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

[2023] SGHC 201

Originating Application No 148 of 2023 (Summons No 1990 of 2023)

In the matter of Part 7 of the
Insolvency, Restructuring and
Dissolution Act 2018

And

In the matter of Sections 90, 91 and 92
of the Insolvency, Restructuring and
Dissolution Act 2018

Between

X Diamond Capital Pte Ltd

… *Applicant*

And

Metech International Limited

… *Non-party*

EX TEMPORE JUDGMEMT

[Insolvency Law — Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 — Striking out]

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Re X Diamond Capital Pte Ltd (Metech International Ltd, non-party)

[2023] SGHC 201

General Division of the High Court — Originating Application No 148 of 2023 (Summons No 1990 of 2023)
Goh Yihan JC
24 July 2023

26 July 2023

Goh Yihan JC:

1 HC/SUM 1990/2023 is Metech International Limited's ("Metech") application to expunge five categories of documents (the "Documents") in Mr Deng Yiming's 3rd Affidavit (the "3DA") dated 3 May 2023, as well as corresponding references in other affidavits and submissions. X Diamond Capital Pte Ltd ("XDC") filed the 3DA in support of its application to be placed under judicial management in HC/OA 148/2023 ("OA 148").

2 The Documents comprise the following:

(a) a *Business Times* article dated 23 August 2022 titled "Wu Yongqiang resigns as executive chairman of Nutryfarm International";

(b) an announcement issued by Nutryfarm International Limited on the Singapore Exchange dated 8 March 2022;

(c) an extract of a WeChat exchange between Mr Wu Yongqiang ("Mr Wu"), Ms Hua Lei ("Ms Hua"), Mr Xu Kang, and Mr Deng Yiming dated 6 November 2021;

(d) a "poison pen email" from an anonymous sender dated 9 November 2022, in which allegations were made against Mr Wu, including one concerning the personal relationship of Mr Wu and Ms Hua (the "Email"); and

(e) a draft unsigned version of the minutes of a meeting held by Metech's Remuneration Committee on 26 August 2022 (the "RC Minutes").

In addition to its application to expunge the Documents, Metech also seeks an injunction to restrain XDC and its representatives from using the RC Minutes in any manner, other than for the purpose of seeking legal advice to comply with the said injunction.

3 Having taken some time to consider the matter, I allow Metech's application to expunge the Documents. However, I do not grant Metech an injunction to restrain XDC and its representatives from using the RC Minutes in any manner. I now provide the reasons for my decision.

Background facts

4 I turn first to the relevant background facts. Metech is a creditor of XDC. It objects to XDC's application to be placed under judicial management in OA 148. On 17 April 2023, Metech set out its grounds of objection in Ms Hua's 1st Affidavit (the "1HA").

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5 On 5 May 2023, XDC filed the 3DA in response to the 1HA. For the present purposes, XDC's position advanced in the 3DA is that Mr Wu "is clearly making use of Metech, AGT and AET to go after [XDC] and [Deng Yiming], in hope [*sic*] of depriving [XDC] from pursuing its case against Mr Wu in OC 9".[1] XDC also stated that if its application in OA 148 is refused, "Metech will most likely pursue a winding up order against [XDC], with its preferred liquidator to be appointed" and that it will be "extremely likely that in such a scenario, [XDC's] claim against Mr Wu in OC 9 would be withdrawn".[2]

6 To substantiate its claims against Mr Wu, XDC referred to the Documents in the 3DA. It is in this context that Metech seeks to expunge the Documents.

The parties' positions

7 In brief, Metech's position is that the Documents should be expunged because they are scandalous, irrelevant, or otherwise oppressive, and were adduced for a collateral purpose.[3] Additionally, Metech submits that two of the Documents should be expunged on alternative bases. First, Metech says that the Email should be expunged on the alternative basis that it is inadmissible hearsay evidence.[4] Second, Metech argues that the RC Minutes should be expunged on the alternative basis that they contain Metech's confidential information that XDC had no right to use or disclose.[5]

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1 3rd Affidavit of Deng Yiming dated 3 May 2023 ("3DA") at para 29.

2 3DA at para 30.

3 Non-party's Written Submissions dated 18 July 2023 ("NWS") at para 3.

4 NWS at para 54.

5 NWS at para 70.

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8 In turn, XDC's position is that the Documents are relevant in the determination of OA 148, specifically in the court's consideration of whether Metech's nominated judicial manager should be appointed.[6] In gist, XDC's position is that Metech is under the control of Mr Wu and Ms Hua, who are objecting to OA 148 so that they can seek a winding up order against XDC, appoint their preferred liquidator, and cause XDC to discontinue its action in HC/OC 9/2023 ("OC 9") against Mr Wu.[7] In addition, XDC also says that the court should not appoint the judicial manager nominated by Metech because Mr Wu and Ms Hua will assert influence on that judicial manager to, among other things, stifle XDC's claim in OC 9.[8]

My decision: the Documents should be expunged

The Documents are irrelevant to the issues in OA 148

9 In my view, the Documents should be expunged because they are irrelevant to the issues in OA 148. In considering this ground in the expunging of the Documents, I am concerned with one primary question: in deciding whether to grant an application for a company to be put into judicial management, is it relevant for the court to consider whether the application was made for a collateral purpose other than those sought to be achieved by judicial management? If so, what is the standard to assess the plausibility of that collateral purpose?

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6 Applicant's Written Submissions dated 18 July 2023 ("AWS") at paras 44–60.

7 AWS at paras 9–10.

8 AWS at paras 8–9.

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The applicable legal principles

10 I turn first to the applicable legal principles, which were, surprisingly, the subject of some dispute between the parties. To begin with, because OA 148 is an application for judicial management under s 90 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"), the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (the "CIR Rules") apply. This is provided for in r 3 of the CIR Rules. Metech relies on r 21 of the CIR Rules for the present application, which provides as follows:

> **Scandalous, irrelevant or oppressive matter**
>
> **21.** The Court may order to be struck out from an affidavit any matter which is scandalous, irrelevant or otherwise oppressive, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

11 While the CIR Rules do not explain how r 21 is to be applied, r 21 is phrased similarly to O 41 r 6 of the Rules of Court (2014 Rev Ed) (the "ROC 2014"), which states "the Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive." Therefore, the principles that govern the application of O 41 r 6 should likewise govern the application of r 21.

12 As a starting point, I note that the description of any offending matter as "scandalous, irrelevant or otherwise oppressive" is framed disjunctively in O 41 r 6. I therefore disagree with XDC's submission that a court can only expunge such matters that it finds to be scandalous *and* irrelevant.[9] In my view, this goes against the plain wording of O 41 r 6. Also, in as much as XDC relies on the New Zealand Supreme Court decision of *Cunningham v Takapuna*

[9] AWS at para 16.

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Tramway & Ferry Co Ltd [1920] NZLR 137 for support that the requirements are conjunctive,[10] that case can be readily distinguished because the court was clearly referring to the ambit of its inherent power to expunge such matter in the absence of a written rule providing for the same (at 138). To the contrary, the CIR Rules expressly sets out the court's power to expunge any offending matter.

13 At this juncture, I observe parenthetically that there is no equivalent provision to O 41 r 6 in the Rules of Court 2021 (the "ROC 2021"). In place of O 41 r 6, O 15 r 25 of the ROC 2021 now provides the following:

> **Contents of affidavit**
>
> **25.**—(1) An affidavit must contain only relevant facts.
>
> (2) An affidavit must not contain —
>
> (*a*) vulgar or insulting words unless those words are in issue in the action; or
>
> (*b*) anything that is intended to offend or to belittle any person or entity.

It is clear that O 15 r 25 of the ROC 2021 assesses the contents of an affidavit using criteria different from those in O 41 r 6 of the ROC 2014. However, as the learned authors of *Singapore Rules of Court – A Practice Guide (2023 Edition)* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) point out (at p 473), O 9 rr 16(4)(*b*) and 16(4)(*c*) of the ROC 2021 provide that the court may order an affidavit to be struck out or redacted on the ground that it is an abuse of process of the court, or in the interests of justice to do so. In any event, it is not necessary for the present purposes to reconcile the differences between O 41 r 6 of the ROC 2014 and O 15 r 25 of the ROC 2021. However, it is obviously helpful for the phrasing of r 21 of the CIR Rules to be updated in due

[10] AWS at para 16.

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course to reflect the phrasing of O 15 r 25 of the ROC 2021. This is to avoid having to interpret r 21 of the CIR Rules using the principles in relation to the ROC 2014, which will slowly be phased out in favour of the ROC 2021.

14 Turning to r 21 of the CIR Rules, as applied in the light of O 41 r 6 of the ROC 2014, I disagree with XDC's submission that the applicable threshold for offending matter to be expunged is a "high one" that is "analogous to that [*sic*] a striking out application".[11] In my view, it is not appropriate to analogise the present application, which involves expunging parts of the evidence in support of OA 148, to the striking out of pleadings. This is because the striking out of pleadings clearly has more serious consequences than the striking out of evidence to substantiate those pleadings. That being said, bearing in mind the cardinal principle that a party should have the freedom to run its case in the manner it desires, a court should be slow to expunge parts of an affidavit on the ground that it is scandalous, irrelevant, or otherwise oppressive. Rather, a court should only do so if it can be shown that the impugned materials are clearly irrelevant or relate to unsustainable allegations.

The Documents are irrelevant

15 With the applicable principles in mind, I turn to the Documents. As a threshold matter, it must be relevant for a court to consider if an application for judicial management is being made for collateral purposes other than those that would be served by such an order (as set out in ss 89–90 of the IRDA). Therefore, I disagree with Metech in so far as it suggests that I am confined to considering the relevancy of the Documents in relation to the purposes of judicial management set out in the IRDA. This must be the case because a party

[11] AWS at para 11.

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cannot make an application on the pretext of judicial management in an abuse of the court's process.

16 However, it is not enough for a party to allege a collateral purpose by conjuring an implausible account of such a purpose. If a party makes up such an implausible account, then the evidence it seeks to rely on to advance this account must necessarily be irrelevant and liable to be expunged. In this regard, I find that XDC has advanced an implausible account of such a collateral purpose. In essence, XDC relies on the Documents to show: (a) that Metech is controlled by Mr Wu and Ms Hua; and (b) that Metech is objecting to XDC's application to advance Mr Wu and Ms Hua's collateral purpose in ultimately causing XDC's claim against Mr Wu to fail, and for Metech and its subsidiaries' claims against XDC to succeed. In my view, this account ignores the important fact that the judicial manager eventually appointed, even if he or she is Metech's nominee, is an officer of the court and is subject to the overriding duty to the court (see s 89(4) of the IRDA). Moreover, on XDC's own case in OA 148, there are several creditors other than Metech. It would be surprising if those creditors, whose primary aim is to maximise the repayment of their debts owing by XDC, were to stand by idly in the event that Metech tries to stifle XDC's legitimate claim against itself.

17 Even if I accept that XDC's account of Metech being able to influence the judicial manager is plausible, I find that the Documents do not advance this account and are therefore irrelevant. Since I have decided to expunge the Documents, it is not necessary to set them out in any detail, save to say the following:

(a) The *Business Times* article pertains to a company known as Nutryfarm International Limited, which has nothing to do with OA 148.

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(b) Similarly, the announcement by Nutryfarm International Limited has nothing to do with OA 148.

(c) The WeChat messages do not show Mr Wu having influence over Ms Hua. If at all, the messages show that Ms Hua questioning Mr Wu's view on the matter concerned. In any case, neither Mr Wu nor Ms Hua is a member of Metech's board since 30 March 2023, and it is unclear how they can influence Metech's actions or its nominated judicial manager (if so appointed).

(d) The Email, being from an unknown author, is unreliable. In any event, the relationship between Mr Wu and Ms Hua, which is the primary focus of the Email, is not relevant to the determination of OA 148. Further, as with (c) above, it is not clear how Mr Wu or Ms Hua can influence Metech's actions or its nominated judicial manager (if so appointed).

(e) The RC Minutes are clearly confidential documents owned by Metech. XDC did not explain how it came to possess them.

18 On the basis that the Documents are irrelevant, I make an order pursuant to r 21 of the CIR Rules for the Documents to be expunged from the relevant documents.

The Email is inadmissible hearsay evidence

19 For completeness, I will also expunge the Email on the alternative basis that it is inadmissible hearsay evidence.

20 As a starting point, where oral evidence is provided on assertions made outside of court and tendered in court as evidence as to the truth of the contents

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therein, but the maker of the assertion is not called as a witness, it is inadmissible hearsay evidence (see the High Court decision of *Wee Teong Boo v Singapore Medical Council (Attorney-General, intervener)* [2023] 3 SLR 705 at [49], as well as the magisterial work by the late Professor Tan Yock Lin, "Stephen's Hearsay – Does it Matter?" (1991) 12 Sing LR 128). The Email is clearly hearsay evidence since it is authored by an unknown individual who cannot be called upon to attest to the truth of its contents.

21 However, the Evidence Act 1893 (2020 Rev Ed) (the "EA") does not apply to OA 148 because it is determined by affidavit evidence alone (see s 2(1) of the EA). In place of the EA, the applicable evidentiary framework will be rules of evidence at common law that are not inconsistent with the EA (see the High Court decision of *HSBC Trustee (Singapore) Ltd v Lucky Realty Co Pte Ltd* [2015] 3 SLR 885 ("*HSBC Trustee*") at [56]). In this regard, it is relevant to refer to s 10(1) of the IRDA, which provides that "[i]n any matter of practice or procedure for which no specific provision has been made by [the IRDA], the procedure and practice for the time being in use or in force in the Supreme Court must, as nearly as possible, be followed and adopted." Therefore, because the CIR Rules are silent as to the applicable evidentiary rules, s 10(1) of the IRDA compels the reference to O 15 r 25(1) of the ROC 2021, which provides that an affidavit must contain only "relevant facts".

22 Unlike O 41 r 5(2) of the ROC 2014, O 15 r 25(1) of the ROC 2021 no longer makes a distinction between affidavits filed for interlocutory applications that may contain statements of information or belief with the sources and grounds thereof (that is, hearsay evidence), and those that are not. However, as the learned authors of *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) suggest at para 15/25/1, evidence on information or on belief is *prima facie* inadmissible in proceedings commenced

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by originating application where the rights and liabilities of the parties are determined with finality. I respectfully agree. In my view, this principle is supported by several authorities and is consistent with the rationale that the quality of the evidence, used to determine the parties' rights and liabilities with finality, should be akin to that used at trial, where hearsay evidence is generally inadmissible (see *HSBC Trustee* at [92]–[94]).

23 With these principles in mind, I first determine that OA 148 is a substantive application that will result in the final determination of XDC's rights in relation to third parties such as its creditors. This is because an order that XDC is to be placed under judicial management will impose substantive effects on the company. There would be nothing left for a court to determine after a company is placed under judicial management except for administrative matters that may arise from time to time. As such, since OA 148 determines with finality the rights and liabilities of the parties, it must follow that XDC cannot rely on the Email, which is hearsay evidence.

The RC Minutes contain Metech's confidential information

24 Finally, I will also expunge the RC Minutes on the alternative basis that they contain Metech's confidential information. I find that the RC Minutes possess the necessary quality of confidence as set out in the High Court decision of *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 (at [129]). This is because the RC Minutes remain relatively secret or inaccessible to the public as compared to information already in the public domain. In this regard, the RC Minutes are a draft unsigned version of the minutes of the meeting held by Metech's Remuneration Committee on 26 August 2022. Its contents are not accessible to the public as they relate to the Remuneration Committee's internal discussions, including those to do with the

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remuneration of Metech's representatives. The RC Minutes are clearly meant to be privy to and circulated to only the parties present at the meeting.

25 While XDC has argued that Metech, being a publicly listed company, comes under certain disclosure obligations and that the remuneration information contained in the RC Minutes would have been disclosed in any event, I do not think that this is sufficient to remove their quality of confidence. This is because even if the remuneration information, including the procedure for setting remuneration, should be disclosed, it remains that the discussions contained in the RC Minutes remain relatively inaccessible to the public. Further, given that XDC and its representatives are not members of Metech's Remuneration Committee and have no right to receive the copies of the RC Minutes, I find that it is appropriate to expunge the said document in the present case.

26 However, I do not grant Metech an injunction against XDC's use of the RC Minutes in other proceedings. This is a free-standing injunction that is too wide. If Metech desires such an injunction, it will have to make the application at the relevant juncture.

Conclusion

27 For completeness, I should mention that XDC also objects to Metech's present application to expunge the Documents because Metech did not make the application earlier. I reject this objection for two reasons. First, I do not think that there has been an inordinate delay in Metech bringing the present application. Second, even if there had been such a delay, XDC has not explained the *legal* implications of such a delay and why it should prevent Metech from bringing the present application.

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28 For the reasons above, I allow Metech's application to expunge the Documents. I will hear the parties on costs at the substantive hearing of OA 148.

Goh Yihan
Judicial Commissioner

Low Chai Chong, Zhulkarnain bin Abdul Rahim, Sean Chen Siang En, Cheong Wei Wen John and Shermaine Lim Jia Qi (Dentons Rodyk & Davidson LLP) for the applicant;
Yam Wern-Jhien, Bethel Chan Ruiyi and Lee Jin Loong (Setia Law LLC) for the non-party.

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