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

[2025] SGHCR 10

Originating Summons (Bankruptcy) No 129 of 2024

Between

Sun Quan

…*Claimant*

And

AI MTBL SPV, LLC

…*Defendant*

GROUNDS OF DECISION

[Insolvency Law] – [Bankruptcy] – [Statutory demand] – [Arbitration agreement]

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Sun Quan
v
AI MTBL SPV, LLC

[2025] SGHCR 10

General Division of the High Court — Originating Summons (Bankruptcy) No 129 of 2024
AR Darryl Soh
20 January and 3 March 2025

30 April 2025

AR Darryl Soh:

Introduction

1 This is an application by an individual seeking to set aside a Statutory Demand on account of an arbitration agreement. Where winding up proceedings are concerned, proceedings will be stayed or dismissed as long as (a) there is a valid arbitration agreement between the parties, and (b) the dispute falls within the scope of the arbitration agreement, provided that the dispute is not raised in abuse of process. *AnAn Group (Singapore) v VTB Bank* [2020] 1 SLR 1158 ("*AnAn Group*"). According to the parties, the Singapore courts did not appear, to date, to have considered the situation in *personal insolvency* where the disputed debt or counterclaim is subject to an arbitration agreement.[1] On

[1] Page 9 paragraph 11 of the Claimant's Written Submissions; page 16 paragraph 41 of the Defendant's Written Submissions.

3 March 2025, I held that the *AnAn Group* requirements applied in personal insolvency proceedings and that the court has no power to impose conditions when setting aside a Statutory Demand. These are my grounds of decision.

Background and Parties

2 The background facts were not in dispute, and I summarise those that are relevant to the application. The Claimant is Mr Sun Quan, and the Defendant is AI MTBL SPV, LLC. The parties entered into a Put and Call Option Agreement (the "Agreement") dated 25 May 2021. The Claimant was the director of MTBL Global Fund (the "Fund") until it was struck off the register of companies in the Cayman Islands on 31 August 2023.

3 Under Clause 7.1.1(b) of the Agreement, the Claimant personally guaranteed the "due and punctual performance by the Fund of all the Fund's obligations under the Transaction Documents" and has undertaken to pay the Defendant "from time to time on demand any sum of money which the Fund is at any time liable to pay to [the Defendant] under … the Transaction Documents". "Transaction Documents" refer to (a) the Agreement, (b) the subscription agreement dated 6 May 2021 (the "Subscription Agreement"), (c) the side letter dated 6 May 2021 (the "First Side Letter"), (d) the side letter dated 25 May 2021 (the "Second Side Letter"), and (e) such other deeds, instruments, agreements and documents entered into pursuant or ancillary to the aforementioned documents. The Subscription Agreement, the First Side Letter and the Second Side Letter are collectively referred to as the "Agreement to Subscribe".

4 On 22 October 2024, in HC/OC 140/2022 ("OC 140/2022") commenced by the Defendant against the Fund and the Fund's manager China Capital Impetus Asset Management Pte. Ltd. (the "Fund Manager"), the Court

determined that the Fund shall pay to the Defendant (a) US$16,633,540.66 pursuant to Clause 4.1(l) of the Second Side Letter and (b) interest on US$16,633,540.66 from 26 May 2022 until the date of actual payment pursuant to Clause 7.3 of the Second Side Letter (collectively, the "Ordered Sum").

5 As the Fund has not paid the Ordered Sum to the Defendant, the Defendant is seeking recovery of the same from the Claimant pursuant to Clause 7.1.1(b) of the Agreement. No appeal was filed against the High Court Judgment in OC 140/2022.

Statutory Demand and Application

6 On 11 December 2024, the Defendant served a Statutory Demand on the Claimant dated 10 December 2024 for the sum of US$31,246,119.57 (the "SD"; the amount shall be referred to as the "Debt"). The Debt comprised the Ordered Sum and accrued interest as of 10 December 2024.

7 In the present application of HC/OSB 129/2024, the Claimant applied for the SD to be set aside ("the Application"). The Application was heard on 20 January and 3 March 2025 and the Defendant resisted the Application and disputed the grounds advanced by the Claimant.

Parties' Cases

8 The Claimant applied to set aside the SD on the basis that the Debt pursuant to the Claimant's obligations under the Agreement is disputed. He prayed for the SD to be set aside pursuant to Rules 68(2)(a), 68(2)(b) and/or 68(2)(e) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 20207 ("PIR"). Specifically, the Claimant advanced three broad arguments.

9 First, the Claimant submitted that his defence against the Ordered Sum is grounded in the operation of the prevention principle, *i.e.* that a person should not be permitted to take advantage of his own wrong ("Prevention Principle Defence"). In other words, the Claimant argued that his obligation to pay the Ordered Sum is disputed on substantial grounds. The Claimant alleged that the Defendant, along with its agents Mr Andrew John Bruce ("AJB") and Mr Richard Andrew Smith ("RAS"), effectively engineered a situation whereby the Fund would be unable to pay off the payments due to the Defendant under the Agreement to Subscribe. AJB is the Chief Investment Officer at Caledonian Advisory Service Pte Ltd ("Caledonian Advisory") and was the Defendant's agent in the relevant transactions or events. RAS is a director at Caledonian Advisory and similarly acted as the Defendant's agent in the relevant transactions or events.

10 According to the Claimant, these acts include issuing statutory demands against the Fund and the Claimant for the amounts due under the Agreement to Subscribe despite efforts underway through a separate acquisition which would be the solution to the outstanding payments due, lodging complaints to the Monetary Authority of Singapore against the Fund Manager and the Claimant, commencing proceedings against the Fund and the Fund Manager, and lodging a complaint to the Law Society of Singapore against the legal advisor for the above-mentioned acquisition. The Claimant submitted that, by the operation of the prevention principle, the Defendant cannot now rely on the Fund's non-payment of the Ordered Sum to seek recovery from the Claimant pursuant to Clause 7.1.1(b) of the Agreement.

11 Further and/or alternatively, the Claimant submitted that he has a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the Ordered Sum ("Conspiracy Counterclaim"). The Claimant alleged that the

Defendant, AJB and RAS conspired to injure the Claimant by imposing maximum financial and other pressure on the Claimant as part of their efforts to recover the outstanding payments due under the Agreement to Subscribe and a Framework Agreement dated 23 December 2021 ("Framework Agreement"). The latter was intended to be a full and final settlement of all indebtedness that may be owed by the Fund to the Defendant under the Agreement to Subscribe. The Claimant submitted that he has consequently suffered loss equivalent to the Ordered Sum which he is now allegedly being made responsible for, and more.

12 Finally, pursuant to Clause 11.2.1 of the Agreement, the Claimant submitted that the Defendant had agreed that any dispute, controversy, difference, conflict or claim arising out of or relating to the Agreement, or its performance shall be referred to and finally resolved by arbitration ("Arbitration Agreement"). The Defendant's attempt to enforce on the Agreement through the SD was therefore a naked attempt to sidestep the agreed arbitration procedure and should not be allowed.

13 The Defendant resisted the Application on three main grounds. First, the Claimant had expressly agreed under Clause 10.1.2 of the Agreement to pay the Defendant all amounts payable in full "without any set-off, counterclaim, restriction or condition". Second, even if the Claimant was permitted to raise a set-off or counterclaim against the Debt, the Defendant submitted that the Debt is not genuinely disputed because the purported Prevention Principle Defence and Conspiracy Counterclaim were mere allegations without any supporting evidence and particulars. The Defendant argued that the allegations thereafter have not been raised *bona fide*. Finally, the Defendant submitted that the Claimant is in abuse of the Court's process. Pursuant to the extended doctrine of *res judicata*, the Claimant ought to have directed the Fund or the Fund Manager to raise the purported defence and counterclaim as a defence and/or

counterclaim in OC 140/2022. Since the Claimant did not do so, he cannot now raise the purported defence and counterclaim.

Decision

14 On the hearing of an application to set aside a statutory demand, Rule 68(2) of the PIR provides that the court must set aside a statutory demand under the following circumstances:

> (a) the debtor in question appears to the Court to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand;
>
> (b) the debt is disputed on grounds which appear to the Court to be substantial;
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> (c) it appears to the Court that the creditor in question holds property of the debtor or security in respect of the debt claimed by the demand and —
>
> (i) rule 64(1)(*e*) has not been complied with; or
>
> (ii) the Court is satisfied that the value of the property or security is equivalent to or exceeds the full amount of the debt;
>
> (d) rule 64 has not been complied with and the failure to comply has caused or will cause substantial injustice to the debtor which cannot be remedied by any order of the Court; or
>
> (e) the Court is satisfied, on any other ground, that the demand ought to be set aside.

15 In this Application, the Claimant relied on Rules 68(2)(a), 68(2)(b) and/or 68(2)(e) of the PIR. I first touch on Rules 68(2)(a), 68(2)(b) of the PIR. The test for setting aside a Statutory Demand is trite. A Statutory Demand must be set aside under the PIR if the counterclaim, set-off, cross demand, or the disputed debt raises a *triable issue*. *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd* [2014] 2 SLR 446 at [16] – [17], citing *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 at

[16] – [17]. It was not however immediately clear how such a test is to be applied where there is an arbitration agreement between the parties.

16 In corporate insolvency proceedings, winding up proceedings commenced against debtors will be stayed or dismissed as long as (a) there is a valid arbitration agreement between the parties, and (b) the dispute falls within the scope of the arbitration agreement, provided that the dispute is not raised in abuse of process. *AnAn Group*. This *prima facie* standard of review was adopted by the Court of Appeal. Where these requirements are satisfied, the court will ordinarily dismiss the petition, or in exceptional circumstances, grant a stay of the proceedings.

17 Both parties were on common ground that the *AnAn Group* requirements should be applied in personal insolvency proceedings. The Court of Appeal's considerations set out in *AnAn Group* at [60] – [82] equally applied in personal insolvency proceedings. The reputational damage and personal repercussions are significant to the debtor, even if proceedings are subsequently dismissed. A bankrupt individual is also incompetent to commence or continue arbitration without the sanction of the Official Assignee and the bankrupt individual may be prejudiced if a sanction is not granted. There is also no reason to have a differentiated approach between corporate and personal insolvency proceedings for the same issue. This promotes consistency in the law, and guards against the use of the court's insolvency jurisdiction from being misused to enforce a disputed debt. After all, parties must be held to their bargain when they agree to arbitrate.

18 Where the parties essentially differ is how the *AnAn Group* requirements are applied to the factual matrix of this case. According to the Defendant, the Court should not set aside the SD because the Claimant has not raised a *bona*

fide dispute. By the latter, the Defendant alleged that the Claimant's case has no basis whatsoever or no evidence in support. The Defendant also raised the alternative argument that the Claimant's application is an abuse of process based on the extended doctrine of *res judicata*. The Claimant's characterisation of the issue was that the *AnAn Group* requirements have been met, and specifically that there has been no abuse of process.

19 I observed that there was no dispute that there is a valid arbitration agreement between the parties and that the dispute falls within the scope of the arbitration agreement, *i.e.* by way of Clause 11.2.1 of the Agreement ("Arbitration Clause"):[2]

> Any dispute, controversy, difference, conflict or claim arising out of or relating to this Agreement or its performance, including without any limitation any question regarding its existence, validity, or a claim for unlawful act under applicable laws ("**Dispute**") shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("**SIAC**"), in accordance with the in accordance with Arbitration Rules of the SIAC for the time being in force (the "**SIAC Rules**"), which rules are deemed to be incorporated by reference in this Clause 11.2.
>
> [Emphasis in bold in original]

20 Accordingly, the Application turned on the issue of whether there has been an abuse of process. In doing so, I considered the Defendant's approach in their Written Submissions as to whether there was a *bona fide* dispute *or* an abuse of process, citing *AnAn Group* at [91]. But that is incorrect – they are both part of the same overarching analysis of whether there is an abuse of process, with the *bona fides* of the debtor in raising the dispute being a relevant factor in determining whether there has been an abuse of process. See *AnAn Group* at [94].

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2 Page 113 of Sun Quan's Affidavit filed on 26 December 2024.

21 The threshold for abusive conduct is *very high*. See *AnAn Group* at [99] and I was not persuaded by the Defendant that there has been an abuse of process. I explain.

22 First, none of the examples articulated in *AnAn Group* at [99] have been shown, *i.e.* (a) where the debt is admitted as regards both liability and quantum, (b) where the debtor has waived or may be estopped from asserting his rights to insist on arbitration, such as where the parties have agreed subsequently that disputes may be resolved by litigation, and (c) where the debtor is seeking to stave off substantiated concerns which justify the invocation of the insolvency regime. I emphasise in particular that the Claimant has not admitted the debt as regards both liability and quantum.

23 Second, the Defendant's arguments that the Claimant's case has no basis whatsoever or no evidence in support goes to the merits of the Claimant's case. As emphasised by the Court of Appeal in *AnAn Group* at [99], the abuse of process control mechanism cannot be used as a gateway for parties to introduce arguments on the merits of the underlying dispute, when such arguments are plainly irrelevant under the *prima facie* standard.

24 Third, I disagreed with the Defendant's argument and analysis that there is an undisputed debt on the basis of the "no set-off or counterclaim" clauses pursuant to Clause 10.1.2 of the Agreement.[3] On such a basis and putting the matter into context, the Defendant was essentially submitting that parties need not arbitrate as a result. This cannot be correct because the Arbitration Clause was drafted very widely, *i.e.* "*[a]ny dispute, controversy, difference, conflict or claim*", to encompass the complaints put forward by the Claimant. The

[3] Page 110 of Sun Quan's Affidavit filed on 26 December 2024.

Defendant's submission would therefore undermine party autonomy and the parties' agreement to arbitrate in the circumstances of this case.

25 Fourth and finally, I considered the narrower issue of whether there has been an abuse of process based on the extended doctrine of *res judicata*. I am unpersuaded by the Defendant's arguments as the Defendant must still prove the liability against the Claimant since the contract of guarantee is a separate and independent contract. I fully agreed with the Claimant's submissions on this issue. In the absence of an express agreement to the contrary, a judgment or an award against a principal debtor is not binding on the surety and is not evidence against a surety in an action by the creditor, and the surety is *entitled* to have the liability proved as against him in the same way as against the principal debtor. See *Ex parte Young: In re Kitchin* (1881) 17 Ch D 668. While the guarantor or indemnitor may choose to accept the determination against a principal debtor or admission by the principal debtor as proof of breach and loss or liability, this does not mean that the guarantor or indemnitor is required to do so. See *AXA Insurance v Chiu Teng Constriction* [2021] 2 SLR 549 at [82].[4] Further, I was of the view that taking the Defendant's arguments to its logical end, all guarantors who are also in senior management or controlling positions in corporate principal debtors cannot rely on either arbitration or litigation should a debt be proved against the principal debtor. Such a result cannot be sustained.

26 In summary, I found that the *AnAn Group* requirements were met and that there has been no abuse of process by the Claimant. Accordingly, I set aside the SD pursuant to Rules 68(2)(a) and 68(2)(b) of the PIR. It was unnecessary for me to consider the Claimant's specific arguments in respect of Rule 68(2)(e)

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4 Page 24 paragraph 39 of the Claimant's Written Submissions.

of the PIR on the exercise of the court's residual discretion given the aforementioned findings and grounds relating to arbitration agreements.

Setting Aside the SD subject to Conditions?

27 The Defendant submitted that any setting aside of the SD should be made conditional since the case advanced by the Claimant was shadowy. The same reasons for opposing the Application were used in support of the Defendant's case for conditions to be imposed.

28 The Defendant sought for the following conditions: (a) the Claimant providing an undertaking that he will progress any arbitration commenced expeditiously and with all due dispatch, (b) the Claimant providing security in the amount equal to the principle sum of the debt pending the resolution of the arbitration commenced, and (c) if the Claimant does not abide by the two preceding conditions, the Defendant shall have liberty to commence a bankruptcy application against the Claimant on the basis of the Claimant's failure to comply with the SD. The Defendant's submissions was premised on Rule 68(1) of the PIR, which provides that the Court may give such directions as it thinks appropriate upon hearing an application to set aside a statutory demand.

29 The Claimant resisted the imposition on the conditions and argued that the Court had no power to do so. The Claimant drew the Court's attention to the juxtaposition between s. 315(1) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") and Rule 68(1) of the PIR, wherein the former empowers the court to impose conditions when staying an application whilst the latter provision does not.

30 I agreed with the Claimant's submissions. The Defendant is only correct to the extent that Rule 68(1) of the PIR is a general empowering provision to provide directions, but this cannot extend to conditions to be imposed on setting aside. This is because Rule 68(2) of the PIR expressly stipulates that the Court *must* set aside a statutory demand if any of the prescribed circumstances have been satisfied. The provision does not empower to court with a discretion to do so *on any such terms and conditions* akin to how s. 315(1) of the IRDA does.

31 In any event, even if I erred in my finding that the Court has no power to impose conditions when setting aside an SD, I was far from persuaded by the Defendant's submissions as to the appropriateness of the conditions because the basis put forward by the Defendant goes to the merits of the dispute. As such, my reasons above at [21] – [24] applies.

Conclusion

32 As the Claimant succeeded in the application and considering the papers filed and length of the proceedings, I ordered costs against the Defendant in the amount of $16,000 (all-in).

Darryl Soh
Assistant Registrar

Daniel Chia, Jonathan Tang Yuan, and Charlene Wee Swee Ting
(Prolegis LLC) for the Claimant;
Jimmy Yim Wing Kuen S.C., Joel Lew Wei Xiang, and Adam Tan
Ern-Ming (Drew & Napier LLC) for the Defendant.
