the first place, there had been an admission for it to resile from. An admission as to both liability and quantum of the debt is therefore a prerequisite to a finding of abuse. It is necessary for the admission to cover both liability *and* quantum because if there is an admission of only the former, there will remain a dispute referable to arbitration on the latter (unless, of course, there is an undisputed portion of the debt that is above the threshold for seeking a winding-up order on the basis of a statutory demand (of $15,000) under s 125(2)(*a*) of the IRDA), and the defendant cannot be said to have abused the process of the court in maintaining a dispute to an aspect of the claimant's claim that it had never admitted: *Tjong Very Sumito* at [63]–[64].

Version No 1: 08 May 2026 (14:33 hrs)

87 Furthermore, the conduct or statement of the defendant that the claimant relies on as an admission must be "clear and unequivocal": *Tjong Very Sumito* at [59]. This standard of "clear and unequivocal" gives effect to the principle of party autonomy and ensures that the court does not get drawn into an evaluation of the merits of the parties' dispute that is a matter properly for the arbitral tribunal. A dispute over whether the defendant has indeed admitted the claim is itself a dispute that an arbitral tribunal has jurisdiction over and, therefore, it is important for the court to tread carefully: *Tjong Very Sumito* at [62]. As explained above, the abuse of process safeguard is not intended to be a backdoor for parties to make arguments on the merits which are within the proper province of the tribunal. The standard of a "clear and unequivocal" admission thus ensures that the *AnAn* framework is internally consistent and that at no point in the analysis does the court engage in a form of merits review (see [80] above).

88 In this regard, it is fair to say that cases in which a clear and unequivocal admission may be found will be the exception rather than the norm: *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [32]. In *Tjong Very Sumito*, we cautioned that the court "ought to be ordinarily inclined to find that there has been a denial of a claim in all but the clearest cases" and "should not be astute in searching for admissions of a claim" [emphasis in original omitted] (at [61]). Thus, "once [an] admission is challenged by the defendant with any semblance of credibility, the court will ordinarily be inclined to decide that a 'dispute' has arisen" and refer the parties to arbitration (at [63]). Accordingly, the court may find that there was *no* admission of the debt where there were previous inconclusive discussions between the parties or prevarication by the defendant. A defendant's silence, without more, will also

Version No 1: 08 May 2026 (14:33 hrs)

generally be insufficient to amount to a clear and unequivocal admission (at [61]).

89 The practical application of this stringent rule can be illustrated by reference to several examples. The decision of the Hong Kong Court of First Instance in *Getwick Engineers Ltd v Pilecon Engineering Ltd* [2002] HKCU 1020 ("*Getwick*") was regarded as a useful example of when a court may find that there was a clear and unequivocal admission of a claim: *Tjong Very Sumito* at [59]. In that case, the plaintiff brought a claim against the defendant for outstanding amounts for work done that were purportedly due under a sub-contract. The claimed sum was said to be evidenced by interim payment certificates issued by the defendant to the plaintiff, as well as three post-dated cheques issued by the defendant (albeit for an amount less than the total claim sum) which were accompanied by a statement that the exact amount of further payment would be agreed after the completion of the final account to the sub-contract. The defendant applied for a stay of the court proceedings in favour of arbitration under s 6 of the Arbitration Ordinance (Cap 341) (Hong Kong).

90 Geoffrey Ma J (as he then was) held that the interim payment certificates did not amount to a clear and unambiguous admissions of liability, as they did not involve a final acceptance by the defendant that either the work carried out had been up to standard or that the amount stated in the payment certificates were unequivocally and undisputedly due (*Getwick* at [26(3)]). However, Ma J accepted that the cheques were clear and unequivocal admissions of liability and quantum for the sums that each cheque had been made out for as cheques were to be treated as equivalent to cash for the amounts stated thereon. Thus, while only two of the cheques had cleared, Ma J granted summary judgment for

Version No 1: 08 May 2026 (14:33 hrs)

the sum stated in the remaining cheque that had been dishonoured (*Getwick* at [26(4)]).

91 The differing treatment given to the interim payment certificates and the dishonoured cheque in *Getwick* usefully demonstrates the high threshold as to what would amount to a "clear and unequivocal" admission. The dishonoured cheque satisfied this threshold as, by issuing the cheque – which, as a bill of exchange, was the legal equivalent to cash – in favour of the claimant, the defendant had basically attempted to pay the claimant the sum stated in the cheque. The defendant would only have done so if it accepted that the claimant was owed a debt of that sum.

92 Similar reasoning can be found in the decision of Hri Kumar Nair J (as he then was) in *Gulf International Holding Pte Ltd v Delta Offshore Energy Pte Ltd* [2023] 5 SLR 1455 ("*Gulf International*"). In that case, the defendant applied to stay a judicial management application against it on the basis that it disputed the debt owed to the claimant who had applied to place it under judicial management. The claimant argued that the dispute in relation to the debt had been raised in abuse of process as the defendant had earlier admitted the debt by making multiple requests for extensions of time to pay the debt. Nair J held that the defendant had indeed admitted the debt as it had, in each of its requests for extensions of time, "clearly and unequivocally acknowledged that the various tranches [of the loan from the claimant] were due to be repaid by a specified date and was asking for more time to repay the same" (at [32]). In our view, the determinative point was that, like the issuance of the dishonoured cheque in *Getwick*, the defendant's conduct in asking for extensions of time to pay necessarily presupposed that it accepted that the debt was due and payable.

Version No 1: 08 May 2026 (14:33 hrs)

93 In contrast, no clear and unequivocal admission was found on the facts of *Mercantile & Maritime Investments Pte Ltd v Iceberg Energy Pte Ltd* [2024] 3 SLR 628 ("*Mercantile*"). The claimant there had applied for the defendant to be wound up based on an unsatisfied statutory demand issued for an outstanding sum due under a loan facility agreement. The defendant resisted the winding up on the basis that the facility was not repayable at the date when the statutory demand was issued and that this dispute should be referred to arbitration under an arbitration clause in the loan facility agreement. In response, the claimant argued that the defendant had expressed a willingness to make repayment under the loan facility in two previous e-mails and had thus disputed the debt in abuse of process. The court held, after examining the two e-mails which the claimant relied on, that the defendant had only acknowledged that it had borrowed the relevant sums under the loan facility agreement and, at most, indicated its willingness to settle the dispute. It was of some significance that the defendant had also vehemently disputed its liability in a prior letter to the claimant. As a willingness to settle was not inconsistent with non-admission of liability, the court considered that there was at least a *prima facie* dispute as to whether the defendant's expressions of willingness to settle the outstanding sums under the loan facility constituted admissions of the debt and this, as well as the main dispute over whether the loan facility was repayable at the time when the statutory demand was issued, should both be referred to arbitration (at [75]–[76]). In our view, the relevant e-mails in *Mercantile* fell short of a "clear and unequivocal" admission as, while the defendant had acknowledged that it had borrowed the relevant sums from the claimant, it had not admitted that the sums claimed by the claimant were *payable* and had qualified its position by indicating its intention to settle the parties' dispute. This factor distinguished it from *Getwick*, where the defendant had actually attempted repayment which

Version No 1: 08 May 2026 (14:33 hrs)

failed, and *Gulf International*, where the defendant had made an unqualified request for an extension of time to repay the debt due.

94 The consequence of there being no clear and unequivocal admission by the defendant, or where there is a dispute or uncertainty over whether there was an admission of the debt, is that the defendant cannot be said to have fabricated a dispute for the purpose of staving off the winding-up proceedings. In such circumstances, and assuming that the first two requirements in *AnAn* are satisfied, a dismissal (or, in exceptional circumstances, a stay) of the winding-up application should be granted in favour of arbitration.

(2) Second stage: Whether there is a clear and convincing reason for resiling from the admission

95 If, however, the high threshold of a "clear and unequivocal" admission as to both liability and quantum of the debt is met, the next question is whether the defendant has resiled from the admission in a manner that may be said to amount to an abuse of the court's process. This will generally be the case where the defendant is unable to provide a "clear and convincing reason for the change of position": *AnAn* at [94]; *BWG* at [55].

96 As mentioned above, the respondent had relied on the "clear and convincing reason" requirement to invite this court to evaluate the cogency of the appellant's explanation for disputing the debt. The respondent was effectively arguing that the appellant had no *arguable or persuasive* defence. In our view, this was problematic as it encroached into an assessment of the merits of the appellant's defence under the abuse of process inquiry.

Version No 1: 08 May 2026 (14:33 hrs)

97 It should be clear from our discussion above that the court will not and should not evaluate the merits of the defence when considering whether there has been an abuse of process (see [79]–[80] above). The point is simply that, as this court expressed in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar*") in the context of stay applications sought pursuant to an exclusive jurisdiction clause, the parties have contractually agreed for *all* disputes within the scope of their agreement, *regardless of their merits*, to be referred to resolution at the agreed forum (at [114]). The court therefore should not adjudicate on the dispute simply because it is of the view that the defence is unpersuasive or because it considers the dispute to be an "open-and-shut" case. To do so would not only be contrary to the principle of party autonomy, but would also engender significant commercial uncertainty, since dispute resolution in arbitration will then be subjected to an uncertain determination of the merits by the court: see *AnAn* at [83]–[86], affirming *Vinmar* at [116].

98 We had therefore emphasised in *AnAn* that the court "must be wary that it does not engage in examining the merits of the parties' dispute" when determining whether a defendant is guilty of an abuse of process: *AnAn* at [99]–[100]. Thus, the fact that a defence was "so obviously lacking in merit" was not a proper basis to conclude that the defendant had acted abusively: *AnAn* at [99]. We had reiterated the centrality of this point in *BWG* (at [1] and [57]).

99 It follows from the above that the abuse of process inquiry does not involve *any* merits assessment, and the respondent has misconstrued the content of the "clear and convincing reason" requirement. The pith of the requirement can be easily discerned when one considers the purpose of the abuse inquiry, namely, to safeguard against abuses of the *prima facie* standard of review. Such

Version No 1: 08 May 2026 (14:33 hrs)

abuse is occasioned when a defendant "seeks a stay *for no reason other than its alleged inability to pay*" [emphasis added]: see *AnAn* at [94], referring to *Vinmar* at [131]. Consequently, for a defendant's conduct of resiling from a previous admission to be found excusable under the test in *AnAn*, a defendant simply needs to provide an explanation for its change of position that would satisfy the court that it is not disputing the debt for the sole purpose of staving off winding up. This, in our view, is the nub of the "clear and convincing reason" requirement.

The appellant did not act in abuse of process

100 Applying the framework we have set out above, we were of the view that respondent had not shown that the appellant had acted in abuse of process in disputing the Alleged Debt by resiling from prior admissions of the Alleged Debt (see [29] above). In the first place, neither the Audit Confirmation Letters, the appellant's financial records nor the Confirmation Request constituted clear and unequivocal admissions of the Alleged Debt. In any event, even if these documents constituted admissions of the Alleged Debt, we were of the view that the appellant had given a satisfactory explanation for disputing the Alleged Debt. Having regard to the totality of the appellant's conduct in CWU 120, we did not think that the appellant's conduct crossed the high threshold of abuse of process.

The appellant did not make any clear and unequivocal admission of the Alleged Debt

101 The Audit Confirmation Letters provided the primary basis for the Judge's finding of abusive conduct and formed the central focus of the parties' arguments before us. The starting point is that the effect of the Audit

Version No 1: 08 May 2026 (14:33 hrs)

Confirmation Letters was disputed between the parties. Although the respondent relied on the Audit Confirmation Letters as admissions of the Alleged Debt, the appellant did not accept this. In the course of the arguments before the Judge, the appellant's counsel, Mr William Ong ("Mr Ong"), had emphasised that: (a) the issue of whether the Audit Confirmation Letters were admissions, or the extent to which they established the Alleged Debt, was a matter governed by PRC law; and (b) the Tribunal had found in the Award that the Audit Confirmation Letters did not establish the Alleged Debt.

102 In our view, Mr Ong was correct in emphasising these two points as they made it untenable for the Audit Confirmation Letters to constitute clear and unequivocal admissions of the Alleged Debt. In arguing that the appellant had abusively resiled from the admissions of the debt in the Audit Confirmation Letters, the respondent was effectively mounting a collateral attack on the Tribunal's finding in the Award that, as a matter of PRC law, an audit confirmation letter "[could not] be used as direct evidence to determine the relationship between [*sic*] creditor's rights and debts" (see [19] above). Indeed, although the appellant did not put the argument strictly in terms that the Tribunal's finding on the Audit Confirmation Letters in the Award had given rise to an issue estoppel that prevented the respondent from relying on them as admissions of the Alleged Debt, we would likely have been prepared to find that such an estoppel had arisen. At the very least, seeing as the respondent itself had sought to rely on the Award to argue that the appellant could no longer dispute the Alleged Debt, it seemed to us that the respondent could not disassociate itself from the aspects of the Award that were adverse to it, such as the Tribunal's findings on the status of the Audit Confirmation Letters and, as we examine in greater detail below, whether the respondent had established its performance of the Alleged Contract (see [113]–[122] below).

Version No 1: 08 May 2026 (14:33 hrs)

103 Before us, Ms Hoang argued that the respondent and the Judge were entitled to go behind the Tribunal's findings on the effect of the Audit Confirmation Letters because the question before the court in CWU 120 was different from that which the Tribunal had considered. Specifically, while the Tribunal had considered if the Audit Confirmation Letters were evidence of the Alleged Debt under PRC law, the issue before the court in CWU 120 was whether the Audit Confirmation Letters constituted admissions of the Alleged Debt under Singapore law. This was because the latter issue was part of the overarching inquiry into whether a respondent to a winding-up application had acted in abuse of process, which fell to be determined as a matter of Singapore law. It was thus argued that there was strictly no inconsistency between the Judge's finding that the Audit Confirmation Letters constituted admissions of the Alleged Debt and the Tribunal's doubts in the Award. In this connection, Ms Hoang referred us to local case law, including this court's decision in *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar*"), as authority for the proposition that audit confirmations were strong *prima facie* evidence of a debt.

104 We rejected the respondent's argument that the issue of whether the Audit Confirmation Letters amounted to admissions of the Alleged Debt was a matter to be decided under Singapore law. As explained above, an admission is correlative to a dispute in that, if there is an admission, there would be no dispute to refer to arbitration. The question of whether the defendant has admitted a claim falls to be determined by the law governing the parties' dispute – in this case, PRC law, as the law governing the Purchase Contract. It will not make sense for the court to hold that there is no dispute over a debt between the parties based on certain statements about the debt, which amount to admissions under the *lex fori*, but not the law governing the contract giving rise to the debt. This

Version No 1: 08 May 2026 (14:33 hrs)

is because an admission of a debt is in substance conclusive evidence of the debt. Whether a given piece of evidence is probative, as well as the extent to which it is probative, of the existence of a debt are matters that are to be determined by the law governing the existence of the debt. The decision in *Fustar*, which concerns the status of an audit confirmation as a matter of *Singapore* law, was thus of no assistance because the status of the Audit Confirmation Letters in this case was a matter of PRC law.

105 In our view, Ms Hoang's argument that the effect of the Audit Confirmation Letters should be decided under Singapore law because it was part of the overarching abuse of process inquiry erroneously conflated the two stages of the analysis that we have explained at [85]–[99] above. The abuse of process arises when a defendant changes its position and disputes a debt after making an earlier admission of the debt in the absence of a clear and convincing reason for the *volte-face*. This is the second stage of the analysis, which is properly a question to be determined under Singapore law. But the assessment of whether there is a clear and unequivocal admission of the debt is an *anterior* question that forms the first stage of the analysis and is a matter to be determined under the law governing the existence of the debt, *ie*, the law governing the contract from which the debt arose.

106 It also appeared to us that the respondent may have fallen into error for a separate reason. The respondent's argument rested on the supposition that the question that had arisen before the Tribunal in the Arbitration was not the same as the question that had arisen before the court in CWU 120 in that the latter was an issue of the respondent's standing to pursue a winding-up application against the appellant while the former was a question of the existence of the Alleged Debt. Since the questions were not the same, it might have been thought

Version No 1: 08 May 2026 (14:33 hrs)

that there was no difficulty in them being governed by different laws. This argument was an example of what we have noted at [69] above was a tendency of the respondent to attempt to build in elements of the Privy Council's reasoning in *Sian Participation* into the legal framework established in *AnAn* and *Founder Group (CA)* without due regard as to the consistency between the two different approaches. Indeed, when we pointed this out to Ms Hoang, she fairly accepted that she was relying on *Sian Participation* for this proposition, but that it was "a sensible decision" on this point. This was untenable. As explained at [67] above, the proposition that a dispute over the debt that the parties have agreed to resolve in arbitration is distinct from a dispute over the debt in the setting of a winding-up application was the basis for the Privy Council's view there that the latter is not subject to an arbitration agreement, and thus the existence of the arbitration agreement does not warrant a different approach than the usual approach of assessing if the debt is disputed on *bona fide* and substantial grounds. This is fundamentally inconsistent with *AnAn* and *Founder Group (CA)* which do not treat as different what is essentially the same dispute based on whether the question is asked in a winding-up application or in another setting. It is for this reason that this court held in *AnAn* and *Founder Group (CA)* that the triable issue standard should not be applied where the dispute over the debt falls within the scope of an arbitration agreement. Having confirmed that the respondent was not inviting this court to overrule *AnAn* and *Founder Group (CA)*, it was quite untenable for the respondent to seek to introduce the approach in *Sian Participation* through the backdoor by raising it in the abuse of process inquiry.

107 In any case, we point out that, even if the approach in *Sian Participation* were to be applied, we had difficulty understanding how that would mean that the issue of the effect of the Audit Confirmation Letters would fall to be decided

Version No 1: 08 May 2026 (14:33 hrs)

under Singapore law instead of PRC law. Even if the relevant question was whether there was a *bona fide* and substantial dispute over the Alleged Debt given the Audit Confirmation Letters, the court would consider if the Audit Confirmation Letters were admissions of the Alleged Debt under PRC law as that was the law governing the Purchase Contract from which the Alleged Debt was said to have arisen. The position is no different than if the respondent had applied for summary judgment on the Alleged Debt: the court would consider if all of the evidence, including the Audit Confirmation Letters, had established the Alleged Debt based on PRC law. The respondent's reliance on *Sian Participation* thus did not take it anywhere.

108 In our judgment, the Tribunal's finding in the Award that the Audit Confirmation Letters did not evidence the Alleged Debt under PRC law was fatal to the respondent's case that the Audit Confirmation Letters were admissions that the appellant had resiled from. As explained above, the need for a clear and unequivocal admission of the debt ensures that the court does not get drawn into deciding a dispute between the parties on whether an admission has been made as that is a matter that is properly reserved for an arbitral tribunal where the parties have agreed to resolve their dispute through arbitration. Where, as in this case, an arbitral tribunal has already weighed in on the effect of an alleged admission, *a fortiori*, it is simply not open to either party, as well as the court, to come to a different conclusion on the issue.

109 Apart from the Audit Confirmation Letters, the respondent also suggested that the appellant had admitted the Alleged Debt by virtue of its financial statements which recorded a sum of "trade payables due to related companies", which presumably included the Alleged Debt owed to the respondent, and the Confirmation Request. The Judge did not find that these

Version No 1: 08 May 2026 (14:33 hrs)

documents amounted to admissions of the Alleged Debt, and the respondent also did not seriously pursue these points on appeal.

110 In any event, we were of the view that these documents could not be said to amount to clear and unequivocal admissions of the Alleged Debt in the present circumstances. Similar to the Audit Confirmation Letters, the parties were sharply divided on whether these documents amounted to admissions of the Alleged Debt. The appellant had consistently objected to the reliance on its financial statements since the inception of CWU 120 in 2022, arguing that the trade payables were only recorded as being due to "related companies" generally and that there was no indication that the stated amounts (or any part thereof) were due specifically to the respondent. The appellant also previously disputed the relevance of the Confirmation Request on the basis of several irregularities.

111 Furthermore, as with the Audit Confirmation Letters, the question of whether the financial statements and the Confirmation Request amounted to admissions of the Alleged Debt was a matter governed by PRC law (see [105] above). However, these documents had not been placed before the Tribunal during the Arbitration, and no evidence was put before the Judge or this court as to their effect under PRC law. We therefore had no proper basis to determine whether these documents constituted admissions of debt. As we have explained above, where uncertainty exists over whether there has been an admission of the debt, the court will ordinarily find that there is a dispute referable to arbitration, and will be slow to conclude that the defendant has fabricated a dispute for the purpose of staving off the winding-up proceedings in an abuse of process (see [88] and [94] above).

Version No 1: 08 May 2026 (14:33 hrs)

112 For the reasons above, we disagreed with the respondent's submission that the appellant had made a clear and unequivocal admission of the Alleged Debt. This meant that the respondent's case on abuse of process failed *in limine* as the appellant logically could not be said to have acted in abuse of process in resiling from an admission that it had never made to begin with. The appeal was allowed on this basis alone. However, for completeness, we go on to explain our view that, even if the Audit Confirmation Letters, the financial statements or the Confirmation Request had constituted admissions of the Alleged Debt, the appellant had provided a satisfactory reason for changing its position and disputing the Alleged Debt.

The appellant had a clear and convincing reason for resiling from any admission of the Alleged Debt

113 In the Arbitration, the appellant had sought a declaration that the Alleged Debt did not exist. The appellant made two closely related arguments in support of this: (a) first, the Purchase Contract was "null and void" under Chinese law as it had been entered into for accounting and bookkeeping purposes and the parties did not have a genuine intention to buy or sell copper cathodes; and (b) second, and flowing from the first argument, the respondent had not delivered any copper cathodes to the appellant under the Purchase Contract (see [11] above). In our view, given the equivocal outcome of the Arbitration, the issue of whether the appellant had a clear and convincing reason for resiling from any admission of the Alleged Debt depended on whether it was entitled to maintain either of these objections in CWU 120 despite failing to obtain the declaration that it had sought. As explained above, the focus is on whether the defendant has an explanation for its change in position such that the court is satisfied that it is not disputing the debt for the sole purpose of staving off winding up. Thus, if the Award had failed to determine either of the objections that the appellant

Version No 1: 08 May 2026 (14:33 hrs)

had made in the Arbitration, that would mean that the appellant could legitimately continue to dispute the Alleged Debt notwithstanding the earlier Arbitration, and it was not open to the court to examine the merits of the appellant's objection to the Alleged Debt.

114 The respondent submitted that the appellant was estopped by the Award from maintaining its first objection that the Purchase Contract had been entered into for bookkeeping purposes and that the parties had not had any genuine intention to buy and sell copper cathodes. Even if that was correct, the appellant would still have a good explanation for disputing the Alleged Debt as long as its second objection as to the respondent's non-delivery of copper cathodes under the Purchase Contract was an issue that had not been determined in the Arbitration. In our view, there was no inconsistency between any finding by the Tribunal that the Purchase Contract was valid and the appellant continuing to maintain its objection that the Alleged Debt was not owed because the respondent had not performed the Purchase Contract. Even if the Tribunal did not agree with the appellant that the parties had no genuine intention to perform the Purchase Contract and therefore upheld its validity, the fact remained that, if the respondent had not performed the Purchase Contract, the Alleged Debt would not be due and payable by the appellant. The crux of the appellant's case was therefore the respondent's non-performance of the Purchase Contract; the reason for the respondent's non-performance – whether it was a common understanding between the parties that the Purchase Contract would not be performed or something else – was strictly irrelevant.

115 In this regard, we found it significant that it was common ground between the parties that the respondent could commence a fresh arbitration to establish that it had performed the Purchase Contract and thereby establish the

Version No 1: 08 May 2026 (14:33 hrs)

Alleged Debt (see [77] above). In its written submissions in the appeal, the respondent had submitted that there had been "no finding [in the Award] as to whether the Purchase Contract had been performed" and that there was nothing by way of estoppel or preclusion preventing the respondent from arguing that it performed the Purchase Contract:

> … since the *ratio decidendi* of the Award contains no finding as to whether the Purchase Contract had been performed, [the respondent] was/is not estopped or precluded from the Award from maintaining, both in CWU 120 and in a future arbitration, that (i) the [Purchase] Contract had indeed been performed; and (ii) the [Alleged] Debt does exist. Indeed, under PRC law, the Award does not preclude [the respondent] from commencing a fresh arbitration against [the appellant] in respect of the [Alleged Debt]. This legal position was also submitted by [the appellant].

Before us, Ms Hoang took the same position when it was put to her that the issue of non-performance had been "left open" by the Tribunal in the Award. Indeed, Ms Hoang went further and accepted that the question of whether the respondent had performed the contract was "something that should be decided by [a] tribunal" as a matter of "PRC law".

116 In our judgment, the respondent's position in this regard made it untenable for it to also argue that the appellant was acting in abuse of process in disputing the Alleged Debt. It was illogical for the respondent to accept, on the one hand, that the dispute over whether it had performed the Purchase Contract remained live, and also argue, on the other hand, that the appellant was acting in abuse of process in disputing the Alleged Debt on that very basis such that the court should wind up the appellant. If the appellant remained entitled to assert in a subsequent arbitration that the respondent had not performed the Purchase Contract, it could hardly be said that the appellant was disputing the Alleged Debt for no reason other than to play for time. Given this, we were

Version No 1: 08 May 2026 (14:33 hrs)

satisfied that the appellant had a clear and convincing reason for resiling from any earlier purported admission it might have made to the Alleged Debt, and it could not be said that the appellant was acting in abuse of process in disputing the Alleged Debt.

117 In any event, even if the respondent had not taken this position, we were nonetheless satisfied, based on a review of the Award, that there was no issue estoppel on the question of whether the respondent had performed the Purchase Contract that would disable the appellant from maintaining this objection.

118 The existence and the scope of any issue estoppel from a prior decision is strictly a matter governed by Singapore law as the *lex fori* because it is an issue of procedure. However, where the prior decision from which a *res judicata* is said to arise is a decision of a foreign court, a Singapore court would only treat it as having final and conclusive effect on a certain issue if the court of origin would regard it as such as well: *Merck Sharp & Dohme Corp v Merck KGaA* [2021] 1 SLR 1102 ("*Merck*") at [41]–[43]. In *Merck*, this court referred with approval to the statement of Lord Reid in *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1967] 1 AC 853 that the court should give a foreign judgment no more and no less a preclusive effect than the foreign court would itself accord to it (at 919):

> … [W]e should have to be satisfied that the issues in question cannot be relitigated in the foreign country. In other words, it would have to be proved in this case that the courts of the German Federal Republic would not allow the re-opening in any new case between the same parties of the issues decided by the [Federal] Supreme Court in 1960, which are now said to found an estoppel here. There would seem to be no authority of any kind on this matter, but it seems to me to verge on absurdity that we should regard as conclusive something in a German judgment which the German courts themselves would not regard as conclusive. It is quite true that estoppel is a matter

Version No 1: 08 May 2026 (14:33 hrs)

> for the lex fori but the lex fori ought to be developed in a manner consistent with good sense.

In our view, there is no reason why the same principle should not apply where the prior decision is not that of a foreign court but an award of an arbitral tribunal. Indeed, it has been held by this court that the principles of *res judicata*, including in the extended form under the *Henderson* doctrine, are applicable to prevent the re-litigation of points that have been or could have been dealt with in an earlier arbitration: *AKN v ALC* [2016] 1 SLR 966 at [57]–[59].

119 Accordingly, the question of whether the Award contained a final and conclusive determination on the respondent's performance or non-performance of the Purchase Contract fell to be considered from the perspective of PRC law: *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545 at [66]. In this regard, there were two main sources before the court from which the court could determine the effect of the Award: (a) the Award itself; and (b) the legal opinions of the parties' respective experts on the legal effect of the Award. In our judgment, both spoke in one voice that the Tribunal had not come down on one side or the other as to whether the respondent had or had not performed the Purchase Contract.

120 In the Award, the Tribunal recorded that the respondent had not been able to adduce any evidence to substantiate its claim that it had delivered the copper cathodes to the appellant under the Purchase Contract such as documents of delivery like the bill of lading or waybill. Because of this, the Tribunal stated that it "ha[d] reason to question the [r]espondent's claim that it ha[d] fulfilled its delivery obligations". In so stating, the Tribunal clearly did not accept that the respondent had performed the Purchase Contract such that the Alleged Debt was owed. The Tribunal went on to highlight another gap in the respondent's

Version No 1: 08 May 2026 (14:33 hrs)

case, in that the respondent had "not provide[d] evidence to explain what delivery conditions it claim[ed] that the actual handover delivery of the contract goods was performed under"; this, too, the Tribunal said, meant that it "ha[d] reason to challenge the [r]espondent's claim that it ha[d] fulfilled its obligation to deliver goods". Then, in its concluding remarks summarising its decision, the Tribunal stated that its rejection of the appellant's case "[did] not mean that [it] supported or made any of ruling on the [r]espondent's claim that it ha[d] contractual claims against the [appellant]", pointing out that the respondent had not filed a counterclaim for the Alleged Debt in the Arbitration.

121 Given what was said in the Award, it was unsurprising that the parties' PRC solicitors both accepted in their respective expert opinions that the Tribunal did not conclusively determine whether the respondent had performed the Purchase Contract. These opinions were put before the Judge for the purposes of the respondent's application for payment out of the Sum, which formed the subject of the first appeal in *SG Commodities (No 1)*:

> (a) The respondent's PRC solicitors, Fangda Partners ("Fangda"), had opined that the Award could be interpreted as having found that it was "more likely than not that the [Alleged] Debt exist[ed] and [the appellant] [was] liable for the same". We rejected this interpretation in *SG Commodities (No 1)* (at [70]). However, more material for present purposes was that it was accepted by Fangda, albeit phrased in double negative terms, that "[t]he Tribunal did not conclude that there was no delivery of the goods by [the respondent]". Fangda also could not point to any part of the Award where the Tribunal definitively found that the respondent had delivered the goods. In other words, the respondent accepted that the Tribunal had not resolved the issue of whether the

Version No 1: 08 May 2026 (14:33 hrs)

respondent had either performed or not performed the Purchase Contract.

(b) The appellant's PRC solicitors, Zhong Lun Law Firm ("Zhong Lun"), opined that the Tribunal had hedged its position on whether the Alleged Debt existed based on its expressions of doubt as to whether the respondent had fulfilled its delivery obligations under the Purchase Contract. Zhong Lun also expressed the view that, because the Tribunal had dismissed the appellant's claim based on the burden of proof, there was nothing preventing the respondent from commencing a fresh arbitration for the Alleged Debt.

122 In these premises, it was clear that there remained an extant dispute following the Arbitration as to whether the respondent had performed the Purchase Contract. There was thus no basis for the respondent to contend that the appellant was abusing the process of the court by disputing the Alleged Debt. As explained above, the court does not consider the merits of the explanation given by the defendant. So long as there *is* an explanation that satisfies the court that the defendant is not contesting the winding-up application simply because it is unable to pay the debt, no abuse of process will be found. Thus, whether the evidence actually supported the appellant's claim that the respondent had not performed the Purchase Contract was a matter to be determined in arbitration, and not by the court in CWU 120. We therefore disagreed with the respondent's submission that the appellant had acted in abuse of process by disputing the Alleged Debt.

Version No 1: 08 May 2026 (14:33 hrs)

The appellant's conduct as a whole did not constitute an abuse of process

123 Finally, taking a holistic view of the appellant's conduct before and during CWU 120, we were satisfied that the appellant had not acted in abuse of process. Although the Judge considered that the appellant's conduct evinced bad faith on its part, we disagreed with this characterisation. It bears emphasis that the threshold for a finding of an abuse of process is a high one: *AnAn* at [99]. Having regard to the following three factors, we did not think that this high threshold had been met.

124 First, after the respondent had issued the statutory demand for the Alleged Debt, the appellant commenced the Arbitration and did so more than a month before the respondent brought CWU 120. The fact that the appellant took the initiative to commence the Arbitration before CWU 120 was even filed demonstrated a genuine desire on its part to dispute the Alleged Debt.

125 Second, the appellant's proactiveness in applying to pay the Sum into court also suggested that it was acting in good faith in disputing the Alleged Debt. As we highlighted to Ms Hoang during the hearing, we found it difficult to see how the respondent could complain that the appellant was acting in bad faith in disputing the Alleged Debt given that the payment in of the Sum showed that the appellant was good for the money and was willing to pay the Alleged Debt if it was found to be due and owing in the Arbitration. Ms Hoang argued that the payment in of the Sum was found by the Judge to have not created any security interest in favour of the appellant in *SG Commodities (No 1) (HC)*, which question we left open in *SG Commodities (No 1)*. However, this point was neither here nor there. The fact remains that, by paying the Sum into court, the appellant accepted that a consequence of doing so was that the Sum might not be returned to it. Put another way, the appellant relinquished control over

Version No 1: 08 May 2026 (14:33 hrs)

how the Sum would be dealt with in so far as the Sum became subject to the terms of the Payment In Order. Objectively speaking, we could not see why the appellant would have subjected itself to this potential detriment – bearing in mind that the payment in of the Sum had been on the appellant's own initiative (see [16] above) – if it was simply looking to play for time.

126 Moreover, we did not accept the respondent's argument that no weight should be given to the payment in of the Sum as the respondent had not derived any benefit from it since the payment out of the Sum ordered by the Judge was later reversed by this court in *SG Commodities (No 1)*. In our view, the fact that the Sum was ultimately not paid out to the respondent could not be attributed to the appellant's conduct. As we observed in *SG Commodities (No 1)*, it was clear from the terms of the Payment In Order that the parties had contemplated that the Arbitration would resolve the issue of the Alleged Debt one way or the other. If the respondent had obtained an Award that confirmed that the Alleged Debt was due and owing, the respondent would likely have had no difficulty in persuading the court to order that the Sum be paid out to it (at [68]). However, for reasons best known to the respondent, which it had described only as "tactical reasons" before the Judge, the respondent chose not to mount any counterclaim in the Arbitration (at [69]).

127 In our view, it was the respondent's omission to bring a counterclaim, rather than any conduct of the appellant, that was the cause of the unusual position which the parties found themselves in. Put simply, if the respondent had mounted a counterclaim (which would entail the burden to prove the existence of the Alleged Debt), the Tribunal would have been constrained to decide if the Alleged Debt was or was not owed to the respondent. Indeed, the Tribunal itself acknowledged this in the Award, as it referred to the lack of a

Version No 1: 08 May 2026 (14:33 hrs)

counterclaim by the respondent when it stated that it was not deciding if the respondent had a claim against the appellant for the Alleged Debt. In the circumstances, we did not think that it lay in the respondent's mouth to complain that the Sum had not been paid out to it or generally that the Tribunal had failed to resolve the parties' dispute over the Alleged Debt. The stalemate following the Arbitration was a consequence of its own making.

128 Third, following on from the last point, we did not see anything in the circumstances of the case that suggested that the appellant was acting in bad faith in resisting CWU 120. A significant feature of this case was that, while the setting of a winding-up application meant that the interests of the appellant's other creditors (and stakeholders) were strictly also in play, it appeared that the respondent was the only creditor of the appellant that had a complaint over an unpaid debt or concerns that the appellant was unable to pay its debts. We say this because no other creditor had come forward in support of CWU 120 despite it having been filed more than three years ago. CWU 120 was thus in substance a bilateral dispute between the appellant and the respondent over the Alleged Debt. There was no extant concern before the court of there being other creditors or claimants lining up to assert that the appellant was unable to pay its debts. In any event, if there were such other creditors, they would be at liberty to take such steps as they saw fit to safeguard their interests, including bringing separate winding-up applications against the appellant if they considered themselves entitled to do so.

Conclusion

129 For the foregoing reasons, we disagreed with the Judge that the appellant had acted in abuse of process by disputing the Alleged Debt. First, we did not agree with the Judge that the Audit Confirmation Letters constituted a clear and

Version No 1: 08 May 2026 (14:33 hrs)

unequivocal admission of the Alleged Debt by the appellant. Second, in any event, we were satisfied that the appellant had given a clear and convincing explanation for disputing the Alleged Debt as it was incontrovertible that the respondent had *not* established its performance of the Purchase Contract and, along with this, that the Alleged Debt was due and payable. Third, having regard to the appellant's conduct as a whole and the totality of the circumstances, we did not think that the appellant's conduct rose to the high threshold of an abuse of process.

130 The consequence of our decision that the appellant did not act in abuse of process was that the respondent was unable to establish its standing as a creditor of the appellant to apply for the appellant to be wound up in CWU 120.

The respondent was not a contingent creditor of the appellant

131 For completeness, the respondent argued in the alternative that it had standing to petition for the appellant to be wound up as a contingent creditor of the appellant. According to the respondent, it was a contingent creditor as the "parties' remaining dispute now only relates to whether the contingency that crystalised the Debt under … the Purchase Contract had occurred".

132 A contingent creditor is a "creditor in respect of a debt which will only become due in an event which may or may not occur": *Stonegate Securities* at 579E–F. The essence of this definition is that the defendant is subject to an existing obligation which, upon a contingency at some point in the future, may crystallise into an obligation to pay the claimant a sum of money. A "contingency" is, by definition, a *future* event that has not yet occurred (and may never occur).

Version No 1: 08 May 2026 (14:33 hrs)

133 In our judgment, it was clear that the respondent did not fit the definition of a "contingent creditor". In the first place, it was not quite clear to us how the respondent was characterising itself as a contingent creditor. As we saw it, the respondent's argument could be put in two different ways that were distinguished based on the source of the alleged contingent debt. On a proper analysis, neither argument could establish the respondent as a contingent creditor of the appellant.

134 The first way would be to treat the Alleged Debt, which arose from the Purchase Contract, as a contingent debt. The relevant "contingency" here would be the respondent's performance of the Purchase Contract by delivery of copper cathodes to the appellant as that was the condition triggering the appellant's obligation to pay the Alleged Debt. But, in our view, this was inconsistent with the definition of a contingent creditor because, as of the time when the Judge heard and decided CWU 120, the respondent's performance (or non-performance) of the Purchase Contract was a matter of *past* fact, save that its existence was disputed and thus subject to a future determination by an arbitral tribunal. The Alleged Debt would only have been a contingent debt if, at the time of the court's determination of CWU 120, the time for the respondent to perform the Purchase Contract had not yet come to pass such that there was an element of uncertainty as to whether the Alleged Debt would later arise. In this case, the fact that the issue of the respondent's performance of the Purchase Contract was disputed and therefore had to be determined by an arbitral tribunal at a future time did not change the issue of performance from a past fact into a future fact. All that an arbitral tribunal would do when deciding the dispute would be to *confirm* what had transpired. That confirmation, however, did not change the reality that the Purchase Contract had either been performed or not been performed and the Alleged Debt had either arisen or not arisen.

Version No 1: 08 May 2026 (14:33 hrs)

135 The respondent referred to our decision in *Founder Group (CA)* at [43(a)] where we had cited the following observations of Kitto J in the decision of the High Court of Australia in *Community Development Pty Ltd v Engwirda Construction Co* (1969) 120 CLR 455 ("*Community Development*") (at 459):

> … there must be an existing obligation and that out of that obligation a liability on the part of the company to pay a sum of money will arise in a future event, whether it be an event that must happen or only an event that may happen. A building contract creates, as soon as it is entered into, an obligation upon the building owner to pay the contract price, either as a whole upon a future event or, more usually, by progress and final payments each of which is to be made on a future event. The event or events may not happen, but if and when one of them does happen the building owner, by force of the contractual obligation, must pay the builder a sum of money. It is, I think, nothing to the point that the event may be complex, as where the payment is agreed to be made when the whole or some part of the work has been done to the satisfaction of an architect as expressed in a certificate or to the satisfaction of an arbitrator as expressed in an award: the building owner is bound from the time the contract is made to pay money to the builder upon a contingency; and that in my opinion makes the builder a contingent creditor of the owner.

In this passage, the point that Kitto J was making was that, upon the entry into a contract, the claimant (the builder) would be a contingent creditor of the defendant (the building owner) as upon the occurrence of a future event (*ie*, the contingency), the defendant will be obliged to pay the claimant a sum of money. We do not disagree with this as a matter of principle. But, in our view, this analysis must be subject to the caveat that the contingency has not occurred by the time of the winding-up application. It is therefore not the case that the claimant would be a contingent creditor in perpetuity. Instead, as explained above, if the contingency is an event that, by the time of the winding-up application, must necessarily have either occurred or not occurred, it will by that time no longer be a contingency by the natural definition of that word. The fact that there is a dispute as to whether the contingency has occurred or not does

Version No 1: 08 May 2026 (14:33 hrs)

not change this; the debt is no longer a contingent debt but simply a disputed debt.

136 For this reason, we disagree with the analysis of the General Division of the High Court in *Re Logistics Construction Pte Ltd* [2024] SGHC 58. In that case, the issue was whether a party, Buildforms, had standing as a contingent creditor of the applicant company to object to the applicant's nominated judicial manager. At the time of the application, there was a pending claim in the Singapore courts where Buildforms had sought payment for certain construction works it had carried out for the applicant. Despite this, the court held that Buildforms was a contingent creditor of the applicant. Its reasoning, in brief, was that because the applicant's defence to Buildforms' claim did not extend to disavowing the existence of the contracts under which Buildforms had brought its claim, but was instead based on a right of set-off in respect of a cross-claim for breach of contract by Buildforms, the contracts "created an obligation upon the applicant to pay Buildforms contingent on a future event, which [was] Buildforms' completion of the specified works" (at [40]). *Community Development* and *Founder Group (CA)* were cited as authority for this analysis. With respect, we do not think this is correct. By the time of the relevant application in which the issue of Buildforms' standing arose, the contingency under the contracts – Buildforms' performance of certain works – had either already occurred or not occurred. The performance of the works was therefore no longer contingent in the sense that it was uncertain whether or not it would take place at some future point in time. If the time for a contingency to occur has passed, the debt which is said to arise upon the fulfilment of the contingency has either come into existence or it has not, although the occurrence of the contingency may be the subject of dispute. Hence, in such circumstances, there

Version No 1: 08 May 2026 (14:33 hrs)

is no longer anything contingent in the existence of the debt, even if its existence or otherwise is subject to determination by a court or arbitral tribunal.

137 The second way in which the respondent could claim to be a contingent creditor of the appellant was based on the debt arising from a future arbitral award confirming that the Alleged Debt had indeed arisen and ordering payment by appellant to the respondent. It should be emphasised that, on this analysis, the relevant debt on which the respondent would claim standing as a creditor of the appellant would not be the Alleged Debt, which arose from the Purchase Contract, but the obligation to pay a sum equivalent to the Alleged Debt imposed by an arbitral award in the respondent's favour. The Alleged Debt, strictly speaking, would by then have ceased to exist as the underlying cause of action for the Alleged Debt would have merged into the arbitral award: *Darsan Jitendra Jhaveri v Lakshmi Anil Salgaocar* [2025] 3 SLR 716 at [48]–[56].

138 However, even on this analysis, the respondent would not be a contingent creditor of the appellant. A claimant would only be a contingent creditor if the defendant was under an *existing* obligation that would crystallise into an obligation to pay the claimant money on the occurrence of a future event. A debt arising from a judgment or arbitral award would not be a contingent debt as until the time when the judgment or award is made, the defendant would be under no obligation to the claimant: *Applications to Wind Up Companies* at para 7.360.

139 In the final analysis, the general difficulty with the respondent's attempt at characterising itself as a contingent creditor was that a disputed debt does not, by reason of the dispute, become a contingent debt. If the respondent's argument were correct, every case involving a disputed debt in a winding-up application

Version No 1: 08 May 2026 (14:33 hrs)

could be re-characterised as a case involving a contingent debt by framing the future determination of the dispute in the applicant's favour as the relevant "contingency". This would abrogate the rule that an applicant whose debt is disputed on *bona fide* and substantial grounds has no standing as a creditor, since any applicant whose debt is disputed could simply sidestep the rule by re-characterising itself as a contingent creditor. We think the absurdity in such an approach speaks for itself.

Conclusion

140 For the above reasons, we found that the respondent had not established its standing as a creditor or contingent creditor of the appellant. This meant that the respondent had no right to present a winding-up application against the appellant. Accordingly, we allowed the appeal, set aside the winding-up order made by the Judge, and dismissed CWU 120. There was no need for us to consider the evidence of the appellant's solvency.

Costs and consequential orders

141 Given our decision to allow the appeal, we ordered that the respondent pay the appellant the costs of the appeal. We also set aside the costs order made by the Judge in CWU 120 for the appellant to pay the respondent's costs and substituted it with an order that the respondent pay the appellant costs.

The respondent was ordered to pay costs on an indemnity basis

142 It is well-established that an order that a party pay costs on an indemnity basis should only be made in exceptional circumstances and must be specifically justified: *BIT Baltic Investment & Trading Pte Ltd v Wee See Boon* [2023] 1

Version No 1: 08 May 2026 (14:33 hrs)

SLR 1648 at [83]. In our judgment, this was an appropriate case for such an order to be made.

143 In *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] 5 SLR 103, the High Court set out the following non-exhaustive categories of conduct that could attract an order of indemnity costs (at [49]):

(a) where the action is brought in bad faith, as a means of oppression or for other improper purposes;

(b) where the action is speculative, hypothetical or clearly without basis;

(c) where a party's conduct during the proceedings is dishonest, abusive or improper; and

(d) where the action amounts to wasteful or duplicative litigation or is otherwise an abuse of process.

The common thread running through these four categories and the general touchstone of an award of indemnity costs is that the party has engaged in unreasonable conduct: *Lim Oon Kuin v Ocean Tankers (Pte) Ltd* [2022] 1 SLR 434 at [36].

144 In our view, the present case fit within all four of the categories above. The respondent's conduct in both CWU 120 and the appeal rose to the high threshold of unreasonableness.

145 First, we considered that the respondent's position in CWU 120 and in this appeal was so devoid of merit that its pursuit of CWU 120 could fairly be termed as "clearly without basis". The law in *AnAn* and *Founder Group (CA)* is

Version No 1: 08 May 2026 (14:33 hrs)

clear: the effect of an arbitration agreement is that the court will, in most cases, find that the applicant in a winding-up application has no standing to apply as a creditor once the debt is disputed by the respondent to the application. In our view, it should have been clear to the respondent that CWU 120 was bound to fail given the circumstances of this case where the parties had already gone through the earlier Arbitration and the resulting Award did not establish the existence of the Alleged Debt. It was obvious, with respect, that the parties remained in the same positions that they were in before the Arbitration in that there was a dispute over the Alleged Debt that was subject to an arbitration agreement. Indeed, even if there remained some ambiguity in the position following the Arbitration itself, any lingering doubts should have been dispelled by our decision in *SG Commodities (No 1)*. Our decision to reverse the payment out of the Sum to the respondent in *SG Commodities (No 1)* turned on the fact that the Award had contained no determination that the respondent was owed the Alleged Debt by the appellant. In the circumstances, as we highlighted to Ms Hoang during the hearing, we found it troubling that the respondent did not do the plain and obvious thing of commencing a fresh arbitration to obtain a conclusive determination that the Alleged Debt was owed to it. Instead, the appellant chose to press on with CWU 120 based on what was, with respect, a contrived argument of abuse of process that was in substance a collateral attack on the Tribunal's decision in the Award, which had expressly stated that there were doubts as to whether the respondent had performed the Purchase Contract (and, therefore, whether the Alleged Debt was owed to it).

146 Second, the overwhelming impression that we derived from the respondent's conduct was that it had chosen to press on with CWU 120 instead of commencing a fresh arbitration to establish the Alleged Debt as it was concerned that it would not succeed in the arbitration, especially in light of the

Version No 1: 08 May 2026 (14:33 hrs)

deficiencies in its evidential case which the Tribunal had flagged in the Award. This concern seemed to us to be the gist of what was referred to before the Judge as the "tactical reasons" for the respondent's omission to mount a counterclaim for the Alleged Debt in the Arbitration and what Ms Hoang described before us as "commercial reasons" for proceeding with CWU 120 despite the Award having expressly stated that the respondent had not established the Alleged Debt. Indeed, despite understandably hedging her position, Ms Hoang candidly accepted that this was "not an unreasonable assessment" of the thinking behind the respondent's decision to proceed with CWU 120.

147 In our view, the respondent's attempt to press on with CWU 120 despite knowing full well from the Award that it had not established the Alleged Debt was a paradigm example of "speculative" conduct. This was reflected in its misguided attempt at relying on elements of the decision in *Sian Participation* which were incompatible with this court's decisions in *AnAn* and *Founder Group (CA)* to justify its decision to pursue CWU 120 instead of establishing the Alleged Debt by commencing a fresh arbitration. It might have been different if the respondent had attempted to mount a direct challenge to the existing law in *AnAn* and *Founder Group (CA)*, and to invite this court to adopt the approach in *Sian Participation* over the approach established in those decisions. But the respondent made no such attempt and was content to argue its case based on the existing law. As mentioned above, it was clear from the outset that there was no reasonable prospect of the respondent succeeding in CWU 120 based on the approach in *AnAn* and *Founder Group (CA)*.

148 Third, we were satisfied that the respondent's conduct in CWU 120 amounted to an abuse of the court's winding-up jurisdiction. As explained at [56] above, a key driver behind the general rule that the court will not exercise

Version No 1: 08 May 2026 (14:33 hrs)

its general civil jurisdiction to decide a dispute over a debt in a winding-up application is the risk that the winding-up application may be abused as an instrument of coercion to pressure a defendant into paying a debt that is genuinely disputed. We considered the present case to be a paradigm example of this. Although we would not go as far as to say that CWU 120 was an abuse of process from the outset, the respondent's continued prosecution of it after the Arbitration was clearly abusive and smacked of bad faith.

149 The starting point is the respondent's application to court for the Sum to be paid out to it despite the Award having stated expressly that the Tribunal had refrained from making any finding that the Alleged Debt existed. We found this significant as it revealed that the respondent was indifferent to whether it had established its right to the Alleged Debt. Rather, its true intention was simply to get its hands on the Sum. To this end, the respondent held CWU 120 over the appellant's head as a Sword of Damocles, when it argued that the appellant should be wound up if the court decided not to order that the Sum be paid out to it: *SG Commodities (No 1)* at [33]. True to this, the respondent's counsel indicated, at the start of the first hearing of the payment out application, that the respondent would apply to withdraw CWU 120 if the appellant consented to the Sum being paid out to the respondent: *SG Commodities (No 1)* at [36].

150 The respondent's motivations were also clear from its adoption of inconsistent positions as to the appellant's solvency. As we have noted at [21] above, despite claiming that the appellant was solvent to justify payment out of the Sum to it, the respondent also maintained in the same breath that the appellant was insolvent such that it should be wound up on the Insolvency Ground in CWU 120 if the Sum was not ordered to be paid out to the respondent. These were logically inconsistent positions since the respondent

Version No 1: 08 May 2026 (14:33 hrs)

could not be solvent and insolvent at the same time. In our view, the fact that the respondent blew hot and cold in this way indicated a lack of genuine belief in its pursuit of CWU 120. It also supported the inference that what the respondent was really interested in was the Sum and pressing on with CWU 120 was a tactical ploy to pressure the appellant not to contest the payment out of the Sum.

151 Even if there remained any doubt, the inference of the respondent's bad faith became inescapable after our decision in *SG Commodities (No 1)*. There, we had made clear that the Award had made no finding as to whether the Alleged Debt existed and that it provided no basis for the respondent to claim payment out of the Sum: *SG Commodities (No 1)* at [69]–[70]. It is also worth pointing out that, in a later part of our judgment explaining our decision to remit CWU 120 to the Judge, we again stated that "the Award did not lead to a resolution of the dispute over the existence of the Alleged Debt", and that the parties should bear this in mind when considering how CWU 120 should be treated based on the principles in *AnAn* and *Founder Group (CA)*: *SG Commodities (No 1)* at [92].

152 As we have already said, it ought to have been obvious to the respondent that it did not have standing to maintain CWU 120 given that the Arbitration had failed to resolve the dispute between the parties over the Alleged Debt. The respondent, however, chose to press on with CWU 120, instead of commencing a fresh arbitration to establish the Alleged Debt and potentially seeking a stay of CWU 120 pending the Arbitration. Leaving aside the fact that this was a completely misconceived position to take, the inexorable inference from the respondent's failure to do the obvious thing and its persistence in prosecuting CWU 120 was that it was using CWU 120 as a means of vexation and

Version No 1: 08 May 2026 (14:33 hrs)

oppression of the appellant to pressure it to pay the Alleged Debt even though the dispute over it had not been resolved in the Arbitration.

153 For the reasons above, we ordered the respondent to pay the appellant costs on an indemnity basis for both CWU 120 and this appeal. We fixed the costs of CWU 120 in the sum of $78,000 (all-in) and the costs of the appeal in the sum of $84,000 (all-in). The latter figure included the costs of the appellant's applications to the Judge and later to this court for a stay of the winding-up order pending the disposal of the appeal. We also ordered that the costs of the liquidation of the appellant to-date were to be borne by the respondent.

The return of the Sum to the appellant

154 Finally, in light of the dismissal of CWU 120 and the conclusion of the Arbitration, the purpose of the Payment In Order was spent given that its terms provided that the Sum was paid into court pending the Arbitration or the determination of CWU 120 (see [17] above). We therefore ordered that the Sum (of US$14,117,585.50) together with all interest accrued thereon, which had been held by the respondent's solicitors, to be returned to the appellant.

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Version No 1: 08 May 2026 (14:33 hrs)

Ong Boon Hwee William, Koh Zhen-Xi Benjamin and Kenneth Wang Ye (Allen & Gledhill LLP) for the appellant;
Hoang Linh Trang and Chu Shao Wei Jeremy (Shook Lin & Bok LLP) for the respondent.

Version No 1: 08 May 2026 (14:33 hrs)