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

[2025] SGHC 184

Originating Application No 130 of 2022 (Registrar's Appeal No 48 of 2025)

Between

MBF Northern Securities Sdn Bhd (in liquidation)

… *Claimant*

And

Purwadi

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Judgments and orders — Stay of enforcement — Conditions to be imposed]

[Conflict of Laws — Foreign judgments — Enforcement — Stay of enforcement pending application to set aside foreign judgment in court of origin]

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v
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General Division of the High Court — Originating Application No 130 of 2022 (Registrar's Appeal No 48 of 2025)
Pang Khang Chau J
17 April, 22 May 2025

13 September 2025

Pang Khang Chau J:

1 In High Court Summons No 202 of 2025 ("SUM 202"), the learned assistant registrar ("AR") dismissed an application by Mr Henry Purwadi ("the Defendant") to stay the enforcement of certain Malaysian judgments registered under the Reciprocal Enforcement of Commonwealth Judgments Act 1921 ("RECJA"). The Defendant had commenced impeachment proceedings in Malaysia to set aside the said Malaysian judgments for fraud and applied for the stay, pending the disposal of the said impeachment proceedings in Malaysia. Upon the Defendant's appeal against the AR's decision, I allowed the appeal in part by imposing a stay with conditions. The Defendant has appealed against my decision.

Background Facts

2 On 20 May 2022, MBF Northern Securities Sdn Bhd (in liquidation) ("the Claimant") obtained an order for registration of the following three Malaysian judgments under the RECJA (the "Order for Registration"):

(a) a judgment of the High Court of Malaya dated 28 December 2010 for the Defendant to pay the Claimant the amount of RM28,622,177.99 (together with interest at the rate of 15% per annum calculated from 18 April 1998 based on the principal sum of RM27,806,891.00);

(b) an order of the Court of Appeal of Malaysia dated 4 January 2019 awarding costs of RM50,000.00 against the Defendant in favour of the Claimant; and

(c) an order of the Federal Court of Malaysia dated 28 September 2020 awarding costs of RM30,000.00 against the Defendant in favour of the Claimant.

I shall refer to these three Malaysian judgments collectively as the "Malaysian Judgments" and to the sums owing under the Malaysian Judgments as the "Judgment Debt".

The proceedings leading to the Malaysian Judgments

3 On 17 September 1998, the Claimant commenced case no D1-22-3393-98 ("Suit 98") in the High Court of Malaya against the Defendant and one Soh Chew Wen ("Soh") for the repayment of certain losses incurred on a share trading account allegedly opened by the Defendant with the Claimant in August 1997 (the "Share Trading Account"). Subsequently, the Claimant discontinued

Suit 98 against Soh, after he was adjudged bankrupt, and proceeded with Suit 98 against the Defendant solely.

4 The main plank of the Defendant's defence in Suit 98 was:

(a) the Defendant was not a customer of the Claimant and did not maintain the Share Trading Account with the Claimant;

(b) the application form for opening the Share Trading Account allegedly signed by the Defendant ("the Application Form") was forged or falsified; and

(c) the Defendant did not instruct and was not aware of the transactions undertaken through the Share Trading Account which formed the subject matter of the Claimant's claim.

5 After a three-day trial which took place from 26 to 28 July 2010, the High Court of Malaya issued judgment in favour of the Claimant on 28 December 2010. In its grounds of judgment, the court held that the Defendant had failed to rebut the Claimant's case and failed to establish his defence of forgery. The court also commented in its grounds of judgment that the Defendant could have called Soh, his co-defendant, as a witness but did not do so.

6 The Defendant's appeal to the Court of Appeal of Malaysia was dismissed on 4 January 2019 and his application for leave to appeal to the Federal Court of Malaysia was dismissed on 28 September 2020.

Procedural history subsequent to registration of the Malaysian Judgments

7 After obtaining the Order for Registration, the Claimant attempted to serve a notice of registration pursuant to O 60 r 7 of the Rules of Court 2021 ("ROC 2021") on the Defendant at his residence on Jervois Road ("the Jervois Road Property") on 12 July 2022 and 19 July 2022. On the first occasion, the Claimant's process server was informed by the Defendant's son that the Defendant was not in Singapore. On the second occasion, the Claimant's process server was informed by the Defendant's domestic helper that he was not at home. The Claimant then obtained an order for substituted service and effected service of the notice of registration on 22 August 2022 by posting a copy of it on the front gate of the Jervois Road Property and also by mailing it through AR registered post to the Jervois Road Property.

8 Not having heard from the Defendant after the notice of registration was served by substituted service, the Claimant obtained an order for examination of enforcement respondent on 17 August 2023. The Claimant attempted to serve the order on the Defendant at the Jervois Road Property on 23 August 2023 and 25 August 2023. On both occasions, the Claimant's process server was told by the Defendant's domestic helper that the Defendant was "not in". The Claimant then obtained an order for substituted service and effected service of the order for examination of enforcement respondent on 12 September 2023 by posting a copy of it on the front gate of the Jervois Road Property and also by mailing it via AR registered post to the Jervois Road Property. However, the Defendant did not turn up for the hearing for examination of enforcement respondent held on 6 October 2023. Even though the hearing was adjourned to 3 November 2023 and further adjourned to 17 November 2023, the Defendant did not turn up for either of the adjourned hearings.

9 Next, the Claimant attempted to serve a statutory demand on the Defendant at the Jervois Road Property on 23 December 2023 and 10 January 2024. On the first occasion, the Claimant's process server was informed by a Chinese lady that the Defendant no longer resided there. On the second occasion, the Claimant's process server was informed by a middle-aged man that there was "no such person". The Claimant then obtained an order for substituted service and effected service of the statutory demand on 22 February 2024 by posting a copy of it on the front gate of the Jervois Road Property and also by mailing it via AR registered post to the Jervois Road Property. In addition, the Claimant also successfully served the statutory demand on the Defendant's Singpass inbox on 17 April 2024.

10 On 16 August 2024, the Claimant commenced a bankruptcy application against the Defendant in HC/B 3028/2024 (the "Bankruptcy Application"). The Bankruptcy Application was served via substituted service on the Defendant's Singpass inbox on 6 September 2024 and by posting on the front gate of the Jervois Road Property on 10 September 2024.

11 At the hearing of the Bankruptcy Application on 19 September 2024, the Defendant appeared through counsel, who sought an adjournment on the ground that the Defendant wished to set aside the Order for Registration. On 18 November 2024, the Defendant filed High Court Summons No 3366 of 2024 ("SUM 3366") to stay the Bankruptcy Application on the ground that the Defendant would be taking steps to set aside the Malaysian Judgments and/or the Order for Registration.

12 On 16 January 2025, the Defendant filed case no WA-22NCvC-45-01/2025 in the High Court of Malaya ("the Impeachment Application") to set aside the Malaysian Judgments for fraud on the basis of new evidence he had

obtained from Soh, who is currently serving a 36-year prison sentence in Singapore for stock market manipulation that led to the penny stock crash in 2013 (see *PP v Soh Chee Wen and another* [2023] SGHC 299).

13 On 21 January 2025, the learned assistant registrar who heard SUM 3366 declined to stay the Bankruptcy Application but agreed to adjourn the Bankruptcy Application for six months in the light of the fact that the Defendant had, since the filing of SUM 3366, commenced the Impeachment Application.

14 After failing to obtain a stay of the Bankruptcy Application on 21 January 2025, the Defendant filed SUM 202 that same evening. SUM 202 was heard and dismissed by the AR on 24 February 2025.

15 Notably, the Defendant's supporting affidavits for both SUM 3366 and SUM 202 listed the Jervois Road Property as his residential address.

Decision below

16 As a preliminary point, the AR noted that this was not the usual case of a party seeking stay of enforcement pending appeal, as the Defendant was seeking to set aside a judgment well after all avenues of appeal in Malaysia had been exhausted. He held that the threshold for establishing a special case in such a case should be higher.

17 The AR held that the Defendant had not established that there was a special case for stay of enforcement for the following reasons:

(a) Even though the Defendant had commenced the Impeachment Application against the Malaysian Judgments, he had not applied for a

stay of enforcement of the Malaysian Judgments in Malaysia. There is little reason for the Singapore courts to stay enforcement when the Malaysian courts which granted the Malaysian Judgments have not done so.

(b) The statutory declaration from Soh tendered by the Defendant was in tentative terms and failed to state affirmatively that the Defendant did not sign the Application Form. It was therefore unclear how the statutory declaration amounted to clear evidence sufficient on its face to contradict the findings of the Malaysian courts.

(c) The only enforcement action commenced by the Claimant thus far was the Bankruptcy Application. Even if the Defendant is adjudged bankrupt, it does not mean that the Defendant could not continue pursuing the Impeachment Application nor does it mean that the Judgment Debt will be paid out immediately to the Claimant as any such payment is subject to steps being taken by the private trustee in bankruptcy in his discretion,

The parties' submissions on appeal

18 The Defendant brought SUM 202 under O 22, r 13 of the ROC 2021, which provides that a party may apply for stay of enforcement of a court order if there is a special case making it inappropriate to enforce the court order immediately. Relying on the decided cases for stay of enforcement pending appeal, the Defendant submitted that a refusal of stay would render the Impeachment Application nugatory in two ways. First, the fact that the Claimant is currently in liquidation means that any money paid by the Defendant to the Claimant would be irrecoverable should the Impeachment Application succeed. Second, if the Bankruptcy Application is allowed to proceed and the Defendant

is declared a bankrupt, the Defendant's ability to effectively pursue the Impeachment Application would be severely compromised.

19 The Defendant further submitted that a stay would cause minimal prejudice to the Claimant. First, the Claimant had displayed no urgency in enforcing the Malaysian Judgments, having waited two years before registering them in Singapore and then waited another two years before commencing the Bankruptcy Application. Second, the Claimant, being in liquidation, was no longer trading and would not require funds for ongoing operations. Third, if the Impeachment Application fails, the Claimant will be compensated for the delay by way of interest which continues to accrue on the Malaysian Judgments.

20 Lastly, relying on the maxim "fraud unravels all", the Defendant submitted that the Singapore courts should not allow the enforcement of the Malaysian Judgments while serious allegations of fraud that could render those judgments unenforceable are being adjudicated in Malaysia. This would prevent the potential injustice of enforcing a judgment that may later be found to have been procured by fraud. In this regard, the Defendant submitted that arguments about the lack of merits of the Impeachment Application are irrelevant and the AR should not have undertaken an evaluation of the strength of the Impeachment Application.

21 Turning to the Claimant's submissions, after making the preliminary point that SUM 202 was a backdoor appeal against the court's decision in SUM 3366 that should not be allowed, the Claimant submitted that the Defendant has failed to show a special case for stay of enforcement. In response to the Defendant's point that sums paid to the Claimant would not be recoverable, the Claimant submitted that, even if the Bankruptcy Application is granted, it would be some time before payment is made to the Claimant, as the

private trustee in bankruptcy would have to be satisfied that the payment ought to be made before doing so. The Claimant also disputed that the Defendant would not be able to pursue the Impeachment Application if declared a bankrupt as he could continue to do so with the Official Assignee's sanction.

22 The Claimant further submitted that the Impeachment Application is unlikely to succeed. The main thrust of Soh's statutory declaration was that he could not recall the alleged meeting in which the Defendant signed the Application Form and that it was "possible" that one of the documents tendered during the trial was forged. The Claimant submitted that Soh's evidence was of limited probative value as it was based on his recollection of events more than 27 years ago without any supporting evidence. In any event. Soh's statutory declaration contained no affirmative assertions to challenge the findings of the Malaysian proceedings and is, in and of itself, not evidence of fraud.

23 Finally, the Claimant submitted that there would be gross injustice to the Claimant if a stay is granted. First, the Impeachment Application, including related appeals, could take years to complete. Second, the Defendant's only known asset is the Jervois Road Property, of which he is one of three joint tenants. As the Defendant is already more than 70 years old, the risk of the Defendant's share passing on to the other two joint tenants pursuant to the rule of survivorship before the completion of the Impeachment Application could not be ignored. Third, given that the procedural history demonstrates that the Defendant has been evading service, the Defendant may also use the period of stay to dissipate his assets thereby causing irreparable harm to the Claimant.

Applicable law

24 The Malaysian Judgments were registered pursuant to s 3(1) read with s 5 of RECJA. Pursuant to s 3(3) of RECJA, the Malaysian Judgments shall, upon such registration, be of the same force and effect as if it had been a judgment originally obtained in Singapore. Even though RECJA has been repealed by the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 ("the RECJA Repeal Act") with effect from 1 March 2023, s 2(2) of the RECJA Repeal Act provides that ss 3(1) and (2) of RECJA shall continue to apply to a Commonwealth judgment obtained before 1 March 2023 and s 3(3) of RECJA shall continue to apply to a judgment registered under ss 3(1) and (2) of RECJA.

25 Section 3(2) of RECJA sets out a several categories of judgments which may not be registered under RECJA. One such category is a judgment "obtained by fraud" (s 3(2)(*d*)). Where a judgment alleged to be obtained by fraud has already been registered under s 3 of RECJA, O 60 r 9 of the ROC 2021 allows an application to be made to set aside such registration. O 60 r 10(2) of the ROC 2021 further provides that, if any application is made to set aside the registration of a judgment, an enforcement order to enforce the judgment "must not" be issued until after such application is finally determined.

26 Thus, if the Defendant had chosen to apply to the Singapore courts to set aside the *registration in Singapore* of the Malaysian Judgments (*ie*, to set aside the Order for Registration) as opposed to applying to the Malaysian courts to set aside the Malaysian Judgments, the effect of O 60 r 10(2) of the ROC 2021 is that an automatic stay of enforcement would apply until the setting aside application is determined. Given that the Defendant had chosen to apply to the Malaysian courts to set aside the Malaysian Judgments (as opposed to

setting aside the Order for Registration), O 60 r 10(2) of the ROC 2021 is not engaged and therefore not applicable to the present proceedings.

27 Instead, the Defendant brought SUM 202 under O 22 r 13 of the ROC 2021, which provides that a party may apply for stay of enforcement of a court order "if there is a special case making it inappropriate to enforce the Court order immediately". As for how O 22 r 13 of the ROC 2021 should be applied by the court, the commentary in *Singapore Civil Procedure 2025* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2024) ("*Singapore Civil Procedure*") on O 22 r 13 of the ROC 2021 referred to cases concerning stay of enforcement pending appeal and the principles laid down in those cases (at para 22/13/2). Similarly, the commentary on O 22 r 13 of the ROC 2021 in *Singapore Rules of Court: A Practice Guide* (Chua Lee Ming ed-in-chief, Paul Quan gen ed) (Academy Publishing, 2023) also cited only cases on stay enforcement pending appeal (at para 22.072). In the light of these commentaries, it was unsurprising that both the Claimant and the Defendant had relied on the principles governing stay of enforcement pending appeal in their respective submissions.

28 These principles may be summarised as follows:

(a) An appeal does not operate as a stay of the proceedings in which the appeal is brought.

(b) The power to grant a stay of enforcement is entirely discretionary and the discretion must be exercised in accordance with well-established principles.

(c) The burden of proof lies on the applicant seeking the stay to show why there might be special circumstances warranting the stay.

(d) The court does not deprive a successful litigant of the fruits of his litigation and lock up funds which he is *prima facie* entitled to pending appeal.

(e) The court must also see that the appeal, if successful, is not nugatory. A stay pending an appeal will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds.

29 At first blush, one might question whether these principles, which were developed in the context of a party exercising his undoubted right to appeal a Singapore judgment to a Singapore appellate court, are appropriate for the present case, which concerns a party seeking to set aside a foreign judgment in the foreign jurisdiction where the judgment was obtained, after having exhausted all avenues of appeal in that foreign jurisdiction. This is especially so since, as recently held by Roger Giles IJ (sitting in the Singapore International Commercial Court) in *Renault SAS v Liberty Engineering Group Pte Ltd and another matter* [2024] 6 SLR 162 ("*Renault v Liberty Engineering*") at [11]–[13], the power to stay enforcement pending appeal stems from s 45 of the Supreme Court of Judicature Act 1969 and O 21 r 6(1) of the Singapore International Commercial Court Rules 2021 ("SICC Rules") (the latter of which corresponds to O 18 r 6(1) and O 19 r 6(1) of the ROC 2021), which is a separate head of power from the *general* power to stay enforcement under O 24 r 2 of the SICC Rules (which corresponds roughly to O 22 r 13 of the ROC 2021). Therefore, according to the reasoning in *Renault v Liberty Engineering*, while O 22 r 13 of the ROC 2021 confers the court with a general power to stay enforcement, it is not a provision concerned with stay of enforcement pending appeal.

30 Once it is recognised that O 22 r 13 of the ROC 2021 does not deal with stay of enforcement pending appeal, it follows that the principles developed for stay pending appeal need not apply automatically to an application for stay under O 22 r 13. This is because, as O 22 r 13 concerns the court's *general* power to stay enforcement, the range of factual scenarios which could give rise to an application under O 22 r 13 is very wide, and not all of these scenarios would be analogous to those concerning a stay pending appeal. Examples of such applications would include applications for stay which would have been brought previously under O 45 r 11 of the Rules of Court 2014 ("ROC 2014) such as the applications in *SAL Leasing (Pte) Ltd v Hendmaylex Pte Ltd and others* [198] SLR(R) 303 (stay of enforcement of default judgment against the principal debtor after unconditional leave to defend was granted to guarantor co-defendants) and *Re Shaw, ex parte Banque Indosuez* [1989] 2 SLR(R) 668 (stay of costs order made against judgment creditor in related proceedings after judgment debtor successfully obtained a stay of enforcement of the judgment made against him). These are not cases that could be resolved by applying the principles developed for stay pending appeal. (Incidentally, the Table of Derivations published at the end of ROC 2021 states that O 22 r 13 of ROC 2021 is derived from O 45 r 11 of ROC 2014.)

31 Having said that, in view of the wide range of applications that may be brought under O 22 r 13 of the ROC 2021, it should not come as a surprise that there would also be applications under O 22 r 13 involving factual scenarios which are analogous to those concerning stay pending appeal, and for which it would be appropriate to apply the principles governing stay pending appeal (with the necessary modifications). In my view, the present case involves one such analogous scenario. Although there are differences between seeking a stay pending disposal of an appeal in a Singapore appellate court and seeking a stay

pending the disposal of an impeachment application in a foreign court, I am of the view that similar considerations of justice apply in both situations. Ultimately, the court is concerned, in both situations, with holding the balance between the interests of the parties to avoid prejudice to the parties pending the disposal of the appeal or impeachment proceedings, as the case may be.

32 Before concluding the discussion on the applicable law, there is one further question I ought to deal with. As noted at [25]–[26] above, in an application pursuant s 3(2)(*d*) of RECJA read with O 60 r 9 of the ROC 2021 to set aside the *registration in Singapore* of a foreign judgment, an automatic stay of enforcement would be imposed pursuant to O 60 r 10(2) of the ROC 2021 until the application under O 60 r 9 is disposed of. The question which arises here is, given the apparent similarity between an application under O 60 r 9 of the ROC 2021 and an application in the nature of the Impeachment Application, whether there is room for the court to apply the automatic stay provided in O 60 r 10(2) of the ROC 2021 by analogy in the present case. In my view, the answer is "no", for two reasons.

33 First, the similarities between an application to the Singapore courts to set aside the *registration in Singapore* of a foreign judgment and an application to set aside the foreign judgment itself in the courts of the foreign jurisdiction where the judgment was obtained are more apparent than real. As explained in Adrian Briggs, *Civil Jurisdiction and Judgments* (Informa Law, 6th Ed, 2015) at p 731:

> … when the court is asked to set aside an English judgment, the defendant is asking for an order which will have international effect, and which will wholly deprive the claimant of his judgment, and of the right to enforce it anywhere and everywhere. In that context, it is unsurprising that English law sets a high hurdle for the defendant to clear. But where an English court is asked to find a foreign judgment to be

> sufficiently tainted by fraud, it is only being asked to withhold recognition and enforcement in England. It will not, and could not, purport to affect the claimant's right to enforce in the country of judgment, or in any third country. It is a much more limited step than it is ever invited to take in respect of its own judgments, and it is wholly rational for the hurdle to be lower.

34 What the foregoing passage means, when transposed to the context of the present case, is:

(a) When a Malaysian court is asked to set aside a Malaysian judgment, the defendant is asking for an order which *will have international effect*, and which *will wholly deprive the claimant of his judgment*, and of the right to enforce it anywhere and everywhere.

(b) When a Singapore court is asked to set aside the *registration in Singapore* of a Malaysian judgment, the Singapore court is only being asked to withhold recognition and enforcement in Singapore. It will not, and could not, purport to affect the claimant's right to enforce the Malaysian judgment in Malaysia or in any third country.

Given the differences in reach, scope and consequences of these two types of applications, there is no compelling reason for the test for stay of enforcement pending these two different types of applications to be the same.

35 Second, and more importantly, since the stay application in the present case is brought under O 22 r 13 of the ROC 2021, the court is obliged to give effect to the words of O 22 r 13 and not the words of some other rules (such as O 60 r 10(2)) which have not been engaged in the present case. The words of O 22 r 13 require the court to find a "special case" and to be persuaded that it is "inappropriate to enforce the Court order immediately". This calls for the court

to exercise its discretion and perform a balancing exercise. There is no scope under O 22 r 13 for the court to grant an automatic stay.

36 For the reasons given above, I accept that parties were correct to invoke the principles concerning stay pending appeal in their respective submissions. I therefore held that the principles set out at [28] above are applicable, with the necessary modifications, for evaluating the application for stay in the present case.

Application to the facts

37 Applying the principle set out at [28(a)] above to the present case, the starting point is that the mere fact that the Defendant had commenced the Impeachment Application is not a sufficient reason to grant a stay. Instead, the burden is on the Defendant to show that there are special circumstances justifying a stay.

Whether Defendant has established special circumstances

38 In my view, the fact that the Claimant is currently in liquidation is sufficient to constitute a special circumstance. As noted by the Court of Appeal in *Lee Sian Hee v Oh Kheng Soon* [1991] 2 SLR(R) at [5], a stay will be granted if it can be shown that, if the judgment sum is paid, there is no reasonable probability of getting it back if the appeal succeeds. In the present case, if a stay is not granted, any money paid by the Defendant to the Claimant pursuant to the Malaysian Judgments will be held by the Claimant's liquidator for the benefit of the general body of creditors to be eventually distributed in accordance with the law governing corporate insolvency. In the circumstances, I am persuaded that there is no reasonable probability of the Defendant getting the Judgment Debt back if the Impeachment Application were to succeed, with the

consequence that a successful Impeachment Application would be rendered nugatory.

39 I did not regard the prospects of the Defendant being declared a bankrupt, if a stay were to be denied, as a special circumstance. While being a bankrupt might cause the Defendant some difficulties, it does not necessarily follow that the prosecution of the Impeachment Application will be compromised. If made a bankrupt, the Defendant could seek the Official Assignee's sanction to continue the Impeachment Application. Alternatively, the private trustee in bankruptcy may take up the prosecution of the Impeachment Application if he considers it in the interest of the Defendant's bankruptcy estate to do so.

Whether there are countervailing factors against granting unconditional stay

40 While judgment creditor insolvency constitutes a strong reason for granting a stay, the decision whether to grant a stay remains in the discretion of the court. This means that it does not necessarily follow that the court should mechanically grant a stay in every case involving judgment creditor insolvency. It remains necessary for the court, in order to properly exercise its discretion, to consider whether there are countervailing factors militating against a stay or, alternatively, prompting the court to consider a conditional stay.

41 On the possibility of conditional stay, I found the following passage from *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] SGHC 47 ("*Axis Megalink*") at [12]–[13] instructive:

> 12 In order to balance the competing interests just mentioned, a court can order a conditional stay of execution, that is, a stay that is conditional upon the satisfaction of specified conditions by the party seeking the stay. Such

> conditions may include the payment of the judgment sum into court or to the other party's solicitors to be held as stakeholder pending the disposal of the appeal.
>
> 13 Prof Jeffrey Pinsler SC explains that whether such terms will be imposed "often depends on such matters as the likelihood of success of the appeal and whether there is uncertainty as to whether the sum will be recovered on the outcome of the appeal" (see Jeffrey Pinsler, *Singapore Court Practice 2017* (LexisNexis, 2017) at para 57/15/3). The courts have considered various factors. For example, time could be another relevant factor in the granting of a conditional stay – where it is known that the appeal will be quickly disposed of, a court may be more inclined to grant a conditional stay since the money will be locked up for a relatively short time (see the English High Court decision of *AMBA Carpet Services v Mowe* [2004] EWHC 1606 (Ch) at [14]; and also the Court of Appeal decision of *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 ("*Turf Club Auto*") at [199(b)]). Further, a court might take into account factors such as any failure to comply with previous court orders, the risks of ancillary negative consequences if a stay were to be imposed (*eg*, payment of a large sum might potentially entitle other creditors to accelerate existing liabilities), and the appellants' willingness to give assurances to the respondents' satisfaction (see the English High Court decision of *The Law Debenture Trust Corporation plc v Ukraine* [2017] EWHC 1902 (Comm) at [6]).

42 Returning to the facts of the present case, the Claimant highlighted the following countervailing factors against granting a stay (or, at least, against granting an unconditional stay):

(a) The Impeachment Application, including related appeals, is likely to take several years to complete.

(b) Given the Defendant's advanced age, there is a real risk that a delay of several years would result in the Defendant's only known asset, which is currently held on joint tenancy with other persons, being put out of reach of the Claimant by virtue of the right of survivorship.

(c) The Defendant's past behaviour in evading service demonstrates that there is a real risk that the Defendant could make use of the long delay pending disposal of the Impeachment Application to dissipate his assets, eg, by transferring some of his assets to family members.

43 I found all three of these concerns to be valid and relevant.

Anticipated timeframe for resolution of Impeachment Application

44 In respect of the first concern, I note that in Suit 98 (the original Malaysian proceedings which gave rise to the Malaysian Judgments), the matter took almost 12 years to get to trial, the appeal to the Court of Appeal of Malaysia took more than eight years to resolve, and the application for leave to appeal to the Federal Court of Malaysia (which was dismissed) took a further one year and nine months. The Claimant's concern that the Impeachment Application will take several years to resolve is therefore neither unfounded nor speculative. Against the foregoing, I found some merit in the Defendant's submissions that (a) the Claimant, being in liquidation, was no longer trading and would not require funds for ongoing operations, and (b) the Claimant will be compensated by way of interest for any delay resulting from a stay. I therefore consider that the anticipated delay in the resolution of the Impeachment Application would not, in and of itself, be a strong reason against the granting of an unconditional stay. Nevertheless, this concern about delay remains relevant because of how it would interact with the remaining two concerns.

Risk of Jervois Road Property being put out of reach of Claimant due to rule of survivorship in joint tenancy

45 In respect of the second concern, I note that the Defendant's only known asset is the Jervois Road Property which he holds as joint tenant with two other

persons. If a stay is not granted, the Claimant will be able to either proceed with the Bankruptcy Application or issue a writ of seizure and sale against the Defendant's interest in the Jervois Road Property. In either of these scenarios, the Defendant's interest in the Jervois Road Property could be made available to satisfy the Judgment Debt. If a stay is granted, the risk of prejudice to the Claimant would increase with time. If the Defendant were to pass away while a stay of enforcement is in place, his interest in the Jervois Road Property will pass to the two remaining joint tenants by right of survivorship and become out of the Claimant's reach. As the Defendant is already in his 70s, the risk of this occurring to the Claimant's prejudice will increase with each passing year.

Risk of Defendant dissipating assets

46 In respect of the third concern, it is clear from the chronology narrated at [7]–[15] above that the Defendant had been residing at the Jervois Road Property at all material times. It is therefore not credible for the Defendant to claim that he had not seen the various documents that were served by posting at the front gate of the Jervois Road Property and sent by AR registered post to the Jervois Road Property. I am also of the view that, by ignoring the order for examination of enforcement respondent, the Defendant had acted in disregard and contempt of the authority of the Singapore courts. Finally, it was only when the Claimant commenced the Bankruptcy Application, which was a proceeding the consequences of which the Defendant could not escape by mere disregard, that the Defendant miraculously appeared through counsel to seek a stay of the Bankruptcy Application. When the foregoing facts are viewed in totality, the irresistible inference is that the Defendant had been evading service and had acted in disregard and contempt of the authority of the Singapore court. As noted by the Court of Appeal in *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratwi Shipping SA* [2003] 1 SLR 157 at [20], the defendant's behaviour in

response to the claimant's claim, such as a pattern of evasiveness, unwillingness to participate in proceedings or total silence, may be factors which assist in establishing a risk of dissipation of assets. I therefore accept that there is a real risk that the Defendant may act to dissipate his assets if enforcement of the Malaysian Judgments is stayed for a prolonged period.

Whether Impeachment Application devoid of merit

47 A further point raised by the Claimant is that the Impeachment Application is, in any event, devoid of merit. In *Strandore Invest A/S and others v Soh Kim Wat* [2010] SGHC 174 at [10], Quentin Loh J (as he then was) observed that:

> 10 In applying the above principles, it has been said time and again that the fact that there are strong grounds for appeal is not by itself a reason for granting a stay, see eg, *Lee Kuan Yew v Jeyaretnam J B* [1990] 1 SLR(R) 772, *Denis Matthew Harte v Dr Tan Hun Hoe & Gleneagles Hospital Ltd* [2001] SGHC 19. The special circumstances must be circumstances which go to the enforcement of the judgment and not to its validity or correctness, see *Che Wan Development Sdn Bhd v Cooperative Central Bank Bhd* [1989] 3 MLJ 40 at 44 and *Dr Kok Chee Min v Kan Choy Yoong & Ors* [1994] 3 MLJ 210 at 217. *However the converse is not necessarily true. If there is little merit in the appeal, it is a relevant circumstance that a Court can take into account. Many an appellant will harbour sanguine views on their prospects of appeal, but if a Court is able to assess objectively that there is little merit, that must be a relevant consideration to put into the balance.* It is usually not the only factor, but there can be circumstances where it can be a major factor.
>
> [emphasis added]

Loh J's foregoing remarks were cited with approval by Woo Bih Li J (as he then was) in *NK Mulsan Co Ltd v INTL Asia Pte Ltd* ("*NK Mulsan*") [2019] 3 SLR 453 at [10]. Thus, although the existence of strong grounds for appeal is not a reason for granting a stay, the fact that an appeal has little merit is a relevant consideration in the exercise of the court's discretion.

48 The Defendant submitted that the merits of the Impeachment Application, or lack thereof, is not a relevant consideration. In support of this submission, the Defendant referred to remarks made by Goh Yihan J in *Axis Megalink* at [32] where he expressed some doubts on whether the merits of an appeal, even if lacking, should matter at all when a court is deciding whether to grant a stay. Goh J gave two reasons for his doubts. First, he found the apparent inconsistency – that lack of merits is relevant but presence of merits is not – to be difficult to explain. Second, he felt that, as a practical matter, keeping out any consideration of merits prevents parties from having to "re-argue" the cases on appeal before the court hearing the stay application.

49 I have five comments on the Defendant's submission.

50 First, Goh J's remarks in *Axis Megalink* at [32] were merely tentative expressions of doubts. He did not expressly depart from *Strandore* and *NK Mulsan* and he certainly did not declare that *Strandore* and *NK Mulsan* were wrong on this point. There was, in any event, no occasion for Goh J to do so as he had concluded that the appeal in *Axis Megalink* was not devoid of merit. I therefore consider that the authority of *Strandore* and *NK Mulsan* had not been affected and that both cases remain good law which I will respectfully follow.

51 Second, unlike Goh J, I do not consider that there are practical issues for a court which is not hearing the actual appeal to undertake a cursory examination of the merits of the appeal. This is an exercise frequently undertaken by our courts when deciding on applications for extension of time to file a notice of appeal. In such applications, one of the four factors which the court is required to consider is the chances of the appeal succeeding – *Lee Hsien Loong v Singapore Democratic Party* [2008] 1 SLR(R) 757 at [25].

52 Third, I do not think there is any inconsistency in the courts adopting a position that the lack of merits is relevant but the presence of merits is not. In this regard, reference may again be made to the context of extension of time to file notice of appeal, where it has been held in *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 3 SLR(R) 355 ("*Aberdeen Asset Management*") at [43]:

> As to the question of merits, it is not for the court at this stage to go into a full-scale examination of the issues involved. Neither is it necessary for the applicant to show that he will succeed in the appeal. The threshold is lower: the test is, is the appeal hopeless? (See *Nomura Regionalisation Venture* ([39] supra at [32]).) Unless one can say that there are no prospects of the applicant succeeding on the appeal, this is a factor which ought to be considered to be neutral rather than against him.

Thus, in the context of extension of time to file notice of appeal, the court is only concerned with whether the appeal is hopeless. Once the court is satisfied that the appeal is not hopeless, the actual strength of the appeal becomes irrelevant (or in the words used in *Aberdeen Asset Management*, a neutral factor).

53 Fourth, case law has explained that the reason for examining whether an appeal is hopeless, when deciding whether to grant extension of time to file notice of appeal, is that it would be an exercise in futility and waste of time and costs for the court to grant extension of time for a hopeless appeal – *Ho Soo Fong v Revitech Pte Ltd* [2019] 1 SLR 255 at [15]. By the same token, since a key principle governing stay pending appeal is that the court does not deprive a successful litigant of the fruits of his litigation and lock up funds which he is *prima facie* entitled to, it would be consistent with the Ideals of expeditious proceedings and fair and practical results for the courts to strive to avoid unnecessarily locking up such funds in cases where the appeal is devoid of merit.

54 Fifth, despite expressing doubts over whether merits of the appeal should matter when deciding *whether to grant a stay* (*Axis Megalink* at [32]), Goh J appeared to have no issue with the court considering the merits of an appeal when deciding *whether to impose conditions on a stay* – see *Axis Megalink* at [13] (reproduced at [41] above) where Goh J cited with approval the statement in Jeffrey Pinsler, *Singapore Court Practice 2017* (LexisNexis, 2017) at para 57/15/3 that whether conditions should be imposed would depend on, among other things, "the likelihood of success of the appeal".

55 Having come to the view that it is relevant to consider whether the Impeachment Application is devoid of merit, I turn to consider the Claimant's submission that the Impeachment Application is devoid of merit.

56 In the grounds of judgment for Suit 98, the judge referred to the evidence of two of the Claimant's employees. They both testified that, in early August 1997, they met the Defendant together with Soh at the office of one Dato' Ho Seng Chuan. At this meeting, these two employees were informed that the Defendant wished to open a share trading account with the Claimant. They also discussed the transactions which the Defendant wished to execute in the share trading account. One of these employees testified that he personally witnessed the Defendant signing the Application Form and that Soh had left the room temporarily during the time that the Defendant was filling up and signing the Application Form. The Claimant also called a handwriting expert to prove that the signature on the Application Form was the Defendant's. According to the grounds of judgment, although the Defendant's position was that the Application Form was forged or falsified, the Defendant admitted during cross-examination that, at the meeting, he signed many documents without looking at them and he did not know what he signed. Specifically, in answer to a question from the court, the Defendant conceded that he did not know if the Application

Form could have been one of the documents he was asked to sign. The grounds of judgment also referred to various inconsistencies in the Defendant's testimony, which led the judge to cast doubt on the Defendant's credibility.

57 In SUM 202, the Defendant produced an eight-page statutory declaration signed by Soh. In relation to the August 1997 meeting, Soh's account in the statutory declaration spanned four short paragraphs which I reproduce in full here:

> 7. Based on the High Court Judgment shown to me by Dr. Henry's lawyers, MBF's witnesses at trial claimed that I was at the August 1997 Meeting alongside Cliff Ng Kean Yew, Alen Lim Gim Khoon and John Chan Chew Chun of MBF, Dato' Ho Seng Chuan and Dr. Henry. The August 1997 Meeting was alleged to have taken place at Wisma Kelanamas. Wisma Kelanamas was one of my offices in Kuala Lumpur at that time. MBF's witnesses alleged that, at the August 1997 Meeting, Dr. Henry was introduced to MBF's representatives and has signed the Application Form for the opening of the Share Trading Account.
>
> 8. I cannot recall attending the August 1997 Meeting, or that it had taken place. I helmed several listed companied in Malaysia at that time. I had a very busy work schedule. It was unlikely that I would have attended a meeting unless it involved matters of importance which warranted my attention. The agenda at the August 1997 Meeting – namely, to assist Dr. Henry with the opening of a Share Trading Account in MBF – does not appear to be a matter of such importance.
>
> 9. Further, I enjoyed close ties with and had a direct line to the late Tan Sri Loy Hean Heong ("**Tan Sri Loy**") (MBF's then CEO). If I had wanted to arrange an account opening with MBF, I could and would have contacted Tan Sri Loy directly rather than go through MBF's representatives.
>
> 10. Hence, based on my recollection and belief, it was unlikely that the August 1997 Meeting took place or I was unlikely to have been present at the August 1997 Meeting.
>
> [bold text in original]

58 Since all that Soh could say was that he could not recall attending the August 1997 meeting and was, in any event, unlikely to have been present at

the meeting, it is difficult to see how Soh's evidence could amount to material and cogent evidence that the Application Form was forged or falsified. For completeness, I note that there is a second part to Soh's statutory declaration which dealt with a letter of guarantee that he gave to the Claimant. Soh stated that he did not recall signing the letter of guarantee, it was unlikely that he would have given such a guarantee, and it is "possible" that the letter of guarantee had been forged. Again, this is vague and tentative language which falls far short of positive and cogent evidence of fraud. In the light of the foregoing, I found the present case to be one where, to quote the words of Woo J in *NK Mulsan*, "it can be easily gleaned, without a minute examination of the merits", that the Impeachment Application will likely fail.

Relevance of absence of stay of enforcement in Malaysia

59 One of the reasons given by the AR for denying a stay is that the Defendant had not applied for stay of enforcement of the Malaysian Judgments in Malaysia. He opined that there is little reason for the Singapore courts to stay enforcement when the Malaysian courts have not done so. The Claimant submitted that this part of the AR's reasoning should be upheld as it is in line with remarks of the Appellate Division of the High Court in *Tan Hock Keng v Malaysian Trustees Bhd and another matter* [2021] SGHC(A) 18 ("*Tan Hock Keng*") at [33], which reads:

> Mr Tan's main reasons for seeking a stay of execution (the possibility of prejudice and the possibility of conflicting judgments) are unconvincing. He says that should Malaysia OS 455's appeal turn out in his favour, he will have to "somehow, nullify the full effect of the registered 2019 Consent [Judgment]". The Judge dealt with that contention and we are not persuaded that he was plainly wrong in refusing a stay of execution. There is no stay of execution in Malaysia. And so, absent additional reasons, Singapore should not afford him a stay of execution that Malaysia itself has not granted.

60 I did not accept this submission as the facts of *Tan Hock Keng* and the reasons given by Mr Tan for seeking a stay in that case are very different from the present case. *Tan Hock Keng* involved the registration under RECJA of a consent judgment granted in Malaysia in November 2019 ("2019 Consent Judgment"). Under the 2019 Consent Judgment, Mr Tan was to pay the sum of RM60m in tranches. When the last tranche was not paid on time, Mr Tan made an application to the High Court of Malaya ("Malaysia OS 455") seeking, amongst other things, a declaration that the 2019 Consent Judgment was valid and binding and an extension of time to comply with his obligations under the 2019 Consent Judgment. Mr Tan did not seek variation of any other part of the 2019 Consent Judgment. Malaysia OS 455 was dismissed by the High Court of Malaya because (a) the 2019 Consent Judgment was final and binding on the parties; (b) the extension sought was unilateral and in the context of a consent judgment, and (c) the court did not have jurisdiction to grant the extension. Mr Tan's appeal against the dismissal of Malaysia OS 455 was still pending at the time *Tan Hock Keng* was heard and decided. The issue for decision in *Tan Hock Keng* was Mr Tan's contention that the 2019 Consent Judgment could not be registered under RECJA because s 3(2)(*e*) of RECJA prohibits the registration of a judgment which is pending appeal and Malaysia OS 455 constitutes an appeal for this purpose.

61 As the foregoing narrative makes clear, Malaysia OS 455 was not an impeachment application to set aside the 2019 Consent Judgment. It was merely an application for the court to vary the timelines which parties had agreed to and enshrined in the 2019 Consent Judgment. Further, the reasons given by Mr Tan for stay of enforcement (the possibility of prejudice and the possibility of conflicting judgments) sounds completely garbled. Read in context, I did not think the Appellate Division intended to lay down an inflexible rule that stay of

enforcement of a foreign judgment must not be granted in Singapore if there is no stay of enforcement in the jurisdiction from which the foreign judgment originate, even in factual situations that are very different from that in *Tan Hock Keng*.

62 On the contrary, I agreed with the Defendant that there is no practical utility to be served by the Singapore courts insisting that the Defendant incur additional time and costs to seek a stay of enforcement of the Malaysian Judgments in Malaysia where no enforcement actions are being taken by the Claimant in Malaysia and the only enforcement actions are taking place here in Singapore. In this regard, it is relevant to observe that, in an application under O 60 r 9 of the ROC 2021 to set aside the registration in Singapore of a foreign judgment, a stay of enforcement is available under O 60 r 10(2) without the applicant having to show that enforcement of the foreign judgment had been stayed in the foreign jurisdiction which granted the foreign judgment.

63 I therefore held that the absence of an order staying enforcement in Malaysia is not a factor that should prevent a Singapore court from staying enforcement of the Malaysian Judgments in Singapore.

Conclusion on whether to grant a stay of enforcement

64 As noted in *Axis Megalink* at [13] (see [41] above), whether a conditional stay should be imposed may depend on matters such as the likelihood of success of the appeal and the failure to comply with previous court orders. In the light of my finding that the Claimant's insolvency is a special circumstance and in the light of the apparent lack of merits of the Impeachment Application as well as the concerns highlighted at [46] above, I concluded that it would be appropriate to grant a conditional stay in order to "hold the balance

between the interests of the parties (pending the hearing of [the] appeal) to avoid any prejudice to any of the parties" (per the Court of Appeal in *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 at [19]).

Conditions to be imposed on the stay

65 At my invitation, parties submitted on the appropriate conditions to be imposed if I were to grant a conditional stay. The Claimant began by noting that the Judgment Debt (together with interest accruing from 18 April 1998) comes up to more than RM106m, which is equivalent to slightly more than S$30m. The Claimant therefore proposed that the Defendant should:

(a) pay an amount of S$10m into court;

(b) provide a listing of his assets and provide an undertaking not to dispose of or encumber any such assets (including his share of the Jervois Road Property) up to the value of the Judgment Debt;

(c) sever his joint tenancy interest in the Jervois Road Property.

66 In respect of the first proposed condition, the Claimant noted that the Defendant had, in his written submissions filed on 17 February 2025 in SUM 202, assured the court that "the Defendant still owns a property which value is sufficient to cover the judgment sum and costs and which he and his family continues to live in". There is no doubt that the "property" referred to in this passage is the Jervois Road Property because the Defendant had footnoted this passage to paragraph 31 of the Claimant's affidavit filed in SUM 202, which in turn refers to a title search showing that the Jervois Road Property has a land area of 1,401.8 sq m (or 15,086 sq ft). The Defendant's claim in this

passage that the value of the Jervois Road Property is sufficient to cover the Judgment Debt amounts to a representation that the Jervois Road Property is worth in excess of S$30m. The Claimant therefore reasoned that the Defendant's one-third share in the Jervois Road Property would exceed S$10m in value. As for the second proposed condition, the Claimant submitted that this was necessary to protect the Claimant from irreparable prejudice by managing the risk of the Defendant dissipating his assets. Finally, the third proposed condition is to protect the Claimant from irreparable prejudice if the Defendant's share in the Jervois Road Property is put out of reach of the Claimant by operation of the rule of survivorship.

67 While maintaining his primary submission that any stay should be unconditional, the Defendant submitted that any condition imposed should not involve payment of significant sums into court or the provision of significant security as it could risk sending the Defendant into bankruptcy and/or cripple his ability to fund the Impeachment Application. Instead, the Defendant proposed that he could furnish security for the Claimant's costs of *enforcement proceedings in Singapore* and provide an undertaking to prosecute the Impeachment Application expeditiously.

68 I found the conditions proposed by the Defendant to be insufficient to meet the objectives of holding the balance between parties and avoiding prejudice to parties. As for the conditions proposed by the Claimant, I did not think the third proposed condition (requiring the Defendant to sever his joint tenancy interest in the Jervois Road Property) was reasonable or appropriate. In my view, such a condition would be overly intrusive and would encroach too much into the property rights of the Defendant and the other co-owners of the Jervois Road Property. It may not be a justifiable exercise of the court's discretion to bring about such a permanent change to the ownership

arrangements for the Jervois Road Property in order to safeguard a temporary situation arising from the stay of enforcement.

69 I found the Claimant's first proposed condition (for payment into court) to be a reasonable one. Where a conditional stay is imposed, payment into court is a common device employed by the court in order to hold the balance between parties and avoid prejudice. As it is the Defendant's position that he has the means to satisfy the Judgment Debt, a condition for payment of S$10m into court is not unreasonable as it amounts to only one-third of the Judgment Debt.

70 I was mindful of the Defendant's concern that a condition which requires him to pay into court an amount he could not afford could cripple his ability to fund the Impeachment Application. I agreed that this is a legitimate concern, and have crafted the conditions specifically to avoid such a result.

71 First, I have pegged the amount to be paid into court at S$10m instead of the entire Judgment Debt. Based on the information placed before the court (not least of which is the Defendant's representation to the court that he has the means to satisfy the Judgment Debt), I was persuaded that this is an amount which the Defendant can afford. Second, I am conscious of the possibility that there may be information which the Defendant has not placed before the court that could call for the foregoing assessment to be revisited. I therefore included a condition giving the Defendant liberty to apply to the court for reduction of the sum to be paid into court if the Defendant could show with proper evidence that he is unable to pay the full sum ordered without stifling the Impeachment Application. Third, to give the Defendant adequate time to raise the funds to be paid into court, I have broken the payment into four tranches – ie, S$250,000 to be paid three weeks form the date of the order granting the stay, S$250,000 to be paid five weeks from the date of the order, S$500,000 to be paid seven weeks

from the date of the order and the final tranche of S$9m to be paid nine weeks from the date of the order. I decided to give the Defendant nine weeks to raise the bulk of the amount to be paid into court so that, if the Defendant's financial situation is such that he needs the payment to be broken down into even more, smaller tranches, the Defendant would have adequate time to apply to court under the general liberty to apply for such an adjustment.

72 I also found the Claimant's second proposed condition (for disclosure of assets and to refrain from disposing assets) to be a reasonable one having regard to the concerns highlight at [46] above. I also note that the imposition of such a condition is supported by precedent (see *Seto Wei Meng (suing as the administrator of the estate and on behalf of the dependents of Yeong Soek Mun, deceased) and another v Foo Chee Boon Edward* [2021] SGHCR 5 at [12].) I would clarify that such a condition does not serve as a freezing order and would carry no penal sanctions if it is not complied with. Instead, it serves as a form of quid-pro-quo, in that there are certain matters which the Defendant should abide by in return for seeking the court's assistance in staying enforcement, so that the court could properly hold the balance between parties to avoid prejudice to either party.

73 Finally, I was informed that the Claimant had filed an application in Malaysia to strike out the Impeachment Application. If the Malaysian courts were to decline to strike out the Impeachment Application after hearing the Claimant's striking out application, it would constitute a finding by a court of competent jurisdiction that the Impeachment Application is not devoid of merit. Such a finding ought to be treated with deference and recognised by this court, and would consequently take away one of the reasons for imposing a conditional stay in the present case. It would then be necessary for this court to review whether the conditional stay should be replaced with an unconditional stay or,

alternatively, whether any of the conditions should be moderated. I therefore included a condition that, if the Claimant's application to strike out the Impeachment Application is dismissed, the Defendant shall be at liberty to apply for the lifting or modification of all or any of the conditions imposed.

Conclusion

74 For the reasons given above, and specifically with a view towards avoiding prejudice to either party while ensuring that the Defendant's ability to prosecute the Impeachment Application is not stifled, I granted a stay of enforcement of the Malaysian Judgments pending the final disposal of the Impeachment Application and related appeals in Malaysia, subject to the following conditions:

(a) The Defendant shall within three weeks from the date of this order file an affidavit listing out all his assets and liabilities.

(b) The Defendant shall not dispose of his assets without permission of court, except for normal living expenses and for legal costs in the present proceedings and in the Impeachment Application and related proceedings.

(c) Liberty for either party to apply to court to add to, elaborate on, particularize, restrict or otherwise vary the list of exceptions to the previous condition.

(d) Defendant shall pay into court a sum of S$10m pending the conclusion of the Impeachment Application (including related appeals), such sum to be paid in four tranches as follows:

(i) three weeks from the date of order - $250,000

(ii) five weeks from the date of order - $250,000

(iii) seven weeks from the date of order - $500,000

(iv) nine weeks from the date of order - the remaining sum.

(e) The Defendant shall be at liberty to make an application to court, supported by proper and adequate evidence, for a reduction of the sum to be paid into court on the basis that he is unable to pay the full sum ordered without stifling the Impeachment Application and related proceedings.

(f) In the event that the Claimant's application to strike out the Impeachment Application is dismissed, the Defendant shall be at liberty to apply to court for the lifting or modification of all or any of the foregoing conditions.

75 I also granted general liberty for parties to apply.

76 Further, in response to the Claimant's query, I clarified that a breach of the foregoing conditions by the Defendant would not have the effect of automatically lifting the stay. Instead, the Claimant would need to apply to court, with evidence of the breach, for the stay to be lifted.

Costs

77 Even though I had granted a conditional stay, the net result is that the enforcement of the Malaysian Judgments has been stayed and the Defendant has successfully prevented the Claimant from proceeding with enforcement. The Defendant should therefore be entitled to costs. However, given the similarities between the conditions I had imposed on the stay and the conditions

proposed by the Claimant, I considered that the costs to be awarded to the Defendant should be discounted. Consequently, I set aside the costs order made below and awarded costs of this appeal to the Defendant fixed at $10,000 all-in.

Pang Khang Chau
Judge of the High Court

Yik Shu Ying and Darius Tan En Han (Lee & Lee) for the claimant;
Clement Julien Tan Tze Ming and Lee Wang Ling (Bird & Bird ATMD LLP) for the defendant.
