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

[2023] SGHC 323

Companies Winding Up No 94 of 2023

In the matter of Section 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Hodlnaut Pte Ltd

Between

(1) Aaron Loh Cheng Lee
(2) Ee Meng Yen Angela

… *Claimants*

And

Hodlnaut Pte Ltd

… *Defendant*

And

(1) Zhu Juntao
(2) Simon Eric Lee
(3) Algorand Foundation Ltd
(4) S.A.M. Fintech Pte Ltd (in liquidation)
(5) Samtrade Custodian Limited (in liquidation)
(6) Official Receiver

… *Non-parties*

JUDGMENT

[Insolvency Law — Winding up — Grounds for petition — Company owing cryptocurrency liabilities — Whether company unable to pay its debts — Whether liability to pay cryptocurrency was a debt for the purposes of a winding up application — Sections 125(1)(*e*) and 125(2)(*c*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]
[Insolvency Law — Winding up — Grounds for petition — Company owing cryptocurrency liabilities — Whether company unable to pay its debts — Whether a halt by the company on customers withdrawing cryptocurrency showed that there was no liability to pay cryptocurrency — Sections 125(1)(*e*) and 125(2)(*c*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]
[Insolvency Law — Winding up — Grounds for petition — Directors of company seeking restructuring of company — Whether court should exercise its discretion to wind up company — Section 125(1) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]
[Insolvency Law — Winding up — Liquidator — Directors alleging wrongdoing by interim judicial managers — Whether interim judicial managers should be appointed liquidators]

Loh Cheng Lee Aaron and another
v
Hodlnaut Pte Ltd (Zhu Juntao and others, non-parties)

[2023] SGHC 323

General Division of the High Court— Companies Winding Up No 94 of 2023
Aedit Abdullah J
7 August, 27 September, 16 October 2023

10 November 2023 Judgment reserved.

Aedit Abdullah J:

1 The main questions presented in this winding up application are whether cryptocurrency funds held by the company from various creditors should count as "debts" within the meaning of s 125(1)(*e*) ("s 125(1)(*e*)") read with s 125(2)(*c*) ("s 125(2)(*c*)") of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), and whether the company is indeed cash flow insolvent. I am satisfied that the company is indeed cash flow insolvent, taking into account the cryptocurrency obligations owed, and that the company should be wound up. These are my brief remarks conveying the main reasons underlying my decision, which I may add to in full grounds if needed.

Background

2 The present application is for the winding up of the Hodlnaut Pte Ltd, a Singapore entity ("the Company"). The Company had previously been placed

in interim judicial management; in HC/OA 451/2022 on 24 April 2023, the court directed the interim judicial managers to proceed to present a winding up petition, with a concurrent application to discharge, and that the interim judicial management was to continue in the meantime. During then, one of the directors of the Company filed an application for a 3-month moratorium pursuant to s 210(1) of the Companies Act 1967 (2020 Rev Ed) premised on a proposal set out in an indicative non-binding term sheet ("the OPNX Offer") from Open Technology Markets Limited ("OPNX").

3 At the hearing on 7 August 2023, the court expressed concern with the directors' conduct in relation to the OPNX Offer and the last-minute filing of HC/OA 792/2023. The directors were ordered to file affidavits to explain their course of conduct and the winding-up application was adjourned for the interim judicial managers to consider the OPNX Offer. The interim judicial management order dated 29 August 2022 was to remain in place in the meantime. Subsequently, the winding up application was proceeded with at the hearing of 16 October 2023, in the face of opposition by two of the directors of the Company.

Summary of parties' arguments

4 The interim judicial managers argue that the Company should be wound up as the requirements under the law have been met: the Company is unable to pay its debts as and when they fall due having regard to its current assets and current liabilities, and the various statutory provisions are fulfilled. The directors argue that the cryptocurrency holdings of the Company are not debts within the meaning of the applicable law, and thus should not be considered in determining whether the company is indeed insolvent. Alternatively, it is argued that the court's discretion should be exercised against winding up to give

further time to rehabilitate the business. Even if winding up were to be ordered, the directors sought the appointment of persons other than the interim judicial managers to act as liquidators.

The Decision

5 I grant the application to wind up the Company. I am satisfied that the requirements under the IRDA have been met. The papers were indicated to be in order. The specific objections raised by the directors are not made out. These concerned the following:

(a) whether the Company is unable to pay its debts;

(b) whether the court's discretion should be exercised in favour of allowing restructuring to be attempted; and

(c) whether the judicial managers should be appointed as the Company's liquidators.

Whether the Company is unable to pay its debts

6 The Company is indeed unable to pay its debts. Its obligation to pay cryptocurrency to its creditors count as debts owed by the Company and are relevant in determining whether the Company is insolvent. The withdrawal halt imposed by the Company does not alter that outcome.

The cryptocurrency obligations do count in determining whether the Company is insolvent

7 The application is made on the basis that the Company is unable to pay its debts within the meaning of s 125(1)(*e*), read with s 125(2)(*c*) of the same Act. There cannot be any argument that cash flow insolvency is the sole test under s 125(2)(*c*): *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly*

known as Tong Teik Pte Ltd) [2021] 2 SLR 478 ("*Sun Electric*"). The argument made by the directors is that the cryptocurrency holdings should not be counted as debts owed by the Company, referring to various provisions of the IRDA.

8 The directors' approach is flawed. Leaving aside for the moment these other provisions, the test of cash flow insolvency under *Sun Electric* is a broad one. The court considers whether a company's current assets exceed its current liabilities such that all debts can be met as and when they fall due within a 12-month timeframe so as to avoid absurd outcomes. It is important also to note that the Court of Appeal considered that time should be given for the realisation of liquid assets, and that contingent and prospective liabilities are expressly stipulated in the statute; in my view, what this means is that the court should look at the holistic position of the company, and consider not just liquidated claims, but also those that might be made on the non-monetary assets of the company, though which may ultimately be payable in money. Here the *Sun Electric* test has been clearly met. Judicial management was granted on the ground that the company was probably insolvent at the time. Since then, the situation has deteriorated.

9 The reliance by the directors on various provisions in the IRDA is, with respect, misguided. For instance, the directors argue that since (a) "indebted[ness]" under s 125(2)(*a*) of the IRDA ("s 125(2)(*a*)" or "Section 125(2)(*a*)") must involve fiat currency; (b) cryptocurrency is not included in the definition of "money" under s 2 of the Payment Services Act 2019 (2020 Rev Ed); and (c) cash debts are not treated as "movable property" under O 22 r 1 of the Rules of Court 2021, it follows that "debts" within the meaning of s 125(2)(*c*) can only refer to liabilities denominated in fiat or actual money. Moreover, it is argued that although s 125(2)(*c*) provides that the contingent and prospective liabilities are to be taken into account in determining whether a

company is unable to pay its debts, "liability" is defined in s 2 of the IRDA as a liability to pay money or money's worth, and a claim in cryptocurrency is not a "money" claim.

10 In my view, s 125(2)(*a*) does not assist the directors' interpretation of s 125(2)(*c*) as the former involves indebtedness measured by reference to a specific amount of money on a specific claim, in contrast to the more holistic approach under s 125(2)(*c*). Section 125(2)(*a*) specifies that a demand made above $15,000, if not satisfied within three weeks, would be presumptive of the inability of the company to pay its debts, and thus of insolvency. The fact that debts are to be defined in money or money's worth is not I should think a controversial point; but it did not follow that because debts are quantified in terms of value in currency, it is only when an actual quantification of assets in monetary terms has been determined through concluded court proceedings that a debt arises.

11 Holdings of these assets can be assessed by the court in a winding up petition. Whether or not the court accepts the valuation put on these by the applicant is dependent on the evidence before it. It is just the case with companies holding other kinds of assets such as wine, precious metals, Bored Apes or even tulips. Thus, the fact that the holdings were in cryptocurrency did not affect the outcome; this was just a particular kind of asset.

12 Seen in that light, the difference between the present case and that of *Algorand Foundation Ltd v Three Arrows Capital Pte Ltd* (HC/CWU 246/2022) (30 March 2023) (General Division of the High Court, Singapore) ("*Three Arrows*") cited by the directors is apparent. In *Three Arrows*, the notes of evidence of which were adduced, winding-up was sought on the basis of indebtedness under s 125(2)(*a*). The precise demand in question was apparently

in cryptocurrency. That failed the requirement under s 125(2)(*a*) as it was not a demand for a money sum. I do not understand *Three Arrows* to stand for the proposition that pursuing and obtaining a judgment to obtain liquidated damages is necessary before an assessment is made of cash flow insolvency. That would I think be contrary to the guidance of the Court of Appeal in *Sun Electric*.

13 For completeness, I should add that nothing in my decision suggests that cryptocurrency should be treated as money in the general sense, a question which I do not have to decide in the present case. In this regard, the applicant's reference to the treatment of cryptocurrency in other jurisdictions is irrelevant to its treatment in ours, and in any event, I do not find that there has been any acceptance in any major commercial jurisdiction of cryptocurrency as being equivalent to a daily medium of exchange, which would call for similar treatment in Singapore.

The imposition of the withdrawal halts

14 The directors relied as well on the fact that withdrawal halts on cryptocurrency were imposed by the Company on the creditors as showing that there was no liability owed.

15 The fact that there may be a halt on withdrawal does not assist. A halt on withdrawal does not extinguish liability, nor does it necessarily postpone the accruing of liability for the purposes of cash flow insolvency. All it does is to prevent the withdrawal of the asset. It may be that there are appropriately drafted clauses that may effectively bar anyone holding an account subject to a withdrawal halt from pursuing a winding up of a company on the basis of an unsatisfied demand under s 125(2)(*a*), or even preclude them from establishing

cash flow insolvency under s 125(2)(*c*). That I leave to the future ingenuity of solicitors. In the present case though I find that the withdrawal halt provisions do not have any such effect.

The Company is unable to pay its debts

16 Therefore, I find that the Company is not able to pay its debts as and when they fall due having regard to its current assets and current liabilities. As argued for by the interim judicial managers, the value of the Company's assets and those realisable within a 12-month timeframe are insufficient to meet its present debts and those which would fall due in the same period. No improvement through any increase in cryptocurrency prices would seem likely to bring the Company out of its difficulties given that net liabilities stand at about S$92 million as of July 2023.

Whether the court's discretion should be exercised against winding up

17 Whether the court's discretion should be exercised against winding up to allow restructuring to be pursued further would depend on requirements based on similar considerations to those for an initial moratoria extension but in addition, given that the discretion is sought to be invoked in the face of a winding up application, the level of persuasiveness has to be ratcheted up significantly. I am not satisfied that the grounds exist for winding up not to be ordered: the likelihood of any success in the directors' proposed restructuring is to my mind very low, and as pointed out by the judicial managers, the major creditors are not supportive. I will not deal at this time with the other issues that point against the proposed further restructuring or rehabilitation efforts.

Whether the interim judicial managers should be appointed liquidators

18 While the directors have objected to the appointment of the present interim judicial managers as liquidators, arguing on the basis of conflict as the directors have alleged wrongdoing on the part of the interim judicial managers, I do not find that there was any reason to doubt the ability or suitability of the judicial managers to function as liquidators.

19 Arguments were raised about the previous conduct of the interim judicial managers in relation to their failure to withdraw the assets of the Company expeditiously before the failure of crypto-exchange FTX Trading Ltd, and steps taken by the interim judicial managers that allegedly incurred substantial financial losses. Both these points had been canvased before the court previously and rejected. If anything, I am satisfied that their familiarity with the Company and its business would aid in the liquidation being more efficient. I therefore appoint the interim judicial managers as the liquidators of the Company.

Conclusion

20 In the circumstances therefore, winding up is ordered, with the following orders granted as well:

(a) the interim judicial managers are authorised to appoint solicitors in their capacity as liquidators;

(b) liberty to apply for approval of remuneration is granted; and

(c) the interim judicial managers are released from liability.

21 I will also deal with the other applications filed aside from this winding up application.

Aedit Abdullah
Judge of the High Court

Leo Zhen Wei Lionel, Manoj Pillay Sandrasegara, Stephanie Yeo Xiu Wen, Md Noor E Adnaan, Li Yiling Eden, Andrew Pflug, Chng Qi Yun Clarice, T Abirami and Toh Yong Xiang (WongPartnership LLP) for the claimants;
Leonard Chua Jun Yi, Suresh s/o Damodara, Ong Ziying Clement, S M Sukhmit Singh, Darius Malachi Lim Wen Hong, Ning Jie and Lim Dao Yuan Keith (Damodara Ong LLC) for the defendant;
Kang Kok Boon Favian (Adelphi Law Chambers LLC) for Zhu Juntao;
Quah Wei Sheng Danny and Ong Hui Jing (CHP Law LLC) for Simon Eric Lee;
Chan Daniel and Wee Min (WongPartnership LLP) for Algorand Foundation Ltd;
Ang Peng Koon Patrick, Raelene Pereira, Ho Zi Wei and Wong Ye Yang (Rajah & Tann Singapore LLP) for S.A.M. Fintech Pte Ltd (in liquidation) and Samtrade Custodian Limited (in liquidation);
Ramesh Chandra for the Official Receiver.