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

[2024] SGHC 160

Companies Winding Up No 127 of 2014 (Summonses Nos 2430 and 2432 of 2023)

In the matter of Section 220 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Zhong Jun Resources (S) Pte Ltd (in liquidation)

Between

(1) Zhong Jun Resources (S) Pte Ltd (in liquidation)

… *Defendant*

And

(1) Inner Mongolia Huomei-Hongjun Aluminium Electricity Co Ltd
(2) Shenzhen Huomei-Hongjun Aluminium Trading Co

… *Non-parties*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Liquidator — Expunging proof of debt]
[Evidence — Proof of evidence — Proof of debt owed by related company]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

INNER MONGOLIA'S PROOF OF DEBT **3**

SHENZHEN'S PROOF OF DEBT **5**

THE LIQUIDATOR'S APPLICATIONS IN SUM 2430 AND SUM 2432 ..... **6**

THE LIQUIDATOR'S BURDEN OF PROOF **6**

WHETHER THE LIQUIDATOR HAD DISCHARGED HIS BURDEN OF PROOF WITH RESPECT TO TRADES 3 TO 6 IN INNER MONGOLIA'S PROOF OF DEBT **7**

INNER MONGOLIA'S CASE 7

THE LIQUIDATOR'S CASE 12

MY DECISION 14

WHETHER THE LIQUIDATOR HAD DISCHARGED HIS BURDEN OF PROOF WITH RESPECT TO SHENZHEN'S PROOF OF DEBT **17**

SHENZHEN'S CASE 17

THE LIQUIDATOR'S CASE 19

MY DECISION 20

CONCLUSION **21**

Version No 1: 26 Jun 2024 (16:12 hrs)

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Re Zhong Jun Resources (S) Pte Ltd (in liquidation) (Inner Mongolia Huomei-Hongjun Aluminium Electricity Co Ltd and another, non-parties)

[2024] SGHC 160

General Division of the High Court — Companies Winding Up No 127 of 2014 (Summonses Nos 2430 and 2432 of 2023)
Chua Lee Ming J
4 March, 6 May 2024

26 June 2024

Chua Lee Ming J:

Introduction

1 In August 2015, the then liquidators of the defendant, Zhong Jun Resources (S) Pte Ltd (the "Company") partially admitted proofs of debt filed by Inner Mongolia Huomei-Hongjun Aluminium Electricity Co., Ltd ("Inner Mongolia") and Shenzhen Huomei-Hongjun Aluminium Trading Co ("Shenzhen") respectively.

2 In HC/SUM 2430/2023 ("SUM 2430") and HC/SUM 2432/2023 ("SUM 2432"), the current liquidator of the Company (who was one of the joint liquidators who had partially admitted the proofs of debt) applied to expunge the proofs of debt that had been admitted.

3 I dismissed the liquidator's applications on 6 May 2024. The liquidator has appealed.

Facts

4 The Company was incorporated on 28 June 2004 and was in the business of trading metals (primarily alumina and copper) from global suppliers to customers in the People's Republic of China. The Company entered into commodity financing arrangements with a number of banks, including the Hong Kong and Shanghai Banking Corporation ("HSBC").

5 On 1 July 2014, HSBC applied to wind up the Company. On 11 November 2014, the High Court ordered the Company to be wound up. Mr Mark Sims Chadwick ("Chadwick") and Mr Yit Chee Wah ("Yit") were appointed jointly and severally as liquidators.

6 On 11 November 2014, Inner Mongolia filed its proof of debt for US$3,257,587.[1] However, as the liquidator has explained, the claims in the supporting documents totalled US$3,653,309.[2] On 12 August 2015, Inner Mongolia was informed that a sum of US$2,893,295 was admitted and the balance of US$760,014 was rejected.[3]

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1 1st affidavit of Yit Chee Wah affirmed on 7 August 2023 ("Yit's 1st affidavit"), at pp 51–52.

2 Yit's 1st affidavit, at para 3, fn 1.

3 Yit's 1st affidavit, at pp 163–165.

Version No 1: 26 Jun 2024 (16:12 hrs)

7 On 9 July 2015, Shenzhen filed its proof of debt for US$28,750,000.[4] On 12 August 2015, Shenzhen was informed that a sum of US$15,033,882.15 was admitted and the balance of US$13,716,117.85 was rejected.[5]

8 According to the liquidator, Inner Mongolia and Shenzhen were related entities of the Company in that all of them were entities within a broader group of entities controlled by one Mr Chen Jihong and his brother Mr Chen Jilong.[6]

9 On 28 July 2016, Chadwick was released as a joint and several liquidator of the Company and Mr Joshua Taylor ("Taylor") was appointed in his stead. On 15 September 2020, Taylor was released as a joint and several liquidator leaving Yit as the sole liquidator of the Company.

10 On 8 August 2023, the liquidator filed SUM 2430 and SUM 2432. In his supporting affidavit, the liquidator stated that following further investigations, he discovered several inconsistencies in the supporting documents provided by Inner Mongolia and Shenzhen, which suggested that the documents were fraudulent and that the underlying trades had not taken place.[7]

Inner Mongolia's proof of debt

11 Inner Mongolia's claims arose from the following:[8]

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4 Yit's 1st affidavit, at pp 168–169.

5 Yit's 1st affidavit, at pp 184–186.

6 Yit's 1st affidavit, at para 6.

7 Yit's 1st affidavit, at para 21.

8 Affidavit of Wang Hong affirmed on 19 April 2024, at paras 3–5. See, also, Yit's 1st affidavit, at para 13.

Version No 1: 26 Jun 2024 (16:12 hrs)

(a) Inner Mongolia had entered into an agreement with Zhong Jun Resources Co., Ltd ("Zhong Jun HK"), a wholly owned subsidiary of the Company, pursuant to which Inner Mongolia agreed to buy certain quantities of alumina from Zhong Jun HK. Inner Mongolia then appointed Shenzhen to act as its agent.

(b) Subsequently, Inner Mongolia resold the alumina to the Company. The sales to the Company were carried out through Shenzhen. For each trade, Shenzhen was entitled to be paid for its services, including the cost of purchasing the alumina from Zhong Jun HK (which Shenzhen funded).

(c) For each trade, the Company agreed to pay Inner Mongolia an amount described as the difference between the original price and the settlement price, calculated in accordance with an agreed formula.

12 Inner Mongolia's claim was for a total amount of US$3,653,309 comprising the price differences arising from the following six trades:[9]

Contract No	**Month**	**Price difference (US$)**
HMHJ-ZJA0021101E ("**Trade 1**")	February 2011	562,153
HMHJ-ZJA0021102E ("**Trade 2**")	April 2011	197,861
HMHJ-ZJA0021103E ("**Trade 3**")	June 2011	818,976

[9] Yit's 1st affidavit, at para 14 and pp 51–161.

Version No 1: 26 Jun 2024 (16:12 hrs)

HMHJ-ZJA0021104E ("**Trade 4**")	August–September 2011	910,742
HMHJ-ZJA0021105E ("**Trade 5**")	October–November 2011	629,659
HMHJ-ZJA0021106E ("**Trade 6**")	December 2011	533,918
Total		3,653,309

13 On 12 August 2015, the then liquidators of the Company admitted Inner Mongolia's proof of debt in the sum of US$2,893,295 being the total amount claimed for Trades 3 to 6. Inner Mongolia's claims for Trades 1 and 2 were rejected.[10] Inner Mongolia did not challenge the liquidators' rejection of its claims for Trades 1 and 2.

Shenzhen's proof of debt

14 Shenzhen's claim arose out of an alumina sale contract dated 19 March 2014 in respect of a bill of lading issued on 2 March 2014 for a shipment on the MV Four Nabucco. Shenzhen's proof of debt was for the sum of US$28,750,000.[11]

15 On 12 August 2015, the then liquidators of the Company admitted Shenzhen's proof of debt in the amount of US$15,033,882.15 and rejected the claim for the balance which comprised incorrect interest calculations.[12]

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10 Yit's 1st affidavit, at para 15 and pp 163–164.

11 Yit's 1st affidavit, at pp 168–182.

12 Yit's 1st affidavit, at para 19 and pp 184–185.

Version No 1: 26 Jun 2024 (16:12 hrs)

The liquidator's applications in SUM 2430 and SUM 2432

16 The grounds for the liquidator's applications were that the claims in the proofs of debt by Inner Mongolia and Shenzhen (which had been admitted) were fraudulent and that the underlying trades had not taken place. The liquidator sought to expunge these proofs pursuant to r 133(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (the "CIR Rules").

17 The Company was wound up in 2014 under the Companies Act (Cap 50, 2006 Rev Ed). IRDA came into force on 30 July 2020. Under s 526(1) of IRDA, the Companies Act 1967 as in force immediately before 30 July 2020 continues to apply to certain matters set out in that subsection. It appeared that the IRDA and therefore the CIR Rules applied to the liquidator's applications to expunge the proofs of debt as they did not fall within any of those matters.

18 Nevertheless, I did not have to decide whether the CIR Rules or the Companies (Winding Up) Rules under the Companies Act 1967 applied to the liquidator's applications. Before me, it was common ground that the CIR Rules were applicable to the liquidator's applications. In any event, the principles applicable to the liquidator's applications were the same whether the applications were to be dealt with under r 133(1) of the CIR Rules or under the equivalent rule in r 94 of the Companies (Winding Up) Rules.

The liquidator's burden of proof

19 Rule 133(1) of the CIR Rules state as follows:

> **Expunging at instance of liquidator or creditor**
>
> **133.**—(1) If a liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator,

Version No 1: 26 Jun 2024 (16:12 hrs)

> after notice to the creditor who filed the proof, expunge the proof or reduce its amount.

20 I was informed that there was no Singapore case that dealt with the principles applicable under the above rule. However, the liquidator accepted that he bore the burden of proof to show, on a balance of probabilities, that the proofs were wrongly admitted, *ie*, they should not have been admitted at all. I agreed with the liquidator. This meant that the liquidator had to prove on a balance of probabilities that the claims or debts that had been admitted were not valid. This was consistent with the principle that a creditor challenging a liquidator's rejection of its proof of debt had to prove the debt on a balance of probabilities: *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar*") at [13].

Whether the liquidator had discharged his burden of proof with respect to Trades 3 to 6 in Inner Mongolia's proof of debt

Inner Mongolia's case

21 Inner Mongolia's claim was that (a) it bought alumina from Zhong Jun HK and resold the alumina to the Company through Shenzhen (acting as its agent), and (b) the Company agreed to pay it the difference in price calculated in accordance with an agreed formula (see [11] above).

22 Inner Mongolia relied on the following documents that it had submitted with its proof of debt:

(a) Alumina Sales Agreement IAL005002 dated 26 May 2005 between Inner Mongolia and Zhong Jun HK and three amendment agreements dated 3 April 2008, 30 May 2008 and 25 September 2009

Version No 1: 26 Jun 2024 (16:12 hrs)

(together, the "Sales Agreement").[13] These documents showed that Inner Mongolia agreed to buy certain quantities of alumina from Zhong Jun HK.

(b) Cooperation Agreement of Alumina Import Agency dated 29 December 2008 between Inner Mongolia and Shenzhen (the "Cooperation Agreement").[14] This agreement appointed Shenzhen to act as Inner Mongolia's agent.

(c) With respect to Trade 3:[15]

(i) Bills of lading issued on 13 and 19 June 2011 by Monson Agencies Australia Pty Ltd ("Monson Agencies") as agent for and on behalf of the master of MV Dream Seas. The bills of lading showed that a total of 30,000mt of alumina were loaded onto MV Dream Seas at Bunbury, Australia and named the port of discharge as "Richards Bay, South Africa".

(ii) Contract No. HMHJ-ZJA0021103E dated 29 June 2011 under which the Company agreed to buy 30,000mt of alumina from Shenzhen to be shipped by MV Dream Seas to Richards Bay, South Africa. The contract also referred to the two bills of lading issued on 13 and 19 June 2011.

(iii) A commercial invoice dated 29 June 2011 issued by Shenzhen to the Company in respect of the 30,000mt of alumina.

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13 Yit's 1st affidavit, at pp 62–78.

14 Yit's 1st affidavit, at pp 81–83.

15 Yit's 1st affidavit, at pp 113–119.

Version No 1: 26 Jun 2024 (16:12 hrs)

(d) With respect to Trade 4:[16]

(i) A bill of lading issued on 8 September 2011 by Monson Agencies as agent for and on behalf of the master of MV Atromitos. The bill of lading showed that 35,000mt of alumina were loaded onto MV Atromitos at Bunbury, Australia and named the port of discharge as "Qingdao, China".

(ii) Contract No. HMHJ-ZJA0021104E dated 16 September 2011 under which the Company agreed to buy 35,000mt of alumina from Shenzhen to be shipped by MV Atromitos to Qingdao, China. The contract also referred to the bill of lading issued on 8 September 2011.

(iii) A commercial invoice dated 16 September 2011 issued by Shenzhen to the Company in respect of the 35,000mt of alumina.

(e) With respect to Trade 5:[17]

(i) A bill of lading issued on 3 November 2011 by Monson Agencies as agent for and on behalf of the master of MV Sam Eagle. The bill of lading showed that 30,000mt of alumina were loaded onto MV Sam Eagle at Gove, Australia and named the port of discharge as "Qingdao Port, China".

(ii) Contract No. HMHJ-ZJA0021105E dated 15 November 2011 under which the Company agreed to buy 30,000mt of alumina from Shenzhen to be shipped by MV Sam Eagle to

16 Yit's 1st affidavit, at pp 120–125.

17 Yit's 1st affidavit, at pp 126–131.

Version No 1: 26 Jun 2024 (16:12 hrs)

Qingdao, China. The contract also referred to the bill of lading issued on 3 November 2011.

(iii) A commercial invoice dated 16 November 2011 issued by Shenzhen to the Company in respect of the 30,000mt of alumina.

(f) With respect to Trade 6:[18]

(i) A bill of lading issued on 6 December 2011 by Monson Agencies as agent for and on behalf of the master of MV Liberty Island. The bill of lading showed that 35,000mt of alumina were loaded onto MV Liberty Island at Bunbury, Australia and named the port of discharge as "Qingdao Port, China".

(ii) Contract No. HMHJ-ZJA0021106E dated 14 December 2011 under which the Company agreed to buy 35,000mt of alumina from Shenzhen to be shipped by MV Liberty Island to Qingdao Port, China. The contract also referred to the bill of lading issued on 6 December 2011.

(iii) A commercial invoice dated 14 December 2011 issued by Shenzhen to the Company in respect of 35,000mt of alumina.

(g) Confirmation Letter About Reselling Four Vessel Alumina in June, August and October 2011 signed by Inner Mongolia, Zhong Jun HK, Shenzhen and the Company (the "Confirmation Letter").[19] This document evidenced:

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18 Yit's 1st affidavit, at pp 132–137.

19 Yit's 1st affidavit, at pp 93–100.

Version No 1: 26 Jun 2024 (16:12 hrs)

(i) the arrangement under which Inner Mongolia agreed to resell alumina (that it purchased from Zhong Jun HK under the Sales Agreements) to the Company;

(ii) the Company's agreement to pay Inner Mongolia certain amounts calculated based on a prescribed formula; and

(iii) the fact that Shenzhen was acting on behalf of Inner Mongolia.

The Confirmation Letter referred to shipments of 30,000mt in June 2011, 35,000mt in August 2011, 30,000mt in October 2011 and 35,000mt in December 2011. These quantities were consistent with the quantities shipped under Trades 3 to 6.

(h) A letter of confirmation dated 21 January 2012 confirming the price differences to be paid to Inner Mongolia in respect of the six shipments of alumina in Trades 1 to 6.[20] The letter was signed by Inner Mongolia but not signed by the Company.

(i) Correspondence from Inner Mongolia to the Company in 2014 seeking the Company's confirmation of the confirmation letter referred to in (h) above, and payment of the amount of US$3,257,587 in respect of Trades 1 to 6.[21]

(j) Minutes of a meeting purportedly held on 25 November 2014 between representatives from Inner Mongolia and the Company.[22] The

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20 Yit's 1st affidavit, at pp 138–142.

21 Yit's 1st affidavit, at pp 143–159.

22 Yit's 1st affidavit, at p 160–161.

Version No 1: 26 Jun 2024 (16:12 hrs)

minutes confirmed the arrangement under which the Company was to pay the price differences to Inner Mongolia. The minutes also stated that as the Company had not received instructions to pay the price difference, and that the amount of US$3,257,587 had been included into the Company's profits for 2014 and listed in the financial statement and auditor's report.

The liquidator's case

23 The liquidator relied on screenshots taken from VesselFinder's website in December 2022 and June 2023. VesselFinder is a vessel tracking service provider that provides vessel tracking information based on historical Automatic Identification System ("AIS") data captured by land-based AIS stations and satellites. AIS is an automatic tracking system that uses transceivers on ships. The International Maritime Organisation's International Convention for the Safety of Life at Sea 1974 requires AIS to be fitted on board international voyaging ships with 300 or more gross tonnage.[23]

24 According to the liquidator:

(a) With respect to Trade 3, VesselFinder showed no record of MV Dream Seas being near Australia between 1 May 2011 and 31 October 2011.[24]

(b) With respect to Trade 4, the liquidator was unable to obtain information on MV Atromitos' movements. However, the liquidator took the position that the fact that the other trades appeared to be

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23 Yit's 4th affidavit at paras 24–25.

24 Yit's 1st affidavit, at para 23(a).

Version No 1: 26 Jun 2024 (16:12 hrs)

fraudulent strongly suggested that Trade 4 was likely to be fraudulent as well.[25]

(c) With respect to Trade 5, VesselFinder showed no record of MV Sam Eagle being near Australia between 1 October and 31 December 2011.[26]

(d) With respect to Trade 6, VesselFinder showed no record of MV Liberty Island being near Australia between 1 November 2011 and 31 January 2012.[27]

25 The liquidator's applications were adjourned after the first hearing on 4 March 2024 for the liquidator to file a further affidavit to explain (among other things) what was in the Company's books regarding the transactions in question. In his further affidavit, the liquidator confirmed that:[28]

(a) The Company's books showed that it "had made purchases from Shenzhen (presumably acting as agent for Inner Mongolia …)" pursuant to the arrangement in respect of Trades 1 to 6 and that the Company had fully settled the amounts due to Shenzhen in respect of these trades.

(b) The Company's books for the period from 2011 to 2014 did not show any outstanding amounts owing to Inner Mongolia in respect of Trades 1 to 6 or at all.

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25 Yit's 1st affidavit, at para 23(d).

26 Yit's 1st affidavit, at para 23(b)

27 Yit's 1st affidavit, at para 23(c).

28 4th affidavit of Yit Chee Wah affirmed on 5 April 2024, at paras 14–15, 17 and 19.

Version No 1: 26 Jun 2024 (16:12 hrs)

(c) Contrary to what was stated in the minutes (see [22(j)] above), the sum of US$3,257,587 was not stated in any of the Company's audited reports for the years 2011 to 2014.

(d) As of 24 December 2014, the audit of the Company's financial statements for 2013 had not yet been completed and the audit for 2014 had not yet commenced.

My decision

26 At the outset, it must be emphasised that the liquidator bore the burden of proving that the Company did not owe Inner Mongolia the amounts claimed in respect of Trades 3 to 6. Specifically, the liquidator had to prove his case that Trades 3 to 6 did not take place and that the documents submitted by Inner Mongolia were fraudulent. In my view, the liquidator failed to discharge his burden of proof.

27 I agreed with the liquidator that minutes referred to in [22(j)] above should be given little weight since the statements in the minutes regarding the treatment of the sum of US$3,257,587 were not borne out by the Company's audited reports (see [25(c)]–[25(d)] above).

28 However, the other documents supported Inner Mongolia's claims and contradicted the liquidator's claim that Trades 3 to 6 did not take place and that the Company had agreed to pay Inner Mongolia the price differences.

29 First, Trades 3 to 6 were supported by bills of lading, contracts and invoices (see [22(c)] to [22(f)] above). The contracts were entered into between the Company and Shenzhen and the invoices were issued by Shenzhen. The Cooperation Agreement (see [22(b)] above) and the Confirmation Letter (see

Version No 1: 26 Jun 2024 (16:12 hrs)

[22(g)] above) showed that Shenzhen was acting as Inner Mongolia's agent. In his further affidavit, the liquidator confirmed that the Company's books showed that it had made purchases from Shenzhen "presumably acting as agent for Inner Mongolia" in respect of Trades 1 to 6 and that the Company had fully settled the amounts due to Shenzhen in respect of these trades (see [25(a)] above). The fact that the Company paid Shenzhen was evidence that Trades 1 to 6 did take place.

30 Second, it was significant that the bills of lading were issued by a third party, Monson Agencies, as agent for and on behalf of the masters of the various vessels. These bills of lading confirmed that the cargoes of alumina were loaded onto the respective vessels at the respective ports of loading.

31 Although the liquidator alleged that the supporting documents provided by Inner Mongolia may have been forged,[29] there was no evidence that the liquidator attempted to confirm with Monson Agencies whether the bills of lading in question were issued by them.

32 If the bills of lading were in fact issued by Monson Agencies, then the liquidator's case necessarily implicated Monson Agencies in the alleged fraud. Before me, the liquidator said that he did not want to and, indeed, did not need to take a position *vis-à-vis* the third parties. The liquidator provided no explanation as to why he did not need to do so. When questioned further, he simply submitted that *all* the documents were tainted by fraud without offering any explanation as to how the bills of lading were so tainted. In any event, apart from his screenshots taken from VesselFinder, the liquidator offered no

[29] Yit's 1st affidavit, at para 23

Version No 1: 26 Jun 2024 (16:12 hrs)

evidence that the bills of lading were forged or that Monson Agencies was party to any fraud.

33 Third, the Confirmation Letter (see [22(g)] above) evidenced the Company's agreement to pay Inner Mongolia.

34 Further, there was no evidence that the vessels in question did not arrive at the respective ports of discharge stated in the bills of lading or that they did not discharge any alumina at those ports. There was no evidence that the liquidator made any enquiries in this regard.

35 The liquidator's case that Trades 3 to 6 did not take place rested simply on the screenshots taken from VesselFinder. The question then was whether these screenshots were sufficient evidence to rebut the evidence that supported Inner Mongolia's claims. Para 9 of VesselFinder's terms of use stated that the information provided by VesselFinder was for general informational purposes only and it made no representation or warranty as to the accuracy, reliability or completeness of any information on VesselFinder.[30] There was no independent expert evidence as to the reliability of information obtained from VesselFinder regarding the vessels' movements. There was no independent expert investigation into the movements of the various vessels at the relevant times. There was not even an affidavit by the person/s from the liquidator's office (who took the screenshots from VesselFinder) explaining how the search or analysis of the vessels' movements was done or the specific dates on which the screenshots were taken. It was also significant that there was no explanation as to why, in relation to Trade 4, the liquidator was unable to obtain information

[30] 1st affidavit of Koh Weijin, Leon affirmed on 19 April 2024, at p 16.

Version No 1: 26 Jun 2024 (16:12 hrs)

on MV Atromitos' movements; this raised questions as to the reliability of the information obtained by the liquidator.

36 In my view, the screenshots obtained by the liquidator from VesselFinder were insufficient evidence to rebut the other evidence that supported Inner Mongolia's claims. The liquidator had not produced sufficient evidence to discharge his burden of proving that Inner Mongolia had committed fraud or that Trades 3 to 6 did not take place. I accepted that these screenshots gave rise to a suspicion, but suspicion was not enough to discharge the liquidator's burden of proof.

37 I noted the liquidator's evidence that the Company's books did not show any record of the amount claimed by Inner Mongolia. Nevertheless, in my view, this did not change my conclusion that the liquidator had not discharged his burden of proving that Trades 3 to 6 did not take place. After all, the Company's books showed that it did pay Shenzhen in respect of these trades; this was evidence that the trades did take place. The Confirmation Letter was evidence of the Company's agreement to pay Inner Mongolia in respect of these trades.

Whether the liquidator had discharged his burden of proof with respect to Shenzhen's proof of debt

Shenzhen's case

38 Shenzhen relied on the following documents that were submitted in support of its proof of debt:[31]

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[31] Yit's 1st affidavit, at pp 170–180. See also 1st affidavit of Li Xiaowei affirmed on 28 December 2023 ("Li Xiaowei's 1st affidavit"), at p 30 for the translation of the Company's acknowledgment of receipt.

Version No 1: 26 Jun 2024 (16:12 hrs)

(a) A bill of lading issued on 2 March 2014 by Monson Agencies as agent for and on behalf of the master of MV Four Nabucco. The bill of lading showed that 31,500mt of alumina were loaded onto MV Four Nabucco at Gove, Australia and named the port of discharge as "Bayuquan Port, China".

(b) A Draft Survey Report dated 2 March 2014 issued by Gove Independent Marine Services certifying that the weight of the cargo loaded on board MV Four Nabucco at Gove, Australia was 31,500mt.

(c) A Marine Cargo Insurance Policy issued on 2 March 2014 by ABCI Insurance Company, insuring the transit of MV Four Nabucco departing on/about 2 March 2014 from Gove, Australia to Bayuquan Port, China

(d) Contract No. HMHJ-IALO06001TL1401E dated 19 March 2014 under which the Company agreed to buy 31,500mt of alumina from Shenzhen to be shipped by MV Four Nabucco to Bayuquan, China. The contract also referred to the bill of lading issued on 2 March 2014.

(e) The company's acknowledgment of receipt (dated 24 March 2014) of the bill of lading, Draft Survey Report, Insurance Policy and Trust Receipt.

39 Shenzhen also relied on a commercial invoice dated 19 March 2014 issued by it to the Company in respect of the sale of 31,500mt of alumina to the Company.[32]

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32 Li Xiaowei's 1st affidavit, at p 28.

Version No 1: 26 Jun 2024 (16:12 hrs)

40 In addition, Shenzhen relied on an award issued by the China International Economic and Trade Arbitration Commission ("CIETAC") on 17 April 2015 (the "Award"). The Award was issued pursuant to arbitration proceedings commenced by Shenzhen in September 2014 against the Company to recover the purchase price for the same trade that was the subject-matter of Shenzhen's proof of debt.[33] The liquidator was properly notified but decided not to attend or participate in the arbitration proceedings. The tribunal proceeded in the absence of the liquidator, found in favour of Shenzhen and held that the Company was liable to pay Shenzhen for the 31,500mt of alumina.

The liquidator's case

41 The liquidator relied on the fact that his screenshot from VesselFinder showed no record of MV Four Nabucco being near Australia between the start of February 2014 and the end of April 2014.[34]

42 As for the Award, the liquidator explained that he did not participate in the arbitration proceedings as he did not consider the arbitration proceedings to be the appropriate forum for the determination of Shenzhen's claim since the Company had been placed under liquidation.[35]

43 The liquidator referred to *Fustar* and submitted that he was entitled to go behind the Award and re-evaluate Shenzhen's claim. In *Fustar*, the Court of Appeal stated (at [20]) that:

> The verification of a proof of debt is not a mere administrative function. Only debts that are legally due are admissible. The liquidator has to ensure that the assets of the company are only

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33 Li Xiaowei's 1st affidavit, at para 18 and pp 46–57.

34 Yit's 1st affidavit, at para 27.

35 Yit Chee Wah's 3rd affidavit affirmed on 7 February 2024, at para 6.

Version No 1: 26 Jun 2024 (16:12 hrs)

> distributed to creditors who have debts that have been genuinely created and remain legally due. He has extensive powers to go behind documents. Even judgments and compromise agreements can be re-evaluated to ensure that the debts are genuine. …

My decision

44 I agreed with the Liquidator that he was entitled to go behind the Award. I also agreed with the Liquidator that his non-participation in the arbitration proceedings did not prevent him from going behind the Award to re-evaluate the correctness of Shenzhen's claim. After all, the rationale for allowing him to go behind the Award was to enable him to ensure that the Company's assets were distributed to creditors who had genuine debts.

45 However, it remained the liquidator's burden to prove that the trade in question did not take place. In my view, the liquidator failed to discharge this burden of proof.

46 The documents in evidence supported Shenzhen's claim. The contract (see [38(d)] above) evidenced the Company's agreement to buy 31,500mt of alumina. The bill of lading (see [38(a)] above) and the Draft Survey Report (see [38(b)] above) showed that 31,500mt of alumina were loaded onto MV Four Nabucco. The bill of lading was issued by a third party, Monson Agencies. The Draft Survey Report was issued by Gove Independent Marine Services. There was no evidence that the Monson Agencies did not issue the bill of lading or that Gove Independent Marine Services did not issue the Draft Survey Report. There was no evidence that the liquidator had attempted to check with them. There was no evidence implicating Monson Agencies and/or Gove Independent Marine Services in the alleged fraud. There was also no evidence that MV Four Nabucco did not arrive at, and/or did not discharge any alumina at, the port of

Version No 1: 26 Jun 2024 (16:12 hrs)

discharge. There was no evidence that the liquidator made enquiries in this regard.

47 Again, the liquidator relied on his screenshot from VesselFinder. For reasons similar to those stated in relation to Inner Mongolia's proof of debt, in my view, the liquidator's screenshot from VesselFinder was ground for suspicion but was not enough to discharge his burden of proof.

Conclusion

48 For the reasons stated above, I dismissed the liquidator's applications in SUM 2430 and SUM 2432. I ordered costs fixed at $12,000 (inclusive of disbursements) to be paid to each of Inner Mongolia and Shenzhen.

Chua Lee Ming
Judge of the High Court

Chng Zi Zhao Joel, Daniel Liu, Chia Shi Mei and Toh Yong Xiang (Wong Partnership LLP) for the defendant;
Koh Weijin Leon, Elsie Lim Yan and Chng He Han (M/s N S Kang) for the non-party Inner Mongolia Huomei-Hongjun Aluminium Electricity Co Ltd;
Jimmy Yap (Jimmy Yap & Co) for the non-party Shenzhen Huomei-Hongjun Aluminium Trading Co.

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