IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 8

Court of Appeal / Civil Appeal No 27 of 2025

Between

Gan Yuan Hong

… *Appellant*

And

(1) Siow Chee Wee
(2) LMO Consulting Pte Ltd

… *Respondents*

EX TEMPORE JUDGMENT

[Insolvency Law — Winding up — Grounds for petition — Just and equitable jurisdiction]

Version No 1: 02 Mar 2026 (17:42 hrs)

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Gan Yuan Hong
v
Siow Chee Wee and another

[2026] SGCA 8

Court of Appeal — Civil Appeal No 27 of 2025
Sundaresh Menon CJ, Hri Kumar Nair JCA and Andrew Phang Boon Leong SJ
2 March 2026

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Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 This appeal arises out of a decision of a judicial commissioner in the General Division of the High Court (the "Judge") dismissing HC/CWU 108/2025 ("CWU 108"): see *Gan Yuan Hong v LMO Consulting Pte Ltd (Siow Chee Wee, third party)* [2025] SGHC 171 (the "Judgment"). CWU 108 was the appellant's application to wind up LMO Consulting Pte Ltd ("LMO") pursuant to s 125(1)(*i*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), which provides that a company may be wound up if the court is satisfied that it is just and equitable to do so.

2 Having considered the parties' arguments and the evidence, we consider that the appeal is unmeritorious and dismiss it.

Background facts

3 We briefly recount the background facts. LMO is in the business of providing regulatory compliance services, trade operations support, and corporate services for offshore entities. LMO is a going concern and is a profitable company. The appellant is the sole executive director of LMO and owns 60% of its shares, while the respondent owns the remaining 40%. The respondent was a non-executive director of LMO until his resignation on 17 December 2024.

4 Three facets of LMO's Constitution are material to the present dispute:

(a) First, there is no pre-emption provision requiring shares to be offered to existing shareholders before being transferred to a third party.

(b) Second, the required quorum for a general meeting of the company is two.

(c) Third, a majority amongst the directors is needed to pass a resolution.

5 Sometime in 2024, relations between the appellant and the respondent deteriorated. Buyout negotiations took place but failed. In January 2025, the appellant proposed that LMO be placed in members' voluntary winding up ("MVWU") pursuant to s 160(1)(*b*) of the IRDA, but his efforts to achieve this also failed, as the respondent was absent for both extraordinary general meetings which were called for the purpose of voting on the MVWU, thereby rendering the meetings inquorate. Consequently, on 21 March 2025, the appellant filed CWU 108.

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6 In CWU 108, the appellant contended that it was just and equitable for LMO to be wound up. According to the appellant, his relationship with the respondent had irretrievably broken down, and this had resulted in a "deadlock" and an inability for him to exit LMO. The respondent resisted CWU 108. According to the respondent, there is no management deadlock in LMO, since he had already stepped down as a director and never played a role in the day-to-day running of LMO. Further, the respondent contends that the appellant had commenced CWU 108 for a collateral purpose, namely, to divert LMO's business to Godwin Austen Advisory Pte Ltd ("GAA"), of which the appellant is the sole shareholder and director.

7 In dismissing CWU 108, the Judge relied on two key findings:

(a) First, LMO was not a quasi-partnership, and the relationship between the appellant and the respondent was not based on mutual trust and confidence. The respondent acquired his shares in the company from another shareholder some time after LMO was incorporated and there were no understandings or expectations that might override the framework of LMO's Constitution (Judgment at [40]).

(b) Second, there was no deadlock in the management of LMO, since the appellant was the sole director, and to the extent it was necessary to convene a general meeting and the respondent was unwilling to attend this, the appellant could satisfy the quorum requirement (of two) in LMO's Constitution without the respondent's participation by transferring a small number of shares to some other individual (Judgment at [41]−[44]).

8 Aside from these two findings, the Judge found that there was inequity on the appellant's part in bringing CWU 108, and thus, it was not open to the

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appellant to seek a winding up of LMO on the just and equitable ground. In this regard, the Judge observed that there was "some evidence" indicating that the appellant had been diverting business that could have been available to LMO to GAA (Judgment at [55]), and considered that this diversion of business to GAA was "an important part of the [appellant's] motivation in pursuing this winding up" (Judgment at [53]).

Our decision

9 The just and equitable ground for the winding up of a company is a broad one. Indeed, as this court noted in *Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 ("*Chow Kwok Chuen*") at [14], there are no set parameters for determining what would constitute "just and equitable". However, the discretion is to be exercised in a principled manner, and the key principles concerning the court's jurisdiction to wind up a company on the just and equitable ground are well-established: see *Tan Yew Huat v Sin Joo Huat Hardware Pte Ltd* [2024] SGCA 27 ("*Tan Yew Huat*") at [72].

10 As we observed in *Perennial (Capitol) Pte Ltd and another v Capitol Investment Holdings Pte Ltd and other appeals* [2018] 1 SLR 763 ("*Perennial*") at [40], the notion of *unfairness* is the foundation of the court's jurisdiction to wind up a company on the just and equitable ground. As a result, where there is a viable mechanism for exit, this would, in the usual circumstances, negate the unfairness required to justify winding up on this ground (*Perennial* at [49]–[51]).

11 In practical terms, this means that it is incumbent upon the party seeking to avail himself of the court's equitable jurisdiction in this regard to demonstrate that there is a justifiable ground for not maintaining the company as a going concern, *and* that there is no available means for him to exit the company. It is

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this combination that results in a finding of unfairness to warrant the invocation of the jurisdiction. In our view, the appellant has failed to demonstrate either of these elements in the instant case. We explain.

12 On the first point, this court has recognised time and again that such grounds may arise in different situations and from different kinds of conduct in various circumstances (see, for instance, *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 ("*Evenstar*") at [31]). In *Chow Kwok Chuen* at [18], we set out the following non-exhaustive list of scenarios which may afford grounds for moving the court to act:

> (a) where the main object of the company cannot be achieved or has been departed from;
>
> (b) where the company's business has been carried on in a fraudulent manner;
>
> (c) where the company is really no more than an incorporated partnership and members can no longer work in association with one another;
>
> (d) where minority members have been oppressed or treated unfairly by controlling members and have justifiably lost confidence in the management of the company; and
>
> (e) where the petitioner has been deliberately excluded from the management of the company contrary to an understanding that he will be allowed to participate in such management.

13 In our view, none of these are applicable to the instant case. It is undisputed that LMO is a going concern, and a profitable one at that. The

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appellant is the majority shareholder and sole director of LMO. Given the circumstances in which the respondent acquired his shares in LMO (through purchase from a third-party for $100,000), and the undisputed fact that the respondent was never involved in the day-to-day running of LMO, it cannot seriously be argued that LMO is a partnership or quasi-partnership, or that there was any kind of legitimate expectation of trust and confidence as between LMO's shareholders.

14 We emphasise that the list of scenarios reproduced above (at [12]) is non-exhaustive, and failure to situate one's application under s 125(1)(*i*) of the IRDA within any of these scenarios is not necessarily fatal. After all, the inquiry into the existence of unfairness is a holistic one which considers all the circumstances of the case.

15 However, in the instant case, there is no such unfairness. We recognise that the required quorum for a general meeting of LMO is two, and that the respondent's persistent absence at such meetings could cause difficulties with convening a general meeting. Were it the case that both the appellant and respondent had an equal shareholding in LMO, a true deadlock may be said to have transpired, and that *might* warrant the conclusion that the company should not be maintained as a going concern on the prevailing basis. However, that is not the case here. As the Judge rightly observed, the appellant holds 60% of the shares in LMO, and there is no reason why the appellant cannot transfer a small number of shares to another individual such that he could then convene meetings without any impediment.

16 For completeness, we address the appellant's allegation that the Judge erred in law. The appellant asserts that the Judge erred (at [48] of the Judgment) in holding that there is a strict requirement of finding a breach of legitimate

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expectations, alongside the inability of the applicant to exit the company, before it can be found that there is unfairness justifying a winding up on just and equitable grounds. In our judgment, the Judge's observations at [48] have been read out of context by the appellant. In our view, the Judge held (at [48]), with reference to *Tan Yew Huat* at [39(c)], that even if an aggrieved shareholder faced difficulty in exiting the company in a particular way, that alone would not suffice to establish unfairness which warranted the winding up of the company on the just and equitable ground. That proposition is undoubtedly correct: there must be a real ground for complaint, coupled with an inability to exit, for the jurisdiction under s 125(1)(*i*) of the IRDA to be successfully invoked. The Judge was saying no more than this; and when the Judgment is read fairly, it is clear that he was not suggesting that it was necessary to find some legitimate expectation in every case before a company may be wound up on just and equitable grounds.

17 We turn to the second element of the analysis which concerns the question of exit arrangements. As we stated above, the ability to exit the company would, in the usual circumstances, negate the unfairness required to justify winding up said company on the just and equitable ground (*Perennial* at [49]–[51]). Plainly, any unfairness complained of can be put to an end once the aggrieved shareholder exits the company. And if there is no ground of complaint to begin with, then any difficulty in exiting the company *per se* cannot amount to a form of unfairness which warrants the invocation of the just and equitable ground.

18 In the final analysis, the fact that there may be some difficulties with exiting a company will not typically suffice to ground an application to wind up the company. This is just something that the shareholder would be taken to have voluntarily agreed to in buying into the company on those terms. As we

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observed in *Perennial* at [69], the power to wind up a company cannot be used to relieve the parties from the bargain they entered into when they structured their relationship according to the articles of association. In this context, legitimate expectations that have arisen between the parties may be relevant to the extent that they represent an agreement or understanding that is not reflected in the articles but nonetheless forms part of the basis on which the parties have dealt with one another (*Evenstar* at [40]). Such expectations may become relevant where their breach affords a basis for complaint, such as where there is an expectation of a relationship of trust and confidence between the shareholders that is no longer in place, or where they affect the exit arrangements for members of the company: see *Ting Shwu Ping (administrator of the estate of Chng Koon Seng, deceased) v Scanone Pte Ltd* [2017] 1 SLR 95 ("*Ting Shwu Ping*") at [107(c)].

19 In the instant case, the appellant could not demonstrate the existence of any relevant legitimate expectation as between the respondent and himself. We do not accept the appellant's assertion that parties "did have a legitimate expectation that they would not continue to be 'locked into' their shareholdings if there were to be an irretrievable breakdown in their relationship" or even that there was something akin to such an expectation. The conduct of both parties, including the respondent's letter of demand dated 14 October 2024, which alluded to a court-ordered buy-out as one of *three* contemplated legal actions, is not compatible with such an assertion.

20 In the absence of any such expectations, the relevance of the appellant's ability to exit LMO is to be assessed with reference to LMO's Constitution. As we noted in *Perennial* at [69], if there is a ready and available means of ensuring that a party who wishes to exit is able to do so on fair terms, then there would in any case be no basis for the court to order a winding-up on the ground of

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unfairness. To be sure, the court must evaluate the viability of the exit mechanism in the light of the circumstances of each case: see *Wong Kit Kee v KSE Technology (Int'l) Pte Ltd* [2019] SGHC 97 at [14], citing *Ting Shwu Ping* at [112]–[113].

21 In the instant case, there is no right of pre-emption in LMO's Constitution, and nothing which limits the selling of shares or the price which they may be sold at. The appellant is not a minority shareholder, for he owns 60% of the shares in LMO. In other words, there is nothing stopping the appellant from just selling his shares in LMO to a third party. We are not dealing here with a minority shareholder that has the theoretical option of selling his shares but in practical terms is unable to find a market for those shares. In such a scenario, the court might well find such an exit mechanism to be unviable.

22 Lastly, we note the Judge's finding that the appellant had been diverting business that could have been available to LMO to GAA (Judgment at [55]). It is not necessary for us to come to a view on this given our conclusion that the grounds for winding up the company are not made out.

Conclusion

23 The appeal is accordingly dismissed with costs. That said, this seems to us to be a case which ought to be capable of consensual resolution. It seems to be common ground that the parties' commercial relationship has run into difficulties. While this, in itself, does not afford grounds for the company to be wound up, the parties ought to be able to work out a fair and sensible way to go their separate ways, and we think, with the assistance of their solicitors, they should direct their efforts to this end.

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24 Having heard the parties on costs, we fix the costs of the appeal in the aggregate sum of $30,000, which is inclusive of all disbursements. We also make the usual consequential orders.

Sundaresh Menon
Chief Justice

Hri Kumar Nair
Justice of the Court of Appeal

Andrew Phang Boon Leong
Senior Judge

Gavin Neo Jia Cheng, Li Yiling Eden and Hudson Wong
(WongPartnership LLP) for the appellant;
Navin Joseph Lobo, Lee Koon Foong Adam Hariz and Suchitra
Suresh Kumar (Premier Law LLC) for the first respondent;
The second respondent absent and unrepresented.

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