IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 31

Court of Appeal / Civil Appeal No 19 of 2024

Between

Zhu Su

… *Appellant*

And

(1) Three Arrows Capital Ltd
(2) Christopher Farmer
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)
(3) Russell Crumpler
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

… *Respondents*

Court of Appeal / Civil Appeal No 30 of 2024

Between

Kyle Livingston Davies

… *Appellant*

And

(1) Three Arrows Capital Ltd
(2) Christopher Farmer
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

(3) Russell Crumpler
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

… *Respondents*

Court of Appeal / Civil Appeal No 31 of 2024

Between

Zhu Su

… *Appellant*

And

(1) Three Arrows Capital Ltd
(2) Christopher Farmer
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)
(3) Russell Crumpler
(solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

… *Respondents*

JUDGMENT

[Civil Procedure — Delay]
[Civil Procedure — Production of documents — Attendance of person to produce document — Whether a person can be ordered to produce documents without having been summoned — Section 244(1) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

[Contempt of Court — Civil contempt — Full and frank disclosure — Intention to commence proceedings against examinee — Concurrent proceedings against examinee]

Zhu Su
v
Three Arrows Capital Ltd and others and other appeals

[2025] SGCA 31

Court of Appeal — Civil Appeals No 19, 30 and 31 of 2024
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA and Kannan Ramesh JAD
3 April 2025

24 June 2025 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Three Arrows Capital Ltd ("TA-BVI") was a large cryptocurrency fund. Following its spectacular collapse in 2022, its liquidators sought orders to compel its directors to provide certain information and to produce some documents. A judge sitting in the General Division of the High Court (the "Judge") granted those orders. Rather than appealing against those orders when they were first made, the directors, Mr Zhu Su ("Mr Zhu") and Mr Kyle Livingston Davies ("Mr Davies") (collectively, the "Appellants"), took no action for many months until Mr Zhu was arrested and committed to prison for not complying with these orders, when he tried to leave Singapore. After Mr Zhu's arrest, the Appellants filed applications to set aside the orders made by the Judge, which the Judge dismissed. The first question in these appeals is whether the Judge was correct to do so.

2 Following Mr Zhu's arrest, the liquidators thinking that his incarceration might afford them their best opportunity to examine him with a view to obtaining more information about the affairs of TA-BVI, also sought and obtained a court order to examine Mr Zhu. However, by the time of the examination order, the liquidators had already formed the intention to commence proceedings against Mr Zhu and Mr Davies in another jurisdiction pursuing claims arising out of the collapse of TA-BVI. The second question in these appeals is whether in such circumstances, the order for the examination of Mr Zhu should be set aside.

Facts

3 By way of background, reference may be made to the narration of the facts in our earlier decision in this matter, where we dealt with a procedural point: see *Zhu Su v Three Arrows Capital Ltd* [2024] 1 SLR 579 ("*Zhu Su (Permission)*"). We will supplement this as necessary. The Appellants were the directors of Three Arrows Capital Pte Ltd ("TA-SG"), a Singapore entity which owned 100% of the shares in TA-BVI, the first respondent. The Appellants were also the directors of TA-BVI. TA-BVI was incorporated in the British Virgin Islands ("BVI") and was in the business of trading cryptocurrency, with operations in Singapore and elsewhere. The liquidators of TA-BVI, Mr Christopher Farmer and Mr Russell Crumpler (the "Liquidators"), are the second and third respondents respectively. We refer collectively to all three respondents as the "Respondents".

4 On 9 July 2022, the Respondents filed HC/OA 317/2022 ("OA 317") seeking recognition of TA-BVI's liquidation proceedings in the BVI as a foreign main proceeding under Art 2(*f*) of the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law") as adopted in Singapore pursuant

to the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"). The Respondents also sought various consequential orders, including recognition of the liquidators as foreign representatives within the meaning of Art 2(*i*) of the Model Law with standing to make applications for orders or reliefs under the IRDA. The Appellants were not parties to OA 317. The Judge allowed OA 317 on 22 August 2022.

The Disclosure Order

5 On 15 October 2022, the Respondents applied in HC/SUM 3802/2022 ("SUM 3802") in OA 317 for various orders including an order requiring TA-SG to submit an affidavit "containing an account of [TA-SG's] dealings with [TA-BVI] and to produce any books, papers or records in [TA-SG's] possession or under [TA-SG's] control relating to the promotion, formation, business, dealings, affairs or property of [TA-BVI]". SUM 3802 was to be heard on 30 November 2022. In opposition to SUM 3802, Mr Zhu filed an affidavit on TA-SG's behalf on 14 November 2022. However, on 23 November 2022, a few days before SUM 3802 was to be heard, the solicitors for TA-SG wrote to the solicitors for the Respondents and abruptly informed them that they "had been de-instructed and discharged" by TA-SG. The solicitors for TA-SG then formally applied to court to be discharged on 28 November 2022.

6 On 30 November 2022, the Judge proceeded to hear and allow SUM 3802. Notably, even though OA 317 and SUM 3802 were only filed against and served on TA-SG, and SUM 3802 only referred to reliefs against TA-SG, the Judge went beyond that and also ordered that the Appellants each personally file an affidavit containing an account of his own and TA-SG's dealings with TA-BVI and to produce as exhibits to that affidavit all documents

which were in his possession or control (the "Disclosure Order"). The relevant parts of the Disclosure Order are as follows:

> …it is ordered that:
>
> 1. [TA-SG] shall, within one (1) week from the date of this order, submit an affidavit to the High Court of the Republic of Singapore by filing the said affidavit in HC/OA 317/2022 containing an account of [TA-SG's] dealings with [TA-BVI] and shall produce as exhibits to that affidavit all books, papers or other records in [TA-SG's] possession or under [TA-SG's] control relating to the promotion, formation, business, dealings, affairs or property of [TA-BVI], including but not limited to the books, papers and other records listed in WongPartnership LLP's letter dated 17 November 2022 to Solitaire LLP ("Documents"), a copy of which letter is annexed hereto.
>
> 2. Zhu Su… shall, within one (1) week from the date of this order, submit an affidavit to the High Court of the Republic of Singapore by filing the said affidavit in HC/OA 317/2022 containing an account of his own and [TA-SG's] dealings with [TA-BVI] and shall produce as exhibits to that affidavit all Documents which are in his possession or under his control.
>
> 3. Kyle Livingston Davies… shall, within one (1) week from the date of this order, submit an affidavit to the High Court of the Republic of Singapore by filing the said affidavit in HC/OA 317/2022 containing an account of his own and [TA-SG's] dealings with [TA-BVI] and shall produce as exhibits to that affidavit all Documents which are in his possession or under his control.

For ease of reference, the different parts of the Disclosure Order will, where necessary, be referred to as Paragraph 1, Paragraph 2, and Paragraph 3 as numbered above. Paragraph 1 was what the Respondents initially sought in SUM 3802, whereas Paragraphs 2 and 3 were orders made by the Judge on his own motion.

7 The Disclosure Order was subsequently served on the Appellants. Counsel for the Appellants, Ms Eileen Yeo ("Ms Yeo"), confirmed at the hearing that the Appellants became aware of the Disclosure Order by 5 January 2023 at the latest.

8 As the Appellants failed to comply with the Disclosure Order, the Respondents on 26 May 2023 sought, by way of HC/SUM 1591/2023 and HC/SUM 1592/2023 against Mr Zhu and Mr Davies respectively, permission to apply for orders of committal. The Judge granted the Respondents permission on 30 June 2023 (the "Leave Orders").

9 The Respondents then proceeded to file HC/SUM 2105/2023 and HC/SUM 2104/2023 on 13 July 2023 seeking orders of committal against Mr Zhu and Mr Davies respectively (the "Committal Orders"). The Judge made orders in terms of these applications on 25 September 2023 and the Appellants were sentenced to four months' imprisonment for contempt of court in intentionally disobeying and/or breaching the Disclosure Order. Mr Zhu was arrested at Changi Airport and committed to prison on 29 September 2023, while Mr Davies has remained out of Singapore.

10 As we noted in *Zhu Su (Permission)* at [8], the Appellants did not appeal against the Disclosure Order or the Committal Order. Instead, well after the time for appeal had passed, Mr Zhu applied in HC/SUM 3418/2023 (on 1 November 2023) and Mr Davies applied in HC/SUM 3147/2023 (on 3 November 2023) to set aside the Disclosure Order, the Leave Orders and the Committal Orders (the "Setting-Aside Applications"). The Judge dismissed the Setting-Aside Applications on 27 November 2023.

11 On 11 December 2023, the Appellants filed CA/OA 37/2023 and CA/OA 38/2023 for permission to appeal the Judge's dismissal of the Setting-Aside Applications (the "Permission Applications"). On 22 January 2024, we dismissed the Permission Applications on the ground that no permission was necessary (see *Zhu Su (Permission)*). We granted the Appellants an extension of time to file and serve their notices of appeal against the dismissal of the

Setting-Aside Applications. On 16 May 2024, the Appellants duly filed the said appeals in CA/CA 30/2024 ("CA 30") and CA/CA 31/2024 ("CA 31").

The Examination Order

12 Following Mr Zhu's arrest, the Respondents filed HC/SUM 3306/2023 ("SUM 3306") on 24 October 2023 under s 244 of the IRDA for an order that Mr Zhu be examined in court on matters that he was supposed to disclose under the Disclosure Order. The Judge granted SUM 3306 on 27 November 2023 (the "Examination Order"), and Mr Zhu was duly examined on 12 and 13 December 2023 by an Assistant Registrar in chambers. At a hearing on 13 December 2023, the Assistant Registrar directed, amongst other things, that Mr Zhu provide his responses to certain questions that he was not able to answer at the hearing in an affidavit. He was to do this by 5 January 2024, and to appear for a further examination on 5 February 2024 (the "Ancillary Directions"). The Respondents posed a set of written questions to Mr Zhu (the "Deferred Questions").

13 Soon after the examination, on 18 December 2023, the Liquidators commenced a claim against the Appellants in the BVI (the "BVI Proceedings") in which they sought, among other things, to recover about US$66m which Mr Zhu allegedly owed to TA-BVI. The Liquidators obtained a worldwide freezing injunction order against the Appellants in the BVI courts, and based on this, obtained on 20 December 2023 a domestic freezing order, on a without-notice basis, against any assets owned by Mr Zhu in Singapore.

14 Mr Zhu applied on 30 January 2024 in HC/SUM 284/2024 ("SUM 284") for the Examination Order and the Ancillary Directions to be set aside. The Judge dismissed SUM 284 on 5 March 2024, but varied the Ancillary Directions, extending the time that Mr Zhu had to provide his responses to the

Deferred Questions to 2 April 2024, and for the further examination to take place on a date to be fixed (the "Varied Ancillary Directions").

15 Mr Zhu appealed against this decision in CA/CA 19/2024 ("CA 19") on 19 March 2024. He also applied in HC/SUM 1044/2024 ("SUM 1044") for a stay of enforcement of the Varied Ancillary Directions. The Judge heard SUM 1044 on 30 April 2024 and, rather than granting SUM 1044, ordered that Mr Zhu deliver his responses in the form of an affidavit to a neutral third-party nominated by the Liquidators by 28 May 2024, with the third party to hold the affidavit at the Liquidators' expense pending the final disposal of CA 19, at which time the third party would deal with the affidavit as directed by the Court of Appeal (HC/ORC 2433/2024 (the "Final Ancillary Directions")). Mr Zhu produced the affidavit, which was placed in a safe deposit box held in the name of one Mr Liew Yik Wee on 29 May 2024. The Judge also ordered that the further examination take place after the final disposal of CA 19.

Cases on Appeal

16 CA 30, CA 31 (the appeals against the dismissal of the Setting-Aside Orders) and CA 19 (Mr Zhu's appeal against the Judge's dismissal of SUM 284) were heard together. The parties' arguments on appeal are largely similar to the arguments they mounted below. The Appellants argued that the Judge had erred in dismissing the Setting-Aside Applications because:

(a) There had been no delay in filing the Setting-Aside Applications.

(b) Even if there had been a delay, the court ought to have granted an extension of time.

(c) The court had no jurisdiction over the Appellants to make the Disclosure Order and Committal Orders because the Appellants had not been served with SUM 3802, in breach of s 16(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA").

(d) The Judge was wrong to take the view that r 12(6) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("CIR") entitled him to make the Disclosure Order against the Appellants in their absence.

(e) While s 244(1) of the IRDA confers on the court two discretionary powers, namely (i) to summon a person to appear before the court; and (ii) to require a person to submit an affidavit or produce documents, the Judge erred in reading these disjunctively. Instead, s 244(1) of the IRDA should be read conjunctively, such that a person must *first* be summoned to appear before court, and this is a necessary pre-requisite to the power to order such a person to submit an affidavit or produce documents. The Judge's failure to first order the Appellants to appear before him was therefore fatal to the Disclosure Order, in so far as it was made against the Appellants.

(f) The Liquidators allegedly failed to make full and frank disclosure of the fact that the Appellants had been actively cooperating with the Liquidators prior to the Respondents' application for the Disclosure Order (SUM 3802).

17 The Appellants also submitted that the Judge had erred in not setting aside the Examination Order and the Ancillary Directions because:

(a) When the Liquidators applied for the Examination Order, they had already decided to sue Mr Zhu. In these circumstances, by means of the Examination Order, TA-BVI stood to gain an undue advantage in the BVI Proceedings. This was an abuse of process. In concluding that the Liquidators were entitled to more latitude at the examination hearings to ask questions, the Judge also erred in taking into account irrelevant factors. The focus ought to have been on the Liquidators' intention in seeking the Examination Order and whether the examination was or would be prejudicial to Mr Zhu. The Liquidators offered no explanation on affidavit as to why they failed to disclose to the Court that they had already decided to sue Mr Zhu by the time SUM 3306 was filed.

(b) The Judge also erred in coming to the view that the bulk of the questioning at the examination hearings would be directed at the general affairs of TA-BVI, and not to any of the claims that the Liquidators had resolved to bring against Mr Zhu.

(c) In any event, even if the application for the Examination Order was not initially an abuse of process, the commencement of adverse litigation against Mr Zhu rendered it prejudicial and oppressive to allow the examination to continue.

18 The Respondents, on the other hand, submitted that the Judge had been correct to dismiss the Setting-Aside Applications because:

(a) The Appellants had breached the deadline to bring the Setting-Aside Applications.

(b) The Judge was correct not to grant them an extension of time.

(c) The Judge had jurisdiction over the Appellants because s 244 of the IRDA operates extra-territorially.

(d) The two discretionary powers created by s 244(1) of the IRDA are to be read disjunctively, so that the Judge was entitled to make the Disclosure Order against the Appellants without first having summoned them to court.

(e) The Judge was also correct that r 12(6) of the CIR entitled him to make the Disclosure Order against the Appellants in their absence and without their having been served with SUM 3802. In any case, even if Paragraphs 2 and 3 of the Disclosure Order were set aside, the Appellants would nonetheless be in contempt of court by reason of TA-SG's inexcusable failure to comply with Paragraph 1 of the Disclosure Order, and their responsibility for this on account of their position as directors.

19 The Respondents further submitted that the Judge was correct to uphold the Examination Order and grant the Final Ancillary Directions because:

(a) The examination was not oppressive given that the Liquidators' purpose in commencing SUM 3306 as stated on affidavit was proper.

(b) The majority of the questions posed to Mr Zhu would have no connection at all to the claims made in the BVI Proceedings against him.

(c) Even the questions that allegedly overlapped with the claims in the BVI Proceedings would not be oppressive because the purpose behind those questions was proper.

(d) As for the Deferred Questions, these have nothing to do with the claims in the BVI Proceedings.

Issues to be determined

20 The parties' submissions raise the following issues in relation to the Setting-Aside Applications:

(a) Were the Appellants out of time in filing the Setting-Aside Applications? If they were out of time, should they be given an extension of time to file the Setting-Aside Applications?

(b) Did the Judge have the jurisdiction to hear SUM 3802?

(c) Was the Judge entitled under r 12(6) of the IRDA to make Paragraphs 2 and 3 of the Disclosure Order against the Appellants personally despite the Appellants' absence from the hearing?

(d) Should s 244(1) of the IRDA be read disjunctively such that the Judge was entitled to make the Disclosure Order without having first summoned the Appellants to court?

(e) Should the Leave Orders and Committal Orders be set aside for reason of the Liquidators' failure to provide full and frank disclosure?

21 As for the Examination Order, the main question is: should it be discharged for being prejudicial to Mr Zhu and/or an abuse of process given that the Liquidators had already decided by the time they filed SUM 3306 to commence suit against Mr Zhu in the BVI?

The Setting-Aside Applications

Issue 1: Whether the Appellants were out of time to file the Setting-Aside Applications and if so, whether they should be granted an extension of time

22 The Appellants were undoubtedly out of time in filing the Setting-Aside Applications. As noted (at [7]) above, the Appellants accept that by 5 January 2023, they had become aware of the Disclosure Order and also of the fact that this had been made against them personally. Nothing has been put forward to explain why the Appellants chose neither to appeal against nor to apply to set aside the Disclosure Order once they became aware of it. Instead, they waited almost ten months before bringing the Setting-Aside Applications.

23 The Appellants make the preliminary point that because the Disclosure Orders were made against them *ex parte*, it was not open to them to appeal against the same. Assuming this to be correct without necessarily finding it to be so, it would have been open for them to apply to set aside the Disclosure Order once it came to their knowledge.

24 Paragraphs 2 and 3 of the Disclosure Order were made by the Judge pursuant to r 12(6) of the CIR. Rule 12(7) of the CIR, in turn, empowers any person "affected" by an order made in his or her absence to apply to set the order aside. While r 12(7) of the CIR does not stipulate a timeline for an application to set aside an order made under r 12 to be brought, this means that the default timelines in the Rules of Court 2021 ("ROC") would apply. This is so by reason of s 10(1) of the IRDA, which provides that "[i]n any matter of practice or procedure for which no specific provision has been made by this Act, the procedure and practice for the time being in use or in force in the Supreme Court must, as nearly as possible, be followed and adopted". The default timeline in the ROC is set out in O 3 r 2(10), which stipulates that an application taken out

under O 3 r 2(8) of the ROC (which the Appellants rely on) "must be taken out within 14 days after the date the applicant knows or should have known that any of the grounds in that paragraph exists".

25 The Appellants accept on appeal that the timelines under O 3 r 2(10) of the ROC apply. Their written arguments focus on the chronology of events surrounding the *Committal Orders*, which were served on Mr Zhu and Mr Davies on 26 October and 9 October 2023 respectively, as against which, the Setting-Aside Applications were filed on 1 and 3 November 2023. However, the obvious flaw in this submission is that the Disclosure Order, which the Appellants also seek to set aside, and which is the foundation upon which the subsequent orders were made, came to the Appellants' knowledge on 5 January 2023, almost ten months prior to the Setting-Aside Applications. This means that the Setting-Aside Applications, at least in relation to the Disclosure Orders, were filed well after the 14-day deadline prescribed in the ROC.

26 The Appellants have no good answer to this. Their principal contention before us was that they thought that they had been cooperating with the Liquidators in good faith, such that they did not think committal orders would be sought against them. However, as we pointed out to the Appellants' counsel, Ms Yeo, this is no answer at all. The fact that the Appellants were, or thought they were, cooperating with the Liquidators may be a factor taken into account in assessing whether there was contumelious default in relation to the Disclosure Order, but says nothing about whether the Setting-Aside Applications had been brought within time, or whether there are grounds for extending time. The fact is that during this period of almost ten months, the Appellants were aware of the existence of the Disclosure Order that had been made against them. Even if they maintained the legal position that the Disclosure Order should not have been made for various reasons, including an alleged lack of jurisdiction and/or

improper service, they were also undoubtedly aware of the possibility of seeking to set aside the Disclosure Order on those grounds. Yet they chose not to do anything. We agree with the inference the Judge drew, which is that the Appellants deliberately chose not to take any steps to set aside the Disclosure Order because they thought they could remain out of reach of its enforcement. In such circumstances, we see no good reason why the Appellants should be allowed to revisit the question, ten months later, of whether the Disclosure Order should even have been made against them in the first place. A delay of this length is patently unreasonable. Therefore, we hold that the Appellants were out of time to bring the Setting-Aside Applications against the Disclosure Order.

27 As for whether we should grant the Appellants an extension of time, the factors that the court generally takes into account in deciding whether to do so are: (a) the length of delay; (b) the reasons for delay, (c) the chance of the defaulting party succeeding in the relevant action or proceeding should the extension be granted; and (d) the degree of prejudice to the counterparty if the extension of time were granted (*Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 3 SLR 725 at [49]; *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [29]). In our judgment, there was no good explanation for the delay because of the reasons canvassed above and in particular, because it follows from the inference which the Judge drew, and which we agree with, that this situation was the result of the Appellants' own cynical litigation choices. That simply cannot be a ground to warrant the exercise of our discretion in their favour.

28 We turn briefly to the Setting-Aside Applications in relation to the Committal Orders. In Mr Davies' case, there was a lapse of almost one month between the date on which he was served with his Committal Order (9 October 2023) and the filing of his Setting-Aside Application (3 November 2023). He

attempts to overcome this by contending that he only had constructive knowledge that one of the grounds existed on 23 October 2023 after he took legal advice. We reject this submission. The question of whether a party "should have known" that any of the grounds exist is not dependent on when they may have taken legal advice. Otherwise, a party would be able unilaterally to secure the extension of the timelines in O 3 r 2(10) of the ROC by delaying the taking of legal advice. This is not a sensible position. As for Mr Zhu, his Setting-Aside Application in relation to his Committal Order appears to have been filed in time; however, given that the Disclosure and Leave Orders cannot be impugned, the only remaining ground on which the Committal Order could plausibly be set aside is the Liquidators' alleged failure to make full and frank disclosure, an allegation we reject for reasons which we discuss below (at [49]−[51]).

29 Before moving to the other arguments raised by the Appellants, we make two observations for completeness. First, even if Paragraphs 2 and 3 of the Disclosure Order were liable to be set aside, the Appellants have not raised any ground on which Paragraph 1 of the Disclosure Order can be impugned. On this basis, the Appellants would nonetheless be liable for contempt by virtue of their position as directors of TA-SG, in failing to cause TA-SG to comply with Paragraph 1 of the Disclosure Order. This follows from s 6(2) of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA"), which provides that where a corporation commits contempt of court (defined in s 4(1) of the AJPA), an officer of the corporation ("officer" being defined in s 6(7)) may be guilty of the same contempt, provided that he: (a) had consented or connived, or conspired with others, to effect the commission of the breach; (b) is knowingly concerned in or is party to the commission of the breach by the corporation; and/or (c) knew or ought to reasonably have known that the breach would be or is being committed, and failed to take all reasonable steps to prevent

or stop the commission of the breach (*Neo Chin Heng v Good Year Contractor Pte Ltd* [2024] 4 SLR 1280 at [22]). Based on the evidence before us, including in particular the matters referred to at [5] above, we are prepared to uphold the Judge's inference that the Appellants caused TA-SG to fail to comply with Paragraph 1 of the Disclosure Order. This would be sufficient to bring them within any of the three limbs in s 6(2)(*a*) of the AJPA, thus rendering them liable for TA-SG's contempt. Second, and in any event, even if the entire Disclosure Order were set aside, the Appellants would nonetheless be guilty of contempt of court because it is no defence in such proceedings to allege that the order should not have been made in the first place. Simply put, any order of court must be obeyed while it stands (*Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [82]).

Issue 2: Whether the court had jurisdiction over the Appellants

30 The second ground on which the Appellants attack the Disclosure Order, the Leave Orders and the Committal Orders is that the court had no jurisdiction to make those orders. The Appellants maintain that jurisdiction over them can only be founded on *in personam* jurisdiction pursuant to s 16(1) of the SCJA. Since the Appellants were never served with OA 317 (which is the originating application that led to the Disclosure Order being made), and were not parties to OA 317 or SUM 3802, it is contended that the court had no *in personam* jurisdiction over them and thus had no jurisdiction to make the orders against them.

31 The Appellants are mistaken given that s 16(2) of the SCJA expressly provides that the General Division of the High Court "has such jurisdiction as is vested in it by any other written law". It is quite clear from s 16 of the SCJA that aside from jurisdiction founded on personal service of proceedings, the

court's jurisdiction may also be conferred by suitable statutory provisions, including those in the IRDA and the Companies Act 1967 (2020 Rev Ed). Such provisions would include s 244(1) of the IRDA, which, on its face, does not require service of the originating process to found the court's jurisdiction to make orders thereunder. It is therefore unsurprising that Ms Yeo and her lead counsel, Mr Christopher Anand Daniel, did not pursue this argument seriously at the hearing.

32 This is sufficient to dispose of much of CA 30 and CA 31. We nonetheless go on to consider the next three issues as these were fully argued before us.

Issue 3: Whether the court was entitled to make the Disclosure Order under r 12(6) of the CIR

33 Turning to the next issue, the Judge reasoned that while in the ordinary course the Appellants should have been named in SUM 3802 and allowed to be heard at the hearing of the same, he was entitled to make the Disclosure Order in their absence under r 12(6) of the CIR. Rule 12(6) provides:

> Where the Court is satisfied that serious mischief may result from delay caused by proceeding in the ordinary way, the Court may make an order in the absence of any person other than the applicant upon such terms as to costs and otherwise, and subject to such undertaking (if any) as the Court thinks just.

34 The Judge considered that "serious mischief" would result from any delay because he disbelieved the Appellants' claim that they were cooperating with the Liquidators, and given the size of the insolvency, and the fact that a substantial part if not most of TA-BVI's assets comprised cryptocurrency, which could be transferred very rapidly and without being traced, he considered

it a matter of importance that the Liquidators be assisted in every way in their effort to gain some control over the situation.

35 The Appellants submit that r 12(6) is an untenable *ex post facto* justification of the Disclosure Order on the Judge's part. They point out that the Liquidators did not take the position, prior to SUM 3802, that prior disclosure of SUM 3802 would have resulted in prejudice to the Liquidators or TA-BVI, or that there was any urgency in SUM 3802. Furthermore, they submit that any allegation that SUM 3802 had to be heard *without notice* rings hollow considering that SUM 3802 was heard with notice in relation to TA-SG. Based on this, they submit that the Judge was not entitled to invoke r 12(6) to make Paragraphs 2 and 3 of the Disclosure Order against the Appellants in their absence.

36 We have some reservations over whether the Disclosure Order should have been made under r 12(6). Our first reservation is that, in our view, r 12(6) is most appropriately invoked in situations where there is a need for such urgency that it overrides the default rule that such matters be dealt with on notice to all parties. This follows from the words "serious mischief may result from delay caused by proceeding in the ordinary way" in r 12(6) which is the basis on which the court may make an order in the absence of a party. In the present case, there was no allegation that the Disclosure Order was so urgently needed against Mr Zhu and Mr Davies that they could not first be served. We note in this connection that SUM 3802 had proceeded *with notice* against TA-SG.

37 Our second reservation is that r 12 appears to be concerned with service of the proceedings on parties to the proceedings, and not primarily with the joinder of additional parties. We explain with reference to the structure of r 12 of the CIR, which provides:

> **Service of application**
>
> **12.**—(1) Subject to any order to the contrary, every application (contained in an originating application or a summons) and every affidavit in support of the application (called in this rule the supporting affidavit) must be served upon every person against whom any order or other relief is sought.
>
> (2) The Court may at any time —
>
> (a) direct that service of an application and the supporting affidavit (if any) be effected on, or notice of proceedings be given to, any person who may be affected by the order or other relief sought; and
>
> (b) direct the manner in which such service is to be effected or such notice is to be given.
>
> (3) Any person who is served or notified under paragraph (2) is entitled to be heard.
>
> (4) Any document referred to as an exhibit in a supporting affidavit must be made available for inspection by any person upon whom service of the affidavit is required.
>
> (5) Where any person other than the applicant is affected by an application, no order may be made except with the consent of that person, or upon proof that a copy each of the application and the supporting affidavit (if any) have been duly served upon that person.
>
> (6) Where the Court is satisfied that serious mischief may result from delay caused by proceeding in the ordinary way, the Court may make an order in the absence of any person other than the applicant upon such terms as to costs and otherwise, and subject to such undertaking (if any) as the Court thinks just.
>
> (7) Any person affected by an order made in his or her absence may apply to set the order aside.

38 Rule 12(1) sets out the general rule that every application and every affidavit in support of the application must be served upon every person against whom any order or other relief is sought. Rule 12(2) provides that if the order or relief sought may "affect" any other person, the court may direct that the application and the supporting affidavit be served on, or notice of the proceedings be given to, any such person, and direct the manner in which such

service or notice is to be effected. Those persons would have certain rights under rr 12(3) and 12(4). Rule 12(5) clarifies that where any person other than the applicant is affected by an application, such an order can only be made if that person has consented or upon proof that the person has been served with the application and any supporting affidavit. Rule 12(6) provides that if "proceeding in the ordinary way" (which must refer to rr 12(1) to 12(5)) may cause delay resulting in "serious mischief", the court can make an order in the absence of any person (other than the applicant). This appears to be particularly relevant as an exception to r 12(5), in that r 12(6) waives the requirement of service before an order is made, though we also see that r 12(6) would be relevant to rr 12(1) and 12(2). Finally, as a safeguard, r 12(7) provides that any person affected by an order made in his or her absence may apply to set the order aside.

39 From the foregoing, the language and structure of r 12 does not speak directly to the power of the court to add parties to an application on its own motion. Rather, r 12 seems to be concerned with service (as the title states), save that there does appear to be recognition of the power to join parties where they may be affected by an order, pursuant to r 12(2)(*a*) and r 12(5). However, if r 12 is to be read harmoniously, it seems to us that r 12(6), being the exception to the general rules in the rest of r 12, is primarily an exception to the *service* requirements rather than a provision enabling a court on its own motion to add a party. We do not agree with the suggestion by counsel for the Respondents, Mr Lionel Leo ("Mr Leo"), that the words "the Court may make an order in the absence of any person other than the applicant" within r 12(6) are broad enough to encompass a court adding a person on its own motion and then making orders against that person. In our view, this would be an overly literal reading of the phrase "absence of any person" that would be divorced from the broader context of r 12 as set out above. It does not seem consistent with the rest of r 12 for

r 12(6) to confer on the court an unlimited discretion to make orders against any absent party regardless of their identity or the reason for their absence. Based on the context of r 12, a party whose presence would ordinarily be required but which can be dispensed with pursuant to r 12(6) would either be one against whom relief was sought by the applicant (r 12(1)) or one who would be affected by the relief sought despite not being the party against whom relief was sought (r 12(2)(*a*)). There was no suggestion that the Appellants in fact fell into either category in SUM 3802, though as directors of TA-SG and in the light of the secondary liability they were subject to in that capacity as explained at [29] above, they might well come within r 12(2), though this was not advanced before us. Therefore, we have some doubt as to whether the Judge correctly invoked r 12(6) as a basis for making the orders in Paragraphs 2 and 3 of the Disclosure Order on his own motion.

40 Despite that, we consider that the Judge's invocation of r 12(6) in the particular circumstances of this case was at most a procedural irregularity. We say this because the Judge would have been entitled to proceed in largely the same manner as he did pursuant to other parts of r 12. As a pre-requisite, the General Division of the High Court had jurisdiction over the Appellants pursuant to s 16(2) of the SCJA and s 244(1) of the IRDA (see [31] above). Therefore, if the Respondents had applied for orders to be made against the Appellants personally, the Judge would have been entitled to make such orders. It follows that the Judge could have invited the Respondents to amend SUM 3802 to include the Appellants personally. For reasons we explain later (at [42]−[48]), we are also satisfied that the Appellants could have been ordered to produce an affidavit or documents without having first been summoned to court. After taking the aforementioned steps, the Judge could then have directed the Respondents to serve the amended SUM 3802 on the Appellants (r 12(2)(*a*))

by the stipulated manner (r 12(2)(*b*)) and heard the Appellants if they wished to be heard (r 12(3)). This series of hypothetical steps that the Judge could and should have taken was largely similar to what actually happened in the present case. It is significant to note that almost throughout the entirety of the proceedings that culminated in the making of the Disclosure Order, TA-SG was represented by solicitors acting on the instructions of its directors, Mr Zhu and Mr Davies. It has never been suggested that Mr Zhu and Mr Davies had an independent ground or basis for resisting the orders that were eventually made against TA-SG and against them.

41 Further, we consider one more factor which may have operated on the Judge's mind but which he did not articulate, and which further persuaded us of the substantive correctness of the Judge's decision. TA-SG essentially withdrew from the proceedings at the eleventh hour by discharging its solicitors on 23 November 2022 (see [5]). This must have been brought about by the Appellants, who were its only directors, and thus effectively controlled TA-SG. The fact that the Appellants had essentially withdrawn TA-SG from further participation in the proceedings of OA 317 and SUM 3802 suggested a deliberate decision by the Appellants to evade the efforts of the Liquidators to gather the necessary information pertaining to the company. In these circumstances, and absent any suggestion that the Appellants had any basis for being treated differently than the company, we consider that the Judge was amply justified in making Paragraphs 2 and 3 of the Disclosure Order against the Appellants personally, and that any error in relying on r 12(6) for this was nothing more than a procedural irregularity. We would exercise our discretion to cure this procedural irregularity, being empowered to do so by s 12 of the IRDA, which provides: "[t]he Court may at any time amend any written process or modify the procedure for any proceedings upon such terms, if any, as the

Court thinks fit". We are bolstered in the exercise of our discretion in this manner by s 264(2) of the IRDA, which provides that a proceeding under Parts 4 to 11 of the IRDA is not invalidated by reason of any procedural irregularity unless the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court.

Issue 4: Whether s 244(1) of the IRDA first requires a person to be summoned to court before he can be compelled to submit an affidavit or produce books and records

42 The next issue concerns s 244(1) of the IRDA, which confers on the court two discretionary powers. The question is whether the exercise of the first discretion is a pre-requisite for the exercise of the second. Section 244 provides:

> **Inquiry into company's dealings, etc.**
>
> **244.**—(1) Where a company is in judicial management or is being wound up, the Court may, on the application of any person mentioned in subsection (2), summon to appear before the Court —
>
> (*a*) any officer of the company;
>
> (*b*) any person who was previously an officer of the company;
>
> (*c*) any person known or suspected to have in his or her possession any property of the company or supposed to be indebted to the company; or
>
> (*d*) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, including any banker, solicitor or auditor,
>
> and the Court may require any person mentioned in paragraphs (*a*) to (*d*) to submit an affidavit to the Court containing an account of the person's dealings with the company or to produce any books, papers or other records in the person's possession or under the person's control relating to the

> promotion, formation, business, dealings, affairs or property of the company.
>
> …
>
> (4) Any person who appears or is brought before the Court under this section may be examined on oath, either orally or by interrogatories, concerning the promotion, formation, business, dealings, affairs or property of the company.

43 The first discretion is the power to "summon to appear before the Court" certain specified persons (the "First Discretion"). The second discretion is the power to require certain persons to submit an affidavit or produce any books, papers or other records in the person's possession or control (the "Second Discretion"). The question is whether a person must first be summoned to court (pursuant to the First Discretion) before that person can be required to produce an affidavit or documents (pursuant to the Second Discretion).

44 The Appellants submit it is so for two reasons. First, the use of the word "and" prior to the Second Discretion suggests that the two discretions are to be read conjunctively. Second, case law pertaining to the now-repealed s 285 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"), which is the predecessor provision of s 244(1) of the IRDA, suggests that a person must first be summoned to court before he can be required to produce documents.

45 We do not agree. In our judgment, s 285 of the Companies Act has limited relevance in interpreting s 244(1) of the IRDA due to the structural and linguistic differences between the provisions. Section 285 of the Companies Act reads:

> **Power to summon persons connected with company**
>
> **285.**—(1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court considers capable of giving information concerning the

> promotion, formation, trade dealings, affairs, or property of the company.
>
> (2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may cause to be made a record of his answers, and any such record may be used in evidence in legal proceedings against him.
>
> (3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.
>
> (4) An examination under this section or section 286 may, if the Court so directs and subject to the Rules, be held before any District Judge named for the purpose by the Court, and the powers of the Court under this section and section 286 may be exercised by that Judge.
>
> (5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

46 It will be apparent, even from a brief comparison of this with the text of s 244(1) of the IRDA (see at [42] above), that there are both linguistic and structural differences between them. Under s 285 of the Companies Act, it is only after a person identified in s 285(1) has been summoned pursuant to s 285(1) that the court may either examine him on oath pursuant to s 285(2), or require him to produce documents pursuant to s 285(3), or both (*Sinfeng Marine Services Pte Ltd v Taylor, Joshua James and another and other appeals* [2020] 2 SLR 1332 at [67]). This follows from the use of the word "him" in ss 285(2) and 285(3), which can only refer to the person already summoned in s 285(1).

47 On the other hand, the language of s 244(1) of the IRDA is different. Section 244(1) begins by setting out the court's discretion to summon certain categories of people this being the first of the discretionary powers. That is then

followed by the second of the discretionary powers, which is worded as "and the Court may require any person mentioned in paragraphs (*a*) to (*d*) to…". The class of persons mentioned in "paragraphs (*a*) to (*d*)" apply *equally and separately* to the power to summon such persons, as to the power to require such persons to submit an affidavit or to produce documents. There is no necessary or logical link between these two powers under s 244(1) of the IRDA, unlike the position under s 285 of the Companies Act. Given that the starting point of interpreting legislation must be its plain language, the difference in wording between s 244(1) of the IRDA and s 285 of the Companies Act requires that the two provisions be read differently, unless there is a clear indication to the contrary, and there is none.

48 We are therefore satisfied that unlike s 285 of the Companies Act, s 244(1) of the IRDA does *not* require a person first to be summoned to court before he can be made to submit an affidavit or produce documents. The Judge, in our view, interpreted s 244(1) of the IRDA correctly, and this therefore affords no basis for the Appellants to challenge the Disclosure Orders against Mr Zhu and Mr Davies.

Issue 5: Whether the Liquidators failed to make full and frank disclosure in seeking the Leave and Committal Orders

49 We turn to the next issue, which can be disposed of shortly. The Appellants contend that they had been actively cooperating with the Liquidators in the months after the Disclosure Order was granted, and were thus caught off guard when the Committal Orders were sought and granted. The Appellants say that they had suggested to the Liquidators that regular meetings be held for the Appellants to answer questions, and the Liquidators had supposedly agreed to this in principle. Furthermore, prior to seeking the Committal Orders, the

Liquidators had not demanded from the Appellants the affidavit required under the Disclosure Order. The Appellants complain that these were all matters that the Respondents failed to disclose to the court when it sought the Committal Orders.

50 We disagree. First, we reject the contention that the Appellants had reason to think that, following the making of the Disclosure Order, Committal Orders would not be sought or availed of. We note that most of the acts which the Appellants cite as evidence of their efforts to cooperate with the Liquidators took place *prior* to the making of the Disclosure Order on 30 November 2022. This is evident from the fact that even on appeal, many of the acts of alleged cooperation which the Appellants rely on are taken from Mr Zhu's first affidavit filed in SUM 3802 (which was the application for the Disclosure Order). Since these acts were cited in the affidavit for the Disclosure Order, it follows that they must have preceded the Disclosure Order. The Appellants' evidence makes clear that the other acts of alleged cooperation not cited in Mr Zhu's SUM 3802 affidavit also pre-date the Disclosure Order. The fact that the Appellants mostly cite acts taking place before the granting of the Disclosure Order as evidence of their alleged cooperation exposes the implausibility of their claim that their cooperation *following* the Disclosure Order caused them to be caught off guard by the Committal Orders. In general, there is scant evidence of their cooperation after the Disclosure Order. The only act of any note that came after the Disclosure Order was the Appellants handing to the Liquidators a key to a safe deposit box registered in Mr Davies' name, but even that was done under compulsion after the Respondents had applied to court in HC/SUM 3801/2022. Second, it is not correct that the Respondents had failed to take issue with the Appellants' failure to comply with the Disclosure Order prior to seeking the Committal Orders. The Respondents had attempted to serve the Leave Orders

on Mr Zhu's registered address and his solicitors (who had been instructed on a different unrelated matter) but failed in both attempts. The covering letter enclosing the Leave Orders specifically mentioned that the Liquidators were prepared to consider withdrawing HC/SUM 1591/2023 (the application for the Leave Order against Mr Zhu) *if* he complied with the Disclosure Order within a week of the letter being sent. As for Mr Davies, the Respondents were unable to follow up with him because he was not present in Singapore, but they made various attempts to serve the relevant documents on him in the US and the BVI. Finally, turning to the alleged agreement to discuss the Liquidators' requests in monthly meetings, by their email of 21 September 2023, in which the Respondents acceded in principle to the request for such meetings (albeit with conditions), the Respondents made clear that the question of monthly meetings was a separate matter from the Appellants' continued non-compliance with the Disclosure Order. Furthermore, the Respondents also asked for the Appellants' available dates in that email, but the Appellants never responded, which casts further doubt on the Appellants' willingness to engage in the said monthly meetings. We therefore have no hesitation in rejecting their assertion that they were actively engaging with the Liquidators or in any meaningful way actually complying with the orders.

51 It follows that there is no basis for setting aside the Leave and Committal Orders for any failure to make full and frank disclosure. In any event, we observe that the Committal Orders were *not* made *ex parte* by the Respondents (though the Leave Orders were) – notice was given to the Appellants, but they simply refused to participate. In these circumstances, it seems to us there is no question of any lack of full and frank disclosure in relation to the Committal Orders.

The Examination Order

52 We turn finally to CA 19. The power of a liquidator to examine the officers of a company is an extraordinary procedure that enables him to extract information pertaining to the company's affairs. As V K Rajah JC (as he then was) explained in *Liquidator of W&P Piling Pte Ltd v Chew Yin What and others* [2004] 3 SLR(R) 164 ("*W&P Piling*") at [3], this inquisitorial procedure is an aberration in the civil litigation system, which is normally adversarial in nature. The rationale for this departure is to equip the liquidator with a strong and cost-effective mechanism to enable him to discharge his functions, including the determination of the cause of the company's insolvency, and deciding whether to commence legal proceedings against possible wrongdoers (*PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 ("*PwC*") at [43(b)]).

53 The description of the examination procedure as an "aberration" in the normally adversarial system of civil litigation alludes to the tension between the rationale of the examination procedure, which is to facilitate the insolvency process, and the general rules of civil procedure which serve to regulate adversarial proceedings. There are established procedures and concomitant safeguards in civil procedure designed to secure fair play between litigating parties. If the power to examine officers of the company is not overseen by the court, there is a risk that such examinations may be used to circumvent the rules of civil procedure. The question is as to the point at which the examination of an examinee becomes inappropriate.

54 This difficulty arises in the present case because, as the Liquidators concede, they had already formed an intention to sue the Appellants in the BVI prior to the making of the Examination Order. Indeed, they commenced suit in

the BVI on 18 December 2023, just five days after Mr Zhu was examined on 12 to 13 December 2023. The Respondents attempt to get around this by pointing out that there is no explicit rule that renders an examination inappropriate merely because it takes place *after* the liquidators of a company have decided to commence proceedings against the examinee. They suggest that the real test is whether, in each case, the examination was conducted for a proper purpose. While they accept that obtaining an undue advantage in the litigation process would be an improper purpose, Mr Leo impressed upon us at the hearing that the Liquidators had no such improper purpose in the present case; rather, the examination questions were directed generally at the causes of TA-BVI's insolvency. He urged us to examine the questions to satisfy ourselves that the overlaps between the questions posed and the claims in the BVI Proceedings were not substantial.

55 We accept that there is no explicit rule that any examination conducted after the liquidators have decided to sue the examinee will in and of itself necessarily be found to be oppressive. However, the authorities are clear that the closer a proposed respondent is to being a defined target of litigation by the liquidators, the more likely it is that an order for examination will be found to be oppressive (*PwC* at [44(b)]); furthermore, where the liquidator has decided to sue the person sought to be examined, an examination order is "almost invariably inappropriate" (*W&P Piling* at [29(f)]). To our minds, this is a sensible balance to strike in light of the competing considerations set out above (at [53]). Where the liquidators have formed a definite intention to sue an officer of the company, they should typically be subject to the constraints imposed by the rules of civil procedure. To enable them in a specific litigation to resort to the extraordinary powers of examination arising under the insolvency regime, which exist in order to serve a collective interest of creditors and stakeholders

seeking information as to the assets of the company or the reasons underlying its financial distress, would, in many cases, afford them an unfair advantage in the contemplated litigation (*PwC* at [44(e)]). It also bears noting that the Respondents have been unable to cite any case in which an examination order was granted in an application brought *after* the liquidators had either formed an intention to sue, or had in fact commenced proceedings against, the examinee, which suggests that such a course is exceptional. In *Re IPO Wealth Holdings No 2 Pty Ltd (in prov liq) & Ors* [2021] VSC 821 ("*Re IPO*"), the relevant question before the court was whether examination proceedings were permissible if the content of the examination extended to matters which were the subject of other existing proceedings. The examinee in that case, who objected to the proposed examination, argued that where the content of the examination covered matters which were the subject of other proceedings, the purpose of the examination would invariably be to obtain a forensic but illegitimate advantage in those other proceedings (*Re IPO* at [160]). The Supreme Court of Victoria disagreed with the examinee's submission and held that an examination was not precluded merely because it may overlap with the subject matter of existing proceedings. However, it is noteworthy that on the facts of *Re IPO*, the only existing proceeding which concerned matters included in the proposed examination had neither been commenced by the liquidator nor been commenced against the examinee as a defendant (*Re IPO* at [44]−[45] and [163]); rather, that proceeding had been commenced by an entity allegedly controlled by the examinee against other companies in the same corporate group in which the examinee had acted as director. There is no indication that the court would have granted the examination in question if it covered any issue which was the subject of any of the other existing proceedings, which had been commenced by the liquidators against the examinee personally.

56 What is also of concern in the present case is that the Liquidators did *not* disclose their intention to sue Mr Zhu when they applied for the Examination Order. Therefore, the Judge could not have taken into account this material fact at the time that he granted the Examination Order. This is significant.

57 As to this, Mr Leo pointed out that even though the fact of the BVI Proceedings was not disclosed when the Examination Order was sought, it was subsequently known by the time SUM 382 was dismissed, and so it would seem that the Judge had considered the fact of the BVI Proceedings but nonetheless decided to uphold the Examination Order. The difficulty here is that the Examination Order had already taken place by the time SUM 382 was heard, and the Liquidators had already obtained the answers to the questions they posed to Mr Zhu (save for the Deferred Questions). In our view, given that the Liquidators already had sight of the answers before commencing their claim, it became impossible to assess the counterfactual scenario of how they might have litigated the BVI Proceedings differently had they not had sight of the answers. As a result, it would not readily have been possible to gauge the extent of any strategic advantage in the BVI Proceedings that the Liquidators might have obtained as a result of Mr Zhu's answers in the examination, and correspondingly, the prejudice that may have been sustained by Mr Zhu. This prejudice cannot be undone or compensated by costs, rendering any continued examination of Mr Zhu potentially oppressive. The Judge should have considered this when hearing SUM 382, although in fairness to the Judge we note that the Respondents declined to confirm at the time whether the Liquidators had decided to sue Mr Zhu at the time of the examination. Furthermore, it bears noting that Mr Zhu had not resisted the examination initially (though he disputed the terms on which it was to take place). Had he known about the impending suit in the BVI, he might have opposed SUM 284

and taken the opportunity to mount arguments against it prior to the first round of examinations taking place in December 2023. This missed opportunity to oppose the Examination Order before it took place is part of the prejudice that Mr Zhu suffered as a result of it. For these reasons, we consider that the starting point is that the Examination Order should be set aside.

58 We have also had regard to the notes of argument in SUM 382, which reveal that the Judge was alive to some of these concerns and rightly questioned the Respondents thereon. However, he decided to uphold the Examination Order and ordered Mr Zhu to answer the Deferred Questions for the following reasons:

(a) First, he considered it part of the Liquidators' duties to ascertain the causes of TA-BVI's insolvency and uphold standards of commercial morality in the dealings that led to its insolvency.

(b) Second, the collapse of TA-BVI was large, and involved cryptocurrency which, in turn, gave rise to novel and developing issues of law.

(c) Third, Mr Zhu had not satisfactorily cooperated with the Liquidators. As a result, the two-day examination in December 2023 was quite possibly the Liquidators' only chance to put questions to Mr Zhu where he would have been obliged to answer them. Once he was released from prison, it was anticipated that he would leave Singapore and no further opportunities to question him in a similar way might be available. As a result, the Liquidators were entitled to slightly more latitude in the opportunity to put questions to Mr Zhu than might normally be the case.

(d) Fourth, the bulk of the questioning in the examination was directed towards the general affairs of TA-BVI, and not any claims that the Liquidators had already resolved to bring against Mr Zhu.

59 We turn to consider whether each of the reasons cited by the Judge would justify a departure from the starting point of setting aside the Examination Order. The first factor is inherent in any request for examination and does not appear to us to be significant in tilting the balance towards upholding the Examination Order. The second factor was at least slightly more relevant, although we have some doubt as to whether an examination order should be more readily granted simply because the value of the company prior to insolvency, or the size of its liabilities, is large. We also do not think the third factor was ultimately relevant. We agree with the Judge that given Mr Zhu's pattern of non-compliance and non-cooperation with the Liquidators, it was not likely that they would get another chance to question him after his release from prison. As against this, the fact that there was a rare opportunity to question Mr Zhu, did not justify invoking that right in the light of the action that was shortly to be initiated in the BVI. In other words, the difficulty of accessing Mr Zhu could not make right something that would otherwise have been wrong. The difficulty of accessing Mr Zhu did not speak to the appropriateness of questioning him under the insolvency powers in these circumstances. The fourth factor was material to the extent of the Judge's assessment that at least some of the questions were uncontroversially proper questions for the Liquidators to put to Mr Zhu. Indeed, it is not the Appellants' case that every single one of the questions would or could be material to the BVI Proceedings.

60 We next balance the competing considerations in the present case. While at least some of the questions posed by the Liquidators were directed towards the legitimate discharge of their duties, and they would have had genuine

difficulties in obtaining answers to those questions in any other way, given that the BVI Proceedings against the Appellants were about to be initiated, it was clearly inappropriate that the Liquidators did not disclose this fact at the time the Examination Orders were sought. Further, and importantly, it is not possible to gauge or undo the prejudice caused to Mr Zhu as a result of the Examination Order for the reasons discussed at [57].

61 On balance, as no satisfactory reason has been advanced for the non-disclosure and having regard to the inability to gauge or reverse the prejudice to Mr Zhu, and the fact that the only material consideration that stands up to scrutiny is the fourth, we set aside the Examination Order, subject to the further orders we make in the next paragraph.

62 This leaves three outstanding issues to be resolved. First, Mr Zhu has already provided various answers to the Liquidators; second, there is the further examination of Mr Zhu that is to take place after the final disposal of CA 19; and third, Mr Zhu has made an affidavit covering the Deferred Questions that is currently being held by the neutral third party. We deal with these in sequence. First, regarding the answers that Mr Zhu has already provided, we see no point in requiring the Liquidators to return or destroy copies of those answers since the Liquidators cannot discard the answers, which they have already had sight of. However, we restrain the Liquidators from relying on any information obtained from the examination in the BVI Proceedings. Second, the order for the further examination of Mr Zhu is discharged. Finally, as for Mr Zhu's affidavit, we order that it continue to be held by that third party at the Liquidators' expense until the conclusion of the BVI Proceedings, at which time the Respondents will be at liberty to apply for the release of the affidavit to them. In our judgment, this strikes the fairest balance in the circumstances.

Conclusion

63 In conclusion, we dismiss CA 30 and CA 31 but allow CA 19 in part. In place of the Final Ancillary Directions, we make the orders set out at [62] above.

64 Turning to the question of costs, unless the parties can come to an agreement on costs, they are to file written submissions limited to ten pages, within 21 days of the date of this judgment, setting out the various costs orders they contend should be made in each of the appeals.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

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