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

[2024] SGHC 312

Originating Application No 1024 of 2024

Between

Tay Lak Khoon

… *Applicant*

And

(1) Tan Wei Cheong (as Judicial Manager of USP Group Limited)

(2) Lim Loo Khoon (as Judicial Manager of USP Group Limited)

(3) USP Group Limited (under judicial management)

… *Respondents*

And

(1) Fervent Chambers LLC

… *Non-Party*

GROUNDS OF DECISION

[Insolvency Law — Administration of insolvent estates — Judicial management — Discounting of creditors' votes in a statement of proposal — Whether votes of related party creditors should be discounted]
[Insolvency Law — Administration of insolvent estates — Judicial management — Creditor applying for removal of judicial managers — Whether removal of judicial managers was in real, substantial and honest interest of judicial management]

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Tay Lak Khoon
v
Tan Wei Cheong (as Judicial Manager of USP Group Ltd) and others
(Fervent Chambers LLC, non-party)

[2024] SGHC 312

General Division of the High Court — Originating Application No 1024 of 2024
Wong Li Kok, Alex JC
28 October 2024

03 December 2024

Wong Li Kok, Alex JC:

Introduction

1 This decision concerned an application under s 115 of the Insolvency Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") to challenge the actions of the judicial managers of USP Group Limited ("USP") in the counting of votes at a creditors' meeting of USP which was called to consider the statement of proposals tabled under s 107 of the IRDA. The applicant also applied for the removal of the judicial managers based on their actions at the creditor's meeting.

2 The applicant painted this application as a critical comparison between the counting of votes under two insolvency regimes – a statement of proposals

in a judicial management on the one hand, and the sanction of a scheme of arrangement under s 210 of the Companies Act 1967 (2020 Rev Ed) ("CA") on the other – and sought to draw parallels between the two. Whilst this comparison was relevant to this case, the crux of this application concerned the court's intervention in a judicial management under s 115 of the IRDA. The relevant test to be adopted for the removal of judicial managers was also considered.

Background

3 The applicant is a creditor of USP (the third respondent). The first and second respondents are the judicial managers of USP (the "Judicial Managers"). USP was placed into judicial management on 11 March 2024 and the Judicial Managers were appointed on the same day.[1]

4 The Judicial Managers held a creditors' meeting on 6 September 2024 (the "Creditors' Meeting"). For the purposes of this decision, the relevant resolution ("Resolution 1") that was put forward at the Creditor's Meeting was for the approval of the "Restructuring Plan" for USP, as set out in the statement of proposals dated 20 August 2024 (the "Restructuring Plan").[2]

5 Resolution 1 was passed by 58.06% in number (18 out of 31 votes) and 89.31% in value of the votes cast and counted.[3]

6 Amongst the votes cast and counted for Resolution 1 were Hinterland Group Pte Ltd ("HG") and the following five subsidiaries of USP (the "USP

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1 HC/ORC 1248/2024 dated 17 October 2024.

2 Tay Lak Khoon's first affidavit dated 17 October 2024 ("TLK-1") at pp 73, 74 and 76.

3 TLK-1 at para 98 and p 792.

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Subsidiaries"). HG and the USP Subsidiaries were creditors of USP and voted in that capacity:[4]

(a) Biofuel Research Pte Ltd – 85.7% indirectly and 7.38% directly owned by USP ("Biofuel");

(b) Koon Cheng Development Pte Ltd – an indirectly wholly owned subsidiary of USP;

(c) Scientific and Industrial Instrumentation Pte Ltd – an indirectly wholly owned subsidiary of USP;

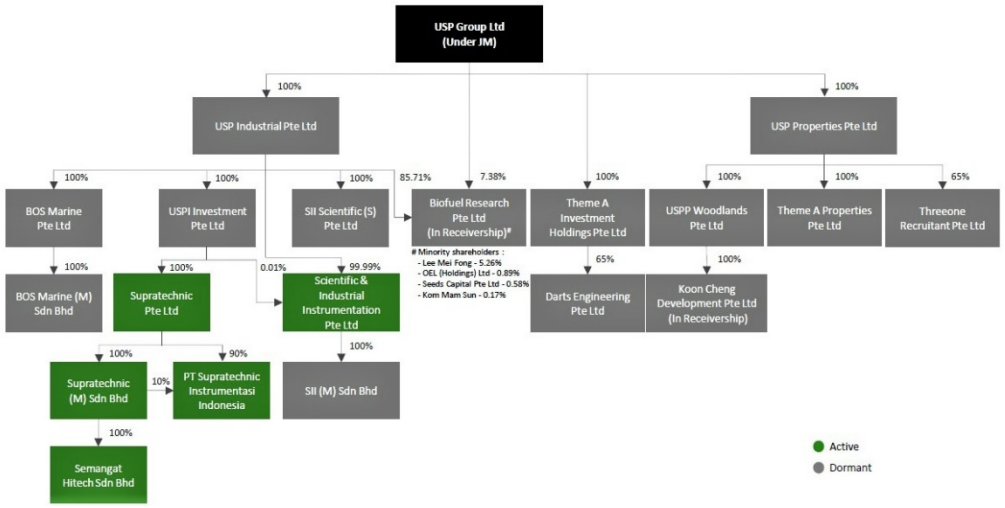
(d) Supratechnic Pte Ltd – an indirectly wholly owned subsidiary of USP ("Supra S"); and

(e) Theme A Investment Holdings Pte Ltd – a directly wholly owned subsidiary of USP.

[4] TLK-1 at p 792.

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A structure chart of the USP group of companies provided by the Judicial Managers is set out here for ease of reference:[5]



7 The USP Subsidiaries share two common directors. They are Mr Shek Chee Seng and Mr Leow Yong Kin.[6]

8 HG had extended a loan of $315,000 to USP. That loan was assigned to a related company, Hinterland Investments Pte Ltd ("HI"). Both HG and HI are controlled by Mr Melvin Tan.[7] It is not disputed that, through discussions with Melvin Tan, HI would invest up to $3,000,000 into the company as a white knight investor (the assigned loan and proposed investment collectively referred to as the "Investment").

9 In return for the Investment, HI had the option to elect to: (a) convert the Investment into new shares in USP; (b) convert the Investment into new shares

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5 TLK-1 at p 65.

6 TLK-1 at paras 24 and 25.

7 1st and 2nd Respondents' Written Submissions dated 25 October 2024 ("RWS") at paras 8 and 9.

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in Supra S; or (c) enforce a super-priority charge to be granted by USP to HI over USP's shares in Supra S.

10 This Investment would be documented in an investment agreement which formed part of the Restructuring Plan.

11 Through the present application, the applicant sought for the following reliefs:

(a) That all votes cast by the following parties (*ie,* the USP Subsidiaries and HG) at the creditors' meeting (the "Creditors' Meeting") held on 6 September 2024 summoned under s 107(1) of the IRDA be wholly disregarded.

(i) Biofuel Research Pte Ltd;

(ii) Koon Cheng Development Pte Ltd;

(iii) Scientific & Industrial Instrumentation Pte Ltd;

(iv) Supratechnic Pte Ltd;

(v) Theme A Investment Holdings Pte Ltd; and

(vi) Hinterland Group Pte Ltd.

(b) A declaration that Resolution 1 of the Creditors' Meeting was not validly passed.

(c) A declaration that the first and second respondents, as joint and several judicial managers of USP, have acted in a manner that is unfairly prejudicial to the interests of USP by counting the votes cast by the USP Subsidiaries and HG at the Creditors' Meeting.

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(d) That the first and second respondents be removed as USP's joint and several judicial managers pursuant to s 104(1) of the IRDA.

(e) That Mr Cameron Lindsay Duncan and Mr David Dong-Won Kim of KordaMentha Pte Ltd be appointed as joint and several judicial managers of USP in place of the first and second respondents, pursuant to s 104(5) of the IRDA.

(f) Costs of this application are to be paid to the applicant out of USP's assets as costs of the judicial management.

The votes of the USP Subsidiaries and HG should be disregarded

The parties' arguments and the law

12 The applicant's position was that the votes of the USP Subsidiaries and that of HG should not have been counted because they did not represent ordinary, independent and objective creditors of USP.[8]

13 The applicant asked me to draw a parallel with the court's sanction of schemes of agreement under s 210 of the CA. He quoted this court's decision in *Re Swiber Holdings Ltd* [2018] SGHC 211 ("*Re Swiber*") in support of this. In *Re Swiber*, Kannan Ramesh J (as he then was) had to decide how to count votes under the predecessor provisions of ss 107 and 108 of the IRDA. Ramesh J in *Re Swiber* (at [51]–[68]) considered different voting approaches that had been adopted in scheme meetings, before coming to his decision (at [75]). The applicant contended that the court should similarly allow cross-consideration of

[8] Applicant's Written Submissions dated 25 October 2024 ("AWS") at para 51.

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the principles related to voting, as between scheme meetings and creditors' meetings convened in judicial management.[9]

14 In that regard, I was pointed to several authorities, relating to scheme meetings, where the votes of related parties were discounted. Hence, the applicant contended that the principle of discounting the votes of related parties in scheme meetings should apply equally to votes that had been cast in the Creditors' Meeting.

15 The key authority quoted by the applicant was the Court of Appeal's decision in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and ors v TT International and another appeal* [2012] 2 SLR 213 ("*TT International*"). In *TT International*, the Court of Appeal held (at [158]) that as wholly owned subsidiaries are entirely controlled by their parent company, they should be viewed as extensions of that parent company and their votes should be discounted to zero.

16 The Court of Appeal's subsequent decision in *SK Engineering & Construction Co Ltd v Conchubar Aromatics Ltd and anor Appeal* [2017] 2 SLR 898 ("*SK Engineering*") (at [41]) added colour to its decision in *TT International*. *SK Engineering* also involved the counting of votes in a scheme meeting. The Court of Appeal in *SK Engineering* (at [41]) outlined some non-exhaustive factors that go towards establishing the existence of a relationship between a creditor and a scheme company. These included when a scheme company controls the creditor and when the scheme company and the creditor have common directors. Further, the Court of Appeal held that it was then for the party opposing any related party allegation, to adduce evidence showing the

9 AWS at para 75.

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related parties are not aligned with the scheme company (*SK Engineering* at [42]). An example of when such evidence was adduced was in Re *Brightoil Petroleum (S'pore) Pte Ltd* [2022] 5 SLR 222 where this court held (at [57]) that no discount needed to be applied to the votes of related subsidiaries because those subsidiaries were in liquidation and under the control of independent liquidators.

17 The applicant also pointed me to the decision of the Hong Kong Court of Final Appeal in *UDL Argos Engineering & Heavy Industries Co Ltd v Li Qi Lin* [2001] 3 HKLRD 634 ("*UDL Argos*"). *UDL Argos* was considered by the Court of Appeal in *TT International*, and particularly [27] of *UDL Argos* where it was held (in the context of Hong Kong's equivalent of a scheme meeting) that the votes of those "with personal or special interests in supporting the proposals … cannot be regarded as fairly representative of the class in question" and may be disregarded.

18 Finally, the applicant directed me to r 15.34(2) of the Insolvency (England and Wales) Rules 2016 ("Rule 15.34") which addresses voting in the context of an administration (the equivalent of judicial management in England and Wales). Rule 15.34(2) codified the position in England and Wales such that the votes of parties connected with the company are not counted.

19 The Judicial Managers countered with their arguments that they had done nothing wrong. They contended that there is nothing at law which prohibits them from counting the votes of the USP Subsidiaries and HG and that the applicable regulations required them to do so.[10]

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10 RWS at para 3.

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20 The Judicial Managers pointed me to s 108(2) of the IRDA which states that the creditors' meeting called to consider the statement of proposals must be conducted in accordance with the regulations.[11] The Judicial Managers referred to regs 34 and 37 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020 (the "IRD Regulations"). They pointed out that regs 34 and 37 of the IRD Regulations do not provide for whether votes should be discounted but merely states that creditors who have submitted a proof of debt are entitled to vote and a resolution is deemed passed where a majority in number and value have voted in favour.[12]

21 With respect to the applicant's arguments on the parallels to be drawn with the court's sanction of schemes of arrangement, the Judicial Managers questioned if such a parallel was workable. They argued that there was a clear difference between a scheme of arrangement, for which the sanction of the court is a statutory requirement, and a statement of proposals in a judicial management, where no such sanction was required if the requisite majority of creditors had agreed with such proposals.[13]

22 The court's power to oversee the actions and decisions of judicial managers rests in s 115 of the IRDA and these arguments should be placed in that context. I set out the relevant provisions:

> **Protection of interests of creditors and members**
>
> **115.**—(1) At any time when a company is in judicial management or interim judicial management, a creditor or member of the company may apply to the Court for an order under this section on the ground —

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11 RWS at para 15.

12 RWS at para 16.

13 RWS at para 22.

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> *(a)* that the company's affairs, business and property are being or have been managed by the judicial manager or interim judicial manager in a manner that is or was unfairly prejudicial to the interests of —
>
> (i) its creditors or members generally;
>
> (ii) some part of its creditors or members (including at least the applicant); or
>
> (iii) a single creditor that represents at least one quarter in value of the claims against the company;
>
> *(b)* that any actual or proposed act or omission of the judicial manager or interim judicial manager is or would be prejudicial in the manner mentioned in paragraph (*a*);
>
> …

In particular, s 115(*b*) of the IRDA is the relevant provision for this application as this application does not strictly involve the management of USP's affairs, business or property but the conduct of the Judicial Managers vis-à-vis the voting of creditors.

23 In *Yihua Lifestyle Technology Co. Ltd and another v HTL International Holdings Pte Ltd* and others [2021] SGCA 87 ("*HTLI*"), the Court of Appeal (at [17]) applied the following two-stage test to the predecessor provision of s 115(*a*) and (*b*) of the IRDA (*ie*, s 227R of the Companies Act (Cap 50, 2006 Rev Ed)):

> (a) first, the action of the judicial manager has or would cause the complainant to suffer harm in his capacity as a member or creditor; and
>
> (b) second, the harm in question must be unfair in that it is either "conspicuously unfair or differential treatment to the disadvantage of the complainant …. or a lack of legal or commercial justification for a decision which causes harm".

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24 This court's subsequent decision in *PT Bank Negara Indonesia (Persero) TBK, Singapore Branch v Farooq Ahmad Mann* [2023] SGHC 249 ("*PT Bank Negara*") expanded on *HTLI* (at [27]) to state that the *HTLI* test should apply equally to s 115(*b*) of the IRDA. In *PT Bank Negara*, Goh Yihan JC (as he then was) went on to explain (at [29]) that the rationale for the court's reluctance to interfere in the decisions of judicial managers is because they should be allowed a wide discretion to employ their skills and experience in trying to resuscitate the company in question and the courts should be careful not to second guess their commercial decisions.

25 Given the parties' positions on whether a parallel should be drawn between the counting of votes in a creditors' meeting in judicial management summoned under s 107(1) of the IRDA on the one hand, and in the sanction of a scheme of arrangement on the other, I found that it would be useful to further explore the purpose behind the statement of proposals in a judicial management.

26 In Choong, T. C. and Rajah, V. K., *Judicial management in Singapore* (Butterworths, 1990), the learned authorities observed that a statement of proposals can help "identify an overall strategy for the conduct of the administration" and that "creditors' support for this strategy at an early stage is often of great practical value since it enables an administrator to identify any areas of concern to creditors [… and] to have the benefit of a creditors' committee with whom he can liaise during the conduct of the administration" (at p 123). A statement of proposals also serves as a "watershed in the scheme of judicial management" since after that event, "it is incumbent on the judicial manager to manage the affairs of the company in accordance with the proposals" (at pp 135–136). In a similar vein, in Goode, Royston Miles, *Goode on Principles of Corporate Insolvency Law* (Sweet & Maxwell, 5th Ed, 2018), it was observed that the purpose of a statement of proposals is for the

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administrator (the equivalent of a judicial manager under UK's insolvency regime) to "se[t] out proposals for achieving the purpose of administration" as well as, where applicable, why the objective outlined in the UK Insolvency Act 1986 cannot be achieve (at para 11-117).

27 Thus it would appear that – as helpfully surmised by Goh J in *Wong Joo Wan (in his capacity as judicial manager of Bravo Building Construction Pte Ltd (under judicial management)) v Bravo Building Construction Pte Ltd (under judicial management)* [2024] SGHC 127 – the key purpose of a statement of proposals in a judicial management is to set out "the proposed strategy for achieving one or more of the purposes of judicial management" (at [16]).

My decision

28 I agreed with the applicant that the votes of the USP Subsidiaries and HG should be discounted to zero.

29 Applying the two-stage test set out in *HTLI* (at [23] above), I found that the Judicial Managers' decision to count the votes of the USP Subsidiaries and HG caused harm to the applicant as a creditor and was unfair. Whilst I was cognisant that the court should be slow in interfering with the commercial decisions of judicial managers and those that involve the judicial managers' business skills and expertise (as per *PT Bank Negara*), the decision in this case was not a commercial decision. It was a decision involving the conflict of interests of voting parties and thus involved a quasi-legal decision where there is a stronger argument for the court's intervention.

30 In order to determine the issue of harm and unfairness to the applicant, I agreed with his argument that parallels should be drawn with the discounting of votes in cases involving schemes of arrangement (see above at [15]–[17]).

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Whilst I agreed with the Judicial Managers that there are differences in a vote to sanction a scheme of arrangement as opposed to one that seeks support for a statement of proposals (above at [21]), the vote on a statement of proposals is still an important part of the judicial management process. It allows the judicial managers to attain the support of creditors on its strategy for the company in question and requires the judicial manager to manage the company going forward based on the creditors' approval (see above at [26]–[27]).

31 That being the case and based on the decisions in *TT International* and *SK Engineering*, I found that the USP Subsidiaries were clearly related parties under the full or (in the case of Biofuel) majority control of USP.

32 HG was not a related party, but it clearly had a special interest in supporting the proposal (see above at [8]–[10]) and was thus not representative of the other creditors voting on the restructuring proposal (as per *UDL Argos* above at [17]).

33 The USP Subsidiaries and HG voted in favour of the Restructuring Plan (Resolution 1) but the Judicial Managers did not raise any arguments to demonstrate why the USP Subsidiaries or HG were not aligned with USP on the restructuring proposal (as per *SK Engineering* above at [16]).

34 As mentioned at [18] above, Rule 15.34 also lent support for this finding. In that regard, I found that the Judicial Managers' reliance on regs 34 and 37 of the IRD Regulations (above at [20]) was insufficient to overcome the court's powers to intervene under s 115(*b*) of the IRDA. Regulations 34 and 37 of the IRD Regulations provides for the counting of votes that have been cast but is silent on whether such votes ought to be discounted as this is a decision that should be left to judicial managers, depending on a fact-specific inquiry.

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35 In this case, I found that there was harm caused to the applicant as, but for the counted votes of the USP Subsidiaries and HG, Resolution 1 (which the applicant voted against) would not have passed. The decision to count these votes was also unfair because the USP Subsidiaries and HG clearly had their own interests in play in voting for Resolution 1 and these interests were different to those of the applicant and the creditor group as a whole. When challenged, the Judicial Managers failed to provide an adequate explanation for their decision to count the votes of the USP Subsidiaries and HG, saying only that they had no legal basis not to count the votes in question.[14]

36 Taking the Judicial Managers' position to a hypothetical extreme, there is nothing stopping a company from manipulating the debt structure of its group of companies such that it can artificially secure a majority in voting at a creditors' meeting in a judicial management. This cannot be the intent behind the judicial management regime.

37 I thus granted an order in terms with respect to prayers 1 and 2. I saw no need to grant the declaration prayed for in prayer 3 (at [11(c)] above).

There are insufficient grounds for the removal of the Judicial Managers

38 The parties were not able to point me to any Singapore authority on the grounds for removal of judicial managers under s 104(1)(*a*) of the IRDA. The parties surmised and I agreed that the authorities for the removal of liquidators under s 139(1) of the IRDA would be instructive.

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14 TLK-1 at para 102.

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39 The Judicial Managers pointed me to Gabriel Moss & Gavin Lightman, *Lightman & Moss on the Law of Administrators and Receivers of Companies* (Sweet & Maxwell, 6th Ed, 2017) at para 27-003, which provides the following:

> The power of removal is free-standing and very wider although in Sisu Capital Fund Ltd v Tucker, Warren J held that it would not be easy to think of any circumstance in which the court would remove an administrator under para.88 without due cause being shown. **By analogy with liquidation cases, it would be for the applicant to show "cause" as to why the administrator should be removed from office and this would be measured by reference to the real, substantial, honest, interests of the administration, and the purpose for which the administrator is appointed.** The court will carry out a balancing exercise when considering such an application and one factor the court will have regard to will be the wishes of the majority of creditors. The court will expect the administrator to be efficient, vigorous and unbiased in his conduct of the administration and should have no hesitation in removing him if satisfied that he has failed to live up to those standards, unless it can be said with reasonable confidence that he will live up to those standards in the future.
>
> [emphasis added in bold]

40 Conversely, the applicant espoused this court's decision in *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid* [2023] SGHC 83 ("*DB International*") where a sequential two-stage test for the removal of liquidators under s 139(1) of the IRDA was adopted (at [13]):

> (a) the first stage required an assessment of the purposes of the liquidation and thus why the liquidator was appointed; and
>
> (b) considering the purposes determined in the first stage, the second stage required the court to assess whether the removal of the liquidator is in the "real, substantial and honest interest of the liquidation".

41 I agreed with the applicant that this test should apply equally to an application for the removal of judicial managers under s 104(1)(*a*) of the IRDA

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but adjusted given the objectives of judicial management are different to the objectives of liquidation. There is a broadly common objective between the two regimes of securing an advantageous realisation of assets (s 89(1)(*c*) of the IRDA). However, the other objectives of judicial management in the form of company rehabilitation (s 89(1)(*a*) of the IRDA) and a debt compromise with creditors (s 89(1)(*b*) of the IRDA) are unique to judicial management, and requires a fact-based assessment of each case.

42 In the current application, the applicant argued that there was considerable creditor opposition to the Judicial Managers and that that was a valid factor to take into consideration when determining whether they should be removed. Particularly so, bearing in mind how the Judicial Managers have conducted themselves with respect to the counting of votes at the Creditors' Meeting (and quoting from *DB International* at [75] and [76]). Given the loss in confidence in the Judicial Managers, the applicant's position was that they should be removed.[15]

43 The applicant went on to contend that a liquidator should be independent and be *perceived and seen* to be independent by independent creditors and observers (citing *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR 671 at [63]).[16] In this regard, the applicant pointed out that the Judicial Managers had refused to accept proofs of debt submitted past the deadline for submission, when such proofs should have been accepted as they were not complicated debts that would have required substantial processing.[17]

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15 AWS at para 102.

16 AWS at paras 103 and 104.

17 AWS at para 98.

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44 I disagreed with the applicant's position that there has been a loss of confidence in the Judicial Managers. The second resolution at the Creditors' Meeting would have passed even without counting the votes of the USP Subsidiaries and HG.[18] Even without counting the votes of the USP Subsidiaries and HG, a substantial majority in value of the creditors still supported Resolution 1.[19] In my judgment, the Judicial Managers had made an honest error in counting the votes of the USP Subsidiaries and HG. As this application has demonstrated, there was a fair debate as to whether this was the right decision. I will however note that the Judicial Managers will have to ensure that their relationship with all creditors remains transparent and open, such that fair explanations of their decisions to questioning creditors should be expected (see above at [35]).

45 I also disagreed with the applicant on his submission that the proofs of debt that were submitted late should have been accepted. I agreed with the Judicial Managers' position that the plain reason for why they were rejected was that they were submitted late and the Judicial Managers had to ensure consistency and fairness to all creditors.[20] It would be pointless to stipulate a deadline for the submission of proofs of debt if any such proofs submitted after the deadline would be readily and easily accepted.

46 Applying the test set out in *DB International* (at [40] above), I did not find the removal of the Judicial Managers to be in the real, substantial and honest interest of USP's judicial management. USP's judicial management was

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18 Tan Wei Cheong's 1st affidavit dated 18 October 2024 ("TWC") at para 26 and TLK-1 at p 792.

19 TLK-1 at p 792 and RWS at paras 27 and 28.

20 RWS at para 44.

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put in place with the aim of trying to resuscitate USP or those parts of it which remained workable going concerns (such as Supra S).[21] In order to achieve this, the Judicial Managers' key task was to establish and build relationships with Melvin Tan, HG and HI as well as manage USP's largest creditor, United Overseas Bank Limited ("UOB"). The Judicial Managers have clearly been able to achieve this, as demonstrated by the positive votes of both HG and UOB in favour of both resolutions at the Creditors' Meeting. Therefore, the Judicial Managers should be allowed to continue with their work.

47 Considering the above, prayers 4 and 5 (see above at [11(d)]–[11(e)]) were dismissed.

Conclusion

48 In summary, I allowed prayers 1 and 2 of the application and dismissed prayers 3, 4 and 5 of the application.

49 Given that arguments across the two issues in this application were evenly balanced and each party succeeded on one issue, I made no order as to costs.

Wong Li Kok, Alex JC
Judicial Commissioner

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[21] TWC at paras 59–61 and 80.

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Lye May-Yee Jaime and Choong Guo Yao Sean (Meritus Law LLC) for the applicant;
Ng Hui Ping Sheila and Chew Jing Wei (Rajah & Tann Singapore LLP) for the defendants;
Clarence Lun Yaodong (Fervent Chambers LLC) for the non-party.

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