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

[2023] SGHC 342

Companies Winding Up No 108 of 2021 (Summons No 1680 of 2023)

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Section 125 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Envy Asset Management Pte Ltd

Between

(1) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd)
(2) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd)
(3) Wong Pheng Cheong Martin
(in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd)

… *Plaintiffs*

And

Envy Asset Management Pte Ltd

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… *Defendant*

Companies Winding Up No 109 of 2021 (Summons No 1679 of 2023)

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Section 125 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Envy Management Holdings Pte Ltd

Between

(1) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Management Holdings Pte Ltd)
(2) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Management Holdings Pte Ltd)
(3) Wong Pheng Cheong Martin
(in his capacity as the joint and several interim judicial manager of Envy Management Holdings Pte Ltd)

… *Plaintiffs*

And

Envy Management Holdings Pte Ltd

… *Defendant*

Companies Winding Up No 110 of 2021 (Summons No 1681 of 2023)

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Section 125 of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

And

In the matter of Envy Global Trading Pte Ltd

Between

(1) Toh Ai Ling
(in her capacity as the joint and several interim judicial manager of Envy Global Trading Pte Ltd)
(2) Bob Yap Cheng Ghee
(in his capacity as the joint and several interim judicial manager of Envy Global Trading Pte Ltd)
(3) Wong Pheng Cheong Martin
(in his capacity as the joint and several interim judicial manager of Envy Global Trading Pte Ltd)

… *Plaintiffs*

And

Envy Global Trading Pte Ltd

… *Defendant*

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GROUNDS OF DECISION

[Insolvency Law — Administration of insolvent estates]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Yap Cheng Ghee Bob (in his capacity as the joint and several interim judicial manager of Envy Asset Management Pte Ltd) and others
v
Envy Asset Management Pte Ltd and other matters

[2023] SGHC 342

General Division of the High Court — Companies Winding Up Nos 108, 109 and 110 of 2021 (Summonses Nos 1679, 1680 and 1681 of 2023)
Goh Yihan J
30 October 2023

1 December 2023

Goh Yihan J:

1 The plaintiffs are the joint and several liquidators (the "Liquidators") of the defendants, Envy Asset Management Pte Ltd ("EAM"), Envy Global Trading Pte Ltd ("EGT"), and Envy Management Holdings Pte Ltd (collectively, the "Envy Companies"). The Liquidators brought the present applications to seek certain directions from the court pursuant to s 145(3) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA").

2 In particular, the Liquidators sought the court's approval to do the following for the purposes of adjudication and/or entering into any compromise or arrangement:[1]

(a) The Liquidators may aggregate and consolidate all payments or part thereof to an investor of the Envy Companies ("Investor") and/or a nominated third party thereof, in so far as such payments were for the account of the Investor, which can be shown to the Liquidators' satisfaction, and the payments were:

(i) in the nature of profits arising from or referable to any purported Letter(s) of Agreement ("LOAs") and/or Receivables Purchase Agreement(s) ("RPAs"); and/or

(ii) in the nature of payments of commissions, profit sharing, and/or referral fees arising from or referable to any purported LOAs and/or RPAs.

(b) The aggregate of (a) shall be netted off against all and any other claims arising from investment contracts which are not in the single name of the aforesaid Investor that lie in the liquidation against the Envy Companies and/or each of them, in so far as such claims arise from, are traceable to, and/or are referable to monies originating from the aforesaid Investor, which can be shown to the satisfaction of the Liquidators.

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[1] HC/SUM 1679/2023; HC/SUM 1680/2023; HC/SUM 1681/2023.

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(c) The foregoing shall not preclude and shall be without prejudice to any claims, arguments, and/or defences raised by the Liquidators, Envy Companies, former employees, creditors, and/or Investors, in respect of existing or future proceedings, in so far as such claims or proceedings relate to commissions, referral fees, profit-sharing, or profits on LOAs and/or RPAs.

(d) Paragraphs (a)–(b) shall be subject to the following conditions:

(i) all relevant parties agree to the consolidation and netting-off; and

(ii) any other conditions which the Liquidators may deem appropriate to impose in their discretion to ensure that the Envy Companies and/or their other creditors are not prejudiced.

For convenience, I will refer to the above as the "Proposed Consolidation".

3 At the end of the hearing before me, I granted the directions which the Liquidators sought. I now provide these grounds to explain my reasons, especially in relation to the application of s 145(3) of the IRDA.

Background facts

4 I begin with the background, as framed by the Liquidators, to the present applications. I emphasise that my citation of the background facts is restricted to the purposes of the present applications only.

The Envy Companies' purported business of nickel trading

5 From around January 2016 to around April 2020, EAM purported to purchase quantities of London Metal Exchange ("LME") Nickel Grade Metal

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("Poseidon Nickel") from an Australian company, Poseidon Nickel Limited. In particular, EAM purported to have purchased Poseidon Nickel at a 16% to 25% discount compared to the average of the LME nickel official daily cash settlement prices for the month prior to the month when shipment was scheduled. EAM then purported to sell Poseidon Nickel to third party buyers at a higher price.

6 By virtue of the above purported arrangements, Investors stood to earn a cut of the profit by entering into a LOA with EAM. Under the terms of the LOA, each Investor would pay an investment amount to EAM to be used "solely for investment in LME Nickel Grade Metal" or "solely for investment in LME Grade Nickel Concentrates" for a three-month period.[2] However, in certain cases, Investors could commit to multiple, consecutive three-month tranches upfront. Upon the maturity date of the LOA, the Investor would be entitled to a return of the "Investment Amount", which is the Investor's original principal amount plus any "Appreciation, net of any Commission, Shipping and Insurance costs and Hedging costs".[3] Investors could then decide whether to fully or partially withdraw their returns or reinvest their returns under a new LOA.

The transfer of business from EAM to EGT

7 On 19 March 2020, the Monetary Authority of Singapore ("MAS") placed EAM on its Investor Alert List. MAS did this to "highlight that EAM

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2 6th Affidavit of Bob Yap Cheng Ghee dated 6 June 2023 ("BYCG's 6th Affidavit") at para 2.1.2(c).

3 BYCG's 6th Affidavit at para 2.1.2(d)(ii).

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may have been wrongly perceived as being licensed by MAS".[4] According to a statement that MAS released at the material time, it had "received public feedback that EAM had told [Investors] that it was in the process of applying for a license from MAS, when in fact no such application had been submitted".[5]

8 Following the actions taken by MAS, the Envy Companies were restructured. From around April 2020, EAM's business of purported nickel trading was transferred to EGT. Thereafter, Investors who invested in the purported nickel trading did so by way of RPAs instead of LOAs. Under the terms of the RPAs, the Investor would directly purchase a proportion of the receivables that EGT was purportedly entitled to receive under a Forward Contract with a third-party buyer at a certain "Sale Price". The Investor would profit from the difference between the "Sale Price" and the proportion of the receivables that the Investor is entitled to. In addition, Investors had to be accredited investors ("AI") as defined in the Securities and Futures Act 2001 (2020 Rev Ed) before they could continue investing in the purported nickel trading.

9 However, since not all of the Investors qualified as an AI, several Investors reinvested purported returns from their LOAs/RPAs through accounts other than their personal investment accounts with the Envy Companies. These primarily took place through: (a) the investment account of a third-party AI; and/or (b) a joint account with another Investor ("Joint Account"). Some of the Investors would reinvest their purported returns by means other than their personal investment accounts (with the Envy Companies) through other third

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4 BYCG's 6th Affidavit at para 2.1.3.

5 BYCG's 6th Affidavit at para 2.1.3.

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parties such as family members, and may claim beneficial interest over those investments.

The winding up of the Envy Companies

10 On 22 March 2021, the Commercial Affairs Department announced that it had preferred charges against the Envy Companies' key person, Mr Ng Yu Zhi ("NYZ"), for cheating and fraudulent trading. On 15 April 2021, the Envy Companies filed applications to place themselves under judicial management. Interim judicial managers ("IJMs") were appointed over the Envy Companies on 27 April 2021. The IJMs were tasked with, among other things, preparing a report on the financial position of the Envy Companies, along with their views on the prospects of the objectives of judicial management being achieved.

11 On 25 May 2021, the IJMs issued the Interim Judicial Managers' Report (the "Interim Report"). The IJMs found that "the Companies' [p]urported [n]ickel [t]rading was non-existent, and documents presented to [them] in support of the [p]urported [n]ickel [t]rading were forgeries".[6] The IJMs therefore concluded that "none of the purposes of a judicial management as set out in section 89(1) of the IRDA can be achieved".[7] This was not only because the purported nickel trading was non-existent, but because the Envy Companies did not undertake in any other meaningful business. Moreover, the Envy Companies' known assets were grossly insufficient to meet the potential claims of the Envy Companies' creditors.

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6 Applicant's Bundle of Documents Vol 1, at p 138; Interim Judicial Managers' Report dated 25 May 2021 at para 5.8.1.

7 Applicant's Bundle of Documents Vol 1, at p 139; Interim Judicial Managers' Report dated 25 May 2021 at para 6.1.1.

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12 On 2 July 2021, the IJMs issued the Update to the Interim Report (the "Update"). The IJMs then applied on the same day to wind up the Envy Companies since there was no meaningful business to rehabilitate. On 16 August 2021, a winding up order was made against each of the Envy Companies.

Events leading to the present applications

13 In the Update, the IJMs identified claims against certain Investors (the "Overwithdrawn Investors") for: (a) referral fees paid by the Envy Companies; and/or (b) the Overwithdrawn Sums, as a potential avenue of recovery for the Envy Companies. By way of letters of demand dated between September 2022 and February 2023, the Liquidators wrote to the Overwithdrawn Investors to demand the return of the Overwithdrawn Sums. One hundred of the Overwithdrawn Investors responded to claim that they reinvested part of, or the entirety of, their referral fees and/or Overwithdrawn Sums in the Envy Companies through a third party's account and/or a Joint Account.

14 On 26 September 2022, the Liquidators filed various applications to seek the court's approval of the Liquidators' use of the "running account" approach to adjudicate on the Investors' proofs of debts. During the hearings of those applications in November 2022, the Liquidators were asked how they would treat the sums reinvested by the Overwithdrawn Investors. The Liquidators responded that they would allow the Overwithdrawn Investors to consolidate and net-off the sums reinvested. However, the Liquidators would seek the approval of the Committee of Inspection ("COI") or the court for such an approach after they had verified the sums reinvested by the Overwithdrawn Investors.

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15 On 7 February 2023, a single COI over the Envy Companies was constituted. On 21 February 2023, the COI gave its in-principle approval of the Proposed Consolidation. However, the COI's approval was subject to the court's approval of the Proposed Consolidation in the present applications. In addition, any and all agreements between the Liquidators and the relevant individuals as a consequence of the application of the Proposed Consolidation shall be presented to the COI and will ultimately be subject to the COI's approval.

16 It was against these background facts that the Liquidators made the present applications. Once again, I emphasise that these are the facts as framed by the Liquidators and can have no bearing on other related proceedings.

The relevant issues

17 In my view, there were two issues for my determination. The first was whether the Liquidators could even rely on s 145(3) of the IRDA. The second related but ultimately distinct question was, if the Liquidators could rely on s 145(3), whether the court should make the directions sought by the Liquidators. In the end, I decided both questions in the Liquidators' favour and made the directions sought by the Liquidators.

Whether the Liquidators could rely on s 145(3) of the IRDA

18 As mentioned above, in considering the present applications, I began with a threshold question: could the Liquidators rely on s 145(3) of the IRDA to bring these applications in the first place?

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The applicable principles

19 In this regard, s 145(3) of the IRDA provides as follows:

> **Exercise and control of liquidator's powers**
>
> …
>
> (3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

Section 145(3) is framed identically to its predecessor, s 273(3) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA").

20 However, the local decisions on s 145(3) of the IRDA and its predecessor have primarily addressed only discrete questions of law and/or facts. For instance, in the High Court decision of *Solvadis Commodity Chemicals Gmbh v Affert Resources Pte Ltd* [2018] 5 SLR 1337, the court's decision regarding an application under s 273(3) of the CA was limited to the issue of whether the liquidator may sell certain of the company's properties and things in action pursuant to s 272(2)(*c*) of the CA. As such, in the absence of directly binding or relevant local authority, I agreed with the Liquidators that it was proper to refer to relevant foreign decisions on the ambit of the court's powers under s 145(3) of the IRDA.

21 I begin with the relevant New South Wales legislation. Section 379(3) of the Companies (NSW) Code (the "Code"), which is framed identically to s 145(3) of the IRDA, provides that "[t]he liquidator may apply to the [c]ourt for directions in relation to any particular matter arising under the winding up". In the New South Wales Supreme Court decision of *Sanderson v Classic Car Insurances Pty Ltd* (1985) 10 ACLR 115, Young J provided helpful guidance on when a court can properly exercise its power under s 379(3) of the Code. The

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learned judge began by stating that while s 379(3) was expressed widely, it "does not permit the liquidator or a provisional liquidator to come to the court whenever he feels some unease about a situation and wishes to obtain some sort of insurance against the possibility of error, as well as assurance that he is on the right track" (at 116). He explained further that because the court does not usually consider it proper to intervene and make the liquidator's commercial decisions for him, it will only exercise its power under s 379(3) "where the matter involves guidance to the liquidator on matters of law or principle or to protect him against accusations of acting unreasonably" (at 117).

22 As such, in the Australian cases at least, the court's exercise of its powers under s 379(3) of the Code are largely confined to the following four classes of cases: (a) guidance to the liquidator on matters of law; (b) questions involving legal procedure (such as whether a liquidator should settle curial proceedings); (c) whether a liquidator should act on his commercial judgment to postpone a sale because he recognises his legal duty ordinarily requires him to reduce the company's assets into cash as soon as possible and to distribute; or (d) where there are two or more competing purchasers for the company's property and the liquidator can see that it may be alleged that he has acted *mala fide* or in an absurd or unreasonable or illegal way. Included within these four classes of cases is the situation where the liquidator's decision-making may be subject to criticism and is likely to be contested. This will especially be the case if the liquidator's decision involves a balancing of the creditors' competing interests (see the New South Wales Supreme Court decision of *In the matter of AE&E Australia Pty Ltd (in liquidation)* [2017] NSWSC 950).

23 In the New South Wales Supreme Court decision of *Re MF Global Australia Ltd (in liq)* [2012] NSWSC 994 ("*Re MF Global*"), Black J helpfully

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summarised the applicable principles in relation to the court's power to give directions under s 479(3) of the Corporations Act 2001 (Cth) (the "Corporations Act 2001"), which is the equivalent of s 379(3) of the Code, in the following terms (at [7]):

> Section 479(3) of the Corporations Act allows a liquidator to apply to the court for directions in relation to a matter arising under a winding up. The function of a liquidator's application for directions under this section is to give the liquidator advice as to the proper course of action for him or her to take in the liquidation: *Sanderson v Classic Car Insurances Pty Ltd* (1985) 10 ACLR 115 at 117; (1986) 4 ACLC 114; *Re Ansett Australia Ltd (admins apptd) and Korda* [2002] FCA 90; (2002) 115 FCR 409; 40 ACSR 433 at [46]. The court may give directions that provide guidance on matters of law and the reasonableness of a contemplated exercise of discretion but will typically not do so where a matter relates to the making and implementation of a business or commercial decision, where no particular legal issue is raised and there is no attack on the propriety or reasonableness of the decision: *Sanderson v Classic Car Insurances Pty Ltd* above at 117; *Re GB Nathan & Co Pty Ltd (in liq)* (1991) 24 NSWLR 674 at 686-7; 5 ACSR 673; 9 ACLC 1291; *Re Ansett Australia Ltd* above at [65]; *Re One.Tel Networks Holdings Pty Ltd* [2001] NSWSC 1065; (2001) 40 ACSR 83 at [32] …

Again, framed identically to s 379(3) of the Code and s 145(3) of the IRDA, s 479(3) of the Corporations Act 2001 provides that "[t]he liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up". Section 479(3) has been repealed by s 151 of Schedule 2 to the Insolvency Law Reform Act 2016 (No 11 of 2016) (Cth).

24 In addition, it should also be noted that whereas s 145(3) of the IRDA governs court-ordered winding up applications, there is the similarly framed s 181(1)(*a*) of the IRDA, which governs voluntary winding up applications. Section 181 provides as follows:

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> **Application to Court to have questions determined or powers exercised**
>
> **181.**—(1) The liquidator or any creditor or contributory may apply to the Court —
>
> > (*a*) to determine any question arising in the winding up of a company; or
>
> …
>
> (2) The Court, if satisfied that the determination of the question … is just and beneficial, may —
>
> > (*a*) accede wholly or partially to any such application on such terms and conditions as the Court thinks fit; or
> >
> > (*b*) make such other order on the application as the Court thinks just.

25 Section 181 differs from s 145(3) in that the former posits an additional requirement that the court must be satisfied that the determination of the question is "just and beneficial". The equivalent in the Corporations Act 2001 is s 511, which provides as follows:

> (1) The liquidator, or any contributory or creditor, may apply to the Court:
>
> > (a) to determine any question arising in the winding up of a company; or
> >
> > (b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.
>
> (1A) APRA may apply to the Court under subsection (1) in relation to a company that is a friendly society within the meaning of the Life Insurance Act 1995 and which may be wound up voluntarily under subsection 180(2) of that Act.
>
> (2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

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For completeness, I note that s 511 has been repealed by s 170 of Schedule 2 to the Insolvency Law Reform Act 2016 (No 11 of 2016) (Cth).

26 In this regard, it is helpful to note that Black J had observed in *Re MF Global* in relation to s 511 of the Corporations Act 2001 (at [8]):

> Section 511 of the Corporations Act provides an alternative source of power to give such a direction and the Liquidators also rely on that section. The principles applicable to an application under that section were recently reviewed by Ward J in *Re Purchas (as liquidator of Astarra Asset Management Pty Ltd (in liq))* [2011] NSWSC 91 … Applications made under this section in a voluntary winding up are determined in a similar manner to applications in a court ordered winding up under s 479(3) of the Corporations Act notwithstanding that section does not expressly require that it be "just and beneficial" to give the relevant direction. The court may give such a direction where it will be "of advantage in the liquidation": *Dean-Willcocks v Soluble Solution Hydroponics Pty Ltd* (1997) 42 NSWLR 209 at 212; *Handberg (in his capacity as liquidator of S&D International Pty Ltd) v MIG Property Services Pty Ltd* [2010] VSC 336; (2010) 79 ACSR 373 at [7]. The effect of a determination under the section is to sanction a course of conduct on the part of the liquidator so that he or she may adopt that course free from the risk of personal liability for breach of duty: *S&D International* at [7].

27 From the foregoing, it appears that the statutory requirements that must be satisfied in a liquidator's application for directions from the court *differs* depending on whether it is a court-ordered winding up or a voluntary winding up. The chief difference lies in the court's determination of whether it is "just and beneficial" to make the direction. Notwithstanding these differences, the courts have interpreted both provisions similarly. Indeed, Young J recognised as such in the New South Wales Supreme Court decision of *Dean-Willcocks v Soluble Solution Hydroponics Pty Ltd* (1997) 24 ACSR 79 (at 81):

> There is a real difference between a court appointed liquidator and a liquidator appointed in a voluntary winding up. In the former case the liquidator is an officer of the court and the court

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> is at liberty to give him directions accordingly or may utilise the statutory power under s 479. With a voluntary winding up, the liquidator is not an officer of the court but is the agent of the company. Thus, in *Re Reid Murray Holdings Ltd (in liq)* [1969] VR 315 at 318, Adam J pointed out that the court has an inherent or implied jurisdiction on an application by its own officer to assist him. This does not apply to a voluntary liquidator.

However, it bears emphasising that the learned judge qualified this by observing that "although a voluntary liquidator does not have the same access to the court through s 479, he has access through s 511 and the authorities tend to suggest that the court has the same jurisdiction under both sections" (at 81).

28 Similarly, in the New South Wales Supreme Court decision of *In the matter of Octaviar Limited (in liq) and Octaviar Administration Pty Ltd (in liq)* [2017] NSWSC 1005 ("*Re Octaviar Limited*"), Black J concluded that the court's powers to give directions under ss 479(3) and 511 of the Corporations Act 2001 (at [8]) "are of substantially the same character and are intended to facilitate the performance of a liquidator's functions". As such, the learned judge opined (at [8]) that these provisions "should be interpreted widely to give effect to that intention", especially when "it is advantageous to the liquidation to do so".

29 Further reasons in support of treating applications by liquidators for directions from the court identically were expounded on by Warren CJ in the Victoria Supreme Court decision of *Hanberg (in his capacity as liquidator of S & D International Pty Ltd) (in liq) and another v MIG Property Services Pty Ltd and others* (2010) 79 ACSR 373 (at 378–379):

> (a) First, the qualification that the direction must be "just and beneficial" in the context of a voluntary winding up is one of purpose

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and not one of scope. Therefore, the powers of the court to make directions in a voluntary winding up application cannot be characterised as more or less limited than the powers of the court to make directions in a court-ordered winding up application.

(b) Second, based on the legislative history of Australian and the UK insolvency legislation, no essential distinction was intended to be made between voluntary and court-ordered windings up when the court was directing liquidators as to what actions they should take. The qualification that the direction must be "just and beneficial" in the context of voluntary windings up was aimed at reducing the work of the court in voluntary windings up to the minimum supervision necessary to ensure that such windings up were conducted properly and fairly, as if they had been conducted by the court.

30 I respectfully think that these principles should likewise apply in Singapore. First, the court's powers under s 145(3) of the IRDA can be invoked where, among other things, the liquidator's decision-making may be subject to criticism and is likely to be contested. Second, ss 145(3) and 181 of the IRDA, while not framed identically, should be interpreted in the same manner so as to give effect to the broad legislative intention of allowing the liquidation an opportunity to proceed advantageously.

My decision: the Liquidators could rely on s 145(3) of the IRDA

31 Having had regard to the applicable principles, I concluded that the Liquidators could rely on s 145(3) of the IRDA. I was satisfied that the present applications involved potentially controversial issues of law and principle. Indeed, the Liquidators' views on these issues, and their proposed course of

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action in the form of the Proposed Consolidation, may be subject to criticism by opposing creditors. As such, I decided that the Liquidators could rely on s 145(3). However, whether I should grant the specific directions sought was a different question, to which I now turn.

Whether the directions sought should be made

The applicable principles

32 To begin with, I highlight again that there are two distinct requirements involved in an application under s 145(3) of the IRDA. First, there is the threshold question of whether a liquidator may apply to the court for directions. Second, the court must also be satisfied that the directions sought *should* be granted. These requirements should not be conflated: while the former goes to a question of the nature of the direction sought, the latter concerns the court's assessment of whether it benefits the liquidation to grant the direction.

33 In considering whether the directions sought under s 145(3) of the IRDA should be granted, I considered Black J's observations in *Re Octaviar Limited* to be helpful. The learned judge had opined (at [8]) that a court can make the directions sought "where it is advantageous to the liquidation to do so". In deciding this, a court should be satisfied that the directions sought are proper and reasonable, which can be ascertained by considering, among other things, the liquidator's reasons, and the process by which the directions had been formulated.

34 Further, as Pritchard J helpfully observed in the Western Australia Supreme Court decision of *Re Great Southern Managers Australia Ltd (in liq)* [2014] WASC 312 (at [63]), this determination will "necessarily involve a

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broad consideration of matters" in the overall context of the liquidation, which include: (a) the nature of the proposed course of action about which the direction is sought; (b) the circumstances relevant to that proposed course of action; (c) the reasons for and consequences of that proposed course of action, including the liquidator's commercial judgment; and (d) in cases involving the determination of a legal issue relevant to that decision, the principles relevant to the determination of that issue.

35 As mentioned above at [23] and [25], ss 479(3) and 511 of the Corporations Act 2001 have been repealed. Their replacement is s 90-15 of the Insolvency Practice Schedule (Corporations) ("IPS") of Schedule 2 to the Corporations Act 2001, which I set out for completeness:

> 90-15 Court may make orders in relation to external administration
>
> Court may make orders
>
> (1) The Court may make such orders as it thinks fit in relation to the external administration of a company.
>
> Orders on own initiative or on application
>
> (2) The Court may exercise the power under subsection (1):
>
> (a) on its own initiative, during proceedings before the Court; or
>
> (b) on application under section 90- 20.
>
> Examples of orders that may be made
>
> (3) Without limiting subsection (1), those orders may include any one or more of the following:
>
> (a) an order determining any question arising in the external administration of the company;
>
> (b) an order that a person cease to be the external administrator of the company;
>
> (c) an order that another registered liquidator be appointed as the external administrator of the company;

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> (d) an order in relation to the costs of an action (including court action) taken by the external administrator of the company or another person in relation to the external administration of the company;
>
> (e) an order in relation to any loss that the company has sustained because of a breach of duty by the external administrator;
>
> (f) an order in relation to remuneration, including an order requiring a person to repay to a company, or the creditors of a company, remuneration paid to the person as external administrator of the company.
>
> Matters that may be taken into account
>
> (4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
>
> (a) whether the liquidator has faithfully performed, or is faithfully performing, the liquidator's duties; and
>
> (b) whether an action or failure to act by the liquidator is in compliance with this Act and the Insolvency Practice Rules; and
>
> (c) whether an action or failure to act by the liquidator is in compliance with an order of the Court; and
>
> (d) whether the company or any other person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the liquidator; and
>
> (e) the seriousness of the consequences of any action or failure to act by the liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.
>
> …

My decision: the directions sought should be made

36 Having regard to the applicable principles, I concluded that the directions sought by the Liquidators should be made.

37 First, I accepted the Liquidators' explanation that the Proposed Consolidation does not benefit one group of creditors over another by

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contravening the *pari passu* principle. This is because the Proposed Consolidation is merely an extension of the "running account" approach, which the Liquidators have consistently applied to claims against and by all of the Investors to determine each Investor's true outstanding claim. By the running account approach, the Liquidators would treat all dollars in and out of the Envy Companies as attributable to an Investor as part of a single "running account" for that Investor. This would apply whether the moneys in or out of the Envy Companies were accounted for in the Investor's personal account or an Investor's investment through a third-party AI, a Joint Account, or through other third parties such as family members. As such, the Proposed Consolidation would simply lay bare the true outstanding claim of an Overwithdrawn Investor. Rather than being a contravention of the *pari passu* principle, the Proposed Consolidation would allow the Liquidators to determine the true claims of the Investors and give effect to that principle in the specific circumstances of the Envy Companies.

38 Second, the Proposed Consolidation is in the best interests of the estate of the Envy Companies and the general body of creditors. Subject to further agreement, the Proposed Consolidation would allow the Liquidators to compromise claims by the Envy Companies against certain Overwithdrawn Investors, and avoid significant time and costs involved in commencing separate proceedings against them. The Proposed Consolidation would also allow the Liquidators more certainty in the adjudication process and allow the Liquidators to determine the total liabilities more accurately and/or claims of the Envy Companies.

39 Third, the COI and the investors' working group comprising 108 Investors are in support of the Proposed Consolidation. There was also no

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objection to the Proposed Consolidation from any creditor at the hearing of the present applications.[8]

40 Fourth, the present applications do not prejudice ongoing legal proceedings. This was made clear in para 1(c) of the summonses.

41 Finally, while the Liquidators stated that the eventual compromises or arrangements that result from the implementation of the Proposed Consolidation would "in principle" receive the court's approval pursuant to ss 144(1)(*c*) and 144(1)(*d*) of the IRDA, they also reiterated that they were not seeking such approval in these applications. As such, despite the Liquidators making rather detailed submissions on this matter, I did not see why it was appropriate or necessary for the court to consider the likelihood of such a compromise or arrangement passing muster at this stage. I therefore emphasise that nothing in these grounds should be taken as making any observations on such compromises or arrangements. These applications had nothing to do with the validity of any such compromises or arrangements.

Conclusion

42 For all of these reasons, I made the directions sought in these applications.

Goh Yihan
Judge of the High Court

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[8] BYCG's 6th Affidavit at paras 3.4.1 and 3.4.2.

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