Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd [2003] SGCA 23

Case Number : CA 78/2002

Decision Date : 28 May 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ

Counsel Name(s) : Michael Por Hock Sing (Tan Lee & Partners) for the Appellant; Sharmilee Shanmugam (Citilegal LLC) for the Respondent

Parties : Wah Yuen Electrical Engineering Pte Ltd — Singapore Cables Manufacturers Pte Ltd

Companies – Schemes of arrangement – Creditors to recover varying percentages – Whether creditors should be divided into separate classes for voting purposes

Companies – Schemes of arrangement – Information provided not adequate to evaluate scheme – Scheme approved by creditors – Whether scheme should be sanctioned by court

Companies – Schemes of arrangement – Lack of transparency of related parties' debts – Whether votes of related parties should be disregarded in determining if s 210(3) of the Companies Act (Cap 50, 1994 Rev Ed) satisfied

Delivered by Yong Pung How CJ

1 This was an appeal against the decision of S Rajendran J ('the judge') not to sanction the appellant's proposed scheme of arrangement on the ground that the appellant had not been sufficiently forthcoming on the circumstances in which its related party debts were incurred. After considering the submissions of all the parties, we were unanimously of the opinion that the appeal should be dismissed with costs. We now give our reasons.

The Facts

2 The appellant, Wah Yuen Electrical Engineering Pte Ltd ('Wah Yuen'), was a well-established company in the construction industry, with the nickname 'Condominium King' due to the large number of condominium projects that it had undertaken. By the time of the appeal, however, Wah Yuen had become insolvent and had a winding-up petition pending against it. The winding-up proceedings were adjourned to 2 May 2003, pending the outcome of this appeal.

3 In January 2002, Wah Yuen had applied to court under s 210 of the Companies Act ('the Act') for leave to convene a meeting of its creditors for the purpose of considering and, if thought fit, approving a scheme of arrangement with its creditors. Section 210(3) of the Act provides:

> If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement, the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

4 At the meeting of creditors that was thereafter convened, Wah Yuen tendered a revised scheme of arrangement. The revised scheme envisaged an investor injecting funds into Wah Yuen for

distribution to participating creditors in exchange for an assignment of their admitted claims to that investor. Participating creditors whose admitted claims were less than or equal to $2,000 were to be paid in full. Participating creditors whose claims were in excess of $2,000 were to be paid the greater of (i) $2,000 or (ii) an amount equal to 15% of the value of their admitted claims. Claims by related parties and directors (collectively referred to here as 'the related parties') were to be fully subordinated to those of the rest of the participating creditors. To secure payment under the scheme, the investor would furnish a performance guarantee of $250,000, the funds of which would be distributed *pari passu* among the participating creditors in the event of default. According to KPMG Corporate Restructuring Services ('KPMG'), the Court-appointed Scheme Administrator, Wah Yuen's estimated realisable value vis-à-vis each creditor in a liquidation scenario was 0.4% as opposed to 15% under the scheme. The meeting was adjourned to give the creditors time to study the revised scheme.

5 At the adjourned meeting, of the 92 creditors present and voting, 75 (constituting 81.52%) voted for and 17 voted against the acceptance of the revised scheme. The total value of the admitted claims of the 75 who voted for the revised scheme was $8,556,893.43 (constituting 82.26%) and the total value of the admitted claims of the 17 who voted against the revised scheme was $1,845,841.81.

6 Section 210(3) of the Act only requires 50% in number and 75% in value of the creditors (or a class of them) to vote in favour of the scheme ('the percentage requirements'). As the 81.52% in number and the 82.26% in value that had voted in favour of the scheme complied with the percentage requirements of s 210(3), Wah Yuen applied to the High Court for its approval to implement the revised scheme.

7 The application was opposed by the respondent, Singapore Cables Manufacturers Pte Ltd ('Singapore Cables'). It contended that the votes of Wah Yuen's three related creditors should be disregarded for the purpose of determining whether the statutory majority under s 210(3) of the Act had been satisfied and that Wah Yuen had in any case not been sufficiently forthcoming with information that was necessary for a meaningful evaluation of the proposed scheme.

8 The judge accepted Singapore Cables' argument based on the insufficiency of information and held that Wah Yuen had not been sufficiently transparent about the circumstances under which related party debts arose. This was particularly so, given the fact that Wah Yuen's audited accounts for the relevant periods were not available. Full disclosure was necessary to allow the creditors to scrutinise the bona fides of the transactions. Failure to provide relevant accounting details would place third party creditors at a disadvantage which they would not be under if Wah Yuen were to be wound up and a liquidator appointed. The fact that the claims of the related parties would be subordinated to the claims of the other creditors did not adequately address this concern. The judge found the facts of the present case to be broadly analogous to those of *Re Halley's Departmental Store Pte Ltd* [1996] 2 SLR 70, where Selvam J had declined to sanction the proposed scheme. The judge did not deal with Singapore Cables' contention that the related party votes should be disregarded for the purposes of determining whether the statutory majority had been met, except to say that s 210 did not draw any distinction between third party creditors and related party creditors.

The issues

9 On appeal, five issues were raised for our consideration:

(a) whether the admitted claims of the company's related parties should be excluded or

disregarded in determining whether the statutory majority under s 210(3) of the Act has been satisfied;

(b) whether the 36 creditors who stood to recover more than 15% of their claims should have been sub-divided into separate classes for voting purposes;

(c) whether the company had been less than forthcoming in furnishing the information requested by Singapore Cables, and, if so, whether the court should refuse to sanction the scheme on the ground that such conduct evidenced bad faith on the part of the company in promoting the scheme;

(d) whether the scheme was a fair and reasonable one; and

(e) whether *Re Halley's Departmental Store Pte Ltd* should be followed.

We will deal with each issue in turn. Singapore Cables' position was that the third and fourth issues were in fact related because Wah Yuen's lack of transparency prevented the creditors from assessing the bona fides of the related party votes, as well as the merits of the proposed scheme. We will therefore deal with the two issues together under the heading 'the adequacy of information'.

General principles

10 The principles which guide the court when it considers an application under s 210 of the Act were set out by the Court of Appeal in *Daewoo Singapore Pte Ltd v CEL Tractors Pte Ltd* [2001] 4 SLR 35 at p 51:

> Generally speaking, in approving a scheme under s 210 of the Act, the duty of the court is to consider whether the statutory provisions have been complied with, whether the scheme is fair and reasonable to the creditors as a whole, whether the company and the majority creditors are acting bona fide, and whether the minority is being coerced to promote the interest of the majority: see *Re English, Scottish, and Australian Chartered Bank* [1893] 3 CH 385; *Re Dorman, Long & Co* [1934] CH 635.

Whether the admitted claims of the company's related parties should be excluded or disregarded in determining whether the statutory majority under s 210(3) of the Act has been satisfied

11 For voting purposes, s 210(3) requires the creditors to be divided into separate classes if "their rights are so dissimilar that they cannot sensibly consult together with a view to their common interest" : *UDL Argos Engineering & Heavy Industries Co Ltd & Ors v Li Oi Lin & Ors* [2001] 3 HKLRD 634 at p 647. Each class vote must comply with the percentage requirements in s 210(3) before the scheme can be put before the court for its approval. This is to minimise the risk that the majority may push through the scheme at the expense of the minority, whose rights may be dissimilar. In the present case, the creditors were not divided into any classes and all of the creditors voted together at the same meeting.

12 Singapore Cables took objection to the claims of three related parties, namely, Mr Stanley Lee Kiang Leng ('Mr Lee'), Mr Wong Beng Huat ('Mr Wong') and R & N Electrical Engineering Pte Ltd ('R & N'). The related party debts accounted for 61.72% of Wah Yuen's total unsecured debt. The extent of the three parties' relationship with Wah Yuen, as well as the quantum of each of their three claims

was as follows:

	Related party	**Quantum of claim**
(a)	Mr Stanley Lee Kiang Leng, the Managing Director and 70.10% shareholder of Wah Yuen	$4,296,254.10
(b)	Mr Wong Beng Huat, a director and 14.95% shareholder of Wah Yuen	$ 20,000.00
(c)	R&N Electrical Engineering Pte Ltd, a company in which Mr Lee held 90% of the shares and of which he was Managing Director	$ 964,833.61
	Total:-	$ 5,281.087.71

13 Counsel for Wah Yuen correctly submitted that related party creditors did not constitute a separate class of creditors for voting purposes simply because they were related parties. This is because "the test is based on similarity or dissimilarity of legal rights against the company, not on similarity or dissimilarity of interests not derived from such legal rights. The fact that individuals may hold divergent views based on their private interests not derived from their legal rights against the company is not a ground for calling separate meetings" : *UDL Argos Engineering & Heavy Industries Co Ltd & Ors v Li Oi Lin & Ors* (supra).

14 The position of Singapore Cables, however, was not that the two directors and R & N should have voted separately by virtue of the fact that they were related parties. Rather, counsel for Singapore Cables argued that the three parties should not have been allowed to vote at all because there were legitimate concerns over the existence and extent of the related party debts. Insofar as Mr Lee and Mr Wong were concerned, the debts owing to the two directors witnessed a dramatic increase :

(a) In 1999, the amount Wah Yuen allegedly owed to their directors was only S$161,188.00;

(b) In Wah Yuen's audited balance sheet as at 31 December 2000, this amount had increased to S$2,109,390.00 – an increase of S$1,948,202.00;

(c) In Wah Yuen's unaudited balance sheet as of 30 November 2001, this amount had further increased to $3,936,847.00 – an increase of S$1,827,457.00. Out of this total amount, the sum $3,916,847.00 was allegedly owing to Mr Lee alone;

(d) At the second creditors' meeting, the debt allegedly owing (as admitted for the purposes of voting) by Wah Yuen to both their directors, as stated in the summary of results, was $4,316,254.10, out of which the amount allegedly owing to Mr Lee alone was $4,296,254.10. This was more than the total amount allegedly owing to all the directors as of 30 November 2001.

Insofar as R & N was concerned, the debt owing to the company witnessed a dramatic decrease:

(a) The amount owing by Wah Yuen to R & N in 1999 was only $356,028.00;

(b) In Wah Yuen's audited balance sheet as at 31 December 2000, this had increased to $2,497,632.000 – an increase of $2,141,604.00;

(c) In Wah Yuen's unaudited balance sheet as of 30 November 2001, this amount decreased to $1,006,391.00 – a decrease of $1,491,241.00;

(d) At the second creditors' meeting, the debt allegedly owing (as admitted for the purposes of voting) as stated in the summary of results was $964,833.61, reflecting a further decrease of $41,557.39.

15 Singapore Cables argued that it was not possible to verify the extent of the related parties' claims (or indeed if they were creditors at all) on the information that was currently available. In the premises, the three related parties should not have been allowed to vote on the revised scheme. If one were to discount the values attributable to these related parties, the creditors in value supporting the scheme ($8,556,893.43 less $5,281,087.71) would be $3,275,805.72 which worked out to 63.96%: a figure that fell short of the 75% requirement of s 210(3). If one were to exclude the claims of the related parties from the equation, Singapore Cables would have the single largest unsecured claim against Wah Yuen (with a claim in excess of $1.1 million) and would have sufficient votes to effectively veto the scheme. In the result, Singapore Cables submitted, Wah Yuen's application failed at the outset because the percentage requirements in s 210(3) had not been met.

16 At the appeal hearing, counsel for Wah Yuen sought to overcome this objection by arguing that the 75% threshold would have been crossed even if the related parties had voted on less favourable terms. He tendered one set of calculations to show that the proposed scheme would have received the support of 81.03% in value of the creditors even if the quantum of related party debts had remained unchanged since the accounts were last audited for the financial year 2000. He tendered yet another set of calculations to show that the proposed scheme would have received the support of 77.48% in value of the creditors even if the amount owing to R & N had dropped to $964,833.61 but the amount owing to the two directors had not increased since the financial year 2000.

17 We were left unimpressed by this submission. In our opinion, it was always possible to cobble together some hypothetical scenario to show that the percentage requirements in s 210 could have been met. Those scenarios, however, were just that — hypotheticals — and they did nothing to allay the real concerns that the changes in the related party debts had provoked.

18 Nevertheless, as much as we shared Singapore Cables' concern over Wah Yuen's lack of transparency over its related party debts, we were of the opinion that it was better dealt with when the bona fides of the related parties' votes or the merits of the proposed scheme were assessed. If it were a condition precedent that a company had to satisfy each creditor of the genesis and extent of all of its debts before the scheme could be put to the vote, the entire process would be cumbersome and administratively inconvenient, especially when the scheme may itself already provide for a procedure for the adjudication of claims for voting purposes (as it did in this case). Any remaining concerns, therefore, were better dealt with on a discretionary basis.

Whether the 36 creditors who stood to recover more than 15% of their claims should have

been sub-divided into separate classes for voting purposes

19 In the alternative, Singapore Cables submitted that the votes of the remaining creditors were not representative of the views of the majority of the creditors as a whole because of the 75 creditors who voted for the scheme of arrangement, 36 of them (almost half of the creditors voting for the scheme of arrangement) may be said to have rights which were so dissimilar from the other creditors that they would not be in a position to consult together with a view to their common interest. 14 of the creditors stood to recover 100% of their claims. Of the remaining 22 creditors, Singapore Cables submitted that they too were not in position to consult together with a view to their common interest because they stood to recover various percentages of their claims ranging from 15.33% to 89.07%.

20 Although counsel for Wah Yuen took no objection, we noted that Singapore Cables had not advanced this argument before the judge below. According to the Court of Appeal in *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd* [2002] 2 SLR 1 at p 15, a party cannot raise a new argument on appeal unless the court is satisfied beyond doubt that (a) it has before it all the facts bearing upon the new contention, as completely as would have been the case, if the controversy had arisen at the trial and (b) that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been afforded them when in the witness box. The underlying principle behind the test is that the Court of Appeal should not allow any party to advance a new argument on appeal unless it is convinced that it is in as good a position as the judge below would have been to determine the merits of the new contention. In the present case, the court was indeed in such a position because it could resolve the question as to whether the creditors should have been divided into separate classes based on the material before it without having to call for further evidence.

21 What Singapore Cables was essentially advocating was that the creditors should have been put into separate classes based on minor differences in the percentages that they stood to recover. We found this to be both unrealistic and impractical. If Singapore Cables were correct, at least 12 classes of creditors would have to be given separate meetings, each of which would be attended by anything from 1 to 14 creditors. Just as the court must be careful not to empower the majority to oppress the minority by allowing the company to put everyone in the same class, it must be careful not to enable a small minority to thwart the wishes of the majority by fragmenting the creditors into small classes : *UDL Argos Engineering & Heavy Industries Co Ltd & Ors v Li Oi Lin & Ors* (supra) at pp 646-647).

22 On the facts of the present case, one could only adopt a "fairly robust" approach : *Re Crusader Limited* [1995] QSC 95, and classify the creditors in a "broad and objective manner" : *Re Jax Marine Pty Ltd & Companies Act 1961* [1967] 1 NSWR 145 at p 149. Complete identity of interest among the creditors was impossible. Any attempt to subdivide the creditors into classes based on the precise percentage they stood to recover would lend itself to the charge of arbitrariness.

23 What did cause us more concern, however, was whether Wah Yuen should at least have put the 14 who stood to recover 100% of their claims, as well as the three whose claims were subordinated to the rest of the creditors, into separate classes for voting purposes. Prima facie, it seemed to us that the rights of these two groups of creditors were so dissimilar from the remaining creditors that they could not sensibly consult together with a view to their common interest. We did not find it necessary, however, to come to a definitive view on this because Wah Yuen's lack of transparency over its related party debts was sufficient reason not to sanction the proposed scheme of arrangement.

The adequacy of information

The duty to give full information

24 Where a meeting is summoned under s 210 of the Act, s 211(1) requires the company to provide its creditors with a statement "explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons". Quite apart from statutory authority, it is an independent principle of law that the creditors should be put in possession of such information as is necessary to make a meaningful choice. As Selvam J held in *Re Halley's Departmental Store* (supra):

> Since s 210 does not lay down any matters on which the application must be based, it is of extreme importance that the company furnishes full information to the creditors and the court before they can give their approval.
>
> This point was stated by Maugham J in *Re Dorman, Long & Co Ltd* [1934] CH 635 at p 657 as follows:
>
> > ... it is essential to see that the explanatory circulars sent out by the board of the company are perfectly fair and, as far as possible, give all the information reasonably necessary to enable the recipients to determine how to vote. I am assuming, of course, that, following the usual procedure, explanatory circulars are sent out, because, I may observe, there is nothing in the Act to render them essential.
>
> Plowman J in *Re National Bank Ltd* [1966] 1 WLR 819 at p 829 [[1966] 1 All ER 1006 at p 1012] reiterated the point:
>
> > Section 206 ... say[s] nothing about disclosure either of valuations or of profits or of assets or of liabilities. By s 206 the court is given the widest possible discretion to approve any sort of arrangement between a company and its shareholders.

The contentions of the parties

25 Counsel for Singapore Cables contended that this court should not sanction the proposed scheme because Wah Yuen did not provide the creditors with such information as was necessary for the creditors to assess the bona fides of the related parties' votes or the fairness and reasonableness of the proposed scheme. In essence, Singapore Cables feared that the related parties, under the guise of subordination, were attempting to use this scheme to continue operating the business for their own benefit and prevent an investigation into possible misfeasance.

26 In the present case, besides the statutorily required explanatory statement, Wah Yuen also furnished all voting creditors with its audited accounts for the year ending 31 December 2000 and its unaudited balance sheet as of 30 November 2001.

27 Singapore Cables was dissatisfied with the extent of disclosure and attempted to seek further information on Wah Yuen's financial status at the two creditors' meetings. Counsel for Singapore Cables alleged that Wah Yuen did not tackle its queries at the first creditors' meeting of 20

March 2002 and evaded the issue by saying that "any creditor aggrieved by any lack of transparency by the company could make further enquiries from the company or vote against the proposed scheme of arrangement". Singapore Cables subsequently wrote to Wah Yuen on 26 March 2002 with a list of questions regarding the proposed scheme, Wah Yuen's audited accounts for the year ending 31 December 2000 and the unaudited balance sheet as of 30 November 2001. Singapore Cables was of the opinion that Wah Yuen's response of 3 April did not answer its queries adequately or at all. At the second creditors' meeting held on 3 April 2002, Singapore Cables again queried Wah Yuen on its alleged lack of transparency. However, it was merely told that it was at liberty to make representations to the court if the company eventually applied to the court for its approval of the revised scheme.

28 For the purposes of the hearing below, Singapore Cables obtained the services of an outside expert who, in a report prepared after a perusal of all the accounting documents relating to Wah Yuen that had been made available to Singapore Cables, pointed out various discrepancies and raised various queries on the amounts owed to the directors and R&N. Singapore Cables' position was that Wah Yuen had yet to address any of its concerns to its satisfaction.

29 Wah Yuen's position was that it had co-operated with Singapore Cables to the extent possible under the circumstances and that Singapore Cables was simply being fastidious in continuing to oppose what was a fair and reasonable scheme.

30 Counsel for Wah Yuen submitted that it was not practical or realistic for the company to furnish an audited set of accounts for the year ending 31 December 2001, when the application to convene the first creditor's meeting was scheduled for 16 January 2002, just two weeks after the close of the financial year. An urgent special audit, counsel argued, was not feasible and could well have delayed the implementation of the scheme. Quite apart from the fact that Wah Yuen allegedly could not even afford a special audit, the company faced significant difficulties in updating its financial records and managing its projects because of the high turnover in its accounting and project management staff. Far from being evasive, Wah Yuen responded to each and every one of Singapore Cables' queries of 26 March 2002 within a week. While its response may not have appeared adequate to Singapore Cables, it was the best that it could achieve within the short time frame and its financial constraints. While Wah Yuen did not respond to the expert's report tendered on behalf of Singapore Cables, counsel submitted that this should not be taken as a sign of bad faith because the fact of the matter was that the company could not afford to hire an accountant to respond to the queries.

31 Insofar as the related party debts were concerned, Wah Yuen accused Singapore Cables of being unduly suspicious. Wah Yuen contended that it was only natural for the directors to sustain the company in a time of grave financial difficulty by lending it substantial sums of money. Insofar as R & N was concerned, Wah Yuen submitted that it was not unusual for its running accounts with R & N to fluctuate over time since it undertook projects of substantial size and R & N was its primary subcontractor.

32 If the related parties really did have oblique motives, they would not have allowed their claims to be subordinated to the rest of the creditors nor permitted an outsider, in the form of the new investor, to be involved in the company's affairs. In the circumstances, Singapore Cables had no legitimate cause for complaint, particularly when no other creditor had raised objections regarding the extent of Wah Yuen's disclosure and the company did not possess any commercial acumen that was superior to the other creditors. Wah Yuen asserted that Singapore Cables could not possibly have the best interests of the other creditors at heart because it had previously attempted to force the company to assign it its project proceeds in preference to the other unsecured creditors.

Whether Wah Yuen was sufficiently forthcoming on the related party debts

33 While the courts have generally adopted the stance that "the creditors … are much better judges of what is to their commercial advantage than the court can be" : *In Re English, Scottish, and Australian Chartered Bank* [1893] 3 CH 385 at p 409, this is premised on the assumption that the creditors have been provided with such information as was necessary to make an informed decision.

34 Amongst all the queries that Singapore Cables had raised regarding Wah Yuen's financial status, we found the most compelling to be the ones concerning the company's lack of transparency over its related party debts. Wah Yuen's related party debts deserved close scrutiny in the present case because of the extent to which their quantum changed within a short period of time.

35 Although related party votes are counted for purposes of determining whether the statutory majority has been reached, the courts have consistently attributed less weight to such votes when asked to exercise their discretion in favour of a scheme. This is because the related party may have been motivated by personal or special interests to disregard the interests of the class as such and vote in a self-centred manner. In the present case, we found no reason to abandon our traditional reserve because Wah Yuen's continued reticence on the related party debts prevented the court from making a competent assessment of the bona fides of the related party votes.

36 It was disingenuous for Wah Yuen to claim that it had neither the time nor the money to respond to Singapore Cables' queries on the related party debts when the circumstances in which they incurred were within the knowledge of its directors. Although Wah Yuen itself acknowledged that it was in possession of all that was necessary to establish the existence of the related party debts, it did not produce any of its evidence. Instead, Wah Yuen had the temerity to dismiss Singapore Cables' concerns by telling it that it could always raise its objections before the court when the scheme came up for the court's approval. This was hardly the sort of attitude that we would expect from a company that was at its creditors' mercy. Wah Yuen could not legitimately expect its creditors to be satisfied with the mere assertion that the movements were "not unusual" when the proposed scheme required them to decide if they should relinquish their claims in toto in exchange for only a limited return : *Re Pheon Pty Ltd* 11 ACLR 142 at p 156. In the absence of further information, it was not unreasonable for Singapore Cables to suspect that there may have been some impropriety in the manner in which the related party debts were incurred.

37 In any case, we withheld our approval for the proposed scheme of arrangement because we found that the creditors were not in a position to assess the fairness and reasonableness of the scheme. At the appeal hearing, counsel for Wah Yuen emphasised repeatedly that KPMG had assessed the company's estimated realisable value vis-à-vis each creditor to be 15% under the scheme, as opposed to 0.4% in a liquidation scenario. In our opinion, this was an attempt to borrow the respectability of the KPMG name to clothe the figures with an aura of authority. In reality, the estimated realisable value vis-à-vis each creditor in a liquidation scenario was not reliable because it was based on unaudited information. Indeed, a representative from KPMG itself went so far as to say that:

> … the assessment of the returns to the creditors in the event of the winding up of the company were (*sic*) based on the unaudited accounts submitted to KPMG by the company. The accuracy of the unaudited accounts was not something KPMG could verify as it was not within KPMG's appointment as proposed Scheme Administrator to verify the same. The accuracy or otherwise of such unaudited accounts would depend largely on the company and its officers… As such … any questions regarding the accuracy of the unaudited accounts should properly be directed to the company.

This meant that the creditors could not determine whether the returns under the proposed scheme of arrangement were *in fact* greater than what they could expect in a liquidation. It may well be that a proper verification of the related party debts would reveal that the related party debts did not in fact exist to the extent currently represented. In such a scenario, the returns to the creditors in a liquidation would be larger than that currently estimated. It was also possible that Wah Yuen could have made preferential payments to its related parties. These payments could be clawed back in a liquidation and channelled to other creditors.

38 In the circumstances, we found Wah Yuen's allegation of bad faith against Singapore Cables to be an attempt at distraction and did not give it much weight. Singapore Cables was well within its rights to bargain with Wah Yuen for security. Even if Singapore Cables did have ulterior motives for opposing the proposed scheme, the fact of the matter was that it had established that the creditors did not possess sufficient facts to exercise an informed vote. We also did not attribute much weight to the argument that Singapore Cables' objections should be given less credit simply because it was the only company to raise objections to the proposed scheme. To our minds, the argument lacked cogency because 16 other creditors in fact also rejected the scheme. Moreover, out of the 75 who voted in favour of the scheme, 14 had no cause for complaint because they stood to recover 100% of their claims.

Whether Re Halley's Departmental Store Pte Ltd should be followed

39 In *Re Halley's Departmental Store Pte Ltd*, the company sought the court's approval of a scheme of arrangement between the company and its unsecured creditors. Prior to the company's application, a winding-up petition had been filed by Twenty Eight Accessories who opposed the scheme of arrangement. Amongst the unsecured creditors was Jewellery Industries who owned a 45% stake in the company. Jewellery Industries was allegedly owed 71% of the total unsecured debt.

40 At the meeting, no accounts or documents were produced. In particular, nothing was produced to show how the alleged debt to Jewellery Industries was incurred. Twenty Eight Accessories opposed the application on the basis that it wanted to wind up the company so that there could be a full investigation into the affairs of the company by liquidators. In particular, it wanted to investigate how the huge debt to Jewellery Industries was incurred and what had happened to the assets of the company.

41 Selvam J declined to sanction the scheme. He found as a fact that the company's primary purpose in making the scheme of arrangement was to bring an end to the winding-up petition presented by Twenty Eight Accessories and avoid an investigation into possible misfeasance. If approved, the effect of the scheme would be that creditors like Twenty Eight Accessories would be paid a small sum in satisfaction of a large debt and the company would continue to operate for the benefit of creditors like Jewellery Industries. Although the scheme was supported by a major creditor, Selvam J treated its support with reserve because the creditor was a substantial shareholder in the debtor company and both companies had common directors/shareholders.

42 On the facts of the present case, it was not possible to say with confidence that the related parties indeed did have similar motives for promoting the scheme. It was not necessary, however, for Singapore Cables to pitch the case as high as this in order to succeed. As discussed above, it is an independent principle of law that the creditors must be put in a position to make an informed choice. On the face of it, the proposed scheme was certainly an attractive one because it offered the creditors an estimated realisable value of 15% as opposed to 0.4% in a liquidation scenario. The creditors were assured of payment because the funds came from an external investor as opposed to the struggling company itself. The related parties even went so far as to give the other creditors

priority by subordinating their claims to theirs. Unfortunately, the creditors were not in a position to ascertain whether the scheme was *in fact* as attractive as it appeared because of Wah Yuen's lack of transparency.

Appeal dismissed.

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