IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 245

Originating Summons No 1416 of 2019 (Summons No 1841 of 2020)

In the matter of Section 273(3) of the
Companies Act (Cap. 50)

And

In the matter of The Wellness Group Pte Ltd (in liquidation)

(1) Seshadri Rajagopalan
(2) Jotangia Paresh Tribhovan

… *Applicant(s)*

Originating Summons No 434 of 2020

In the matter of Section 272(1)(*d*) of the
Companies Act (Cap. 50)

And

In the matter of The Wellness Group Pte Ltd (in liquidation)

(1) Seshadri Rajagopalan
(2) Jotangia Paresh Tribhovan

… *Applicant(s)*

GROUNDS OF DECISION

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[Insolvency Law] — [Winding up] — [Liquidator] — [Powers] — [Court sanction]
[Insolvency Law] — [Winding up] — [Liquidator] — [Discontinuance of action]

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Re Seshadri Rajagopalan and another and another matter

[2020] SGHC 245

High Court — Originating Summons No 1416 of 2019 (Summons No 1841 of 2020) and Originating Summons No 434 of 2020
Chua Lee Ming J
4 August 2020

10 November 2020

Chua Lee Ming J:

Introduction

1 The Companies Act (Cap 50, 2006 Rev Ed") ("CA") grants liquidators a panoply of powers that enable them to carry out their tasks. Some of these powers may be exercised on the liquidator's own volition; others require the Court's approval. Under s 272(1)(*d*) of the CA, the liquidator's power to compromise debts owing to the company in liquidation is subject to approval by the Court or the committee of inspection. The main issue in these proceedings concerned the approach that the Court should take in deciding whether to grant such approval.

2 The applicants in both applications, Mr Seshadri Rajagopalan and Mr Jotangia Paresh Tribhovan, are the joint and several liquidators (collectively, the "Liquidators") of The Wellness Group Pte Ltd ("Wellness"), which was

ordered to be wound up in Companies Winding Up No 62 of 2018 ("CWU 62/2018").

3 The first application was Originating Summons No 434 of 2020 ("OS 434/2020"), in which the Liquidators sought the Court's approval authorising them to compromise and discharge Wellness' claims against (a) Sunbreeze Group Investments Ltd ("Sunbreeze"); and (b) Mr Manoj Mohan Murjani ("Manoj") and Mrs Kanchan Manoj Murjani ("Kanchan"), on the terms of a draft Deed of Settlement (the "Settlement Deed"). Sunbreeze, which was wholly owned and controlled by Manoj and Kanchan, held 80.62% of the shareholding in Wellness. At the material times, Manoj and Kanchan were also directors of Wellness.

4 The second application was Summons No 1841 of 2020 ("SUM 1841/2020"), filed in Originating Summons No 1416 of 2019 ("OS 1416/2019"). In Originating Summons No 1416 of 2019 ("OS 1416/2019"), the Liquidators had applied for an order that they be at liberty to take all steps as they deem necessary to recover a sum of $8,866,057.70 from Sunbreeze. In SUM 1841/2020, the applicants sought the leave of Court to discontinue OS 1416/2019. It was common ground that SUM 1841/2020 was contingent on the Court's approval in OS 434/2020. OS 1416/2019 would no longer be required if the approval sought in OS 434/2020 was granted.

5 After considering the parties' written and oral submissions, I granted the Liquidators' applications in both OS 434/2020 and SUM 1841/2020.

Factual background

6 In April 2018, two shareholders of Wellness, Vickers Private Equity Fund VII LP and Vickers Fund II LP (collectively, "the Vickers Funds"), filed

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CWU 62/2018, in which they applied for a winding up order against Wellness under s 254(1)(*f*) and s 254(1)(*i*) of the CA. Subsequently, the Vickers Funds withdrew their application and another shareholder, EQ Capital Investments Ltd ("EQ Capital"), was substituted as the plaintiff in place of the Vickers Funds.

7 On 2 May 2019, I ordered Wellness to be wound up (see *EQ Capital Investments Ltd v The Wellness Group Pte Ltd* [2019] SGHC 154). I was satisfied that EQ Capital had established sufficient grounds to justify the winding up of Wellness under both ss 251(1)(*f*) and 254(1)(*i*) of the CA.

8 On 17 May 2019, I approved the appointment of the Liquidators. No committee of inspection was established in Wellness' liquidation.

9 Sunbreeze and Wellness appealed against my decision to wind up Wellness in Civil Appeal No 96 of 2019 and Civil Appeal No 114 of 2019 respectively. On 16 January 2020, the Court of Appeal dismissed both appeals, finding that the grounds for the winding up were satisfied and that the winding up order had been properly made in the circumstances of the case.

The Settlement Deed

10 In CWU 62/2018, I had made the following findings, among others:

(a) Manoj had caused Wellness to borrow $1.05m from Sunbreeze and this sum was used to pay the party-and party costs ordered against Wellness and Manoj in respect of an earlier action in High Court Suit No 187 of 2014 ("S 187/2014"). S 187/2014 was a claim by Wellness and Manoj for oppression; it was dismissed (see *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another*

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suit [2016] SGHC 64) and the appeal to the Court of Appeal in Civil Appeal No 64 of 2016 was also dismissed.

(b) Manoj had caused Wellness to distribute dividends to Wellness' shareholders in excess of the company's accumulated profit for the year ended 31 March 2011. The excess dividends amounted to $10,997,730.49.

11 The Liquidators demanded payment of the excess dividends from the shareholders of Wellness. The Vickers Funds and EQ Capital repaid their respective shares of the excess dividends to Wellness. Sunbreeze declined to repay its share, which amounted to $8,866,057.70. Instead, Sunbreeze demanded that the Liquidators call for an extraordinary general meeting ("EGM") to authorise and direct the Liquidators to divide among the shareholders in specie assignments of each shareholder's respective share of the excess dividends, subject to payment of the company's liabilities. The EGM was held on 11 November 2019 and, given Sunbreeze's 80.62% shareholding, the resolution was passed.

12 The Liquidators did not believe that the resolution was in the best interests of the company. They also believed that Sunbreeze had a conflict of interests in voting on the resolution. They therefore filed OS 1416/2019 (see [4] above).

13 After the appeals against my decision in CWU 62/2018 were dismissed, the Liquidators were approached to engage in without prejudice negotiations with Sunbreeze, Manoj and Kanchan on the global resolution of claims that Wellness may have against them and claims that each may have against

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Wellness. The negotiations resulted in the Settlement Deed that was the subject matter of OS 434/2020 (see [3] above).

14 The Settlement Deed settled Wellness' claims against:

(a) Sunbreeze for $8,866,057.70, being Sunbreeze's share of the excess dividends (the "Sunbreeze Excess Distribution"); and

(b) Manoj for $522,056.89, being Manoj's purported share of the taxed costs and disbursements relating to S 187/2014 that had been paid by Wellness (the "Manoj Suit 187 Costs)".

15 In summary, the Settlement Deed provided as follows:

(a) Sunbreeze, Manoj and Kanchan agreed to be jointly and severally liable to pay the Settlement Sum, *ie*, the Sunbreeze Excess Distribution and the Manoj Suit 187 Costs less the Final Adjudicated Amount. The Final Adjudicated Amount was such amount that may be admitted by the Liquidators or the Court (in the event that Sunbreeze and/or Manoj appealed against the Liquidators' decision) in respect of a sum of $4,595,000 claimed by Sunbreeze in its proof of debt.

(b) Payment of the Settlement Sum was to be made in instalments:

(i) The first instalment of $1m was to be paid within three business days from the date of the court's approval of the Settlement Deed (the "Initial Payment Date").

(ii) A second instalment of $1m was to be paid within six months from the Initial Payment Date.

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(iii) The balance amount was to be paid by the later of five business days from the date the Final Adjudicated Amount was determined, or 12 months from the Initial Payment Date.

(c) Sunbreeze, Manoj and Kanchan were to deposit the first instalment with Rev Law LLC upon execution of the Settlement Deed, and to furnish a bankers' guarantee for the second instalment by the Initial Payment Date.

(d) If Sunbreeze, Manoj and/or Kanchan defaulted in making any payment or breached any of the terms of the Settlement Deed, the entire Settlement Sum would become immediately due and payable, with interest at 5.33% per annum from the due date up to the date of actual payment.

(e) Kanchan, Manoj and Sunbreeze irrevocably agreed not to contest, and to consent to judgment in any legal proceedings that may be brought by Wellness and/or the Liquidators against Manoj and/or Sunbreeze in the first instance or against Kanchan in the second instance, to recover any sum due under the Settlement Deed.

16 The Liquidators then filed OS 434/2020 seeking the Court's approval for them to compromise the claims against Sunbreeze and Manoj on the terms of the Settlement Deed.

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OS 434/2020: Application to approve the Settlement Deed

17 The Liquidators' application was made pursuant to s 272(1)(*d*) of the CA, which reads as follows:

> **Powers of liquidator**
>
> **272.**—(1) The liquidator may with the authority either of the Court or of the committee of inspection –-
>
> …
>
> (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages subsisting, or supposed to subsist, between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof; and
>
> …
>
> (2) The liquidator may —
>
> …
>
> (b) compromise any debt due to the company, other than calls and liabilities to calls and other than a debt where the amount claimed by the company to be due to it exceeds $1,500;
>
> …

As there was no committee of inspection, the Liquidators sought the Court's approval.

18 I was informed that the only reported decision in Singapore on s 272(1)(*d*) is the High Court decision in *Re Barring Futures (Singapore) Pte Ltd (in compulsory liquidation)* [2002] SGHC 15. In that case, the liquidators applied for the Court's sanction of a scheme of arrangement. In the course of

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the proceedings, the liquidators also applied pursuant to s 272(1)(*d*) of the CA for sanction of seven netting off deeds on contribution liability and costs. The Court gave its approval but did not discuss s 272(1)(*d*) (at [16]).

19 The Liquidators then referred me to the position in England and Australia.

The position in England

20 Section 167(1)(*a*) of the UK Insolvency Act 1986 (c 45) ("UKIA") provided that where a company is being wound up by the court, the liquidator may "with the sanction of the court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 4 …". Paragraphs 2 and 3 of Part I of Schedule 4 of the UKIA provided for the liquidator's power as follows:

> 2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
>
> 3. Power to compromise, on such terms as may be agreed –
>
> > (a) all calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist, between the company and a contributory or other debtor or person apprehending liability to the company, and
> >
> > (b) all questions in any way relating to or affecting the assets or the winding up of the company,
>
> and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

Paragraph 3 was in *pari materia* to s 272(1)(*d*) of the CA.

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21 In *Re Edennote Ltd (No. 2)* [1997] 2 BCLC 89 ("*Re Edennote*"), there was no liquidation committee and the liquidator applied to the court for an order sanctioning a proposed compromise of proceedings. The liquidator was not in funds to pursue the court action. The Court sanctioned the compromise. Lightman J set out the approach to be adopted as follows (at 92):

> Where a liquidator seeks the sanction of the court and takes the view that a compromise is in the best interest of the creditors, in any ordinary case, where…there is no suggestion of a lack of good faith by the liquidator or that he is partisan the court will attach considerable weight to the liquidator's views unless the evidence reveals substantial reasons why it should not do so, or that for some reason or other his view is flawed.

22 *Re Edennote* was cited with approval by the English Court of Appeal in *Re Greenhaven Motors Ltd (in liquidation)* [1999] BCLC 635 ("*Re Greenhaven*"). Chadwick LJ set out the following additional guidance on the approach to be taken by the Court (at 642):

> In deciding whether or not to sanction a proposed compromise the court must consider whether the interests of those, whether creditors or contributories, who have a real interest in the assets of a company in liquidation are likely to be best served (i) by permitting the company to enter into that compromise with all the terms that it contains; or (ii) by not permitting the company to enter into that compromise. It is not for the court to speculate whether the terms of the proposed compromise were the best that could have been obtained; or whether the proposed compromise would have been better if it did not contain all the terms that it does contain. Unless it is satisfied that, if the company is not permitted to enter into the compromise on the terms which the liquidator has negotiated, there will then be better terms or some of compromise offer, the decision is between the proposed compromise and no compromise at all.
>
> In reaching that decision, the court may have to weigh the different interests of creditors and contributories and, perhaps, the different interests of preferential and non-preferential creditors. It will not give weight to the wishes of those who will be unaffected whichever way the decision goes, for example, the

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> interests of contributories who have no realistic prospect of receiving a distribution in any foreseeable circumstances, or the wishes of preferential or secure creditors who will be paid in full in any event. Subject to that, the court will give weight to the wishes of creditors and contributories whose interests it has to consider, for the reason that creditors and contributories, if uninfluenced by extraneous consideration, are likely to be good judges of where their own best interests lie. For the same reason the court will give weight to the views of the liquidator, who may, and normally will, be in the best position to take an informed and objective view. But, as I have said, at the end of the day it is for the court to decide whether or not to sanction the compromise.

23 In *Re Greenhaven*, the Court of Appeal refused to sanction the compromise. The Court found that (a) the settlement agreement conferred no discernible benefit on any creditor or contributory of the company; (b) the fact that some benefit might be conferred on the Liquidator personally, was no reason for the Court to sanction the compromise; (c) there was some risk, perhaps remote, that the agreement might cause loss to the company by reason of the very wide terms of the release contained in it; and (d) by contrast there was no detriment to the company if it was not permitted to enter into the agreement.

The position in Australia

24 Section 477(1)(*d*) read with ss 477(2A) and 477(2B) of Australian Corporations Act 2001 (Cth) ("ACA") provide as follows:

> **Powers of liquidator**
>
> **477.**—(1) Subject to this section, a liquidator of a company may
>
> **…**
>
> (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist, between the

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> company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of, and give a complete discharge in respect of, any such call, debt, liability or claim.
>
> …
>
> (2A) Except with the approval of the Court, of the committee of inspection or of a resolution of the creditors, a liquidator of a company must not compromise a debt of the company if the amount claimed by the company is more than:
>
> (a) if an amount greater than $20,000 is prescribed-the prescribed amount; or
>
> (b) otherwise--$20,000.
>
> (2B) Except with the approval of the Court, of the committee of inspection or of a resolution of the creditors, a liquidator of a company must not enter into an agreement on the company's behalf (for example, but without limitation, a lease or an agreement under which a security interest arises or is created) if:
>
> (a) without limiting paragraph (b), the term of the agreement may end; or
>
> (b) obligations of a party to the agreement may, according to the terms of the agreement, be discharged by performance;
>
> more than 3 months after the agreement is entered into, even if the term may end, or the obligation may be discharged, within those 3 months.
>
> …

25 Section 272(1)(*d*) of the CA is substantially similar to s 477(1)(*d*) read with s 477(2A) of the ACA, except that:

(a) under s 477(2A) of the ACA, the monetary threshold below which the liquidator can compromise debts without further approval, is A$20,000 or higher (if so prescribed) whereas under s 272(2)(*b*) of the CA, the threshold is S$1,500; and

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(b) under s 477(2A) of the ACA, the liquidator may compromise debts with the approval of the company's creditors whereas this is not provided for under s 272(1) of the CA.

26 In *Re Sheahan (as joint and several liquidators of BCI Finances Pty Ltd, BINQLD Finances Pty Ltd, EGL Development (Canberra) Pty Ltd, Ligon 267 Pty Ltd) (all in liquidation)* [2018] FCA 1499 ("*Re Sheahan*"), the Federal Court of Australia held (at [16]) that the principles relating to an approval under s 477(2A) were the same as those under s 477(2B) of the ACA and referred to the following summary of the principles set out in *Stewart, Re Newtronics Pty Ltd* [2007] FCA 1375:

> (1) the Court does not simply "rubber stamp" what is put forward by a liquidator. As Giles J observed in *Re Spedley Securities (in liq)* (1992) 9 ACSR 83 at 85 – 86:
>
> > "[T]he Court is necessarily confined in attempting to second guess the liquidator in the exercise of his powers, and generally will not interfere unless there can be seen to be some lack of good faith, some error in law or principle, or real and substantial grounds for doubting the prudence of the liquidator's conduct. The same restraint must apply when the question is whether the liquidator should be authorised to enter into a particular transaction the benefits and burdens of which require assessment on a commercial basis. Of course, the compromise of claims will involve assessment on a legal basis, and a liquidator will be expected (as was made plain in *Re Chase Corporation (Australia) Equities Ltd)* to obtain advice and, as a prudent person would in the conduct of his own affairs, advice from practitioners appropriate to the nature and value of the claims. But in all but the simplest case, and demonstrably in the present case, commercial considerations play a significant part in whether a compromise will be for the benefit of the creditors".
>
> (2) the Court will not approve an agreement if its terms are unclear: *Re United Medical Protection (No 4)* [2002] NSWSC 741.

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> (3) the role of the Court is to grant or deny approval to the liquidator's proposal. As such, its role is not to develop some alternative proposal which might seem preferable: *Corporate Affairs Commission v ASC Timber Pty Ltd* [1998] NSWSC 596.
>
> (4) in reviewing the liquidator's proposal, the Court's task is "[not] to reconsider all of the issues which have been weighed up by the liquidator in developing the proposal, and to substitute its determination for his in…a hearing *de novo* but…simply to review the liquidator's proposal, paying due regard to his or her commercial judgment and knowledge of all of the circumstances of the liquidation, satisfying itself there is no error of law or ground for suspecting bad faith or impropriety, and weighing up whether there is any good reason to intervene in terms of the 'expeditious and beneficial administration' of the winding up (*ASC Timber* at 1,650).
>
> (5) further, in deciding whether or not a liquidator should be given permission to enter into a funding agreement (whether retrospective or not), it is important to ensure, *inter alia*, that the entity or person providing the funding is not given a benefit disproportionate to the risk undertaken in light of the funding that is promised or a grossly excessive profit: *Anstella Nominees Pty Ltd v St George Motor Finance Ltd* (2003 21 ACLC 1,347 at [11].
>
> (6) generally, the Court grants approval under s 477(2B) of the Act only where the transaction is the proper realisation of the assets of the company or otherwise assists in the winding up of the company: *GDK Financial Solutions* at [58].

White J also emphasised (at [17]):

> … the Court's approval is not an endorsement of a proposed agreement. It is instead a permission for liquidators to exercise their own commercial judgment. The Court satisfies itself that there is no good reason to intervene in the administration of the winding up insofar as that is reflected in the agreement for the compromise of the debts.

27 In *Re Sheahan*, the Court approved the settlement agreement for the following reasons (at [18] – [25]):

> (a) the creditors of each of the liquidated companies had given their approval for the compromise pursuant to s 477(2B) and had

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communicated their willingness to give approval pursuant to s 477(2A) of the ACA;

(b) the number of creditors was small and in cases where there was more than one creditor, the Deputy Commissioner of Taxation was by far the largest creditor and was actively involved in the negotiation of the proposed agreement;

(c) the approval would result in the payment of substantial sums to the liquidated companies;

(d) the liquidators had taken advice from senior counsel and the legal advisors had advised in favour of entering into the proposed arrangement;

(e) the liquidators were experienced and had said that the settlement agreement would be in the best interests of the creditors of the liquidated companies;

(f) the content of the proposed agreement was detailed and complex and close consideration must have been given and was not ill-considered or hastily prepared; and

(g) there were no other considerations which should cause the Court concern about granting its approval.

The approach to be adopted under s 272(1)(d) of the Companies Act

28 It seemed to me that the English and Australian positions were not really all that different and I respectfully agree in general with the principles set out in *Re Greenhaven* and in *Re Sheahan*. In my view, in deciding whether to approve

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an application by a liquidator under s 272(1)(*d*) of the CA, the Court has to satisfy itself that the terms of the compromise are in the interests of the company. In making this determination, the Court:

(a) neither "rubber stamps" the liquidator's decision to enter into the compromise nor reviews the liquidator's decision as though it were hearing an appeal;

(b) does not speculate on whether better terms could have been obtained;

(c) should not approve a compromise if its terms are unclear;

(d) should accord weight to the liquidator's view unless there are substantial grounds to suspect bad faith or that the liquidator's view is clearly flawed;

(e) should consider the interests of those who have a real interest in the assets of the company and accord weight to their views unless there are substantial grounds to suspect bad faith or that the views are clearly flawed; if necessary, the court may direct that a meeting be called for this purpose;

(f) should disregard the interests of those who will be unaffected whichever way the decision goes, for example, the interests of contributories who have no realistic prospect of receiving a distribution in any foreseeable circumstances, or the wishes of preferential or secure creditors who will be paid in full in any event; and

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(g) should ask the question as to whether the interests of those who have a real interest in the assets of the company are likely to be served by permitting the company to enter into the compromise than by not permitting the company to do so.

Whether the Settlement Deed should be approved

29 Under the Settlement Deed, Sunbreeze, Manoj and Kanchan jointly and severally agreed to pay the Sunbreeze Excess Distribution and the Manoj Suit 187 Costs in full, less the Final Adjudicated Amount. In return, Wellness agreed to an instalment payment schedule (see [15(b)] above).

30 The Liquidators submitted that the Settlement Deed was in the interests of Wellness for the following reasons:

(a) There will be clear savings in terms of time and costs. Even if the Liquidators obtained an order under OS 1416/2019 granting them liberty to take the necessary steps to recover the Sunbreeze Excess Distribution, separate legal proceedings would still have to be commenced to pursue the recovery.

(b) The first instalment payment of $1m would be deposited with Rev Law LLC upon execution of the Settlement Deed and the second instalment payment of $1m would be secured by a bankers' guarantee. In the event of default, the entire amount payable under the Settlement Deed would become immediately due and payable with interest. Sunbreeze, Manoj and Kanchan have undertaken not to contest and to agree to judgment in any subsequent enforcement proceedings. They

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will also indemnify Wellness and the Liquidators for costs incurred in any such enforcement proceedings.

(c) The Settlement Deed avoided expensive and protracted litigation and reduced risks of recovery occasioned by protracted litigation.

31 EQ Capital objected to the application and submitted that the Settlement Deed did not serve the interests of and was highly unfair to EQ Capital and the creditors of Wellness for the following reasons:

(a) There was no reason why Sunbreeze, Manoj and Kanchan should be given the benefit of repaying the Sunbreeze Excess Distribution and the Manoj Suit 187 Costs in instalments over such a long period. EQ Capital submitted that there could be no dispute that Sunbreeze was liable to repay the excess dividends that it had received.

(b) No interest was payable on the Sunbreeze Excess Distribution and the Manoj Suit 187 Costs (unless there was default).

(c) There was no indemnity for the legal fees and costs incurred by Wellness in relation to OS 1416/2019, which the Liquidators were compelled to file because of (i) Sunbreeze's repeated and wrongful refusal to repay its share of the excess dividends and (ii) the steps it took to block the Liquidators from recovering the monies, by pushing through the resolution at the EGM on 11 November 2019 (see [11] above).

(d) There was no justification for Sunbreeze, Manoj and Kanchan to be given the benefit of any set off against the amount claimed by Sunbreeze in its proof of debt since there could be no dispute that Sunbreeze and Manoj were liable to repay the Sunbreeze Excess

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Distribution and the Manoj Suit 187 Costs respectively, immediately and in full.

32 Taking all the circumstances into consideration, I was of the view that the Settlement Deed should be approved. The Settlement Deed was *prima facie* in the interests of the company. Its terms were clear. There was no suggestion of bad faith and the Liquidators' reasons could not be said to be flawed. Although Wellness' claims for repayment of the Sunbreeze Excess Distribution and the Manoj Suit 187 Costs seemed to be strong ones, it did not necessarily mean that any action to recover the same would not be more costly and/or protracted. With the Settlement Deed, the only matter that remained outstanding was the adjudication of Sunbreeze's proof of debt (including the disposal of any appeal against the adjudication), which would have been necessary in any event. Further, even if the Liquidators did sue, obtain judgment and recover the moneys, it would not have been prudent for them to make use of the moneys pending the disposal of an appeal (if any).

33 The Settlement Deed substantially reduced, if not removed, the risks and costs of protracted litigation. Under the Settlement Deed, Sunbreeze, Manoj and Kanchan undertook not to contest and to agree to judgment if the Liquidators had to sue on the Settlement Deed. In addition, the Liquidators would receive the first payment of $1m within three business days of the Court's approval of the Settlement Deed and another $1m within six months of the first payment.

34 It seemed to me that the interests of Wellness and its contributories were better served by permitting the company to enter into the Settlement Deed. It could not be said that not entering into the Settlement Deed would be more beneficial to the company and its contributories.

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35 In my view, the objections raised by EQ Capital did not tilt the balance. EQ Capital's argument based on the strength of Wellness' claims has been dealt with above. It was not unreasonable that the Settlement Deed, being a compromise, did not provide for any interest (unless there was default) or for an indemnity for legal fees in relation to OS 1416/2019. EQ Capital's objections merely showed that it disagreed with the Liquidators' considered view that the Settlement Deed was in the interests of the company. The mere fact that EQ Capital came to a different conclusion was no reason to not approve the Settlement Deed.

36 It was understandable that EQ Capital felt that the Settlement Deed was unfair to it. After all, it had repaid its share of the excess dividends in response to the Liquidators' demand whereas Sunbreeze had refused to do so and now was being given time to pay. However, in my view, this too was inadequate reason to not approve the Settlement Deed.

SUM 1841/2020: Application to discontinue OS 1416/2019

37 As stated at [4] above, it was not disputed by the parties that SUM 1841/2020 was contingent on the Court's approval of the Settlement Deed. As I granted the Liquidators' application to approve the Settlement Deed, I thus also granted the Liquidators' application in SUM 1841/2020 to discontinue OS 1416/2019.

Conclusion

38 For the reasons stated above, I allowed both applications by the Liquidators.

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39 I made no order for costs in respect of OS 434/2020. As OS 1416/2019 was withdrawn following my approval for the Liquidators to compromise the claims against Sunbreeze and Manoj on the terms of the Settlement Deed in OS 434/2020, I similarly made no order as to costs for the discontinuance of OS 1416/2019 in SUM 1841/2020.

Chua Lee Ming
Judge

Balakrishnan Ashok Kumar, Tay Kang-Rui Darius and Lim Yin Li (BlackOak LLC) for the applicants;
Jaikanth Shankar, Tan Ruo Yu, Yee Guang Yi and Terence De Silva (Davinder Singh Chambers LLC) for the first non-party;
Lin Chunlong and Dana Chang (WongPartnership LLP) for the second non-party;
Jasmine Yong (Tan Rajah & Cheah) for the third non-party (watching brief).

Version No 2: 08 Mar 2021 (17:05 hrs)