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

[2025] SGHC 132

Originating Application No 185 of 2024 (Summons No 1444 of 2025)

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Sections 90 and 91 of the Insolvency, Restructuring and Dissolution Act 2018

Between

USP Group Limited (in judicial management)

… *Applicant*

And

United Overseas Bank Ltd

… *Non-party*

GROUNDS OF DECISION

[Insolvency Law — Judicial management — Section 99(5) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) — Whether court direction amounting to sanction should be issued]

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Introduction

1 The present application, HC/SUM 1444/2025 ("SUM 1444"), was an application under s 99(5) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") by the judicial managers of USP Group Ltd ("the Company") for the court's sanction in relation to a proposed settlement agreement ("the Proposed Agreement") between the Company and United Overseas Bank Ltd ("UOB").

2 Section 99(5) IRDA has not been the subject of any written decision. Its predecessor, s 227G(5) of the Companies Act (Cap 50, 2006 Rev Ed), was the operative provision in two written decisions: *Re Ocean Tankers (Pte) Ltd* [2022] SGHC 55 and *Re Ocean Tankers (Pte) Ltd (in liquidation)* [2023] SGHC 330. The latter went on appeal: see *DGJ v Ocean Tankers (Pte) Ltd (in liquidation)*

and another appeal [2024] SGCA 57. However, in all three cases, the question of whether the directions *should* be given was not in issue.

3 That unique issue arose here as I was not asked to decide on a legal question with which the judicial managers were faced. Instead, I was asked to give my sanction to the Proposed Agreement. The judicial managers clearly had the power to enter into the Proposed Agreement and the Proposed Agreement was not legally complex. While there were no objections to SUM 1444, I still had to consider whether this was an appropriate case to issue directions to the judicial managers. I allowed the application and now provide my detailed grounds of decision.

Factual background and procedural history

4 The judicial managers of the Company, a holding company, have considered the affairs of the entire group of companies under the Company ("the Group"). One of the wholly owned subsidiaries of the Company is Supratechnic Pte Ltd ("Supra Singapore"), which in turn holds all the shares in Supratechnic (M) Sdn Bhd ("Supra Malaysia").[1] Supra Malaysia generated more than 75% of the Group's revenue and, during the judicial management, saw interest from a few investors.[2] However, the loans between UOB and the Group (of which the Company guaranteed repayment), entailed UOB's security over the shares in Supra Malaysia among other assets.[3]

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1 Tan Wei Cheong's 3rd Affidavit filed on 23 May 2025 ("TWC-3") at p 33.

2 TWC-3 at paras 31 and 35, and p 41.

3 TWC-3 at paras 48 and 49.

5 At an earlier creditors' meeting, the judicial managers put forth a proposal ("the First Resolution") that the Company take a loan of up to $3m from an investor.[4] The key terms of the First Resolution included the following:

(a) The investor may elect to convert the investment into new shares in the Company or Supra Singapore, or to enforce a super-priority charge to be granted over the shares of Supra Singapore.

(b) Another subsidiary of the Company would give a loan to Supra Singapore, secured by a charge over all the shares of Supra Malaysia.

As part of the First Resolution, the judicial managers proposed to negotiate with UOB for the release of UOB's security over the shares in Supra Malaysia.

6 On 6 September 2024, the First Resolution was passed.[5] However, on 3 December 2024, in separate proceedings, I partially allowed a creditor's challenge to the passing of the First Resolution. I ordered that votes from related companies were to be disregarded and declared that the First Resolution was not validly passed. In those proceedings, the creditor also applied for a replacement of the judicial managers, which I dismissed. The creditor subsequently appealed against my dismissal of his claim to have the judicial managers replaced.

7 The appeal was filed on 30 December 2024 and unfortunately left the Company in limbo. Supra Malaysia continued to attract significant interest from potential investors.[6] However, the negotiations did not advance much as the

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4 TWC-3 at pp 40 and 41.

5 Tan Wei Cheong's 2nd Affidavit filed on 19 September 2024 at para 6.

6 TWC-3 at paras 27 and 30.

potential investors were alive to the risk of the judicial managers being replaced (if the appeal was allowed).[7] The Court of Appeal dismissed the appeal on 15 May 2025.

8 While the appeal was pending, UOB demanded repayment of the sums owed to it by the Group, indicating the possibility of it exercising its security rights, or applying to wind up Supra Singapore.[8] The exercise of UOB's security rights would likely result in the Company losing ownership and/or control of Supra Malaysia, which the judicial managers considered the crown jewel of the Group.[9] Wishing to avoid this outcome, the judicial managers engaged in extensive discussions with UOB.[10] As part of these discussions, UOB highlighted its frustration with the significant litigation surrounding the judicial management, and the impact that it had on the restructuring process.[11]

9 On 30 April 2025, UOB applied to wind up its debtors in the Group, Supra Singapore and USPI Investment Pte Ltd ("USPI"). By 8 May 2025, UOB and the judicial managers arrived at the principal terms of the Proposed Agreement as follows:

(a) The moneys in the bank accounts opened with UOB held by two other companies in the Group, Scientific & Industrial Instrumentation Pte Ltd ("SII") and Koon Cheng Development Pte Ltd ("KCD"), access to which UOB had prevented, would be released.[12]

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7 TWC-3 at para 32.

8 TWC-3 at pp 219 and 221.

9 TWC-3 at para 38.

10 TWC-3 at para 56.

11 TWC-3 at p 229.

12 TWC-3 at p 249.

(b) Those moneys in SII's and KCD's bank accounts would be loaned to USPI and Supra Singapore respectively. With these funds, USPI would fully repay its loan to UOB, and Supra Singapore would partially repay its loan to UOB. The balance amount owed by Supra Singapore would be repaid to UOB by Supra Malaysia on a monthly basis over a 60-month period.[13]

(c) UOB would discharge all security given by the Group and discontinue the winding up proceedings commenced against Supra Singapore and USPI respectively.[14]

(d) The Proposed Agreement would only take effect upon:[15]

(i) SII, KCD, USPI, Supra Singapore and Supra Malaysia each confirming that it agrees to the transaction above, including confirming that it is satisfied the transaction is lawful; and

(ii) approval being obtained from the court for the Company to enter into the Proposed Agreement.

10 On 8 May 2025, the judicial managers notified the creditors of these terms and sought a vote to determine if the creditors supported the Proposed Agreement.[16] Excluding UOB and four creditors in which the Company holds shares, 20 of 42 creditors voted in support of the Proposed Agreement. The other creditors did not vote.[17] There were no objections to the Proposed Agreement.

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13 TWC-3 at pp 249 and 250.

14 TWC-3 at p 251.

15 TWC-3 at p 251.

16 TWC-3 at pp 238 and 239.

17 TWC-3 at para 60.

11 In light of the condition precedent requiring court approval for the Company to enter into the Proposed Agreement, the judicial managers filed the present summons on 23 May 2025.

The legal requirements

12 In the present case, the direction sought under s 99(5) IRDA was not meant to resolve any question faced by the judicial managers. Instead, the direction sought would have served as a court sanction. There was a threshold question as to whether the court should issue the direction in the present case, as it was apparent to me that the court's process must not be misused. It would be entirely inappropriate for judicial managers to seek a court sanction for every action they take. To borrow the words of Miles J in *Re Sova Capital Ltd (in administration)* [2023] 1 All ER (Comm) 69 ("*Sova*") at [183(f)], "The court is not a sanctuary or bomb shelter for office-holders." It would be similarly inappropriate for court sanction to be sought *solely* on the basis that contracting parties had agreed for court sanction to be a condition precedent.

13 The relevant application in *Sova* was made under para 63 of Sch B1 to the Insolvency Act 1986 (c 45) (UK) which reads: "The administrator of a company may apply to the court for directions in connection with his functions." This is *in pari materia* with s 99(5) IRDA: "The judicial manager of a company may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of the judicial manager's functions." In *Sova*, the court considered earlier decisions concerning the court's approval of a transaction to be undertaken by insolvency office holders:

> [172] The starting point is the excerpt from Robert Walker J's judgment set out by Hard J in *Public Trustee v Paul Cooper & Co* [2001] WTLR 901 at 922:

> "The second category is where the issue is whether the proposed course of action is *a proper exercise* of the trustees' powers where *there is no real doubt as to the nature of the trustees' powers* and the trustees have decided how they want to exercise them but, because the decision is *particular momentous*, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is *within their powers*. … In a case like that, there is no question of surrender of discretion and indeed it is *most unlikely that the court will be persuaded in the absence of special circumstances to accept the surrender of discretion* on a question of that sort, where the trustees are prima facie in a much better position than the court to know what is in the best interests of the beneficiaries."

[173] *Re MF Global UK Ltd* [2014] EWHC 2222 (Ch), [2014] Bus LR 1156 was a case concerning a compromise of claims by administrators. At [32] David Richards J explained the Court's function in Category 2 cases by approving the following statement from *Lewin on Trusts*:

> 'The court's function where there is no surrender of discretion is a limited one. It is concerned to see that the proposed exercise of the trustees' powers is *lawful* and *within the power* and that it *does not infringe the trustees' duty to act as ordinary, reasonable and prudent trustees might act* … but it requires only to be satisfied that the trustees *can properly* form the view that the proposed transaction is for the benefit of the beneficiaries or the trust estate and that they have *in fact formed that view*. … The court, however, acts with caution, because the result of giving approval is that the beneficiaries will be unable thereafter to complain that the exercise is a breach of trust or even to set it aside as flawed. … [The trustees] *mut put before the court all relevant considerations supported by evidence*. …'

…

[emphasis added]

14 The principles above have to be adapted to suit the context of the IRDA. In my judgment, where the direction sought under s 99(5) IRDA amounts to a court sanction for an intended act by the judicial manager, the following requirements must be satisfied:

(a) The judicial manager must have the power to carry out the act.

(b) The judicial manager must reasonably and honestly believe that the act would achieve one or more of the purposes of judicial management stated in s 89(1) IRDA.

(c) The judicial manager must reasonably and honestly believe that the act is in the interests of the company's creditors as a whole.

(d) There must be some special reason or unusual circumstance requiring court sanction.

15 The first requirement is clear. A direction under s 99(5) IRDA is not meant to empower a judicial manager to undertake something he otherwise would not be able to do. A court sanction for an act exceeding the statutory powers of the judicial managers may be more appropriately sought under s 99(3)(*b*) IRDA.

16 The second and third requirements maintain consistency with acts of judicial managers in a normal case *without* court sanction. The direction under s 99(5) IRDA relates to a "matter arising in connection with the carrying out of the judicial manager's *functions*" [emphasis added]. Section 89(1) IRDA mandates that these functions be performed to achieve one or more of the purposes thereunder. In a similar vein, s 89(2) IRDA directs these functions to be performed in the interests of the company's creditors as a whole. Judicial managers seeking court sanction for an act must show that that act is in accordance with ss 89(1)–(2) IRDA.

17 The fourth requirement relates to the court's discretion to decline making a direction if it is not appropriate to do so. As alluded to (at [12] above), the court is not meant to and will not prospectively verify each and every act of

the judicial managers. Judicial managers are statutorily granted wide powers for a reason. The court maintains oversight of judicial managers, but judicial managers must not become excessively dependent on the court.

18 In my judgment, the special reason or unusual circumstance justifying a court sanction must be something which materially tugs at the commercial or professional conscience of the judicial manager. In *Public Trustee v Paul Cooper & Co* [2001] WTLR 901 at 922 and *Re Nortel Networks UK Ltd (No 2)* [2017] 2 BCLC 572 ("*Nortel*") at [49], the court's sanction was described as appropriately sought on a "particularly momentous" decision or transaction. However, a decision is not "particularly momentous" simply because it is a difficult one; neither is a transaction "particularly momentous" simply because the quantum is large (see *Sova* at [184(a)]–[184(c)]). Examples where it may be appropriate to seek the court's approval include situations where there are doubts over the administrator's powers or legality of a transaction, or where there are potential conflicts of interests (*Sova* at [184(d)]).

19 Thus, in *Sova* (at [193]), the English High Court considered that it was an appropriate case for the administrators to seek the court's approval over a transaction because it arose in "very unusual circumstances" of sharp asymmetry in value of the relevant property owned by the company as a seller and potential buyers. Further, the legal mechanism for the transfer appeared to raise novel issues, there was continuous litigation over the administration, and there was urgency to enter into the transaction. In a similar vein, in *Nortel*, the court gave its approval to a global settlement involving more than 130 subsidiaries worldwide. The settlement would involve the release of US$7.3bn, which was realised from the sale of the group's assets and which has been held in escrow since. The creditors deserved the certainty and finality of a settlement,

rather than have their returns put at risk and diminished from continued litigation.

The direction sought should be issued

The judicial managers had the power to enter into the Proposed Agreement

20 In the present case, I agreed with the judicial managers that their power to enter into the Proposed Agreement was not fettered by the invalidation of the First Resolution.

21 First, it was clear that discharging UOB's security over the shares in Supra Malaysia in order to obtain clean title of those shares fell within the scope of the judicial managers' powers. Section 99(3)(*a*) IRDA provides that the judicial manager of a company has such powers necessary for the management of the business and property of the company. Paragraphs (*m*) and (*s*) of the First Schedule of the IRDA, read with s 99(4) IRDA, laid to rest any doubt that the Proposed Agreement involved transactions or acts outside the scope of the judicial managers' powers. Those paragraphs state as follows:

> The judicial manager may exercise all or any of the following powers:
>
> …
>
> (*m*) power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company; [and]
>
> …
>
> (*s*) power to make any arrangement or compromise on behalf of the company;
>
> …

22 Second, there were material differences between the contemplated transaction in the First Resolution and the Proposed Agreement, such that it

cannot be said that the creditors have rejected the Proposed Agreement. The focus of the First Resolution was the facilitation of the loan from the external investor, whereas the Proposed Agreement is pursued primarily as a defensive mechanism against UOB enforcing against its security. Further, UOB's position vis-à-vis the Group has changed significantly. Between the First Resolution and the Proposed Agreement, UOB has commenced winding up proceedings against Supra Singapore which may frustrate any restructuring attempt by the judicial managers. UOB is no longer simply a party in the background. The aim of the Proposed Agreement is to settle those proceedings ensuring that the Company maintains control and/or ownership over Supra Singapore and Supra Malaysia.

23 In any event, I was satisfied that the Proposed Agreement was not against the wishes of the creditors. There were zero "no" responses in the creditors' vote taken by the judicial managers, albeit informally over e-mail rather than at a meeting of the creditors. Additionally, the creditors were aware of SUM 1444 and none had written in or attended to object.

The judicial managers honestly and reasonably believed that the Proposed Agreement is in the interests of the creditors and would achieve the purposes of judicial management

24 There was no reason to suspect that the judicial managers did not honestly believe that the Proposed Agreement is in the interests of the creditors and would achieve one or more of the purposes of judicial management.

25 I also found that the judicial managers' beliefs were reasonably held since they were informed by the positive response from the creditors (see [10] and [23] above). Further, the judicial managers reasonably believed that protecting the ownership and/or control over Supra Malaysia and Supra Singapore is key to advancing the creditors' interests and purposes of judicial

management. After all, the business of Supra Malaysia constituted a substantial part of the ongoing business of the entire Group.

There were special reasons justifying the court sanction

26 At the hearing on 13 June 2025, I was satisfied that this was an appropriate case to issue the direction sought, which would grant liberty to the Company to enter into the Proposed Agreement. First, entry into the Proposed Agreement was important and urgent, considering the pending winding up proceedings against Supra Singapore. Second, the judicial management has been plagued by litigation which has significantly hampered the ability of the judicial managers to perform their functions. Whilst that litigation was now behind them, the Proposed Arrangement did have some connection to the ill-fated First Resolution (see above at [5] and [22]). Third, given Supra Malaysia's position as the crown jewel of the Group's remaining assets, any transaction affecting its status would be a significant transaction in the context of the judicial management. With these considerations in mind, the Proposed Agreement was something that would materially tug at the professional and commercial conscience of the judicial managers such that the sanction sought should be granted.

27 However, one other concern remained in that the other condition precedent to the Proposed Agreement had not yet been fulfilled. Besides court approval for the Company to enter into the Proposed Agreement, the relevant subsidiaries also had to confirm that they agreed to the transactions in the Proposed Agreement (see [9(d)(i)] above). Before me, the judicial managers conceded that the subsidiaries had not given confirmation because they wanted to avoid wasting costs in the event that the court did not sanction the Proposed Agreement. I disagreed with this approach. Where court sanction is required,

the court must have all the relevant information before it (see *Sova* at [173], reproduced at [13] above). For instance, the relevant subsidiaries in this case may have sought to impose conditions to, or amend, the Proposed Agreement. Further, the court sanction must not be a tool to coerce or influence any person (the subsidiaries in this case) in their decision making.

28 For that reason, I adjourned the hearing until 25 June 2025 for the Company to obtain the requisite confirmation from its subsidiaries. On 23 June 2025, the judicial managers filed an affidavit exhibiting the confirmations from Supra Malaysia, Supra Singapore, USPI, KCD and SII.[18]

Conclusion

29 At the hearing on 25 June 2025, I allowed the application for the reasons set out above.

Wong Li Kok, Alex
Judicial Commissioner

Ng Hui Ping Sheila and Chew Jing Wei (Rajah & Tann Singapore LLP) for the applicant;
Nayo Leong (TKQP Law LLP) for the non-party.

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[18] Tan Wei Cheong's 4th Affidavit filed on 23 June 2025.