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

[2025] SGHC 49

Originating Application No 1272 of 2024

In the matter of Part 11 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 252 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Article 15 of the UNCITRAL Model Law on Cross-Border Insolvency

(1) Compuage Infocom Limited
(2) Gajesh Labhchand Jain

… *Applicants*

GROUNDS OF DECISION

[Insolvency Law — Cross-border insolvency — Recognition of foreign insolvency proceedings]

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24 March 2025

Aidan Xu @ Aedit Abdullah J:

1 These grounds are issued for the guidance of practitioners in the area as this application is one of the first granting recognition and assistance to Indian insolvency and restructuring proceedings.

2 In HC/OA 1272/2024 ("OA 1272"), Compuage Infocom Limited ("CIL"), an Indian-incorporated company, and one Gajesh Labhchand Jain ("Mr Jain") (collectively, "the applicants") sought recognition of CIL's Corporate Insolvency Resolution Process ("CIRP") under Art 17 of the UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law"), as adopted in Singapore by way of s 252 and the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"), and the recognition of Mr Jain as a foreign representative within the meaning of Art 2(*i*) of the Model Law. Additionally, reliefs under Art 21(1)(*e*) of the Model Law were sought, pertinently, for CIL's assets in Singapore to be vested in Mr Jain and for Mr Jain to be granted the power to take all actions reasonably necessary

for the administration, realisation, sale and return of all assets (and any proceeds thereof) located in Singapore to CIL's estate in India.

3 Having considered the arguments and the evidence before me, I concluded that the requirements in respect of granting recognition under the Model Law had been satisfied. I granted OA 1272, except for the additional relief to grant Mr Jain the power to repatriate or return CIL's assets or any proceeds thereof in Singapore to CIL's estate in India. I ordered that no assets or any proceeds thereof could be repatriated or returned to CIL's estate in India without the leave of court.

Facts

4 CIL was incorporated on 1 January 1999 under the Indian Companies Act 1956 (the "ICA 1956") and validly continues to exist under the Indian Companies Act 2013 (the "ICA 2013"). CIL's business is in the Information Technology ("IT") and mobility distribution services sector.[1] CIL has a branch office in Singapore, Compuage Infocom Limited ("CIL SG branch"), which is registered in Singapore as a foreign entity. CIL SG branch's management and control are based in India.[2] CIL also has a fully-owned Singaporean-incorporated subsidiary, Compuage Infocom (S) Pte Ltd ("CIL SG"), which operates from the same registered address as CIL SG branch.[3]

Background in relation to the insolvency proceedings in India

5 CIL's financial difficulties emanated from a recession in the IT sector and stiff competition. To meet its working capital requirements, CIL entered

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1 Applicants' Written Submissions dated 12 February 2025 ("AWS") at para 4.

2 AWS at para 5.

3 AWS at para 6.

into a loan agreement with another Indian company (the "creditor company") on 2 August 2021. CIL was only able to repay a part of the loan and defaulted on the remaining amount, on which interest continued to accrue at 10% per annum.[4] As a result, the creditor company initiated a Corporate Insolvency Resolution Process (the "CIRP") on 20 March 2023 against CIL pursuant to s 7 of the Indian Insolvency and Bankruptcy Code 2016 (the "IBC"). On 2 November 2023, the National Company Law Tribunal, Mumbai Bench (the "NCLT") passed an Order of Court admitting and ordering the initiation of the CIRP against CIL (the "first NCLT order"). The first NCLT order also appointed an interim Resolution Professional ("RP"). This interim RP was replaced by Mr Jain, who was appointed as CIL's RP by a subsequent NCLT Order of Court dated 29 April 2024 (the "second NCLT order") (collectively, the "NCLT orders").[5] On Mr Jain's appointment, the powers to manage CIL's affairs that were vested in the interim RP (set out in s 17(1) of the IBC) were transferred to him pursuant to s 23(2) of the IBC.[6]

6 The CIRP was due to end on 30 April 2024, following the 180-day statutory timeline. However, through four extensions that were sequentially sought with the approval of the Committee of Creditors ("CoC"), and the NCLT's respective Orders of Court approving each extension request, the CIRP was extended to 25 April 2025. The latest extension was requested to further facilitate the consideration of an appropriate resolution plan.[7]

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4 AWS at para 7.

5 AWS at para 8.

6 AWS at para 9.

7 1st affidavit of Saptarshi Chatterjee dated 17 February 2025 ("1st affidavit of SC") at para 6.

Background in relation to OA 1272

7 OA 1272 was filed by CIL on 5 December 2024 to obtain the bank statements of CIL SG branch's two current accounts with HSBC Bank Singapore Limited (the "bank accounts") and to change the authorised signatory of those accounts to Mr Jain, in his capacity as CIL's RP. This is because the bank would only provide Mr Jain with the requested documents or information relating to these bank accounts if the NCLT orders are recognised. Further, there are assets belonging to CIL in Singapore, which CIL hoped could be vested in Mr Jain, and be repatriated to India.[8] The repatriation of these assets would enable the collective and orderly handling of assets under CIL's CIRP, and is in line with the obligation of the RP under s 25(2)(*a*) of the IBC to take immediate custody and control of CIL's assets, including its business records.[9]

8 Steps were taken to notify CIL's Singapore-based creditors about OA 1272: Mr Jain notified the Singapore-based creditors of OA 1272 on 6 December 2024 via e-mail and CIL's website published a public notice on 11 December 2024 to notify all creditors. The creditors were provided with copies of the application papers and invited to notify Mr Jain of their intention to object to the application. However, no objections were made.[10]

9 As CIL had property (as defined in s 2(1) of the IRDA) in Singapore in the form of the monies in its bank accounts, and bank books and records, the court had jurisdiction to hear OA 1272 pursuant to Art 4(2)(*a*)(ii) of the Model Law.

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8 AWS at paras 36–38.

9 AWS at paras 39–40.

10 1st affidavit of SC at para 7.

The Indian insolvency regime

10 Before turning to the substantive application, a brief survey of the Indian insolvency regime gives some context. The IBC replaced the ICA 1956 and the ICA 2013. It consolidates all the provisions relating to individual and corporate reorganisation and insolvency in India.

11 The NCLT is a quasi-judicial body in India that adjudicates insolvency resolution processes for companies and limited liability partnerships under the IBC.[11] Constituted via a notification by the Ministry of Corporate Affairs on 1 June 2016 pursuant to s 408 of the ICA 2013, the NCLT is the Adjudicating Authority under the IBC (s 5(1) of the IBC). Thus, references to the "Adjudicating Authority" in the IBC have been replaced with references to the NCLT for the purposes of these grounds. Under ss 408 and 409 of the ICA 2013, the NCLT shall comprise of (a) a President, who is or must have been a Judge of a High Court for five years, (b) judicial members with experience as a judge or advocate, and (c) technical members with the relevant background in, amongst others, accountancy and corporate turnaround and insolvency.

12 As for the CIRP, the IBC provides that it is a mechanism for corporate turnaround. A CIRP applicant (which includes creditors and the debtor company so long as the debtor company does not fall under s 11 of the IBC) may apply for the initiation of the CIRP (ss 6 and 10(1) of the IBC). After which, the NCLT has the power to admit or reject such an application (ss 7(5)(*a*) and 7(5)(*b*) of the IBC). Once admitted, the CIRP shall be completed within a period of 180 days, and any such application for extension must be approved by the NCLT (s 12 of the IBC). The NCLT shall also impose a moratorium, announce the

[11] The National Company Law Tribunal, https://efiling.nclt.gov.in/mainPage.drt (accessed 6 March 2025).

initiation of the CIRP publicly and call for a submission of claims, and appoint an interim RP (s 13 of the IBC). The management of the affairs of the corporate debtor shall vest in the interim RP (s 17(1)(*a*) of the IBC). The interim RP shall, after collating the claims, constitute a CoC (s 21(1) of the IBC). Within seven days of the constitution of the CoC, they shall vote to either retain or replace the interim RP (ss 22(1) and 22(2) of the IBC). The duties of the RP are set out in s 25 of the IBC, and mainly include preserving and protecting the debtor's assets, including its continued business operations. The RP shall undertake certain actions, including taking immediate custody and control of all the debtor's assets, and representing the debtor.

13 The RP conducts the CIRP by firstly preparing an information memorandum for the purpose of allowing the CoC to formulate a resolution plan (s 29(1) of the IBC). The resolution plan must provide for the payment of insolvency resolution process costs in priority to the repayment of the other debts, the repayment of debts of operational creditors which shall not be less than the amount to be paid to them in the event of liquidation, and the management of the affairs of the corporate debtor after the approval of the resolution plan by the NCLT (s 30(2) of the IBC). Once approved, the resolution plan is binding on the debtor, its employees, members, creditors, *etc* (s 33 of the IBC). If no resolution plan is proposed to or accepted by the NCLT, the company heads to liquidation (s 33(1) of the IBC). Thereafter, unless replaced by the NCLT, the RP shall act as the liquidator (s 34(1) of the IBC).

Application for recognition of a foreign proceeding

14 Art 15 of the Model Law governs recognition applications. A foreign representative may apply to court for recognition of a foreign proceeding in which the foreign representative has been appointed (Art 15(1) of the Model

Law). Art 15 of the Model Law sets out further procedural requirements for an application for recognition, namely, that it must be accompanied by the requisite documentation (Arts 15(2)–15(4) of the Model Law). This gave rise to the following issues:

(a) whether the CIRP is a foreign proceeding;

(b) whether Mr Jain is a foreign representative, and whether he was appointed under the CIRP; and

(c) whether the procedural requirements under Art 15 of the Model Law have been satisfied.

Whether the CIRP is a foreign proceeding

15 Art 2(*h*) of the Model Law reads:

> "foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation[.]

16 In *Ascentra Holdings, Inc (in official liquidation) and others v SPGK Pte Ltd* [2023] 2 SLR 421 ("*Ascentra Holdings*") at [29], the Court of Appeal held that there were five requirements for a proceeding to qualify as a "foreign proceeding" under the Model Law, which I will discuss in turn:

(a) the proceeding must be collective in nature;

(b) the proceeding must be a judicial or administrative proceeding in a foreign State;

(c) the proceeding must be conducted under a law relating to insolvency or adjustment of debt;

(d) the property and affairs of the debtor company must be subject to control or supervision by a foreign court in that proceeding; and

(e) that proceeding must be for the purpose of reorganisation or liquidation.

Whether the CIRP is a collective proceeding

17 What amounts to a collective proceeding was considered in *Ascentra Holdings*, which laid down the following relevant propositions:

(a) it concerns all creditors of the debtor generally, and is not instigated at the request and for the benefit of a single secured creditor;

(b) a key consideration is whether substantially all of the debtor's assets and liabilities are dealt with in the proceeding (*Ascentra Holdings* at [104], citing *United Securities Sdn Bhd (in receivership and liquidation) and another v United Overseas Bank Ltd* [2021] 2 SLR 950 ("*United Securities*") at [55]–[62]); and

(c) it considers the rights and obligations of all creditors (*Ascentra Holdings* at [105], citing *Re Betcorp Ltd (in liquidation)* 400 BR 266 (Nevada US Bankruptcy Court, 2009) at 281).

18 Given the objectives of the CIRP, noted above (at [12]–[13]), I accepted the applicants' argument that the CIRP's primary objective is to facilitate the implementation of a resolution plan that provides for the treatment of the claims of all creditors and the revival of CIL.[12] The CIRP's objectives are, namely, to

[12] AWS at para 19.

provide a mechanism for corporate turnaround through (a) a structured process involving the formation of a CoC and appointment of the interim RP and RP to manage the company's affairs and assets, (b) mandatory safeguards ensuring fair treatment of all stakeholders, including requirements for the resolution plan to provide for operational creditors' payments which shall not be less than that in a liquidation, and (c) a clear preference for reorganisation over liquidation as evinced by liquidation being only a last resort when no resolution plan is proposed or accepted.

19 The applicants also submitted that the CIRP's collective nature is demonstrated by three key features: (a) its public and inclusive character, which is evidenced by the issuance of public announcements regarding CIL's CIRP in India and an open invitation to all creditors to submit their claims to the interim RP; (b) the RP's statutory duties, which include maintaining an updated list of claims, taking immediate custody and control of CIL's assets to preserve and protect them (including ensuring business continuity), and actively inviting prospective resolution applicants to propose a resolution plan; and (c) the automatic moratorium protection that remains in force throughout the entire CIRP until one of three outcomes occurs – the completion of the CIRP, the approval of a resolution plan, or the issuance of a liquidation order.[13]

20 I would also add that the CoC is constituted by creditors who have submitted claims upon public notice and invitation, and the same CoC must provide the requisite approval for a resolution plan to be submitted to the NCLT. The resolution plan, in turn, must address the repayment of debts in a way that does not prejudice the operational creditors (see above at [13]). In my view, these characteristics of the CIRP showed that it is a reorganisation process that

[13] AWS at para 19.

concerns all of CIL's creditors generally and considers their rights and obligations. Furthermore, all of CIL's assets are dealt with in the CIRP – they are accounted for in the resolution plan and managed by the RP. Accordingly, the CIRP is a collective proceeding.

Whether the CIRP is a judicial or administrative proceeding in a foreign State

21 Next, I turned to the issue of whether the CIRP is a judicial or administrative proceeding in a foreign State, *ie*, in India. A closely related issue was whether the NCLT constitutes a "foreign court" by the definition of Art 2(*e*) of the Model Law, which refers to a judicial or other authority competent to control or supervise a foreign proceeding. Paragraph 74 of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (UN document A/CN.9/442) (the "1997 Guide"), which is a relevant document for interpreting the Model Law pursuant to s 252(2)(*b*) of the IRDA, reads:

> A foreign proceeding that meets the requisites of article 2(a) should receive the same treatment irrespective of whether it has been commenced and supervised by a judicial or administrative body. Therefore, in order to obviate the need to refer to a foreign non-judicial authority whenever reference is made to a foreign court, the definition of "foreign court" in subparagraph (e) also includes non-judicial authorities …

22 Paragraph 74 of the 1997 Guide sought to provide some remarks on the definition of a foreign court pursuant to Art 2(*e*) of the Model Law. From this paragraph, the concepts of a "foreign proceeding" and a "foreign court" are inextricably linked – first, the definition of a "foreign court" in Art 2(*e*) of the Model Law is deliberately expansive, encompassing both judicial and non-judicial authorities, precisely to ensure consistency with the broad recognition given to foreign proceedings regardless of their supervising authority (whether judicial or administrative); and second, the paragraph's structural choice to discuss the definition of a "foreign proceeding" immediately before and

alongside the definition of a "foreign court" cements their conceptual interdependence.

23 Considering, firstly, whether the NCLT would constitute a foreign court, the NCLT is a quasi-judicial body (see above at [11]). While it partly comprises members of the judiciary, it is not a court – it was constituted via a notification by the Ministry of Corporate Affairs. However, its quasi-judicial nature does not defeat its status as a foreign court, as a foreign court includes non-judicial authorities. Indeed, the NCLT would constitute a foreign court because it is competent to control or supervise a foreign proceeding (assuming for the moment that the CIRP is indeed a foreign proceeding). The NCLT is the Adjudicating Authority under the IBC and has specific jurisdiction over the CIRP process for companies. It also exercises several judicial powers in relation to controlling or supervising the CIRP, including (a) the power to admit or reject the initiation of a CIRP; (b) the imposition of a moratorium; (c) the appointment of an interim RP; and (d) the power to approve or reject a resolution plan subject to the fulfilment of the statutory requirements, which can determine a company's fate (whether reorganisation or liquidation) (see above at [12]–[13]). I did not read the Model Law as requiring a specific form for a body to qualify as a court. Perhaps the most important characteristic is that the body must be adjudicative, making a determination that is not merely administrative, but which involves weighing whether to accept arguments put forward and accede to an application. The NCLT is thus a foreign court. Once it was established that the NCLT is a foreign court, it would follow that the CIRP, being a proceeding commenced and supervised by the NCLT, which is a judicial or administrative body (paragraph 74 of the 1997 Guide), would constitute a judicial or administrative proceeding in the foreign State.

Whether the other requirements for a foreign proceeding were fulfilled

24 I was also satisfied that the CIRP is conducted under a law relating to insolvency or adjustment of debt – from what has been discussed above at [10], the IBC is a statute which carries legal force and which relates to insolvency.

25 Moreover, the property and affairs of CIL are subject to control or supervision by the NCLT in the CIRP. The applicants argued that the NCLT exercises supervision over the RP, who conducts the CIRP. Such supervision would constitute the requisite control or supervision (*United Securities* at [67]).[14] However, it would seem on one reading of the provisions in the IBC, that the NCLT exercises supervision over the selection and replacement of the RP, which is proposed by the CoC, rather than direct supervision. Nonetheless, whichever way it is characterised, I found that the requisite control or supervision is made out by the NCLT having the power to approve a resolution plan, following which the property and affairs of CIL are managed according to that resolution plan (see [13] above).

26 Finally, as discussed in [12]–[13], the CIRP is a tool for corporate reorganisation, an alternative to liquidation. Accordingly, the CIRP fulfils the five cumulative requirements for a foreign proceeding under the Model Law.

Whether Mr Jain is a foreign representative appointed under the foreign proceeding

27 Following Art 2(*i*) of the Model Law, a foreign representative refers to a person or body authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding. Mr Jain is within this definition, as he

[14] AWS at paras 21–23.

is a person authorised in the CIRP to administer the reorganisation of CIL. Furthermore, via the second NCLT order, he was appointed and authorised as the RP for CIRP. Accordingly, I also granted recognition of Mr Jain as a foreign representative within the meaning of Art 2(*i*) of the Model Law.

Whether the procedural requirements in Art 15 of the Model Law have been satisfied

28 Finally, Art 15 of the Model Law sets out further procedural requirements to be satisfied before Mr Jain is allowed to apply to the court for recognition of the CIRP. He satisfied these requirements. The application was accompanied by certified copies of the two NCLT orders (Art 15(2)(*a*) of the Model Law) and a statement identifying all foreign proceedings and proceedings under Singapore insolvency law in respect of CIL that are known to him (Art 15(3) of the Model Law).[15] There was no need for the documents to be translated to English, thus Art 15(4) of the Model Law was also satisfied.

Recognition under Art 17 of the Model Law

29 In order for the court to grant recognition of a foreign main proceeding under Art 17(2)(*a*) of the Model Law, there must be (a) a foreign proceeding (b) which takes place in a State where the debtor has its Centre of Main Interests ("COMI") (see also Art 2(*f*) of the Model Law). Having found that the CIRP is a foreign proceeding, I turned to examine the issue of CIL's COMI.

Whether CIL's COMI is in India

30 Following *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] 4 SLR 1343, the COMI is determined as at the date of

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15 1st affidavit of Gajesh Labhchand Jain dated 5 December 2024 at para 38 and pp 97–108.

the recognition application (at [23]). The court starts with Art 16(3) of the Model Law, which presumes the debtor's COMI to be where its registered office is. This presumption can be displaced by the relevant COMI factors (at [31]). These factors must be objectively ascertainable by third parties, especially creditors and potential creditors (at [76]), and their relevance depends on how they might influence creditors' decisions to extend credit to the company (at [78]). COMI factors should demonstrate permanence or intended permanence, prioritising actual operations over legal structures and corporate identities (at [79] and [82]). Key factors include: (a) the location of CIL's (i) control and management, (ii) clients, (iii) creditors, (iv) employees, and (v) operations, (b) third-party dealings, and (c) the governing law (at [85]).

31 CIL's registered office is in India. *Prima facie*, India would be the COMI of CIL. There does not exist any proof to rebut the presumption. On the contrary, I agreed with CIL's submissions that the other factors evinced by the circumstances cemented India as the COMI of CIL, namely, that (a) both CIL and CIL SG branch are controlled from India, where the directors are based and make operational decisions; (b) CIL's main assets, operations and substantial business are in India; and (c) India hosts the majority of CIL's creditors, with only one Singapore creditor's claim filed, expected to constitute about 95% of all Singapore-based claims.[16] Therefore, CIL's COMI was determined to be in India.

32 Accordingly, I granted recognition of the CIRP as a foreign main proceeding under Art 17(2)(*a*) of the Model Law.

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16 AWS at para 33.

Reliefs under Art 21(1)(*e*) of the Model Law

33 The additional reliefs sought in relation to the repatriation of CIL's assets in Singapore fell under Art 21(1)(*e*) of the Model Law, which would be subject to the requirement under Art 22(1) of the Model Law that the interests of the creditors and other interested persons are adequately protected.

34 The applicants, without making reference to the requirement under Art 22(1) of the Model Law, suggested that there would be no prejudice to the creditors of CIL, pertinently those based in Singapore, if the power to repatriate CIL's assets in Singapore to its estate in India is granted as a relief. For instance, Mr Jain has provided notice of the CIRP to all known creditors including Singapore-based creditors and has invited them to submit their claims. Currently, only one Singapore-based creditor has filed a proof of claim, which has been fully admitted. Further, once the CIRP is recognised, Mr Jain intends to advertise the recognition in Singapore to notify other potential creditors and will also invite them to submit claims. These creditors may also participate in CIL's CIRP as CoC members. Finally, any resolution plan submitted to the NCLT will ensure the equal treatment of all similarly-situated creditors, regardless of where they are based.[17]

35 While these do serve the interests of creditors in Singapore, I declined to grant such relief at this stage of the proceedings. The Singapore-based creditors must be put on notice and given an opportunity to voice their objections if CIL wishes to repatriate its assets in Singapore to its estate in India. If CIL wishes to do so, the court will convene a hearing with the participation of Singapore-based creditors.

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[17] AWS at paras 41–43.

36 This requirement for leave aims to preserve, within the spirit of modified universalism, the interests of local creditors, giving a last opportunity for them to raise any concerns before repatriation occurs. I note the need for the court to have in mind local creditor interests in s 250(3)(*c*)(i) of the IRDA, which requires a foreign company in liquidation to make payment of liabilities in Singapore ahead of payment in its home jurisdiction. The existence of such a provision to my mind points to the need for the court to be sensitive to addressing local creditor needs. I would note however that while similar orders or directions have been made in other cases, I have not yet refused leave to repatriate. If it is shown that local creditors will be treated fairly and will be given ample opportunity to participate in the process abroad, I would think there would rarely be any reason to refuse repatriation or remittal of funds out of Singapore.

Public policy exception in Art 6 of the Model Law

37 Finally, the recognition of the CIRP and the reliefs ordered will not contravene public policy, satisfying the requirement in Art 6 of the Model Law.

Conclusion

38 In conclusion, I granted OA 1272, save that I declined to grant the additional relief for Mr Jain to be given the power to repatriate or return CIL's assets or any proceeds thereof in Singapore to CIL's estate in India. Any such repatriation or return must be done only with the leave of court.

Aidan Xu
Judge of the High Court

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