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

[2024] SGHC 288

Companies Winding Up No 221 of 2024

In the matter of Sections 125(1)(*b*), 125(1)(*c*) and 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)

And

In the matter of Nusantara Energy International Pte. Ltd.

Between

Lai Chung Wing

… *Claimant*

And

Nusantara Energy International Pte. Ltd.

… *Defendant*

And

Official Receiver

… *Non-party*

GROUNDS OF DECISION

[Insolvency Law — Winding up — Grounds for petition — Whether company suspended business for whole year — Section 125(1)(*c*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

[Insolvency Law — Winding up — Grounds for petition — Whether company unable to pay its debts — Section 125(1)(*e*) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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v
Nusantara Energy International Pte Ltd
(Official Receiver, non-party)

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Goh Yihan J
6 September, 8 October 2024

6 November 2024

Goh Yihan J:

1 This was an application by Mr Lai Chung Wing (the "claimant") for a winding-up order against Nusantara Energy International Pte Ltd (the "Company") under ss 125(1)(*c*) and 125(1)(*e*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). I granted the order against the Company on 8 October 2024 pursuant to the ground in s 125(1)(*c*) of the IRDA and I now provide the reasons for my decision.

Background facts

2 The claimant is the sole director and a minority shareholder of the Company. The Company was incorporated in Singapore on 22 November 2010

as an exempt private company limited by shares. Its principal activities are management consultancy services.[1]

3 The Company has an issued and paid-up share capital of 100 ordinary shares. At the time of its winding up, the claimant held 30 shares and one Ms Lee Chi Kuen ("Ms Lee") held the other 70 shares.[2]

4 According to the claimant, he became acquainted with one Mdm Willawati, an Indonesian businesswoman, over ten years ago. Mdm Willawati said that she wanted to start a business in Singapore. The claimant therefore introduced her to Ms Stella Pe Peck Luan ("Ms Pe"), who was the owner of an accounting and consulting firm in Singapore.[3] The claimant thereafter met Mdm Willawati, Ms Pe, and the latter's brother, Mr Andy Pe Yong Woon ("Mr Pe"). The claimant said that this was the only time that he met Ms Pe and Mr Pe.[4]

5 Subsequently, the claimant understood that Ms Pe and Mr Pe helped Mdm Willawati incorporate the Company. Mr Pe was appointed as the Company's nominee director to act on behalf of Mdm Willawati. Ms Pe was in turn appointed as the Company's secretary through APacTrust Consultants LLC ("APacTrust"). Ms Lee, whom the claimant understood to be Mr Pe's sister-in-law, became the sole nominee shareholder, and held the Company's shares on

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1 Affidavit of Lai Chung Wing filed on 13 August 2024 ("Claimant's Supporting Affidavit") at para 9.

2 Claimant's Supporting Affidavit at para 10.

3 Claimant's Supporting Affidavit at para 12.

4 Claimant's Supporting Affidavit at para 13.

behalf of Mdm Willawati. The claimant averred that he was not involved in the Company and its dealings thereafter.[5]

6 In or around 2021, Mr Pe reached out to the claimant. He informed the claimant that the Company had difficulties setting up a Chinese currency bank account with DBS Bank. Mr Pe suggested that the claimant be appointed as the Company's director and shareholder to reassure the banks that the Company was not a nominee company, and to involve the claimant in the Company's reorganisation. The claimant agreed to be so appointed and involved, subject to Mr Pe continuing to be a director and to manage the Company. The claimant was therefore appointed a director on 22 September 2021 and received 30% of the Company's shares from Ms Lee.[6]

7 As it turned out, Mr Pe resigned as one of the Company's directors on 5 January 2023. Ms Pe also resigned as the Company's secretary at or around the same time. These resignations came to the claimant's attention in or around February or March 2023, and left the claimant as the Company's sole remaining director.[7] Since the claimant had only agreed to become a director on the condition that Mr Pe remained as a director and continued to manage the Company, he issued his letter of resignation as director to the Company and APacTrust on 19 May 2023.[8] However, on 22 May 2023, APacTrust's representative informed the claimant that, due to fees that remained unpaid to them, it would not update the statutory records nor file the claimant's resignation with the Accounting and Corporate Regulatory Authority

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5 Claimant's Supporting Affidavit at para 14.

6 Claimant's Supporting Affidavit at paras 16-17.

7 Claimant's Supporting Affidavit at para 18.

8 Claimant's Supporting Affidavit at para 19.

(the "ACRA"). APacTrust's representative also informed the claimant that he was unable to resign as director, as the Company was statutorily required to have at least one locally resident director.

8 In May 2023, the claimant came to know that the Company had received a letter of demand dated 12 May 2023 from APacTrust's solicitors, Bih Li & Lee LLP ("BLL"), for payment of an outstanding sum of $42,785.00 in respect of professional services rendered. The claimant wrote to BLL on 19 May 2023 to state that he was unable to assist with the demand as he was never involved in the management or accounts of the Company.[9]

9 On 4 July 2024, the claimant obtained permission of court to commence the present winding-up application (see HC/ORC 3600/2024 dated 4 July 2024 ("ORC 3600") rendered pursuant to the claimant's application in HC/OA 490/2024).[10] It was only then that the claimant was able to access the Company's various records from APacTrust. From these records, the claimant discerned that DBS Bank had unilaterally closed the Company's only two accounts with them on 21 February 2022. It also appeared that the Company did not have any other bank account or any cash.[11]

10 Separately, the claimant was also notified by the ACRA on or around 13 May 2023 that the Company had failed to file its Annual Return for the financial year ending on 30 June 2022, as well as failed to hold an Annual General Meeting for the 2023 financial year.[12] After the claimant obtained the

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9 Claimant's Supporting Affidavit at paras 23-24.

10 Claimant's Supporting Affidavit at para 4.

11 Claimant's Supporting Affidavit at para 26.

12 Claimant's Supporting Affidavit at para 34.

Company's various records in July 2024, he discovered that APacTrust had filed its very last Annual Return on 24 January 2022. From this Annual Return, the claimant discerned that the Company last held an Annual General Meeting on 30 November 2021, and that the Company last prepared financial statements for the financial year ending in 2021. There were no further financial statements for the financial years ending in 2022 and 2023 in the Company's records.[13]

11 Finally, on 4 September 2024, APacTrust wrote to the claimant's solicitors to once again demand the sum of $42,785.00 from the Company. While the letter was titled "Claim by APacTrust Group of Companies Against Nusantara Energy International Pte. Ltd. (the 'Company')", it was addressed to the claimant's solicitors and not to the Company nor to the claimant.[14]

12 Against the above background, the claimant filed the present application in HC/CWU 221/2024 praying for a winding-up order against the Company, on the grounds that: (a) the Company has not commenced business within a year of its incorporation or suspended its business for a whole year (pursuant to s 125(1)(*c*) of the IRDA); and (b) the Company is unable to pay its debts (pursuant to s 125(1)(*e*) of the IRDA). Apart from the required advertisements, the claimant also served the present application on Ms Lee, being the only other shareholder in the Company. That was done pursuant to the court's order in ORC 3600, requiring that any winding-up application filed by the claimant be notified to the Company's shareholders. I note, for completeness, that although, at the time of filing the winding-up application on 13 August 2024, the claimant had also averred in his supporting affidavit that he was relying on the ground in s 125(1)(*b*) of the IRDA, the claimant's solicitors confirmed in the written

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13 Claimant's Supporting Affidavit at paras 39-40.

14 Claimant's Supplementary Affidavit filed on 16 September 2024 at p 5.

submissions dated 4 October 2024 that the claimant was no longer proceeding with that ground. I shall therefore say no more about it.

The affidavits of service

13 Before I deal with the substantive grounds in relation to the winding up, I first discuss a procedural issue concerning the affidavit of service in respect of the service of the winding-up application and supporting affidavit on the proposed liquidators.

14 At the initial hearing before me on 6 September 2024, Ms Kwang Jia Min ("Ms Kwang"), who appeared for the Official Receiver, pointed out that the affidavit of service, in respect of the winding-up application and supporting affidavit to the proposed liquidators, was sworn by one of the claimant's solicitors, Ms Stacey Teng Shu-Shan ("Ms Teng"), instead of the process server. In the said affidavit, Ms Teng averred that she had served the papers on the Official Receiver.[15] However, Ms Teng averred that she had instructed one Mr Rafinyi bin Ahlias ("Mr Rafinyi"), a process server to her law firm, to serve the papers on the proposed liquidators. Ms Teng averred that Mr Rafinyi then informed her that he had effected personal service of the papers on the proposed liquidators.[16]

15 Similarly, Ms Kwang pointed out that the affidavit of service, in respect of the service of the winding-up application and supporting affidavit on the Company's members, officers, or employees (see at [12] above), was sworn by

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15 Affidavit of Service of Winding Up Application on Liquidator filed on 21 August 2024 at para 3.

16 Affidavit of Service of Winding Up Application on Liquidator filed on 21 August 2024 at para 5.

Ms Teng. In the affidavit, Ms Teng averred that she had personally served the papers on the claimant, being one of the two shareholders of the Company.[17] However, Ms Teng averred that she had instructed Mr Rafinyi to serve the papers on Ms Lee, being the other shareholder, and the Company. Mr Rafinyi later informed Ms Teng that he had served the papers as instructed.[18]

16 As Ms Kwang rightly pointed out, Ms Teng's affidavits of service did not conform with Form CIR-13 found in the First Schedule of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (the "CIR Rules"). This was therefore in breach of r 68(4) of the CIR Rules, which provides as follows:

> **Service and affidavit of service of winding up application**
>
> **68.**—(1) …
>
> (4) The applicant of the winding up application *must file in Form CIR-13* an affidavit of service of the application and the supporting affidavit in accordance with paragraph (1) at least 5 days before the day appointed for the hearing of the winding up application.
>
> [emphasis added]

17 Indeed, the plain language of r 68(4) of the CIR Rules, such as the use of the mandatory word "must", clearly imposes an express requirement for an applicant to file the affidavit of service in accordance with Form CIR-13. Form CIR-13 is a form sworn or affirmed by the person who *actually* served the papers on the specified party. That is made clear by the following excerpt from Form CIR-13:

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17 Affidavit of Service of Winding Up Application and Supporting Affidavit on Members, Officers or Employees filed on 21 August 2024 at para 5.

18 Affidavit of Service of Winding Up Application and Supporting Affidavit on Members, Officers or Employees filed on 21 August 2024 at para 7.

> 1. [In the case of service of winding up application on a company by leaving it with a member, officer or employee at the registered office, or if no registered office, at the principal or last known principal place of business of the company.]
>
> That *I did* on the ..... day of ..... [month] ..... [year] *serve* the abovenamed company with the abovementioned winding up application and supporting affidavit *by delivering to and leaving with* ..... [name and description] a member (or officer) (or employee) of the company a copy of the abovementioned winding up application and supporting affidavit, duly sealed with the seal of the Court, at ..... [office or place of business as aforesaid], at ..... a.m. / p.m.
>
> [emphasis added]

18 Thus, in so far as Ms Teng's affidavits alluded to her being informed by Mr Rafinyi that the latter had served the papers, r 68(4) of the CIR Rules had not been complied with. This is not a mere formality, such that non-compliance with this provision can be waived, as the purpose of r 68(4) of the CIR Rules is to ensure that the primary evidence of service being so effected is placed before the court. Given the draconian consequences of a winding-up order, it is essential for the court to be satisfied that all interested parties have been properly served with the papers and have actual notice of the winding-up proceedings. The court can only be so satisfied if it has the best evidence of service.

19 I therefore adjourned the matter for, *inter alia*, the claimant to file supplementary affidavits of service in accordance with Form CIR-13. Mr Rafinyi did so on 12 September 2024. Ms Goh Yin Dee, who appeared for the Official Receiver at the subsequent hearing on 8 October 2024, confirmed that the supplementary affidavit was in order. I take this opportunity to emphasise the importance of conforming to the prescribed rules. While some of the rules may appear formalistic, it is important to remember that they exist for a reason. Much time and costs can be saved if the rules are conformed with from the beginning.

20 Having dealt with this procedural issue, I turn to the substantive grounds in relation to the winding-up application.

The ground for a winding-up petition under s 125(1)(*c*) of the IRDA was made out

21 The claimant's first ground in support of the winding-up application was s 125(1)(*c*) of the IRDA. This section provides as follows:

> **Circumstances in which company may be wound up by Court**
>
> **125.**—(1) The Court may order the winding up of a company if —
>
> [Sections 125(1)(*a*) and 125(1)(*b*) omitted]
>
> (*c*) the company does not commence business within a year after its incorporation, or suspends its business for a whole year;

22 It has been noted that s 125(1)(*c*) of the IRDA has been "rarely utilised in Singapore" (see Harold Foo and Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) at para 10.059). This is because it may often be easier and cheaper to let a company slide into dormancy, after which the Registrar of Companies may be induced to strike it off the register as a defunct company (see s 344(1) of the Companies Act 1967 (2020 Rev Ed) and the General Division of the High Court decision in *Grimmett, Andrew and others v HTL International Holdings Pte Ltd (under judicial management) (Phua Yong Tat and others, non-parties)* [2022] 5 SLR 991 at [78], citing *Halsbury's Laws of Singapore – Company Law* vol 6 (LexisNexis Singapore, 2019) at para 70.506). Be that as it may, s 125(1)(*c*) of the IRDA exists to "provide shareholders with a means of recovering their investment from a company which fails to engage in its intended business" (see the General Division of the High Court decision in

Zhejiang Crystal-Optech Co Ltd v Crystal-Moveon Technologies Pte Ltd (Moveon Technologies Pte Ltd and another, non-parties) [2024] 4 SLR 1736 ("*Zhejiang*") at [54], citing Andrew Keay, *McPherson & Keay: The Law of Company Liquidation* (Sweet & Maxwell, 5th Ed, 2021) at para 4-020).

23 The present case was rather different from the reason contemplated in *Zhejiang* at [54] and [69]. Section 125(1)(*c*) of the IRDA would certainly assist shareholders where the company has fallen into a state of dormancy. However, there is no reason why it should not assist directors in the claimant's position as well. This is especially the case where a director has been "abandoned" by the other directors and left to deal with potential liability for failing to comply with statutory requirements. To be clear, though, a director may not be able to escape from subsisting liability that has already arisen through a successful winding-up application. However, such a director may thereby be able to alleviate himself or herself from future liability.

24 More broadly, however, the import of s 125(1)(*c*) of the IRDA is, on its face, not limited to the objects of helping investors or contributories recover their capital or protecting directors of defunct companies from accruing future statutory liabilities. Rather, *ex facie*, s 125(1)(*c*) of the IRDA provides a means by which companies, which have been inactive for a sufficient period of time, may be dissolved. That must be because where the object for their incorporation is no longer actively being pursued or carried on for whatever reason – whether it be the impossibility of carrying it out or the elective cessation of the same by its members and directors – then there is typically no longer any real purpose in keeping the company alive for its own sake. The impractical result would be that an inoperative company would still be incurring statutory obligations to file returns and hold general meetings when it is effectively defunct. For instance,

the High Court observed in *Lau Yu Man v Wellmix Organics (International) Pte Ltd* [2007] SGHC 96 ("*Wellmix Organics*") that a winding-up petition under the predecessor provision in s 254(1)(*c*) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA (Cap 50)") was presented as there were no "proper books or accounting records maintained … and no annual returns have been filed" by the company, which was "in disarray", and so "not operated as a company" (at [5] and [11]).

25 I noted in the English Court of Appeal case of *In re German Date Coffee Company* (1882) 20 Ch D 169, that concerned a winding-up petition presented against a company incorporated to work a German patent which was never granted, the court there granted the winding up on the just and equitable ground, as the petition had been presented within a year of the company's incorporation. However, Lindley LJ made the following observation about the ground under s 79(2) of the UK's Companies Act 1862 (25 & 26 Vict c 89) (the "UK CA 1862"), which is *in pari materia* to s 125(1)(*c*) of the IRDA (at 189):

> Now, I attach great importance to an observation made by Mr. *Buckley*, that the petitioners did not wait for a year after the formation of the company before presenting their petition. It was presented within a year, and therefore we ought to be careful in considering what ought to be done under the circumstances, because the Act of Parliament ***gives the company a year to see whether it can get to work or not***. The language of the 79th section, sub-s. 2, "Whenever the company does not commence its business within a year from its incorporation, or suspends business for the space of a year." That, I understand, ***is to give the company a reasonable time***. Supposing that there was no proof that the ***company had failed within a year***, I should think that the company was entitled by statute to a year – the shareholders would be entitled to it. But when we have to deal with a case in which it is apparent within a year ***that the whole thing is abortive***, that the company cannot acquire that which it was intended to acquire, and cannot carry out the objects for which it was formed, the Act of Parliament does not require us to wait a year, and the case is then brought fairly within the 5th clause of the

> same sub-section, *i.e.*, whenever the Court is of opinion that it is "just and equitable" that the company should be wound up.
>
> [emphasis added in bold italics; emphasis in original in italics]

This passage shows the connection between the ground in s 125(1)(*c*) of the IRDA and the loss of substratum basis for seeking an equitable winding up under s 125(1)(*i*) of the IRDA. Moreover, from the language employed by Lindley LJ – "failed", "abortive", and if the company "can get to work or not", *etc* – it may readily be gathered that the whole overriding import of s 79(2) of the UK CA 1862, which is similar in wording to s 125(1)(*c*) of the IRDA, is to provide a practical avenue for corporate entities that have failed and are not carrying on business to be dissolved. This is especially so where there is simply no further purpose served in maintaining their existence, and incurring the costs and trouble associated with maintaining the company and fulfilling various statutory obligations. Accordingly, the purpose of s 125(1)(*c*) of the IRDA ought not to be limited to the prototypical case of a contributory attempting to recoup their capital from the company (see, *eg*, at [22] above). There is nothing on the face of s 125(1)(*c*) of the IRDA to limit its operation to that factual matrix.

26 Having considered the purpose of s 125(1)(*c*) of the IRDA, I turn to its application. In *Zhejiang*, Hri Kumar Nair J laid down a three-step analysis with which to apply the section (at [71]), which I gratefully adopted:

(a) First, what was the "business" of the Company?

(b) Second, whether the Company's "business" failed to commence within the first year of its incorporation or had been suspended for a whole year prior to the filing of the winding-up application?

(c) Third, if so, whether the court should exercise its discretion to grant a winding-up order?

27 The first two elements at [26(a)]–[26(b)] above are therefore threshold requirements for the court's discretion in [26(c)] to be engaged. In applying the court's discretion under [26(c)] above, the court will generally have regard to whether there is any further purpose served in preserving the juridical existence of an inoperative entity, given that s 125(1)(*c*) of the IRDA serves a practical purpose of providing a route for defunct or abortive entities to be dissolved where there is no real reason to maintain them (see at [23]–[25] above). For example, in *Wellmix Organics*, Lee Seiu Kin J (as he then was) noted that while the company was inoperative and in "disarray" due to its non-compliance with the various statutory requirements for maintaining that company (at [11]), it was also being kept alive to pursue a *bona fide* cause of action against the chairman of its board of directors (at [5] and [11]). Lee J observed that the court therefore had to balance the interest of its contributory in receiving a return on the capital invested, against the interest of the company's shareholders in seeing a potential realisation of the company's only remaining asset, *ie*, its claim (at [12]). That case served as an illustrative example of how the court balances competing interests in exercising its discretion under s 125(1)(*c*) of the IRDA, considering the purpose that would be served by keeping the company alive and weighing that against the trouble and expense of maintaining an inoperative company's existence as a legal entity with all the corresponding obligations that entails.

28 I noted, for completeness, that the subsequent grant of the winding-up order in *Wellmix Organics* in the High Court case of *Lau Yu Man v Wellmix Organics (International) Pte Ltd* [2007] SGHC 223 at [7] was overturned by the Court of Appeal in *Lai Shit Har and another v Lau Yu Man*

[2008] 4 SLR(R) 348 on the basis that the winding-up petition had been brought to smother the company's cause of action and was therefore an abuse of process. Nothing in that decision casts doubt on the correctness of Lee J's reasoning in *Wellmix Organics* where he adjourned the winding-up proceedings (at [12]). It thus does not impugn the balancing act conducted by Lee J in that case (at [27] above) to arrive at his decision to exercise his discretion to adjourn the winding-up proceedings instead of granting the winding-up order sought there (see *Zhejiang* at [56]).

29 In the present case, the Company was involved in the business of providing management consultancy services. However, the evidence showed that it has not conducted any commercial activity since Mr Pe resigned as a director on 5 January 2023. In particular, the Company's known bank accounts with DBS Bank were closed on 21 February 2022. In fact, even before their closures, these accounts displayed minimal activity in 2021. In this regard, there were only six recorded transactions in the last three months' statements that were made available to the claimant (*ie*, April–June 2021). These transactions were mainly service charges and withdrawals, leaving one of the accounts with a closing balance of $990.28 as of June 2021.[19] Given this state of the Company's financial situation, including the fact that it has not reopened a new bank account since the closures in February 2022, I found it unlikely that the Company would be able to enter into any business activity or contract with any other party. This led me to infer that the Company has suspended its business from at least 5 January 2023, when Mr Pe resigned as director, if not earlier.

30 Moreover, the Company has also not filed any Annual Returns or held any Annual General Meeting since the financial year 2021. The last Annual

[19] Claimant's Supporting Affidavit at p 93.

General Meeting was held on 30 November 2021 while the last annual return was filed on 24 January 2022. This was again indicative of the Company having suspended its business. Indeed, the circumstances showed that the former officers of the Company, namely, Mr Pe and Ms Pe, had simply abandoned the Company, leaving the claimant to be the sole locally resident director. Indeed, the majority shareholder, Ms Lee, has not been responsive to the claimant's requests for her to take back his 30% shareholding in the Company. Nor has she responded to the present winding-up application despite it having been served on her (see at [12] above). In the premises, I concluded that the Company has suspended its business since at least 5 January 2023, which sufficed to satisfy the factual requirement of a one-year suspension of business in s 125(1)(*c*) of the IRDA.

31 As for whether this court should exercise its discretion to wind up the Company, I found that there is no reason to refuse to do so. Like in *Zhejiang*, the Company had no discernible plans to do any business nor any intention to develop such plans. Ms Lee, the majority shareholder, has been unresponsive to the claimant's attempts to contact her and to the present application. The claimant, being the Company's only director, had expressed no interest in either carrying on as a director or the business of the Company. I was therefore satisfied that this court should exercise its discretion to wind up the Company on the basis that s 125(1)(*c*) of the IRDA had been satisfied.

The ground for a winding-up petition under s 125(1)(*e*) of the IRDA was likely made out

32 In addition to s 125(1)(*c*) of the IRDA, the claimant also relied on s 125(1)(*e*) of the same Act. In this regard, the Court of Appeal in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)*

[2021] 2 SLR 478 ("*Sun Electric*") established the following principles for the cash flow insolvency test for showing that a company is "unable to pay its debts" under ss 254(1)(*e*) and 254(2)(*c*) of the CA (Cap 50) (the predecessor provisions to ss 125(1)(*e*) and 125(2)(*c*) of the IRDA) (at [65] and [69]):

> 65 We thus hold that the cash flow test is the sole applicable test under s 254(2)(*c*) of the Companies Act. For clarity, the cash flow test assesses whether the company's current assets exceed its current liabilities such that it is able to meet all debts as and when they fall due. We agree with Mr Lim that "current assets" and "current liabilities" refer to assets which will be realisable and debts which will fall due within a 12-month timeframe, as this is the standard accounting definition for those terms.
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> …
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> 69 Finally, we set out a non-exhaustive list of factors which should be considered under the cash flow test, many of which were also stated in *Kon Yin Tong* at [37]–[38]. The court should consider:
>
> (a) the quantum of all debts which are due or will be due in the reasonably near future;
>
> (b) whether payment is being demanded or is likely to be demanded for those debts;
>
> (c) whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;
>
> (d) the length of time which has passed since the commencement of the winding-up proceedings;
>
> (e) the value of the company's current assets and assets which will be realisable in the reasonably near future;
>
> (f) the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;
>
> (g) any other income or payment which the company may receive in the reasonably near future; and
>
> (h) arrangements between the company and prospective lenders, such as its bankers and

> shareholders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

33 More broadly, as was said in the General Division of the High Court decision of *Re Bu Shen Xi (S) Pte Ltd (Official Receiver, non-party)* [2024] SGHC 247 (at [32]), the court adopts a commercial, rather than a technical, view of insolvency. The crucial question is whether the liquidity issue is temporary and may be cured in the reasonably near future. In doing so, the court applies the cash flow insolvency test flexibly, based on what is commercially realistic and sensible, to avoid absurd and illogical outcomes (see, *eg*, *Sun Electric* at [67]–[68]).

34 In the present case, the claimant principally relied on BLL's statutory demand dated 12 May 2023 to show that the Company was unable to pay its debts. While APacTrust had sent another letter of demand to the claimant's solicitors on 4 September 2024, Mr Trent Ng Yong En ("Mr Ng"), who appeared on behalf of the claimant, rightly acknowledged that this letter did not qualify as a statutory demand referred to in s 125(2)(*a*) of the IRDA since it was not served on the Company. Be that as it may, the claimant relied on the totality of the evidence to show that the Company was unable to pay its debts pursuant to ss 125(1)(*e*) and 125(2)(*c*) of the IRDA, instead of relying on the presumption of insolvency in s 125(2)(*a*) of the IRDA to satisfy the ground in s 125(1)(*e*) of the same Act.

35 In my judgment, it appeared likely that the Company is unable to pay its debt to APacTrust. To begin with, that the debt still existed was clear from APacTrust's letter dated 4 September 2024, even if the letter did not come within the meaning of a statutory demand for the purposes of s 125(2)(*a*) of

the IRDA. There was no prohibition against relying on that letter to establish the fact of a debt, as opposed to giving rise to the presumption of an inability to pay a debt should the demand be unsatisfied. Given that the debt existed, it was also clear from the Company's known bank accounts that it did not have cash on hand to repay the debt. In the circumstances, if I had to decide the matter on the basis of s 125(1)(*e*) of the IRDA, I would have found that it had likely been satisfied. However, as I said to Mr Ng at the hearing before me, I decided this application primarily on the basis of s 125(1)(*c*) of the IRDA.

Conclusion

36 For all these reasons, I made the winding-up order against the Company, along with the usual consequential orders prayed for by the claimant.

Goh Yihan
Judge of the High Court

Trent Ng Yong En and Stacey Teng Shu-Shan
(Fortress Law Corporation) for the claimant;
The defendant absent and unrepresented;
Goh Yin Dee and Kwang Jia Min (Insolvency & Public Trustee's Office) for the official receiver.