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

[2024] SGHC 144

Originating Application No 243 of 2023

In the matter of Rule 132(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 and Section 190 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Greatearth Construction Pte Ltd (In Liquidation)

Between

Rich Construction Company Pte Ltd

… *Claimant*

And

(1) Greatearth Construction Pte Ltd (In Liquidation)
(2) Chan Kheng Tek (in his capacity as a joint and several liquidator of Greatearth Construction Pte Ltd (in liquidation))
(3) Sam Kok Weng (in his capacity as a joint and several liquidator of Greatearth Construction Pte Ltd (in liquidation))

… *Defendants*

Originating Application No 244 of 2023

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In the matter of Rule 132(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 and Section 190 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Greatearth Construction Pte Ltd (In Liquidation)

Between

China State Construction Engineering Corporation Limited (Singapore Branch)

… *Claimant*

And

(1) Greatearth Construction Pte Ltd (In Liquidation)
(2) Chan Kheng Tek (in his capacity as a joint and several liquidator of Greatearth Construction Pte Ltd (in liquidation))
(3) Sam Kok Weng (in his capacity as a joint and several liquidator of Greatearth Construction Pte Ltd (in liquidation))

… *Defendants*

JUDGMENT

[Insolvency Law — Winding up — Proof of debt — Whether liquidators rejected proof of debt without good reason]

[Insolvency Law — Winding up — Interpretation of settlement agreement]
[Insolvency Law — Winding up — Proof of debt — Valuation of contingent claim or contingent debt — Genuine and fair assessment of chances of liability occurring]
[Insolvency Law — Winding up — Proof of debt — Hindsight principle]

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Rich Construction Co Pte Ltd
v
Greatearth Construction Pte Ltd (in liquidation) and others and another matter

[2024] SGHC 144

General Division of the High Court — Originating Applications Nos 243 and 244 of 2023
Wong Li Kok, Alex JC
8, 19 September, 1 December 2023, 9 April 2024

31 May 2024 Judgment reserved.

Wong Li Kok, Alex JC:

1 Originating Applications Nos 243 and 244 of 2023 (the "Applications") arose out of the same set of facts relating to the liquidation of Greatearth Construction Pte Ltd (In Liquidation) ("GEC"), the first defendant. The claimants in the Applications were related companies. Rich Construction Company Pte Ltd ("Rich") was the claimant in Originating Application No 243 of 2023 ("OA 243") and China State Construction Engineering Corporation Limited (Singapore Branch) ("CSCEC") was the claimant in Originating Application No 244 of 2023 ("OA 244"). The second and third defendants in both of the Applications were the joint and several liquidators of GEC (the "Liquidators"). OA 244 was subsequently withdrawn by CSCEC, save for one relatively minor claim. I hence refer to CSCEC in these grounds of decision

only where relevant for the purposes of determining CSCEC's unwithdrawn claim.

Introduction and brief facts

2 Rich and CSCEC had entered into separate joint venture agreements (collectively "JVAs" and each a "JVA") with GEC relating to distinct construction projects in Singapore.[1] The JVAs provided for the sharing of obligations, profits and, where necessary, losses for those projects.

3 GEC was placed into provisional liquidation on 31 August 2021,[2] which also resulted in its withdrawal from the respective JVAs.[3] Around this period, Rich, CSCEC and GEC carried out negotiations to determine, for the future, each party's rights and obligations,[4] bearing in mind that the projects were still under construction at that time. On 25 September 2021, Rich and CSCEC submitted proofs of debt to the Liquidators claiming both completion costs and termination costs pursuant to the respective JVAs for the projects.[5]

4 On 31 May 2022, Rich and CSCEC entered into separate settlement deeds with the Liquidators (acting on behalf of GEC) to resolve the claims of

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1 Affidavit of Liu Peng Cheng filed for HC/OA 243/2023 dated 16 March 2023 ("LPC (OA 243)-2023 03 16") at para 4; Affidavit of Liu Peng Cheng filed for HC/OA 244/2023 dated 16 March 2023 ("LPC (OA 244)-2023 03 16") at para 4.

2 LPC (OA 243)-2023 03 16 at para 5.

3 Affidavit of Liu Peng Cheng filed for HC/OA 243/2023 dated 12 April 2023 ("LPC (OA 243)-2023 04 12") at paras 13 and 62–64; Affidavit of Liu Peng Cheng filed for HC/OA 243/2023 dated 12 April 2023 ("LPC (OA 244)-2023 04 12") at paras 13 and 54–56.

4 Affidavit of Chan Kheng Tek filed for HC/OA 243/2023 dated 27 June 2023 ("CKT (OA 243)-2023 06 27") at para 15; Affidavit of Chan Kheng Tek filed for HC/OA 244/2023 dated 27 June 2023 ("CKT (OA 244)-2023 06 27") at para 15.

5 LPC (OA 243)-2023 03 16 at para 6; LPC (OA 244)-2023 03 16 at para 6.

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Rich and CSCEC against GEC pursuant to the JVAs (the "Settlement Deeds").[6] For the purposes of this decision, the Settlement Deeds were identical.

5 On 9 March 2023, the Liquidators rejected the entirety of both proofs of debt submitted by Rich and CSCEC on two separate grounds that (a) the sums claimed had been resolved under the Settlement Deeds and could no longer be claimed and (b) alternatively, that there were insufficient supporting documents to substantiate the claims under those proofs of debt.[7] Rich filed OA 243 asking the court to reverse or vary the decision of the Liquidators on its proof of debt ("Rich's Proof of Debt"). CSCEC filed OA 244 asking the same, but this was ultimately reduced to only a claim for termination costs (together with Rich's Proof of Debt, the "Proofs of Debt").

6 I agreed with the claimants that, in principle, the Settlement Deeds had not resolved or excluded the sums claimed under the Proofs of Debt, but I also agreed with the Liquidators' finding that there was insufficient support provided by the claimants to substantiate their claims. As I have not located a reported case with a similar factual matrix where, in the context of an ongoing construction project where a debt continues to accrue, a court found against a liquidator on a point of contractual interpretation in the proof of debt and simultaneously found that the creditor has not adduced sufficient evidence of its debt, I consider it useful to provide this judgment. This judgment comprises my earlier decisions surrounding the interpretation of the Settlement Deeds and the substantiation of the Proofs of Debt, as well as my judgment on the final amounts to be proved by the claimants following the request from the parties for my decision on the same.

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6 CKT (OA 243)-2023 06 27 at para 17; CKT (OA 244)-2023 06 27 at para 17.

7 LPC (OA 243)-2023 03 16 at paras 10–11; LPC (OA 244)-2023 03 16 at paras 10–11.

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Additional background

7 Under clause 5.2 of the JVA, Rich and GEC agreed to share the rights, interests, assets, liabilities, obligations, risks, profits and losses arising out of the joint performance of the works in accordance with their participating interests.[8] Under clause 5.1 of the JVA, GEC's participating interest was 30%, while Rich's participating interest was 70%.[9]

8 Rich's Proof of Debt claimed the amount of $15,054,956.06.[10] As mentioned at [3] above, there were two components to this proof of debt, namely, a claim for completion costs and a claim for termination costs. The completion costs amounted to $12,747,830.06 and this sum represented 30% of the estimated/projected losses, damages, costs and expenses arising out of, and in connection with, the carrying out and completion of the works at the time of filing of Rich's Proof of Debt. The completion costs were calculated on the premise that GEC would be required to bear 30% of the completion costs under the JVA, pursuant to its 30% participating interest (see [7] above). The termination costs amounted to $2,307,126.00 and this sum represented the estimated additional losses, damages, costs and expenses arising out of, and in connection with, GEC's repudiatory breach of the JVA and withdrawal from the project at the time of the filing of Rich's Proof of Debt.

9 For the purposes of OA 244, it is relevant to note that CSCEC's proof of debt included only the termination costs of $967,304.00 (see [5] above).[11]

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8 LPC (OA 243)-2023 04 12 at p 16 (Joint Venture Agreement for Tender No. JTC18T0065 dated March 2019 at p 4 cl 5.2).

9 LPC (OA 243)-2023 04 12 at p 16 (Joint Venture Agreement for Tender No. JTC18T0065 dated March 2019 at p 4 cl 5.1).

10 LPC (OA 243)-2023 03 16 at para 6.

11 LPC (OA 244)-2023 03 16 at para 6(2).

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10 On 12 April 2023, in affidavits filed by Mr Liu Peng Cheng ("Mr Liu"), a project director at Rich and CSCEC,[12] the claimants clarified that they were reducing the amounts claimed for termination costs to only claim for legal costs relating to work undertaken by counsel arising from and in connection with GEC's financial failure and liquidation. The revised termination costs claimed by Rich and CSCEC were $51,564.41 *each*.[13] As a result of this reduction, Rich's overall debt claim became $12,799,394.47[14] and CSCEC's overall debt claim became $51,564.41. At the hearing on 8 September 2023, counsel for the claimants orally stated that these legal costs claimed would be reduced to $47,000.00,[15] though, given that this figure only emerged in oral submissions and was not found in the affidavits or written submissions, it was unclear what the basis of the reduction was and what claim components remained in the $47,000.00 figure. By the time of the hearing on 9 April 2024, the amount of termination costs claimed was $46,608.79 (see below at [60]–[62]).

11 At this juncture, it is also helpful to reproduce clauses 1.5 and 1.6 of the Settlement Deeds, which will be analysed further below. Clauses 1.6 in the respective Settlement Deeds for Rich and CSCEC have a minor difference in wording, but parties have been asked about the difference at the hearing of the Applications, and nothing turns on this difference.[16] I reproduce clauses 1.5 and 1.6 of Rich's Settlement Deed for reference:[17]

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12 LPC (OA 243)-2023 04 12 at para 1; LPC (OA 244)-2023 04 12 at para 1.

13 LPC (OA 243)-2023 04 12 at paras 62–66; LPC (OA 244)-2023 04 12 at paras 54–58.

14 LPC (OA 243)-2023 04 12 at para 70.

15 Minute Sheet dated 8 September 2023 at p 4.

16 Minute Sheet dated 8 September 2023 at p 5.

17 LPC (OA 243)-2023 03 16 at p 43 (Settlement Deed dated 31 May 2022 at p 2 cll 1.5–1.6).

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> 1.5 The Parties hereby agree that this Deed is without prejudice to, and does not cover, the claims submitted by [Rich] in its Proof of Debt in the insolvency of GEC, other than the Excluded Liabilities. For the avoidance of doubt, any claims submitted by [Rich] in its Proof of Debt will be subject to adjudication.
>
> 1.6 Subject to the performance by the Parties of their obligations under paragraphs 1.1 to 1.3, the Parties hereby acknowledge and agree that GEC shall be released from all of its liabilities arising from any obligations to perform, the Contract or the Agreement, or anything undertaken or ought to have been undertaken on the Project, from 1 September 2021 onwards (collectively, the "**Excluded Liabilities**").
>
> [emphasis in original]

The parties' cases

12 The claimants' arguments are summarised below:

(a) the intent of clauses 1.5 and 1.6 of the Settlement Deeds was not to effect a complete release of GEC from any and all liabilities relating to the respective projects from 1 September 2021 onwards, but instead a release only from performance of its JVA obligations and a release from liability arising from the performance of the claimants in the respective projects from 1 September 2021 onwards;[18]

(b) Rich's claims for contingent debt and estimates of future losses were provable in a winding up;[19] and

(c) the completion costs for the project were adequately substantiated and should be admitted under Rich's Proof of Debt.[20]

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18 Claimants' Written Submissions in HC/OA 244/2023 dated 4 September 2023 ("CWS (OA 244)") at paras 22–32; Claimants' Written Submissions in HC/OA 243/2023 dated 4 September 2023 ("CWS (OA 243)") at paras 22–32.

19 CWS (OA 243) at paras 38–39.

20 CWS (OA 243) at paras 40–41.

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13 The defendants' arguments are summarised below:

(a) the claimants' claims under the Proofs of Debt were excluded under clauses 1.6 of the Settlement Deeds as "Excluded Liabilities";[21]

(b) based on the "hindsight principle" (see [42]) and the fact that the claims under Rich's Proof of Debt were excluded under clause 1.6 of the Settlement Deed, Rich's claims for contingent debt or estimated future losses were not provable;[22] and

(c) there was insufficient evidence and documentation to substantiate the claimants' claims, especially Rich's claims on completion costs.[23]

Issues to be determined

14 The key issue in the Applications was the interpretation of clauses 1.5 and 1.6 of the Settlement Deeds, which determine whether, in principle, the claimants should be entitled to have their debts proved based on the Proofs of Debt they submitted.

15 Assuming the first issue was decided in favour of the claimants, the additional issue arising was the basis of calculation of the Proofs of Debt. This, in turn, raised three sub-issues: firstly, whether Rich was entitled to prove based on contingent loss; secondly, whether Rich had submitted sufficient particulars on completion costs to allow the Liquidators to make a determination of the

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21 Defendants' Written Submissions submitted jointly for HC/OA 243/2023 and HC/OA 244/2023 dated 4 September 2023 ("DWS") at paras 40–47.

22 DWS at paras 37–39.

23 DWS at paras 50–54 and 63.

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amount of debt proved; and thirdly, what the quantum of debts to be proved for OA 243 and OA 244 is.

De novo decision by the court

16 The parties agreed that the applicable legal principles in this application derived from r 132(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("CIR Rules")). The rule states:

> **Appeal by creditor**
>
> **132.**—(1) If a creditor or contributory of a company is dissatisfied with the decision of the liquidator of the company in rejecting a proof (in whole or in part), the Court may, on the application of the creditor or contributory, reverse or vary the decision of the liquidator.

17 The parties also agreed that the court hears the application to reverse or vary the adjudication of the Proofs of Debt *de novo*, meaning the court makes its decision based on the evidence before the court at the time of this application. This is a matter of settled law. As the court noted in *ERPIMA SA v Chee Yoh Chuang and another* [1997] 1 SLR(R) 923 at [6], the claimant "is not restricted to the material it had placed before" the liquidator, and (citing *Re Kentwood Constructions Ltd* [1960] 1 WLR 646 at 648) the function of the court is not merely to say whether a decision by the liquidator is right or wrong; the court "may vary [the liquidator's decision] in any way it thinks necessary in the light of the evidence before the court". The burden of proof is on the creditors to prove the debts in question (*Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar CA*") at [13], citing *Westpac Banking Corporation v Totterdell* [1997] 142 FLR 137 and *The Trustee in Bankruptcy of Lo Siu Fai Louis v Toohey* [2005] 4 HKC 51).

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Clauses 1.5 and 1.6 of the Settlement Deeds

18 The respective counsels took opposing interpretations of clauses 1.5 and 1.6 of the Settlement Deeds and it is worth exploring their different approaches to those interpretations based on a plain reading of the clauses and extrinsic evidence arising from the negotiations leading up to the conclusion of the Settlement Deeds. The interpretation of clauses 1.5 and 1.6 is also relevant to OA 244, to the extent that it affects the determination of the issue of termination costs (as limited to legal costs incurred).

Plain reading of clauses 1.6 of the Settlement Deeds

19 The defendants argued that it was the intention of the parties for the Settlement Deeds to form a clean break between GEC's liabilities before 1 September 2021 and those liabilities from and after that date. In support of this approach, the defendants' counsel pointed to:[24]

> (a) recitals (G) and (I) of the Settlement Deeds which provided that the claimants had taken over all the work under the projects with effect from 1 September 2021 and that the parties were desirous of reaching a settlement with respect to the outstanding issues between them as at 1 September 2021 and arising from GEC's withdrawal from the JVAs; and
>
> (b) clauses 1.4 of the Settlement Deeds which provided for a payment by GEC to the claimants representing the full and final settlement of all claims against GEC as at 31 August 2021 and, consequently, clauses 1.6 of the Settlement Deeds being the *quid pro quo* for GEC, *ie*, a release by the claimants of GEC's liabilities from and after 1 September 2021.

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[24] Defendants' oral submissions on 8 September 2023 and DWS at paras 36 and 40–41.

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20 In view of the above, the defendants' position was that the definition of "Excluded Liabilities" in clauses 1.6 of the Settlement Deeds was all-encompassing and GEC ought not to be liable for any liabilities arising from and after 1 September 2021.

21 The claimants' position was more nuanced:

(a) The claimants argued that, on a plain reading of clauses 1.6 of the Settlement Deeds, the parties' intention was only to release GEC from "liabilities arising from any obligations to perform" the contracts (relating to the respective projects) and that the reference to "anything undertaken or ought to have been undertaken on the Project" also refers to the actual completion of works under the projects. The claimants gave the example that clauses 1.6 of the Settlement Deeds was intended (a) to protect GEC from liabilities arising out of work that will be undertaken by the claimants (*eg,* drainage, sewer works *etc*) from and after 1 September 2021; and (b) to release GEC from having to do any more work under the projects from and after that same date. Clauses 1.6 of the Settlement Deeds was not and cannot be read as a complete release of all of GEC's liabilities from and after 1 September 2021.[25]

(b) In that regard, the claimants contended that the recitals of the Settlement Deeds (pointing also at recitals (G) and (I)) supported its interpretation of clauses 1.6 of the Settlement Deeds.[26]

(c) The claimants also pointed to clauses 1.5 of the Settlement Deeds which purported to create a caveat to the "Excluded Liabilities"

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25 CWS (OA 243) at para 29; CWS (OA 244) at para 29.

26 CWS (OA 243) at para 31; CWS (OA 244) at para 31.

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in referring to claims submitted by the claimants in the Proofs of Debt which remained subject to adjudication. The claimants made the point that if the "Excluded Liabilities" were all-encompassing as argued by the defendants, then clauses 1.5 of the Settlement Deeds would be superfluous and this would be an absurd result in the interpretation of clauses 1.5 and 1.6 of the Settlement Deeds.[27]

Extrinsic evidence from negotiations

22 The defendants sought to adduce evidence from e-mail exchanges between counsel for the claimants and the defendants in the lead-up to the finalisation of the Settlement Deeds. The claimants did not object to the e-mail exchanges being used to assist in the interpretation of clauses 1.6 of the Settlement Deeds. I set out below the e-mail exchange between claimants' counsel, Mr Ho Chien Mien ("Mr Ho") and defendants' counsel, Mr Md Noor E Adnaan ("Mr Noor").[28]

(a) On 14 February 2022 at 6.56pm, Mr Noor e-mailed drafts of the two Settlement Deeds and drafts of two deeds of release and discharge concerning projects involving Rich and CSCEC to Mr Ho, and asked Mr Ho for his clients' comments on the documents.[29]

(b) On 15 February 2022 at 10.10pm, Mr Ho replied to Mr Noor's e-mail, asking for drafts of the documents with the changes relative to earlier drafts tracked.[30]

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27 CWS (OA 243) at para 32; CWS (OA 244) at para 32.

28 CKT (OA 243)-2023 06 27 at pp 54–61.

29 CKT (OA 243)-2023 06 27 at pp 59–60.

30 CKT (OA 243)-2023 06 27 at p 59.

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(c) On 15 February 2022 at 11.39pm, Mr Noor replied with marked-up versions of the draft deeds of release and discharge, and enquired if Mr Ho would also require the marked-up versions of the draft Settlement Deeds.[31]

(d) On 16 February 2022 at 1.47am, Mr Ho replied in the affirmative.[32]

(e) On 16 February 2022 at 9.27am, Mr Noor e-mailed Mr Ho marked-up copies of the two draft Settlement Deeds.[33]

(f) On 17 February 2022 at 10.58am, Mr Ho replied to Mr Noor's e-mail with the following comments:[34]

> I refer to the amended Settlement Deeds and need some clarification on the proposed amendments at Clauses 1.5 and 1.6 on the "Excluded Claims". Can I just confirm that the purpose of these amendments is to make the point clear that Greatearth is not liable for anything done by RCC [Rich] / CSCEC on the Project from 1 September 2021 onwards?
>
> The way it is phrased it seems that Greatearth is released from all its liabilities from the contracts as at 1 September 2021 – meaning that whatever liabilities it has as at 1 September 2021, it would be released from these. I am sure this is not what you intended with the amendments to Clause [*sic*] 1.5 and 1.6.

(g) On 18 February 2022 at 12.45pm, Mr Noor replied to Mr Ho's e-mail with the following comments:[35]

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31 CKT (OA 243)-2023 06 27 at p 58.

32 CKT (OA 243)-2023 06 27 at p 58.

33 CKT (OA 243)-2023 06 27 at p 57.

34 CKT (OA 243)-2023 06 27 at pp 56–57.

35 CKT (OA 243)-2023 06 27 at p 56.

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> Thanks for your email below.
>
> The purpose to the amendments to Clauses 1.5 and 1.6 is that GEC is released from all of its liabilities and obligations on and after 1 September 2021, i.e. no more liability and obligation on and from 1 September 2021.
>
> For the avoidance of doubt, we propose the following amendment (in red) to Clause 1.6 of both draft settlement deeds: "*…GEC shall be released from all of its liabilities arising from, and obligations to perform, the Contract and the Agreement, in each case, on and from 1 September 2021 (collectively, the "**Excluded Claims**").*"
>
> Please let us know if your clients are agreeable to this, and if there are any further comments to the draft settlement deeds.
>
> [emphasis in original]

(h) On 18 February 2022 at 9.36pm, Mr Ho replied to Mr Noor's e-mail with the following comments:[36]

> Thank you for your email.
>
> I think the amendments need to be clarified further. It still does not address our concern that it appears to provide that GEC will be released from all its liabilities as at 1 September 202 [*sic*] – i.e. liabilities existing as at 1 September 2021.
>
> If the concern is that GEC will no longer be liable for anything done or ought to have been done under the Contract and the Project from 1 September 2021 onwards, I proposed [*sic*] that Clause 1.6 be amended as follows:
>
> > "Subject to the performance by the Parties of their obligations under paragraphs 1.1 to 1.3, the Parties hereby acknowledge and agree that GEC shall be released from all of its liabilities arising from any obligations to perform the Contract or the Agreement, or anything undertaken or ought to have been undertaken on the Project, from 1 September 2021 onwards (collectively the "Excluded Liabilities")"

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[36] CKT (OA 243)-2023 06 27 at p 55.

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> And we replace "Excluded Claims" with "Excluded Liabilities".
>
> I will come back to you shortly regarding the other provisions. In the meantime, please let me know if the abovementioned proposal works.

(i) On 22 February 2022 at 1.17am, Mr Ho sent a chaser e-mail to Mr Noor seeking a reply to Mr Ho's e-mail excerpted at [22(h)] above.[37]

(j) On 22 February 2022 at 10.12am, Mr Noor replied to Mr Ho's e-mail with the following comments:[38]

> Thanks for your email below.
>
> We have no further comments to your proposed amendments to Clause 1.6 as set out in your email dated 18 February 2022.
>
> We look forward to receiving your comments on the other provisions of the settlement documents.

23 The defendants argued that the position taken by the claimants in the Applications was different to the position taken during negotiations wherein, on the defendants' characterisation, the claimants had taken the same position as the defendants as set out at [19] above, *ie*, a symmetrical "clean break" approach.[39]

Clauses 1.5 and 1.6 of the Settlement Deeds did not provide a complete release of GEC's liabilities

24 I agreed with the claimants that the intent of the clauses was not to effect a complete release of GEC from any and all liabilities relating to the respective projects from and after 1 September 2021 but a release only from performance of GEC's obligations under the JVAs and a release from liability arising from

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37 CKT (OA 243)-2023 06 27 at pp 54–55.

38 CKT (OA 243)-2023 06 27 at p 54.

39 DWS at paras 40–41.

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the performance of the claimants in the respective projects from and after 1 September 2021. In the context of both the extrinsic evidence (see [22]–[23] above) and the context of clauses 1.6 of the Settlement Deeds when read with clauses 1.5 of the Settlement Deeds (see [19]–[21] above), that is the most plausible reading of those clauses. The Court of Appeal in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") noted the following canons of contractual interpretation (at [131], citing Gerard McMeel in *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007):

> (a) the aim of contractual interpretation is "to ascertain the meaning which [the terms] would convey to a reasonable business person";
>
> (b) contractual terms must be interpreted having regard to both the contract as a whole and the circumstances in which it was entered into; and
>
> (c) the court should eschew an interpretation that would lead to an unreasonable result, "unless it is required by clear words and there is no other tenable construction".

25 Based on these principles, I agreed with the claimants' position that clauses 1.5 of the Settlement Deeds would be superfluous if the defendants' position was adopted, leading to an absurd reading of the Settlement Deeds. The defendant had tried to submit – but I was not convinced – that there was a different reading to those clauses. The defendants had pointed to the finality of the Settlement Deeds and how they addressed all claims between the parties in an absolute way as the logical and clean break between the time on and before 31 August 2021, on the one hand, and from the time after that date, on the other.

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However, the defendants were not able to cogently explain what matters then remained to be determined or adjudicated in the Proofs of Debt (bearing in mind that the Proofs of Debt were submitted before the settlement negotiations for the Settlement Deeds) if I accepted their explanation of the finality of the Settlement Deeds. In other words, I could not see what remained to be determined in the Proofs of Debt in a manner that rendered clauses 1.5 in the Settlement Deeds necessary for inclusion therein.

26 Turning to the extrinsic evidence in the form of the e-mail exchanges between counsel (see [22] above), whilst I agreed with the defendants' submission that there was a certain symmetry and logic in how the parties wanted to address their rights and obligations from the time on and before 31 August 2021 and from after that date, those who have been part of commercial negotiations will know that the symmetry and reasonableness with which those negotiations start do not always point to how those negotiations finish. Ultimately, the mistrust generated in the negotiations often means that the fair and reasonable positions taken at the start of negotiations culminate in the littering of those positions with all manner of exceptions and caveats by the end of those negotiations. I was of the view that that is part of what happened in this case.

27 There is no requirement in negotiations for either party to be transparent and frank. On the contrary, parties in negotiations are often coy and what is left unsaid often reveals more than what is said. For those reasons, the law is cautious with how much weight is placed on extrinsic evidence. I took the same view in this case.

28 It is uncontroversial that extrinsic evidence of the external context of a contract is admissible in aid of contractual interpretation (even if there is no

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ambiguity in the contract sought to be interpreted), so long as the extrinsic evidence in question is relevant, reasonably available to all the contracting parties and relate to a clear or obvious context: *Zurich Insurance* at [132(d)]. I have a discretion to attach an according amount of weight to the extrinsic evidence that was submitted: *Goh Guan Chong v AspenTech, Inc* [2009] 3 SLR(R) 590 at [58]–[59]. However, the extrinsic evidence in this case could not persuade me that the intentions of the parties necessitated the defendants' reading of clauses 1.5 and 1.6 of the Settlement Deed. In fact, I took the contrary view. The claimants' counsel's response to the proposed drafting of clauses 1.5 and 1.6 of the Settlement Deeds is consistent with and does not detract from the reading of those clauses as set out at [24] above. In particular, as noted above at [22(f)] and [22(h)], Mr Ho, acting for the claimants, had twice emphasised that the intent of clauses 1.5 and 1.6 of the Settlement Deeds was not to release GEC from all its liabilities as at 1 September 2021. As conveyed by Mr Ho in his e-mail sent on 17 February 2022 at 10.58am (see [22(f)]), clauses 1.5 and 1.6 of the Settlement Deeds were meant to make the point clear that GEC was "not liable for anything done by [Rich] / CSCEC on the Project from 1 September 2021 onwards". I also note that Mr Ho's final substantive e-mail in that chain of e-mails, sent on 18 February 2022 at 9.36pm (see [22(h)] above), was finally accepted by the defendants (see Mr Noor's e-mail at [22(j)] above), with the corresponding wording proposed by Mr Ho in that e-mail being included in the Settlement Deeds. The explanation from Mr Ho in that final e-mail for the need to adopt the wording proposed by the claimants also went substantially unanswered by Mr Noor. In fact, there were a few days of pause between Mr Ho's e-mail and Mr Noor's acceptance of that draft on behalf of the defendants, which could suggest a contemplation thereof by the defendants and an ultimate acceptance of the claimants' position.

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29 Having made the decision that GEC's putative liability to the claimants under the Proofs of Debt was *not* precluded based on clauses 1.5 and 1.6 of the Settlement Deeds, I did not need to tackle the two alternative arguments raised by Rich. In summary, these were the arguments that:

(a) Rich was entitled to claim losses from GEC as damages arising from GEC's breach of the JVA when it entered into liquidation on 31 August 2021.[40] Specifically, the JVA provided that insolvency, winding up and liquidation were events of default. Moreover, GEC's insolvency and entry into liquidation and winding up proceedings also rendered it unable to carry out any of its obligations under the JVA, including the day-to-day conduct of the project.

(b) Even if clause 1.6 of the JVA precluded Rich from claiming losses incurred on the project after 1 September 2021, it should at least be entitled to enter a proof of debt for the losses incurred up till and including 1 September 2021.[41]

Calculation of the proofs of debt submitted

30 I turn now to the question of the quantum and amount of the Proofs of Debt submitted. As Rich and CSCEC had drastically reduced their claims for termination costs to only legal costs relating to work undertaken by counsel arising from and in connection with GEC's financial failure and liquidation (see [10] above), I will focus on Rich's claim for completion costs of the project. It would be helpful to set out a brief chronology of some of the key events in this regard:

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40 CWS (OA 243) at paras 33–36.

41 CWS (OA 243) at para 37.

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(a) Rich's Proof of Debt was submitted on 25 September 2021.[42] Rich's Proof of Debt was in summary form and stated the particulars of the completion costs component of the debt in a short half-page summary attached as an appendix.

(b) Rich's Proof of Debt was rejected by the Liquidators on 9 March 2023 on the basis that the claims submitted fall within the scope of "Excluded Liabilities" in the Settlement Deeds and, even if the claims did not fall within the scope of "Excluded Liabilities", there were no supporting or underlying documents to substantiate the claims.[43]

(c) Mr Liu, on behalf of Rich, filed a second affidavit for OA 243 on 12 April 2023. Mr Liu's aforesaid second affidavits will be referred to as "LPC2 243". In LPC2 243, Rich sought to substantiate the claims made in Rich's Proof of Debt in both explaining the basis of the calculations of the amounts claimed in Rich's Proof of Debt as well as providing documentation to substantiate these calculations. It is of note that LPC2 243 was a substantial document over a thousand pages long.

31 A brief explanation of the basis of calculating the completion costs claimed in Rich's Proof of Debt is warranted. Under the JVA, Rich and GEC had agreed to share the profits and the losses arising out of the performance of the project on a 70:30 basis (see [7]–[8] above). In other words, GEC's share of the project profits or losses was 30%, with Rich taking the remaining 70%. Rich's calculation of the overall project profit or loss was straightforward. Rich would subtract the project costs (comprising elements such as labour costs, supplier costs, site costs, costs of insurance *etc*) ("Project Costs") from the

42 LPC (OA 243)-2023 03 16 at pp 30–33.

43 LPC (OA 243)-2023 03 16 at pp 37–39.

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projected project income (comprising elements such as the original contract sum, income from contract variations, safety bonus incentives, and payments under Part 8B of the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020)) ("Project Income").[44]

32 As I explain below (see [48]), it is not necessary for the purposes of this decision to go into the details of the Project Costs and the Project Income. It suffices to say that LPC2 243 included as exhibits the documentation offered by Rich to substantiate the Project Costs and Project Income. For example, paragraphs 41 to 46 of LPC2 243 set out the basis of calculation for labour-related costs as part of Project Costs. This included a detailed breakdown of the forecast for labour-related costs and an explanation as to how the exhibited documents support Rich's calculation of the anticipated sum for labour-related costs.

33 The defendants remained unimpressed with the voluminous documentation submitted by Rich. Amongst other things, the second defendant's affidavit of 27 June 2023 filed for OA 243 at paragraph 34, when presumably referring to the documents submitted in LPC2 243, explained that he was "… unable to identify any methodology therein that purports to conform to any conventional and generally accepted accounting standards, and accordingly [he was] unable to agree with any of the calculations presented therein".

34 The second defendant added at paragraph 36 of his affidavit that he had "not undertaken a complete review of the documents" and reserved his "right to comment on the authenticity and veracity of the same".

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44 LPC (OA 243)-2023 04 12 at paras 14–15 and CWS (OA 243) at paras 40–63.

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35 In submissions, the defendants also submitted on the lack of audited financial statements or accounts that would allow the Liquidators to make a more objective assessment of the purported claims.[45] An additional comment was made in oral submissions to the effect that the documentation provided by Rich in LPC2 243 was out of date.[46] By way of example, Tab 1 of Exhibit LPC-2 in LPC2 243 contained a spreadsheet of the project accounts for that project but only for the period up to July 2021. The defendants contended that there must be more up-to-date documentation on which an assessment could be made.[47]

36 Two questions arose from Rich's Proof of Debt and the subsequent documentation supporting the proof:

(a) should the Rich be permitted to prove contingent and expectation loss; and

(b) how should I approach a *de novo* review of the Proofs of Debt in the unique circumstances of this case where one of the key reasons for rejecting the Proofs of Debt cannot be sustained but the other reason for rejection remained inconclusive?

Rich was permitted to prove contingent and expectation loss

37 As to the first question, I accepted that Rich should be permitted to prove contingent and expectation loss.

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45 DWS at para 53.

46 Minute Sheet dated 8 September 2023 at p 20.

47 DWS at paras 53 and 62.

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38 Rich pointed me to s 218 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").[48] I accepted that s 218 of the IRDA is the key statutory provision concerning provable contingent liabilities, and their valuation, where an insolvent company is being wound up. I reproduce ss 218(2) and 218(4) of the IRDA for reference:

> **Description of debts provable in judicial management or winding up**
>
> **218.**—…
>
> (2) Subject to this section and section 203, the following are provable where a company is in judicial management or an insolvent company is being wound up:
>
> (*a*) any debt or liability to which the company —
>
> (i) is subject at the commencement of the judicial management or winding up, as the case may be; or
>
> (ii) may become subject after the commencement of the judicial management or winding up (as the case may be) by reason of any obligation incurred before the commencement of the judicial management or winding up, as the case may be;
>
> (*b*) any interest, on any debt or liability mentioned in paragraph (*a*), that is payable by the company in respect of any period before the commencement of the judicial management or winding up, as the case may be.
>
> …
>
> (4) An estimate is to be made by the judicial manager or liquidator of the value of any debt or liability provable under this section that, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

[48] CWS (OA 243) at para 38.

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39 I have further found the case of *In re Danka Business Systems plc (in members' voluntary liquidation); Ricoh Europe Holdings BV and others v Spratt and another* [2013] EWCA Civ 92 ("*Re Danka*") to be illuminating in this regard. At [43] of *Re Danka*, the court stated that a creditor of an insolvent company with a contingent claim is entitled to a valuation of that claim "based on a genuine and fair assessment of the chances of the liability occurring". This paragraph in *Re Danka* merits reproduction in full:

> **43** It seems to me that *any valuation of a contingent liability must be based on a genuine and fair assessment of the chances of the liability occurring.* The very concept of valuing a contingency implies *the need to make an assessment of how likely are the chances of the event occurring.* The liquidator must therefore use *his own expertise* and *that of any relevant advisers* to *make a realistic estimate of the likelihood* of the Infotec companies sustaining the tax liabilities. Where some material change in the relevant factual position occurs it must be taken into account. But the liquidator is not, in my opinion, required simply to wait and see. That is the opposite of valuation. In the case of indemnity, it is true of course that the contractual liability of the party offering the indemnity operates as a kind of insurance against the prospective loss. But in the hands of a liquidator who must make a current assessment of the risk of that event occurring, the nature of the indemnity is irrelevant to the assessment of that outcome. There is nothing in rule 4.86 which requires the liquidator to guarantee a 100% return on the indemnity by assuming a worst-case scenario in favour of the creditors. To do so would produce a valuation which, by definition, was unfair to the company and its other creditors and members. The valuation provisions must apply in the same form to both solvent and insolvent liquidations. I cannot see particularly in the case of an insolvent liquidation how such a valuation could ever be regarded as appropriate.
>
> [emphasis added]

40 The *dicta* in *Re Danka* are relevant for the Singapore context because the valuation provision in s 218(4) of the IRDA is *in pari materia* with the provision in the relevant UK statutory instrument concerning the valuation of contingent liabilities for the purposes of a distribution to creditors that was

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applied in *Re Danka*. I reproduce the relevant provision in r 4.86(1) of the UK Insolvency Rules 1986, which was quoted at [20] of *Re Danka*, for reference:

> **Estimate of quantum**
>
> **4.86.**—(1) The liquidator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him. He shall inform the creditor as to his estimate and any revision of it.
>
> …

41 I note for completeness that there is a Singapore case speaking about valuation using a different principle, and this principle is that the claimant is entitled to "include the full value of contingent debts where there is a *real prospect* that the relevant contingency will occur [emphasis in original]": *Christie, Hamish Alexander (as private trustee in bankruptcy of Tan Boon Kian) v Tan Boon Kian and others* [2021] 4 SLR 809 at [60]. However, this case concerns a different context involving the valuation of contingent liabilities for the purposes of determining whether a person was balance sheet insolvent. This is quite different from the situation I am faced with in OA 243, and I consider *Re Danka* to be more relevant here.

42 The defendants objected to Rich's attempt at proving contingent and expectation loss by arguing, with reference to *MF Global UK Ltd (in special administration), Re* [2013] EWHC 92 (Ch) at [48], that liquidators and the court should apply the hindsight principle, which requires the taking into account of events that have occurred after the commencement of liquidation which would assist in making a better estimate of the loss or remove the need to estimate the contingent debt or liability.[49] The defendants argued that clause 1.6 of the

[49] DWS at para 38.

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Settlement Deed released GEC from its obligations and liabilities to Rich under the JVA, such that, following the application of the hindsight principle, the claims submitted in Rich's Proof of Debt were not provable in the liquidation of GEC in OA 243 before this court.[50]

43 Rich did not contest the existence of the hindsight principle as a matter of Singapore law. The hindsight principle provides a helpful guide in the valuation process for liquidations. Our courts have referred to this principle in the context of insolvency set-off (see *eg*, *Beluga Chartering GmbH (in liquidation) v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (Deugro (Singapore) Pte Ltd, non-party)* [2013] 2 SLR 1035 at [163]), which is part of the law on proof of debt. As there is no controversy that the hindsight principle applies to the present case, I say no more in this regard. The more fundamental problem with the defendants' submission on the hindsight principle was that this principle could not assist them, given that the defendants' application of said principle to the facts was predicated on an erroneous interpretation of clauses 1.5 and 1.6 of the Settlement Deed (see [24] above). As explained above, nothing in the Settlement Deed prevented a damages claim for contingent loss because the intent of clauses 1.5 and 1.6 was not a complete release of GEC from any and all liabilities relating to the project from and after 1 September 2021, but a release only from performance of GEC's obligations under the JVA and a release from liability arising from the performance of Rich in the project from and after 1 September 2021.

44 Therefore, I agreed with Rich's position that it should be entitled to submit a claim based on contingent and expectation loss, with the valuation of that claim to be "based on a genuine and fair assessment of the chances of the

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50 DWS at para 39.

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liability occurring" (*Re Danka* at [43]). This brought me to the trickier issue of *how* I should approach a *de novo* review of the Proof of Debt.

De novo review of the proofs of debt

45 The arguments relating to the sufficiency of the documentation provided and the substantiation of the Proofs of Debt were more evenly balanced. I accepted the defendants' arguments that the Liquidators rightly had to question the claims produced by the claimants and how they arrived at those claims in the Proofs of Debt and in the claimants' affidavits.

46 As the defendants reminded me, a *de novo* review was not an opportunity for me to pass judgment on the conduct of the Liquidators in their administration of the insolvency and the Proofs of Debt. This was a *de novo* review of the decision of the Liquidators in processing the Proofs of Debt. As explained at [17] above, *de novo* in this case meant that I had to make a decision based on the updated evidence put before me, and not just based on what was submitted to the Liquidators in the Proofs of Debt.

47 This did not put me in a satisfactory position. It was an unusual situation where a simple broad brush binary decision (however tempting) as to whether the Proofs of Debt should be admitted or dismissed was not the fair or just outcome. In short, whilst the claimants appeared to have a correct claim in principle, it was based on information which seemed outdated and remained a moving feast as the projects were in the midst of construction. The Liquidators had based their rejection of the Proofs of Debt as originally submitted (and leaving aside the interpretation of clauses 1.5 and 1.6 of the Settlement Deeds) without the benefit of the information that was before me. Subsequently, the Liquidators conceded that they had not gone through the documents submitted

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by the claimants in their affidavits in detail and they would struggle to make a decision on the debts in question without more updated figures justifying those claims (see [34] above). It was difficult for the court to either summarily force the Liquidators to accept the claimants' numbers as correct (based on recently submitted details and the interpretation of the Settlement Deeds), or to summarily dismiss those numbers as being wrong (simply because the documentation was not sufficiently cogent). In this regard, I note the observations of the court in *Feima International (Hongkong) Ltd (in liquidation) v Kyen Resources Pte Ltd (in liquidation) and others* [2022] SGHC 304 ("*Feima*"). At [22]–[23] of *Feima*, the court set out the interlinked roles played by creditors and liquidators in the process of proving debts and scrutinising proofs. In essence, while "the creditor bears the burden of proving the debt on a balance of probabilities", "the liquidator must examine and investigate every proof of debt and the grounds of the debt" and "may call for further evidence in support of the claim" (*Feima* at [22]–[23], citing r 92 of the Companies (Winding Up) Rules (Cap 50, R 1, 2006 Ed) and *Fustar CA* at [13]). These *dicta* suggest that while creditors must ensure that they adduce sufficient material to discharge their burden of proof, it is also incumbent on liquidators to apply their minds to the material and examine and investigate the material to ascertain if the debts were genuinely created and remained legally due.

48 In this case, the court was also not able to undertake a detailed analysis of the claims submitted in the Proofs of Debt and the accompanying documentation without expert assistance. The best or even only way forward was to order the parties to conference with each other and to look again at the details of the documentation and the particulars needed to come to a conclusion on the correct amounts that ought to be proved with respect to the debts in question. Such conference (including documentation, particulars and review of

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the same) would be based on the decisions I have made with respect to the interpretations of clauses 1.5 and 1.6 of the Settlement Deeds, the validity of contingent claims and expectation of future loss, and the principles undergirding the valuation of such claims.

49 By way of analogy, if the Liquidators had been faced with this situation at the time the Proofs of Debt were submitted (absent the interpretation issues in the Settlement Deeds and the cloud of a court date hanging over them), I believe this would have been the logical next step they would have taken, *ie*, to seek more particularity of the debts and to seek to find a sensible outcome in the circumstances.

50 I was also cognisant of the claimants' suggestion on the need to be practical (bearing in mind GEC is a company in liquidation with little hope for any substantial dividend to creditors). In that regard, I encouraged the parties (as they conference and make their way through the difficult task of calculating the quantum of debts to be proved) to bear in mind the practical approach that had been suggested and the low likelihood of recovery given the status of GEC.

51 That was my decision, and I adjourned the Applications to allow time for the parties to conference and carry out the analysis required to arrive at a conclusion on the quantum of debts to be proved.

Amount to be proved for completion costs

52 The parties took some time in reaching a compromise and my judgment here addresses the final issues which the parties have asked me to determine following their deliberations. With respect to completion costs for OA 243 (which represented the vast majority of the amounts that Rich sought to prove), Rich and the Liquidators each arrived at an amount which that party submitted

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should be the quantum to be proved. I am asked to make a binary decision as to which amount – $19,175,002.00 or $10,015,612.00 – should be accepted and proved. The claim for completion costs for OA 244 had been withdrawn so I do not need to address that claim.

53 The starting point for the calculation of completion costs is the figure of $19,175,002.00. This was the amount stated in Rich's financial statement for the financial year ending 31 December 2022 (the "2022 Audited Accounts"), audited by Rich's auditors, Ernst & Young LLP.[51] This figure reflected Rich's "[t]otal identified net liabilities at fair value" as of 1 September 2021. Mr Ho for Rich argued that $19,175,002.00 ought to be the amount proved.[52] Mr Noor for the Liquidators disagreed, claiming that the amount should be $10,015,612.00. This was because the 2022 Audited Accounts recorded a reversal figure of $9,159,390.00 which was solely attributable to the project with GEC.[53] In other words, the completion costs that Rich was entitled to claim had to take into account the reversal ($19,175,002.00 – $9,159,390.00 = $10,015,612.00).

54 Rich's position on completion costs is that the figure of $19,175,002.00 should be adopted, notwithstanding the reversal, because Rich had suffered more losses since 1 September 2021.[54] To support this point, counsel for Rich first directed me to a cost report dated July 2021 which recorded Rich's loss at

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51 Affidavit of Liu Peng Cheng filed for HC/OA 243/2023 dated 30 November 2023 ("LPC (OA 243)-2023 11 30") at Tab 4 of Exhibit LPC-3.

52 Affidavit of Liu Peng Cheng filed for HC/OA 243/2023 dated 2 April 2024 ("LPC (OA 243)-2024 04 02") at para 32.

53 LPC (OA 243)-2024 04 02 at paras 33–34.

54 LPC (OA 243)-2024 04 02 at para 34.

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$4,703,749.17.[55] This was compared against the cost report dated June 2023 which reflected that actual loss suffered was $37,060,113.20.[56] Another document that I was referred to was the forecast report made in April 2023 which projected the completion costs to amount to $45,920,253.14.[57] Mr Ho argued that since the 2022 Audited Accounts only cover the period of up till 31 December 2022 and do not cover account information available since then, I should take into account the subsequent losses.[58] In sum, Rich's position is that, given its documents clearly show actual and projected loss well in excess of $19,175,002.00, a fair and equitable estimate of Rich's contingent loss must conclude that the higher figure of $19,175,002.00 submitted by Rich as the amount to be proved should be accepted.[59]

55 The Liquidators took a more conservative approach to completion costs. They argued that there was no legal or accounting basis to provide any uplift to the figure of $10,015,612.00. The Liquidators challenged the accuracy and reliability of the numbers put forward by Rich. Compared to those numbers, the figure of $10,015,612.00 was objectively verified by auditors who are independent third parties.

56 Rich presented a compelling case to show that its loss arising from the completion of the construction projects referred to in OA 243 would be significantly higher than $19,175,002.00. I can see that it was certainly feasible that the losses when calculated beyond the sanitised confines of the 2022

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55 LPC (OA 243)-2023 11 30 at Tab 4 of Exhibit LPC-3.

56 LPC (OA 243)-2023 11 30 at Tab 4 of Exhibit LPC-3.

57 LPC (OA 243)-2023 11 30 at Tab 4 of Exhibit LPC-3.

58 LPC (OA 243)-2024 04 02 at para 35.

59 LPC (OA 243)-2024 04 02 at para 36.

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Audited Accounts in the manner described by Rich in paragraph [54] could exceed $19,175,002.00.

57 For the purposes of OA 243, the fatal flaw in Rich's case was that the amounts on which its arguments were based were not verified by any independent parties. This was a key concern raised by the Liquidators and I share their concern. Rich had good reason not to seek such verification for the simple reason that the likely recovery under any debt proved did not justify a separate and independent verification. Rich noted that the likely recovery based on dividends to be issued by the Liquidators would be in the range of $60,093.67 to $90,140.51, if the amount admitted is $10,015,612.00.[60]

58 In the absence of such verification, I am not able to make a decision that could justify Rich's calculation. The question was not raised as to whether the Liquidators could have made such verification. The Liquidators did not attempt to verify Rich's calculations but relied on the 2022 Audited Accounts as a neutral and verified statement of Rich's loss. In the circumstances of this case, I find that it was practical and reasonable for the Liquidators to do so. In *Re Danka*, experts had assisted the courts and parties on the valuation of the tax liabilities (*Re Danka* at [8] and [40]). There may be other circumstances where liquidators would also rely on experts and independent verification to assess what debts should be proved, particularly where specialist knowledge is required. That is not to say that liquidators should not make that verification themselves where they have the expertise or where it is practical and reasonable for them to do so depending on the circumstances of the case. In the present case, with likely dividends at a minimum and faced with voluminous documents provided by Rich, the Liquidators decided fairly to rely on the 2022 Audited

[60] LPC (OA 243)-2024 04 02 at para 37.

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Accounts. I agree that this is the most practical and reasonable approach in this case.

Amount to be proved for termination costs

59 The claimants had withdrawn all their claims for termination costs with the exception of their solicitor's costs necessitated by the termination of the JVAs. This excluded the costs of negotiating and finalising the Settlement Deeds (where parties agreed to bear their own costs).

60 The claimants claimed the amount of $46,608.79 as termination costs for Rich (under OA 243) and the same amount as termination costs for CSCEC (under OA 244). This calculation is based on the sum of two invoices of their solicitors less amounts related to their solicitors' work on the Settlement Deeds. This number was then divided by two with an equal number allocated to termination costs under OA 243 and OA 244. The invoices tendered had the detailed time entries redacted with the claimants noting that this was privileged information.

61 The Liquidators concluded that they could not accept and prove this amount based on the redacted invoices. They could not determine if the work done was a consequence of the termination of the JVAs.

62 The claimants offered to provide unredacted copies of the invoices to me so I could determine if the costs incurred for work done were indeed a consequence of the termination. I accepted the claimants' suggestion. Having reviewed the unredacted copies of the invoices, I accept the amount of $46,608.79 sought to be proved as termination costs for each of OA 243 and OA 244 as work done by Rich's and CSCEC's solicitors as a consequence of the termination of the JVAs.

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Conclusion

63 To summarise, the quantum to be proved for in OA 243 is $10,062,220.79 comprising completion costs of $10,015,612.00 and termination costs of $46,608.79. The quantum to be proved in OA 244 is termination costs of $46,608.79. The Liquidators are directed to accept the debts sought to be proved in OA 243 and OA 244 in these amounts and to pay dividends based on these amounts proved when those dividends have been determined by the Liquidators in the course of the liquidation.

64 I thank both sets of counsel in assisting the parties to reach a sensible and reasonable conclusion to the Applications. In that regard, the parties also agreed that there would be no order as to costs for the Applications.

Wong Li Kok, Alex
Judicial Commissioner

Ho Chien Mien, Yeo Alexander Lawrence Han Tiong and Yew Kai Ning Sophia (Allen & Gledhill LLP) for the claimants;
Lee Hwai Bin and Md Noor E Adnaan (WongPartnership LLP) for the defendants.

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