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

[2024] SGHC 219

Companies Winding Up No 162 of 2024

In the matter of Sections 125(1)(*e*) and 125(2)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Dynamiq Solution Pte Ltd

Between

Maybank Singapore Limited

… *Claimant*

And

Dynamiq Solution Pte Ltd

… *Defendant*

And

Official Receiver

… *Non-party*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Service of statutory demand — Requirements for proper service of statutory demand in Section 125(2)(*a*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) and

Section 48A Interpretation Act 1965 (2020 Rev Ed) to trigger presumption of insolvency for company to be wound up]

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Maybank Singapore Ltd
v
Dynamiq Solution Pte Ltd
(Official Receiver, non-party)

[2024] SGHC 219

General Division of the High Court — Companies Winding Up No 162 of 2024
Goh Yihan J
12 July, 12 August 2024

28 August 2024

Goh Yihan J:

1 This was an application by Maybank Singapore Limited (the "claimant") for a winding up order against Dynamiq Solution Pte Ltd (the "defendant"). Ms Iman Mohamad Fong ("Ms Fong") appeared for the claimant, while M/s Lim Yew Jin ("Mr Lim") and Jeffrey Yip appeared for the non-party, *ie*, the Official Receiver (the "OR"). The defendant was absent and unrepresented. After hearing Ms Fong and Mr Lim on 12 July 2024, I made the winding up order against the defendant on 12 August 2024. I now explain my reasons for having done so, as this application raised a number of issues concerning the service of statutory demands pursuant to s 125(2)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), as well as the service of winding up applications pursuant to r 68(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and

Restructuring) Rules 2020 ("CIR Rules").

Background facts of the application

2 I turn first to the background facts of the application. The claimant alleged that, as of 18 June 2024, the defendant was indebted to it in the sum of $186,870.19 (excluding interest) under a "Micro Loan Account".[1] This account was created pursuant to the claimant's letter of offer dated 19 January 2023 and supplemental letter of offer dated 13 February 2023 for the banking facility, which the defendant duly accepted.[2]

3 The claimant conducted an Accounting and Corporate Regulatory Authority ("ACRA") search on the defendant on 8 March 2024. The search showed that the defendant's registered office address was at Bendemeer Road [address redacted], with the unit number listed as "#03-01A" (the "First Unit").[3] The claimant – acting through its solicitors, Adsan Law LLC ("Adsan") – then issued a statutory demand for repayment dated 8 March 2024 under s 125(2)(*a*) of the IRDA (the "Demand"). This was said to have been served on the defendant by leaving it at the defendant's registered office address (as provided for by s 125(2)(*a*)), as well as by registered post.[4] For completeness, s 125(2)(*a*) provides as follows:

> **Circumstances in which company may be wound up by Court**
>
> **125.**—(1) …
>
> (2) A company is deemed to be unable to pay its debts if —

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1 Affidavit of Lim Chow Yang dated 19 June 2024 ("LCY's Affidavit") at para 5.

2 LCY's Affidavit at para 5.

3 LCY's Affidavit at para 6 and p 34.

4 LCY's Affidavit at para 6.

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> (*a*) a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding $15,000 then due has served on the company, by leaving at the registered office of the company, a written demand by the creditor or the creditor's lawfully authorised agent requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;
>
> …

4 However, the claimant's attempt to leave the Demand at the First Unit was unsuccessful. There was no unit "#03-01A" on the third floor of the building concerned (see at [3] above). Instead, there were only four units on the third floor that were numbered "03-01" to "03-04".[5] This much was clear from the photographs of each unit on the third floor of the building, as well as the floor directory for the third floor (although, see the High Court decision of *Gunvor SA v Atlantis Commodities Trading Pte Ltd* [2024] SGHC 192 ("*Gunvor*") at [16]–[20], where the court doubted the veracity of a floor directory on the facts of that case and stated that it was "not an authoritative document"). It therefore appears that the defendant's registered office address as reflected in the claimant's ACRA search of 8 March 2024 (*ie*, the First Unit) was either wrong or outdated.

5 As a matter of prudence, the claimant on 1 April 2024, through Adsan, sent a copy of the Demand under cover of letter by registered post to (a) the defendant's sole director, Mr Tan Hwang Feng Perry ("Mr Tan"), and (b) the defendant's company secretary, Mr Chew Kum Kong ("Mr Chew").[6] Neither M/s Tan nor Chew nor any other officer of the defendant ever responded to the Demand, and certainly not within the three weeks following service (or putative

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5 LCY's Affidavit at para 7 and pp 39–44.

6 LCY's Affidavit at para 8.

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service) of the Demand, as referred to in s 125(2)(*a*) of the IRDA. Accordingly, the claimant argued that pursuant to s 125(1)(*e*) read with s 125(2)(*a*), the defendant was deemed to be unable to pay its debts to the claimant, which thereby empowered the court to wind up the defendant.

6 On 11 June 2024, the claimant conducted a second ACRA search on the defendant. This subsequent search revealed that, since 25 March 2024, the defendant's registered office address was instead at a different building (also along Bendemeer Road) and a different unit numbered "#03-33A" (the "Second Unit").[7] Without serving the Demand on the defendant at the Second Unit, the claimant proceeded to file the present application on 19 June 2024. Following on from that, the claimant was required, pursuant to r 68(1) of the CIR Rules, to serve the winding up application on the defendant via certain prescribed methods at least seven clear days before the hearing of the application. For completeness, r 68(1) provides as follows:

> **Service and affidavit of service of winding up application**
>
> **68.**—(1) Every winding up application in respect of a company and every affidavit supporting the application (called in this rule the supporting affidavit) must be served on the company at least 7 clear days before the hearing of the application —
>
> > (*a*) by leaving a copy each of the application and the supporting affidavit with any member, officer or employee of the company at the registered office of the company or, if there is no registered office, at the principal or last known principal place of business of the company;
> >
> > (*b*) in a case where no member, officer or employee of the company can be found at the registered office or place of business mentioned in sub-paragraph (*a*) — by leaving a copy each of the application and the supporting affidavit at the registered office or place of business, as the case may be; or

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7 LCY's Affidavit at para 8 and p 58.

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> (*c*) by serving a copy each of the application and the supporting affidavit on any member or members of the company as the Court may direct.

7 Then, on 27 June 2024, the claimant, through Adsan, attempted to serve on the defendant a sealed copy of the winding up application (along with the supporting affidavit) at the Second Unit (see at [6] above). It will be recalled that this was the address revealed by the second ACRA search. However, just as with the First Unit, the Second Unit either never existed or was no longer in existence at the time service was attempted (see at [4] above). Adsan's process server found out that there was no unit numbered "#03-33A" and the units on the third floor were numbered from "03-05" to "03-19".[8] The process server checked with the building's "Fire Command Post Office" – presumably a reference to the building's Fire Command Centre – which confirmed that there was no unit "#03-33A" at the location.[9] As such, Adsan served (or putatively served) the documents on M/s Tan and Chew later in the evening of 27 June 2024 by leaving copies of the same at their residential addresses (or purported addresses) as reflected in the claimant's ACRA searches.[10]

8 After this, the claimant, through Adsan, sent a copy of the winding up application by registered post to the defendant's registered address at the Second Unit on 1 July 2024. On 3 July 2024, the tracking record from the postal service showed that the winding up application could not be delivered because an "Invalid/Incomplete address" had been given.[11] Accordingly, the claimant submitted that it had made all reasonable efforts to serve the winding up

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8 Joint Affidavit of Service of Kong Siew Cheong, Loh Teck Hee, Chan Kok Poh and Ho Pearl dated 4 July 2024 ("Joint Affidavit") at para 1(a).

9 Joint Affidavit at para 1(a).

10 Joint Affidavit at paras 2 and 3.

11 Joint Affidavit at para 5 and pp 14–15.

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application on the defendant.

The parties' arguments on 12 July 2024

9 When the parties first appeared before me on 12 July 2024, Mr Lim raised two objections on behalf of the OR. First, Mr Lim pointed out that the claimant had not applied for substituted service in respect of the Demand. He argued that, even if viewed as a mere technicality, it was incumbent on the claimant to have made that application before it served the Demand on M/s Tan and Chew. Second, Mr Lim submitted that the claimant ought to have sought the court's directions pursuant to r 68(1)(*c*) of the CIR Rules before serving the winding up application on M/s Tan and Chew. Mr Lim further argued that before the claimant could have sought the court's directions pursuant to r 68(1)(*c*), it should have tendered an affidavit to show that it had expended all reasonable efforts to serve the winding up application and supporting affidavit at the defendant's registered office address or its principal or last known principal place of business pursuant to r 68(1)(*a*).

10 Ms Fong answered Mr Lim's objections in the following manner. First, in respect of the Demand, she submitted that the court could (and should) make a retrospective order for substituted service in the circumstances. Second, in respect of the winding up application, Ms Fong argued that s 48A of the Interpretation Act 1965 (2020 Rev Ed) ("IA") supplemented r 68(1) of the CIR Rules, so that the winding up application had been validly served on M/s Tan and Chew as "the secretary or other like officer" of the defendant, pursuant to s 48A(1)(*c*)(i) of the IA. For completeness, s 48A(1)(*c*) provides as follows:

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> **Service of documents**
>
> **48A.**—(1) Where a written law authorises or requires a document to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, then, unless the contrary intention appears, the document may be served —
>
> …
>
> (*c*) in the case of a body corporate —
>
> (i) by delivering it to the secretary or other like officer of the body corporate; or
>
> (ii) by leaving it at, or by sending it by prepaid post to, the registered office or a principal office of the body corporate in Singapore.

My decision: the winding up order was granted subject to certain service requirements

11 After hearing the parties on 12 August 2024, I made the winding up order against the defendant, but only after I had earlier made related orders on the service of the Demand and the winding up application.

The service of the Demand

12 In relation to the Demand, I decided on 12 July 2024 to make a retrospective order allowing the claimant to serve it on M/s Tan and Chew by way of substituted service. That order was made on the premise that the claimant ought to have applied to vary the method of service provided for by s 125(2)(*a*) of the IRDA. It was noteworthy that Mr Lim did not object on the OR's behalf to this approach. I thought that this approach was practical, given that the persons behind the defendant had for all intents and purposes been reasonably made aware of the Demand by such acts as serving the necessary documents at the addresses of the defendant's sole director and company secretary. Seen differently, it was not clear to me what else the claimant could have done. Out of an abundance of caution, I made this order to cure any irregularities (if at all)

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in the service of the Demand (in respect of which there had been no express directions from the court).

13 In any case, there may well have been no need for me to have made the retrospective order for substituted service. Although the argument had not been pressed by Ms Fong in relation to the Demand, I took the view that s 48A of the IA could be read as providing for service to be properly effected on the defendant's company secretary, namely, Mr Chew. This is because, as s 48A(1)(*c*)(i) provides, where a written law requires a document to be served on a "person" – which, by virtue of s 2 of the IA, includes any "company or association or body of persons, corporate or unincorporate", and by virtue of s 48A(1)(*c*) of the same, includes a "body corporate" – then, "unless the contrary intention appears" from that written law, the document may be served "by delivering it to the secretary or other like officer of the body corporate". Section 125(2)(*a*) of the IRDA required service of the Demand, but nothing in that provision alludes to an intention that the Demand should have been served *only* by leaving it at the defendant's registered office (or, put another way, that service could not have been validly effected by other means, such as delivering the Demand to the defendant's company secretary pursuant to s 48A(1)(*c*)(i)).

14 In this regard, the High Court's reasoning in *Nanyang Law LLC v Alphomega Research Group Ltd* [2010] 3 SLR 914 ("*Nanyang Law*") is instructive. There, it was held that although s 387 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA (Cap 50)") provided for service of documents on a company by leaving them at the company's registered office or sending them by registered post thereto, that did not foreclose the methods of service provided for in s 48A(1)(*c*) of the IA (at [10]–[13]). Whether s 48A(1) applies to (or is excluded by) a provision of written law concerned with service of documents depends on whether that latter provision is "clearly permissive and not

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prescriptive" (see *Nanyang Law* at [13]). I should note, for completeness, that in *Nanyang Law* (at [10]), emphasis was placed on the fact that the word "may" was used in s 387 of the CA (Cap 50), which is *in pari materia* with s 387 of the present-day Companies Act 1967 (2020 Rev Ed). I acknowledge that the word "may" is absent from s 125(2)(*a*) of the IRDA, but that fact alone did not preclude the relevance of the court's reasoning in *Nanyang Law* to the present case, namely, that s 48A of the IA is intended to have a *supplementary* effect *vis-à-vis* other legislative provisions concerning service of documents (see *Nanyang Law* at [12]).

15 Applied to the present case, the question was whether, on a proper construction, s 125(2)(*a*) of the IRDA *required* service *exclusively* by the method described therein to the exclusion of any other means that may be provided for in other written laws – in short, whether that method was not merely permissive but *prescriptive* (see *Nanyang Law* at [13]). I found that s 125(2)(*a*) of the IRDA could be regarded as permissive and not prescriptive. It provides for *a* method of service of the statutory demand – *viz*, "by leaving [it] at the registered office of the company" – but it does not, on its face, operate to *exclude* other methods of service in written law (such as those in s 48A of the IA), by mandatorily *prescribing* that as the *sole* and exclusive means by which the statutory demand may be served. Thus, it is possible to satisfy the service requirement provided for in s 125(2)(*a*) of the IRDA by the alternative methods prescribed by s 48A(1) of the IA, including delivery of the statutory demand to the company secretary pursuant to s 48A(1)(*c*)(i). By this approach, the claimant's service of the Demand on Mr Chew on 1 April 2024 (see at [5] above) was sufficient to constitute proper service.

16 I note, for completeness, that in *Gunvor*, Hri Kumar Nair J held that the claimant in that case failed to prove that its statutory demand "had been left at

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the defendant's registered office address *as statutorily required*" [emphasis added] (at [21]). The learned judge's pronouncement should not be taken out of context to mean that s 48A(1) of the IA is *inapplicable* to the service of statutory demands because the method of service provided for in s 125(2)(*a*) of the IRDA is "statutorily required". On the facts of *Gunvor*, the claimant's statutory demand had been deposited at the reception of the building in which the defendant's office was allegedly situated (at [10]). The only issue was whether that sufficed as service of the statutory demand at the defendant's registered address within the meaning of s 125(2)(*a*) of the IRDA (at [13]). None of the methods of service under s 48A(1)(*c*) of the IA were at issue in *Gunvor*, and it was never argued by the claimant that those methods had been attempted to procedurally validate the service of its statutory demand. It was against that backdrop that Nair J considered the evidence (at [16]–[20]) and found that the claimant had failed to prove that the statutory demand had been left at the defendant's registered office address "as statutorily required" (at [21]). Here, however, I was concerned with an altogether different question, *ie*, whether the Demand could alternatively be served by the methods provided in s 48A(1)(*c*) of the IA.

17 Accordingly, regardless of the approach taken in relation to the Demand, I held that it had been properly served on the defendant under the terms of s 125(2)(*a*) of the IRDA.

The service of the winding up application

18 In relation to the winding up application, I decided on 12 July 2024 that s 48A of the IA did not operate to permit alternative methods of service. The proper service of the winding up application (and the supporting affidavit) stood on a different legal footing from that of the Demand (see, *eg*, *Gunvor* at [6]–[8]

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and [21]–[22]). That was because, unlike the position under s 125(2)(*a*) of the IRDA in relation to the Demand, r 68(1) of the CIR Rules (which governed service of the winding up application and supporting affidavit) uses mandatory language that discloses a "contrary intention" as described in s 48A. That renders r 68(1) prescriptive and not merely permissive, which thereby excludes the supplementary effect of s 48A of the IA (see *Nanyang Law* at [12]–[13]). In particular, the opening words of r 68(1) (see at [6] above) provide that "[e]very winding up application in respect of a company and every affidavit supporting the application … *must* be served on the company at least 7 clear days before the hearing of the application" [emphasis added], and by way of the prescribed methods of service. The use of the imperative "must" suggests that r 68(1) cannot be read to admit of the alternative methods of service provided for by s 48A of the IA.

19 Rule 68(1) prescribes three methods of serving the winding up application on a defendant company. Mr Lim submitted – and I agreed – that although each method may appear to be an alternative to the others at first blush, a careful consideration of the language used will reveal that one is intended to cascade into the next. For ease of explication, I reproduce the three methods in full again:

> (*a*) by leaving a copy each of the application and the supporting affidavit with any member, officer or employee of the company at the registered office of the company or, if there is no registered office, at the principal or last known principal place of business of the company;
>
> (*b*) in a case where no member, officer or employee of the company can be found at the registered office or place of business mentioned in sub-paragraph (*a*) — by leaving a copy each of the application and the supporting affidavit at the registered office or place of business, as the case may be; or

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> (*c*) by serving a copy each of the application and the supporting affidavit on any member or members of the company as the Court may direct.

20 In my view, the method prescribed by r 68(1)(*b*) is clearly predicated on the method in r 68(1)(*a*) being impracticable. This is because the method in r 68(1)(*a*) contemplates leaving a copy of the winding up application with an affiliated member of the company at its registered office or its principal or last known principal place of business. Rule 68(1)(*b*) then provides for a fall-back "in a case where no member, officer or employee of the company can be found at the registered office or place of business *mentioned in sub-paragraph (*a*)*" [emphasis added]; only then does the method prescribed in r 68(1)(*b*) apply, *viz*, by "leaving a copy each of the application and the supporting affidavit at the registered office or place of business, as the case may be".

21 Seen against the architecture of r 68(1) as a whole, it must be that the method prescribed in r 68(1)(*c*) only applies if *both* the methods prescribed in rr 68(1)(*a*) and 68(1)(*b*) cannot be accomplished. Put another way, there must be a basis for the court to allow service of the documents "on any member or members of the company". That will generally be established where the claimant has provided evidence that the other methods were either impracticable or that reasonable attempts at effecting service by those methods have proven fruitless. It is in such a circumstance, where the claimant cannot effect service of the winding up application on any member, officer, or employee of the company at the company's registered office or principal or last known place of business (as in r 68(1)(*a*)), or at the company's registered office or place of business (as in r 68(1)(*b*)), that a court would have the proper basis to direct for service to be effected in the method provided for by r 68(1)(*c*). In saying this, I do not intend to limit the bases upon which directions may be given pursuant to r 68(1)(*c*), even if the circumstances most likely to surface in the courts and

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which will warrant such directions are those that I have just described.

22 With the above analysis in mind, I directed the claimant to file an additional affidavit by 2 August 2024 attesting to their reasonable efforts to comply with the methods of service provided for in rr 68(1)(*a*) and 68(1)(*b*) of the CIR Rules. Having then been satisfied of those efforts by their affidavit filed on 19 July 2024, I made a retrospective order on 22 July 2024, pursuant to r 68(1)(*c*) of the CIR Rules, directing the claimant to serve the winding up application on M/s Tan and Chew at their addresses as reflected in the claimant's ACRA searches. That was done on 27 June 2024 (see at [7] above). With this, the claimant was taken to have satisfied the requirement in r 68(1) that the winding up application be properly served on the defendant at least 7 clear days before the hearing of the application on 12 August 2024. Practically, I was satisfied on the facts that M/s Tan and Chew – and, by extension, the defendant – had notice of the winding up application. It was also clear to me that the claimant had done all that it reasonably could to bring the winding up application to the defendant's notice and in compliance with r 68(1).

There was good reason to wind up the defendant

23 Given the above, I was satisfied that the Demand and the winding up application had been properly served on the defendant. Since the defendant did not respond to the Demand within the prescribed statutory period of three weeks, it was deemed to be unable to pay its debts to the claimant pursuant to s 125(2)(*a*) of the IRDA and was therefore liable to be wound up by the court pursuant to s 125(1)(*e*). In the circumstances, and in the absence of any contrary evidence to rebut the presumption of insolvency, I made the winding up order and other consequent orders against the defendant on 12 August 2024 in the terms prayed for by the claimant's originating application.

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Conclusion

24 To summarise, for all the reasons above, I made the winding up order against the defendant, along with the consequent orders. However, due to the circumstances of this application, I had also made earlier orders concerning the service of the Demand and the winding up application.

25 In closing, I thank Ms Fong and Mr Lim for all their helpful submissions on what appeared to be a seldom discussed point of service.

Goh Yihan
Judge of the High Court

Iman Mohamad Fong (Adsan Law LLC) for the claimant;
The defendant absent and unrepresented;
Lim Yew Jin and Jeffrey Yip (Insolvency & Public Trustee's Office)
for the non-party.

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