IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2026] SGHC(I) 19

Originating Application No 1 of 2026 (Summons No 28 of 2026)

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

And

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

And

In the matter of DYY

Between

DYX

… *Claimant*

And

DYY

… *Respondent*

Originating Application No 2 of 2026 (Summons No 29 of 2026)

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

And

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

And

In the matter of DYZ

Between

DYX

… *Claimant*

And

DYZ

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Stay of court proceedings — Grounds]
[Insolvency Law — Judicial management — Stay of proceedings in favour of arbitration]

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DYX
v
DYY and another matter

[2026] SGHC(I) 19

Singapore International Commercial Court — Originating Application No 1 of 2026 (Summons No 28 of 2026) and Originating Application No 2 of 2026 (Summons No 29 of 2026)
James Michael Peck IJ
12–14 May, 14, 21 August 2026

17 September 2026

James Michael Peck IJ:

Introduction

1 The Claimant, [DYX], filed applications (SIC/OA 1/2026 ("OA 1") and SIC/OA 2/2026 ("OA 2")) seeking the appointment of judicial managers for the Respondents, [DYY] and its wholly-owned subsidiary, [DYZ]. The Respondents are operating subsidiaries within a corporate enterprise group in which [HoldCo] sits at the top.[1]

2 The Claimant is a fund incorporated in the Cayman Islands that receives and invests capital from third-party investors.[2] The Claimant is managed by

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1 Agreed Bundle of Documents ("ABOD") Volume 1 at pp 21–22.

2 ABOD Volume 1 at p 20.

[BVI Manager],[3] a management company controlled by [Mr X], who acts with advice from members of an investment committee.[4] Both the BVI Manager and Mr X, in his individual capacity, are parties to a certain Waiver and Release Deed dated 16 January 2025 ("Waiver Deed") that is of pivotal importance in determining whether the Claimant should be permitted to move forward with the pending applications or whether the disputes should be referred to arbitration.

3 The judicial management applications are based on well-documented commercial loans ("Loans") initially advanced by the Claimant to the Respondents in 2020 and 2022.[5] The Claimant asserts that the Loans have matured and are presently due and payable, and therefore constitute grounds supporting the requested appointment of judicial managers. The Claimant argues that it, and other similarly situated creditors, would benefit from having the protection of responsible and responsive independent managers over the Respondents.

4 The Respondents oppose this relief and seek a stay of these proceedings (SIC/SUM 28/2026 ("SUM 28") and SIC/SUM 29/2026 ("SUM 29")), contending that obligations evidenced by the Loans have been waived and released, and are therefore not enforceable by reason of a negotiated settlement agreement between related parties that includes an arbitration clause (*ie*, the Waiver Deed). The Claimant is not named in the Waiver Deed, but other parties who signed the document (as discussed at [9] below) may arguably have acted in a representative capacity sufficient to bind the Claimant.

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3 ABOD Volume 1 at p 14.

4 ABOD Volume 6 at p 3052.

5 ABOD Volume 1 at pp 152–157.

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5 The Respondents contend that the Waiver Deed, properly construed, extends to the Claimant and clearly provides for disputes to be resolved by arbitration seated in Singapore pursuant to the rules of the Singapore International Arbitration Centre ("SIAC"). Assuming the stay is granted and arbitration takes place, arbitrators would be asked to determine whether the Claimant's claims against the Respondents have been waived and released. This court would retain jurisdiction to consider future rulings in relation to the judicial management applications in the event that the arbitral tribunal finds that the Loans remain outstanding and enforceable.

6 The Claimant has portrayed itself as a total stranger to the Waiver Deed, a non-party that never authorised any other party that signed the document to act on its behalf in relation to the Waiver Deed. Consequently, it takes the position that no agreement to arbitrate its claims ever came into existence and that it is therefore at liberty to pursue available relief in any court of competent jurisdiction, including this one.

7 The Claimant has been pressing for judicial relief against the Respondents in respect of the Loans for over a year. The current applications in the Singapore International Commercial Court ("SICC") were filed on 24 December 2025, promptly after the dismissal of the Claimant's winding up application in Hong Kong against the first respondent on [date redacted].[6] Hong Kong is the jurisdiction in which the Respondents are incorporated and maintain their offices.[7]

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6 ABOD Volume 2 at p 484.

7 ABOD Volume 1 at p 21.

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8 The winding up application was dismissed by the Hong Kong court based on colourable arguments by the first respondent that the Claimant lacked standing to pursue a winding up because its claim against the first respondent had allegedly been waived and released. The Hong Kong court was also informed that arbitration had been demanded by the first respondent pursuant to the arbitration clause in the Waiver Deed.[8]

9 The Respondents seek to stay the judicial management proceedings on essentially the same grounds as those presented in Hong Kong. They assert that all disputes between the Claimant and the Respondents are covered by the arbitration clause contained in that certain Waiver Deed.[9] The parties to the Waiver Deed are (i) [Cayman Manager], [name redacted] and [name redacted] (collectively, [Claimant Parties]); (ii) Mr X and the BVI Manager (collectively, [BVI Manager Parties]); and (iii) the HoldCo.[10]

10 The arguments made by the Respondents have caused the court to dive into the language of the Waiver Deed and to search for the intention of the parties to that document. Neither the Claimant nor the Respondents are identified by name in the Waiver Deed, nor have any of the parties to these proceedings signed the document. Thus, the requested stay invokes an arbitration agreement that must be examined to determine its intended scope and application.

11 Connecting the arbitration agreement within the Waiver Deed to the Loans requires a close reading of the language used in the document regarding

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8 ABOD Volume 2 at pp 908–931.

9 ABOD Volume 2 at p 634.

10 ABOD Volume 2 at p 634.

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its application to subsidiaries (as that term has been defined in the Waiver Deed) and consideration of what the parties truly intended when they negotiated and drafted a formal waiver and release agreement that curiously does not mention and makes no specific reference to the separately documented Loans.

12 This omission (whether deliberate or inadvertent) has resulted in contradictory (and no doubt also purposeful and self-interested) arguments as to the meaning of the Waiver Deed and its application to the judicial management proceedings before this court.

13 The Claimant's decision to commence these proceedings implies a strategic choice to proceed with its applications for relief based on its own theory that the Waiver Deed does not apply to the Loans. It has done so despite its experience in Hong Kong and actual knowledge of the opposing arguments that the Respondents would likely raise.

14 The failure to even mention the Loans in the Waiver Deed has added an element of uncertainty to the process of determining whether disputes based on the Loans are covered by the arbitration clause. The Claimant highlights the fact that it is not a named party and that the Loans are not mentioned at all, while the Respondents point to broadly worded language within the Waiver Deed and its business purpose in asserting that the Loans were waived as bargained-for consideration and that arbitration is the appropriate means to resolve the dispute.

15 In an effort to better understand what the parties truly had in mind and were trying to accomplish in the Waiver Deed, four witnesses with knowledge of the negotiations submitted detailed affidavits and presented extensive sworn testimony at hearings that took place in the SICC from 12 to 14 May 2026.

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16 Written submissions summarising the evidentiary record of these hearings were presented on 5 August 2026, and closing arguments took place on 14 August 2026. In the interest of expediting resolution of the stay applications, a concise version of this decision was read to the parties at a virtual hearing held on 21 August 2026.

17 The central question in the record is whether the individuals who negotiated and executed the Waiver Deed understood that the Claimant, although not named, was a party under agency principles and that claims based on the Loans were being released. A related point is whether those involved in the negotiations intentionally agreed and understood that any disputes arising out of their agreement were to be governed by the arbitration clause of their agreement.

18 The Claimant, through the testimony of Mr X and [Mr Y], a lawyer who participated directly and actively in drafting and negotiating the Waiver Deed, has asserted that the parties to the Waiver Deed never intended that it would extend to the claims made in these judicial management proceedings. The Claimant further contends that it should not be subject to the waiver and release provisions given its status as a separately managed investment vehicle that receives, holds and invests assets for the benefit of independent investors. Those investors are the real parties with an economic interest in the enforceability of the Loans and whose invested capital would be lost for no consideration by the operation of the Waiver Deed, a document to which they never agreed to be bound.

19 The Claimant, through its solicitors, denies that it fits within the sweeping definition of "subsidiary" used in the Waiver Deed and denies that

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Mr X or his firm, the BVI Manager, were authorised to waive and release the claims being made in these proceedings for the benefit of its investors.

20 Mr X, as a representative of the Claimant, testified under oath and insisted repeatedly that it was always understood that claims based on the Loans were not part of the separation transaction described below and were to be excluded.

21 The evidence shows that the Waiver Deed was negotiated over a period of several months as part of an agreed restructuring of what had once functioned as a consolidated enterprise group with an integrated corporate governance structure dedicated to the financing and development of alternative energy projects.

22 The aim of the negotiations that produced the Waiver Deed was to divide this combined enterprise group of affiliated businesses into two separately managed corporate groups ([Claimant Group] and [Respondent Group] respectively). Beneath these transactional formalities was a falling out that had occurred at a senior management level between Mr X, who managed the Claimant Group's side of the HoldCo's business and two other individuals, [Mr Z] and [name redacted], who utilised borrowed capital sourced by the Claimant Group in developing and operating these projects in various Asian countries.[11]

23 The HoldCo and its related companies had engaged in the financing and development of energy projects in [locations redacted] and its business activities were carried out through a web of affiliated subsidiaries and special purpose

[11] ABOD Volume 1 at p 22.

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vehicles that were managed by the HoldCo at a holding company level. The Claimant Group functioned as the financing side of this enterprise and were to be spun off from the Respondent Group as an independent operation managed by Mr X.[12]

24 The restructuring effort was undertaken to resolve friction between these principals arising out of the discovery of certain alleged related party transactions approved at Mr X's direction without first having obtained authorisation from others within the HoldCo's corporate governance structure.[13]

25 Regardless of whether these transactions were actually unauthorised, the fact that the HoldCo had complaints about Mr X's non-compliance with required internal governance practices constituted a good reason for him to want a waiver and release of any and all claims that might be made against him. It was perfectly understandable under these circumstances that he would want to protect himself from future claims by the HoldCo.

26 Mr X thus personally benefitted by becoming a party to an agreement with mutual waivers and releases. The record shows that he engaged the Cayman law firm, [name redacted], to represent his interests and to draft the Waiver Deed in the first instance, although Mr Y subsequently took over the drafting responsibilities.

27 The proposed separation, which included a transfer and reallocation of equity interests giving Mr X control of the Claimant Parties, was intended to address potential discord at the senior management level during an already intense period of acknowledged financial distress across the business.

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12 ABOD Volume 1 at pp 22–23; ABOD Volume 4 at pp 1526–1532.

13 ABOD Volume 4 at pp 1526–1532.

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28 In effect, the Waiver Deed was a bargained-for transactional step in implementing a corporate divorce. Regrettably, the parties failed to clearly set forth the most basic settlement thesis of all – were all claims released, including those at the investment fund level, or did some survive – and they are still squabbling over misunderstandings that should have been resolved by plain language when they documented their agreement.

29 An open question is whether the parties were seeking a clean break that eliminated the overhang of all legacy claims or a separation that preserved the claims of the Claimant under the Loans. The evidence is in conflict on this point.

30 One side says a clean break was the intended and mutually understood goal, while the other says that the Loans were not to be impacted by a separation that was taking place at the management level of the HoldCo's business, leaving the claims of managed funds such as the Claimant intact. These are mutually exclusive interpretations and have proven to be a recipe for ongoing discord.

31 This decision resolves issues raised by the stay requests limited to the scope of the Waiver Deed in relation to the agreement to arbitrate. The court leaves unanswered the question of whether the Loans remain outstanding and are enforceable. It will be left to the arbitral tribunal to consider and evaluate the conflicting testimony concerning the Loans and whether they are subject to the waiver and release provisions or have survived the Waiver Deed.

32 The court assumes the good faith of all actors here, but the record does show that the potential application of the expansively worded Waiver Deed to the Loans was recognised by the Claimant as a risk before signing and that the current judicial management applications might be seen as a tactical move

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pursued with the aim of overcoming the consequences of a known weakness in the drafting.

33 From Mr Z's perspective, that was not a drafting weakness at all, but rather, an accurate statement of the parties' intent to deliver the only valuable consideration (*ie*, loan forgiveness) that was available to support the transfer of supermajority equity interests that benefitted Mr X.

34 Despite that testimony from Mr Z, the evidence shows that Mr Y believed during the drafting phase that there was a common understanding that claims at the investment fund level such as the ones now before the court were intended to be excluded from the scope of the Waiver Deed.

35 It appears that Mr Y was well aware of this issue, was concerned about the potential for ambiguity and decided that some clarification was needed. While drafts of the document were still being exchanged and before the parties came to a final agreement on an execution version, Mr Y sought to verify what he said was a common understanding of the parties that claims of the investment funds were not to be affected or impaired by the Waiver Deed. There is some uncertainty as to which party Mr Y was representing at various stages during the drafting process, but in this instance, it appears that he was trying to insulate the funds.

36 Mr Y sent an email in which he sought to confirm the existence of a shared understanding that investment funds managed by Mr X and the BVI Manager (including the Claimant) were not agreeing to release their claims.[14] Mr Z promptly and forcefully disagreed with that characterisation, denied that

[14] ABOD Volume 5 at pp 3004–3005.

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any such understanding existed and rebuffed the effort to adopt clarifying language.

37 In the interest of expediency at a time when the HoldCo and the Claimant Group were feeling economic pressure and struggling to make payroll, the Waiver Deed was signed without further editorial clarification notwithstanding the existence of this now highly problematic loose end.

38 It is undisputed that the Claimant Parties, Mr X and the BVI Manager all knew that the document they were signing contained an arbitration clause, and (as revealed in Mr Y's email and Mr Z's reply) they were on notice that their understanding regarding the intended scope and application of the Waiver Deed was disputed by Mr Z on behalf of the HoldCo.

39 Mr Y (with the concurrence of Mr X) elected not to challenge Mr Z, and the parties moved ahead, choosing to finalise and execute the agreement, despite knowing that an unsettled question existed as to the intended scope of the agreement in relation to the Claimant's claims. The result is documentation that fails to include express language making clear that the Claimant's claims are carved out and excluded.

40 The email exchange between Mr Y and Mr Z indicates that the common understanding proposed by Mr Y was not an agreed understanding at all but rather an inconclusive effort by counsel acting for the Claimant Group's side of the transaction to propose an interpretation that would be beneficial to the Claimant and the other funds managed by the BVI Manager.

41 It is hard to ignore the fact that this question of scope and the intentions of the parties could easily have been resolved by adding some plain language

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providing that the Loans were excluded from and not affected by the Waiver Deed, or by explicitly stating that the Claimant is an investment fund that should not be treated as a subsidiary and should not be deemed bound by the Waiver Deed.

42 But Mr X, Mr Y and the Claimant Parties chose to live with the document as it was drafted (essentially acceding to the HoldCo's construction that the Loans were included) and to accept the consequences of the existing language rather than pressing for a drafting change that would have achieved greater interpretive clarity consistent with their own wishes and expectations.

43 Given Mr Z's response, they knew that what they had hoped to confirm as a common understanding to exclude the Claimant and the Loans from the Waiver Deed had been firmly rejected, and that the existing language, while imperfect from their point of view, realistically amounted to a "done deal" that could not be changed. The pursuit of creditor remedies by the Claimant in Hong Kong and in the SICC may be an attempt to undo what had been done.

44 What does seem to be beyond any doubt, however, is that an arbitration clause governs the resolution of any disputes that might arise with respect to the Waiver Deed. The disagreement over the scope of the waiver and whether the Claimant's claims are covered is a perfect example of such a dispute.

45 As explained in this decision, upon consideration of the text of the Waiver Deed and the evidence regarding intent and conflicting interpretations, the court has concluded on the *prima facie* standard that: (a) an agreement to arbitrate has been established that extends to the claims made by the Claimant in the judicial management proceedings in the SICC; and (b) the stay requested by the Respondents is needed, appropriate and should be granted.

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46 The Claimant Parties appear to have executed and agreed to be bound by the Waiver Deed as part of a mutually beneficial separation, despite awareness of a genuine misalignment regarding the proper scope of the Waiver Deed and its application to the Claimant and the Loans.

47 The pending questions regarding the interpretation of the Waiver Deed and its impact on the Loans are matters to be determined by an arbitral tribunal. This decision to grant the requested stay is based on well-developed Singapore law favouring a referral to arbitration in all instances where a *prima facie* showing can be made that parties to a dispute have agreed to arbitration. That showing has been made here.

Background

48 The Waiver Deed was negotiated with the assistance of counsel over a period of months in 2024 and was one of the transactions structured by the parties to effectuate the separation of the Claimant Group and the Respondent Group. The Waiver Deed became effective on 16 January 2025.[15]

49 Certain other documents were created that relate to aspects of the overall separation, including transfers of shares, but there is no single unifying document that describes the intention of the parties or that specifies the sequencing and purpose of the various transactional steps undertaken to achieve the separation.

50 Notwithstanding the fact that the Waiver Deed contained an arbitration agreement designating Singapore as the seat of arbitration, The Claimant disregarded the Waiver Deed, treated it as inapplicable to the Loans and brought

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15 ABOD Volume 2 at p 634.

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a winding up application against the first respondent in Hong Kong on 7 July 2025, predicated on the ongoing validity of the Loans.

51 On 11 September 2025, the first respondent demanded arbitration against the Claimant in the SIAC. This arbitration and a related demand for arbitration brought by the Respondents against the Claimant on 30 March 2026 have been stayed pending the resolution of these proceedings in the SICC.[16]

52 The Hong Kong winding up application was heard and dismissed on [date redacted]. The judgment was released shortly after on [date redacted].[17] The winding up application was dismissed based on contentions that the underlying debt owed by the first respondent had been waived and was subject to a valid arbitration agreement.[18] While the arguments raised in Hong Kong mirror those raised by the Respondents in the present judicial management applications, this earlier decision has played no role in the SICC's independent evaluation of the issues.

53 These applications for judicial management were filed in the SICC on 24 December 2025.

Procedural history

54 An initial hearing took place on 13 February 2026 to consider an application for leave to serve the Respondents at their offices in Hong Kong. The court considered threshold jurisdictional questions and after submission of a supplemental affidavit by Mr X, granted leave for service of the judicial

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16 ABOD Volume 4 at pp 1517–1518, para 5.

17 ABOD Volume 2 at p 484, para 44.

18 ABOD Volume 2 at pp 908–931.

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management applications in Hong Kong. The Claimant contended that judicial management was an appropriate remedy under the circumstances and was urgently needed to protect the Claimant and other similarly situated creditors.

55 After serving the judicial management applications on the Respondents in Hong Kong, a hearing on the merits of OA 1 and OA 2 was scheduled to take place in the SICC on 7 April 2026.

56 Immediately prior to that scheduled hearing, the Respondents initiated SUM 28 and SUM 29, seeking a stay of proceedings based on the arbitration agreement contained in the Waiver Deed. The Respondents sought the stay under s 6 of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") or as a discretionary case management stay.

57 An initial hearing on SUM 28 and SUM 29 took place on 7 April 2026. The evidence at the initial hearing included an affidavit exhibiting an expert report of [name redacted], a Cayman qualified lawyer, who provided a detailed legal opinion concluding that the Claimant should be considered a party to the Waiver Deed under applicable Cayman law and recognised principles of agency law.[19] This report was not admitted into evidence, and the parties have stipulated that the Waiver Deed, despite being governed by Cayman law, will be construed in accordance with Singapore law.[20]

58 Based on the conflicting positions taken by the Claimant and the Respondents at the initial hearing, the court concluded that additional evidence was needed to uncover the true intentions of the parties and whether parties acting on behalf of the Claimant ever agreed to arbitration. The court's aim was

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19 ABOD Volume 3 at p 1015.

20 Minute Sheet dated 14 August 2026 at p 5.

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to apply the *prima facie* standard to the Waiver Deed and to explore the continued validity and enforceability of the Loans that could only be released and waived by means of signed writing by the parties. The court therefore ordered that the deponents of the various affidavits be cross-examined pursuant to O 20 r 6(1)(*b*) of the Singapore International Commercial Court Rules 2021 ("SICC Rules").[21]

59 Evidentiary hearings took place in the SICC from 12 to 14 May 2026. At the close of those hearings on 14 May 2026, the court encouraged the parties to attempt to overcome their differences by engaging in bilateral discussions dedicated to a commercial resolution. Those discussions have taken place but have thus far failed to produce an agreement.

60 The parties have submitted their closing briefs, authorities and references to testimony and documents and argued their respective positions on the stay at a virtual hearing on 14 August 2026 that lasted over two and a half hours. The arguments indicated a continuing disagreement on the question of whether the Claimant is a party covered by the Waiver Deed.

61 At the conclusion of the hearing on 14 August 2026, the court indicated that it would be taking the questions presented under advisement and would issue its decision one week later at a hearing on 21 August 2026.

62 Shortly after the court announced its findings and the essential grounds of this decision on 21 August 2026, the Respondents and the Claimant filed two sets of competing applications seeking procedural relief from the court relating to the permissible use of the record developed in SUM 28 and SUM 29. The

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[21] Minute Sheet dated 7 April 2026 at p 10.

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Respondents are seeking unfettered (and unredacted) use of that record, while the Claimant seeks judicially sanctioned restrictions on its use and publication, based on broad contentions of privacy and confidentiality.

63 In SIC/SUM 63/2026 and SIC/SUM 64/2026, the Respondents seek an order that would allow the entire unredacted record to be adduced as evidence in another pending case before the General Division of the High Court. That case involves a dispute between different entities of the Claimant Group and the Respondent Group, but raises similar questions regarding the scope and interpretation of the Waiver Deed.

64 In SIC/SUM 67/2026 and SIC/SUM 68/2026, the Claimant seeks an order that would impose blanket confidentiality restrictions on the use of the entire record both in the pending case before the General Division of the High Court and before the arbitral tribunal, pursuant to O 16 r 9 of the SICC Rules, s 23 of the IAA or the court's inherent jurisdiction. Those restrictions would also extend to the publication of these grounds of decision.

65 The court will address the issues raised by these applications separately in due course. These grounds of decision have been redacted in the interim to enable their publication pending the determination of those applications.

The applicable legal standard

66 A central issue in the present applications concerns the applicable test for determining whether the stay in favour of arbitration should be granted.

67 The Respondents argue that the *prima facie* standard of review applies. This follows from the Court of Appeal's decisions in *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 ("*Tomolugen*") at [63] in the context of

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a stay application under s 6 of the IAA and *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 ("*AnAn*") at [56] in the context of a winding up application where the disputed petition debt is subject to an arbitration agreement.[22]

68 The Claimant seeks to hold the Respondents to a more exacting burden of proof by characterising the issue before this court as an "anterior" one. Here, the anterior issue is whether the Respondents are entitled to invoke the arbitration clause in the Waiver Deed against the Claimant in the first place, given that the Claimant is not a signatory to the Waiver Deed and denies that it was a party to the Waiver Deed.[23] This issue is anterior in the sense that it must be resolved before the frameworks in *Tomolugen* and *AnAn* are even engaged.[24] In so far as the anterior issue is one of construction of the language of the Waiver Deed, no standard of proof applies. In so far as the anterior issue turns on disputed facts, it must be decided on the balance of probabilities.[25]

69 The court rejects the Claimant's argument and finds that the *prima facie* standard of review applies. This attempt to evade the application of the *prima facie* threshold by characterising the issue as "anterior" runs counter to the prevailing Singapore case authorities.

70 The Claimant cited a number of cases in its initial set of submissions for the proposition that issues as to formation, consent, and the existence of a valid arbitration agreement between the parties are subject to a *de novo* review by the seat court (see *COT v COU* [2023] SGCA 31 ("*COT*") at [29] and [39]; *Jiangsu*

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22 Respondents' Closing Submissions dated 5 August 2026 ("RCS") at paras 16 and 18.

23 Claimant's Written Submissions dated 8 May 2026 ("CWS") at paras 9, 15 and 25.

24 Claimant's Closing Submissions dated 5 August 2026 ("CCS") at para 10.

25 CCS at paras 18–19.

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Overseas Group Co Ltd v Concord Energy Pte Ltd [2016] 4 SLR 1336 at [48]; *CUG v CUH* [2022] 5 SLR 22 at [82]).[26]

71 The Respondents have rightfully pointed out, however, that these were all cases involving jurisdictional challenges at the setting aside stage, after the arbitral tribunal already had considered and found jurisdiction over the parties' dispute in the first instance under the *kompetenz-kompetenz* principle.[27] It is permissible in that context for the court to undertake a *de novo* review, but there are still certain limits.

72 As explained in *COT* at [39], where the setting aside application is premised on the absence of a binding contract, the seat court need only concern itself with whether such a contract existed. This may require the court to consider the terms of the contract to determine the parties to the contract as well as questions of authority, but this only needs to be done on a *prima facie* basis to avoid delving into the merits of the dispute, which should be reserved to the tribunal.

73 The stay applications of the Respondents are at a very different procedural stage. As disclosed by the parties, there has been little, if any, progress in the SIAC arbitrations to date, presumably because of the ongoing court proceedings. What is clear is that the arbitral tribunal has not yet had the opportunity to rule on its own jurisdiction in the first instance, and specifically, to consider whether the Claimant is a party to and bound by the arbitration agreement contained in the Waiver Deed.

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26 CWS at paras 10–13.

27 RCS at paras 26–27.

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74 These circumstances lead to the conclusion that it would be inappropriate for this court to now determine the "anterior issue" and thereby deprive the tribunal of its *kompetenz-kompetenz*. The Court of Appeal's decision in *Tomolugen* makes clear that the tribunal is to be the first arbiter of its own jurisdiction, and s 6 of the IAA is not intended to undermine or detract from that principle (at [66]–[67]).

75 The fact that the Claimant is not a signatory to the Waiver Deed and denies being a party to the Waiver Deed makes no difference to the analysis. A similar argument was raised and rejected by the High Court in *Malini Ventura v Knight Capital Pte Ltd* [2015] 5 SLR 707 ("*Malini*"). The defendants in that case commenced arbitration proceedings against the plaintiff, seeking payment under a guarantee that contained an arbitration clause. The plaintiff applied to stay the arbitration on the ground that she had not signed the guarantee and that her signature was a forgery (at [17]). Counsel for the plaintiff contended that in a situation where one party has denied ever entering into the arbitration agreement so that its very existence is brought into question, the question as to whether any agreement was reached should be decided by the court on the usual civil standard after a full trial (at [24]). The court rejected this argument, noting at [36] that:

> The regime in force here gives primacy to the tribunal although, of course, the court still has an important role to play. *If I were to hold that, in a situation where the conclusion of the arbitration agreement is in issue, the jurisdiction in s 6(2) to stay the court proceedings would not bite unless I could conclude, on the basis of the usual civil standard, that the arbitration agreement had been entered into, I would be imposing too high a burden on the party seeking the implementation of the arbitration agreement.* I consider that it would satisfy the rights of both parties if the party applying for the stay was able to show on a *prima facie* basis that the arbitration agreement existed. The matter would then go to the tribunal to decide whether such existence could be established on the usual civil standard and then, if any party was dissatisfied with the tribunal's decision, such party could

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> come back to the court for the last say on the issue. [emphasis added]

76 Accordingly, the Claimant's arguments are unavailing and insufficient to displace the *prima facie* standard of review. Whether the Claimant is a party to and bound by the Waiver Deed is to be determined by the arbitral tribunal in the first instance on the usual civil standard. That determination may ultimately be subject to a *de novo* review by the seat court, but prior to such determination, the seat court is confined to a *prima facie* review. Any logical discomfort in the notion that an arbitral tribunal may well decide that there was no arbitration agreement, and that therefore, the tribunal had no authority to decide on its jurisdiction in the first place, should be disregarded to give effect to the principle of *kompetenz-kompetenz* (*Malini* at [37]).

77 The Claimant submits that its approach, nonetheless, accords with the framework in *Tomolugen*, relying on *Tjong Very Sumito v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 ("*Tjong*"). In that case, the Court of Appeal cited a passage from *Gulf Canada Resources Ltd v Avochem International Ltd* 66 BCLR (2d) 114, but that reference to "clear" cases of no agreement to arbitrate is consistent with the *prima facie* standard of review. If the *prima facie* threshold is not met, then it would be a clear case in which the stay should not be granted. Conversely, if the *prima facie* threshold is met, then it is not a clear case, and the court *must* stay the proceedings in favour of arbitration.

78 There is no discretion to determine the "anterior issue" on anything other than the *prima facie* standard under the frameworks in *Tomolugen* and *AnAn*. This is especially so in light of the Court of Appeal's decision in *Singapore Commodities Group Co, Pte Ltd v Founder Group (Hong Kong) Ltd* [2026] 1 SLR 651 ("*Singapore Commodities*"), discussed further below at [84]–[87].

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79 The Claimant points to *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 ("*Founder Group*") as an instance where the court considered, as a threshold issue, whether the debtor could even assert the existence of the arbitration agreement (at [21]). In that case, the debtor disputed the petition debt on the basis that the underlying contracts were null and void under Chinese law (at [51]). At the same time, the debtor sought to invoke the arbitration agreement in those contracts to stay the winding up application. The Court of Appeal held that the debtor could not invoke the arbitration agreement in these circumstances and that the *AnAn* framework was therefore not engaged at all (at [59] and [63]). The debtor's position was "manifestly inconsistent", in that it was seeking to rely on arbitration agreements contained in contracts that they simultaneously claimed were null and void (at [62]). The Court of Appeal also noted that to allow the debtor to invoke the arbitration clause would amount to an abuse of process (at [61]).

80 The present case clearly stands on a totally different footing. There is no inconsistency in the Respondents' position. They seek to rely on an arbitration agreement contained in the very document they assert has the effect of waiving the underlying debts on which the judicial management applications are based. The validity and effectiveness of the Waiver Deed is the very foundation of their case. No allegation of abuse of process has been advanced by the Claimant. To the extent that *Founder Group* accepts that the *prima facie* standard of review may be displaced in certain circumstances, those circumstances are not present here.

81 In an apparent effort to invoke the court's residual discretion to determine the "anterior issue", the Claimant alluded to the rights of other creditors being at stake as cause to promptly resolve the question of whether The Claimant should be permitted to proceed with its applications for judicial

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management. The Claimant argued that the court is particularly well positioned to determine the issue, having presided over the cross-examination of the witnesses and having access to a full evidentiary record. But the authorities make clear that this expedient alternative is not available and that the court is precluded from exercising any such discretion.

82 The Claimant refers to *Gulf International Holding Pte Ltd v Delta Offshore Energy Pte Ltd* [2023] 5 SLR 1455 ("*Gulf International*"). That case involved a judicial management application based on a disputed debt subject to an arbitration agreement. The court held that its discretion to stay or dismiss the application should not be limited to situations where the alleged debtor is acting in abuse of the court's process. Instead, the court should undertake a "more holistic assessment of the facts and consider, *inter alia*, the interests of the other stakeholders of the debtor company and the wider public interest" (at [69]).

83 The court in *Gulf International* recognised that judicial management applications engage broader public interest concerns that, in appropriate cases, may justify giving precedence to the insolvency regime over arbitration (at [62]–[63]). This sensitivity to the protection of creditors implies that the court has a residual discretion to refuse a stay of a judicial management application where broader public interest concerns are sufficiently compelling to outweigh the principle of party autonomy.

84 Notwithstanding this more expansive approach to the exercise of jurisdiction where creditors' rights are implicated, the Court of Appeal's recent decision in *Singapore Commodities* points to a more nuanced perspective and instructs that it is not within the court's discretion to determine the "anterior issue" on the merits once a *prima facie* case in favour of arbitration has been established.

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85 In *Singapore Commodities*, the Court of Appeal explained that in cases where there is no arbitration agreement, the default position is that the court has no jurisdiction to wind up the debtor where the underlying debt is disputed on *bona fide* and substantial grounds. However, the court retains the discretion, in rare cases, to decide the dispute in the exercise of its general civil jurisdiction, and can, in so doing, cure the deficiency in its winding-up jurisdiction. If the dispute is decided in the petitioner's favour, that would establish its standing as creditor, and the court could then proceed to make the winding-up order (at [54] and [57]).

86 A different approach applies, however, where the parties have agreed to resolve disputes over the debt in arbitration. In such cases, it would not be proper for the court to review the merits of the dispute. It follows that the court cannot exercise its residual discretion to decide the dispute as part of its general civil jurisdiction in the winding-up proceedings. That discretion, as a general rule, is displaced by the parties' agreement to arbitrate (at [61]). The petitioner will therefore be unable to establish its standing as creditor, and the court will have no jurisdiction to wind up the debtor, until the dispute has been resolved in arbitration. This is subject only to the abuse of process safeguard established in *AnAn*, which, if engaged, will allow the court to apply the general approach to winding-up applications instead (at [64]). The Claimant, however, advances no allegation of abuse of process in the present case.

87 *Singapore Commodities* therefore confirms that the Singapore courts generally lack residual discretion to determine a disputed debt in a winding-up application where the parties have agreed to arbitrate that dispute. This raises some doubt as to whether the holistic approach in *Gulf International* continues to be appropriate in the judicial management context.

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88 In any event, the court is unconvinced that credible grounds exist that would justify displacing the arbitration regime in the holistic sense contemplated in *Gulf International*. There are two main reasons for this conclusion.

89 First, this is not the first occasion where the Claimant has sought to pursue an insolvency remedy against the Respondents. In July 2025, the Claimant filed a winding-up petition against the first respondent in Hong Kong.[28] In resisting the petition, the first respondent relied on essentially the same arguments as in the present case, namely, that the Claimant's claim had been waived pursuant to the Waiver Deed and that the dispute should be referred to arbitration instead.

90 The Hong Kong court dismissed the winding-up petition in November 2025, finding that there was a *bona fide* and substantial dispute as to the underlying debt which should be referred to arbitration.[29] When the present judicial management applications in the SICC are viewed as a reflexive and immediate ricochet response to the dismissal of the Hong Kong proceedings, the applications before the court appear consistent with a wilful attempt to circumvent the arbitration agreement in the Waiver Deed for the purpose of gaining a tactical advantage and do not appear to be a serious attempt to rehabilitate the Respondents.

91 Second, creditors unrelated to the Claimant are not likely to benefit from the pursuit of judicial management and a denial of the stay applications. Mr Y's testimony shows that other creditors of the Respondents are entities related to

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28 ABOD Volume 2 at p 484.

29 ABOD Volume 2 at pp 923 and 929–931.

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the Claimant Group and controlled by Mr X. As Mr Y explained, the amount collectively owed by the Respondent Group to the Claimant Group exceeds $100m,[30] of which the Claimant's claim represents only a small fraction.[31] While the judicial management applications are being pursued by the Claimant on its own as a single claimant, the Claimant is essentially acting as a nominee for three funds belonging to the Claimant Group that have entered into a cost sharing arrangement.[32]

92 The entities with a real economic interest in the outcome of the current judicial management applications therefore all appear to be aligned entities acting under Mr X's direction and common control. Viewed from that perspective, the Claimant's assertion that the rights of other creditors are involved technically may be correct but is also a dubious proposition under these circumstances involving collaboration among nominally independent investment funds that are all connected to Mr X.

93 The applications plainly are not being pursued to benefit unrelated creditors. They are just the latest episode in an ongoing struggle for strategic advantage between two adverse corporate groups. This parochial business conflict is one in which the public interest concerns identified in *Gulf International* simply are not implicated.

94 For the reasons noted, the *prima facie* standard of review applies in this case. To obtain a stay of the judicial management applications, the Respondents have to establish a *prima facie* case that: (a) there is a valid arbitration clause

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30 13 May 2026 Transcript at p 181 lines 5–8.

31 ABOD Volume 1 at p 31.

32 13 May 2026 Transcript at p 182 lines 10–15.

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between the parties to the court proceedings; (b) the dispute in the court proceedings falls within the scope of the arbitration agreement; and (c) the arbitration agreement is not null and void, inoperative or incapable of being performed. To the extent that the *AnAn* framework is engaged, the stay applications may also be defeated if the Respondents are acting in abuse of the court's process, although no such allegation has been made in the present case.

The Respondents have established a *prima facie* case in favour of arbitration

95 The validity of the arbitration agreement in the Waiver Deed is not disputed, but questions do exist regarding whether the Claimant is a party to and bound by the arbitration agreement within the Waiver Deed.

96 The Respondents' case rests on two main planks, both of which must be satisfied at a *prima facie* level for the purposes of the stay applications:

(a) First, the Claimant is a "subsidiary" within the meaning of the Waiver Deed.[33]

(b) Second, the Cayman Manager, the BVI Manager and/or Mr X acted as the Claimant's agent and had actual or apparent authority to agree to the Waiver Deed on the Claimant's behalf.[34]

97 The Claimant, through the testimony of Mr X and Mr Y, disputes both of these assertions, contending that the Claimant does not fit the definition of "subsidiary" as that term is used in the Waiver Deed,[35] and that none of the

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33 RCS at paras 41–48.

34 RCS at paras 49–57.

35 CCS at paras 22–27.

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parties that signed the Waiver Deed exercised any actual or apparent authority on behalf of the Claimant.[36]

98 The court does not need to delve deeply into and resolve these issues definitively. The threshold question at this stage is only whether the Respondents have established a *prima facie* case that the Claimant is a party to and bound by the arbitration agreement in the Waiver Deed. Upon consideration of the parties' submissions and the evidence, the court is satisfied that the *prima facie* standard has been met here.

Whether the Claimant is a "subsidiary" within the meaning of the Waiver Deed

99 The Respondents' first main argument is based on the language used by the parties. They rely on the bespoke definition of "subsidiary" in the Waiver Deed, which is not tied to percentages of share ownership but to the ability to exercise direct or indirect control over the management and decision-making of that entity. The term is defined in the Waiver Deed as follows:[37]

> … references to a "subsidiary" means in relation to a person (other than a natural person) where another person has or obtains direct or indirect control of the power to direct or cause the direction of the management and decision-making of that person without reference to any other person.

100 The terms "Claimant Group" and "BVI Manager Parties" are defined as extending beyond the signatories to the Waiver Deed, namely, the Cayman Manager, the BVI Manager and Mr X, to include their subsidiaries. Those expansive definitions read as follows:[38]

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36 CCS at paras 66–89.

37 ABOD Volume 2 at p 639, clause 1.2(u).

38 ABOD Volume 2 at p 637, clause 1,1.

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> "[Claimant Group]" means, collectively [Cayman Manager], [names redacted] and their (direct and indirect) subsidiaries.
>
> "[BVI Manager Parties]" means, collectively, [Mr X], [BVI Manager], its director(s) and their (direct and indirect) subsidiaries (excluding the [Claimant Group]) and each of them, a "[BVI Manager Party]".

101 Clause 3.1(b) of the Waiver Deed is the operative provision under which the Loans are alleged to have been waived. That clause reads:[39]

> … each of [Cayman Manager], [names redacted] (for themselves and as agents for each member of the Claimant Group), and the [BVI Manager Parties] waives, releases and completely and forever discharges all and/or any Claims whether or not presently known to the parties or to the law and that it ever had, may have or hereafter can, shall or may have against any [entity of the Respondent Group] arising out of or connected with the Circumstances in existence on or prior to the date of this Deed …

102 In reading these clauses together, the court has concluded that there is a plausible construction consistent with a finding that the Claimant qualifies as a subsidiary of the Cayman Manager, the BVI Manager or Mr X, and therefore falls within and is subject to clause 3.1(b) of the Waiver Deed.

103 There are certain inconsistencies in the record regarding which entity was functioning as the Claimant's manager when the Waiver Deed was signed. While the Claimant's fund register states the BVI Manager as the manager,[40] other documents presented to investors refer to the Cayman Manager as the manager instead.[41]

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39 ABOD Volume 2 at p 640, clause 3.1(b).

40 ABOD Volume 1 at pp 57 and 62.

41 ABOD Volume 4 at p 1544, para 60(f)(iii); ABOD Volume 5 at p 2516.

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104 There is no need to resolve those inconsistencies for present purposes. Whether the Claimant's manager was the Cayman Manager or the BVI Manager, the Claimant's Second Amended and Restated Operating Agreement ("Operating Agreement") vests the management and control of the fund exclusively in the manager.[42] On its face, therefore, the Claimant would be a subsidiary of either the Cayman Manager or the BVI Manager, as that term has been defined in the Waiver Deed.

105 More importantly, it is undisputed that Mr X was the sole director of both the Cayman Manager and the BVI Manager at the relevant time.[43] The man "behind the curtain" who was in effective control of the Claimant during the negotiations was therefore Mr X. Acting through one management entity or another, it appears that he made decisions for the Claimant Group, the BVI Manager Parties and ultimately for the Claimant as well.

106 It is sufficient to note that utilising the corporate instrumentality of either the Cayman Manager or the BVI Manager, Mr X appears to have had the power at all material times to direct or cause the direction of the management and decision-making of the Claimant. The tribunal can sort through the particulars as to which legal entity was truly vested with and carried out those responsibilities and determine whether that factual finding is a relevant consideration in deciding if the Claimant is bound by the Waiver Deed.

107 The Claimant points to the fact that its fund manager remains subject to fiduciary duties owed to its investors and cannot enter into contracts such as the

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42 ABOD Volume 5 at p 2749, section 2.02(e).

43 ABOD Volume 5 at p 2578; ABOD Volume 7 at p 3998.

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Waiver Deed without approval from the manager's investment committee.[44] Both Mr X and Mr Y were quick to emphasise these points in cross-examination.[45] But these issues regarding the investment committee's role and involvement in decision-making and how it actually functioned are both self-serving and disputed by the Respondents.

108 Applying a *prima facie* standard of review, the court agrees that the Claimant appears to fall within the broad definition of "subsidiary" chosen by the parties to the Waiver Deed and to qualify as a subsidiary of either the Cayman Manager or the BVI Manager. The key here is the power to control decision-making for the Claimant, and one of these management entities certainly had that power.

109 The Respondents have also argued that the Claimant may be regarded as a subsidiary of Mr X under the Waiver Deed.[46] As the sole director of both the Cayman Manager and the BVI Manager at the relevant time,[47] Mr X exerted effective control over the investment funds managed by these entities. That is an independent reason for finding that the Claimant, while unnamed, is subsumed within the scope of the Waiver Deed.

110 This analysis demonstrates that the Respondents have made out a *prima facie* case that the Claimant is a "subsidiary" of the Cayman Manager, the BVI Manager or Mr X under the Waiver Deed's intentionally broad definition of that term.

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44 CCS at para 26.

45 14 May 2026 Transcript at p 91, lines 4–11; 13 May 2026 Transcript at pp 32–33 and 43, lines 23–25.

46 RCS at para 41.

47 ABOD Volume 5 at p 2578; ABOD Volume 7 at p 3998.

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Whether the Cayman Manager, the BVI Manager and/or Mr X had actual or apparent authority to enter into the Waiver Deed on the Claimant's behalf

111 The Respondents contend, based on agency principles, that the Cayman Manager or the BVI Manager had actual authority to enter into the Waiver Deed on the Claimant's behalf as its manager at the relevant time, and that Mr X had either actual or apparent authority to do so.[48]

112 Regarding actual authority, the Operating Agreement authorises the manager to "perform all acts the Manager deems necessary or advisable in connection with carrying out the objects and purposes of [the Claimant]".[49] That authority expressly includes the power to enter into and to take any action under any contract.[50] On a plain reading, that is broad enough to cover the Waiver Deed and the release of the Loans and establishes a *prima facie* case that the Cayman Manager or the BVI Manager had actual authority to bind the Claimant.

113 The Operating Agreement also allows the manager to delegate such authority to its "Affiliate".[51] As a director of the BVI Manager and the Cayman Manager during the negotiation and drafting of the Waiver Deed, Mr X fits the definition of "Affiliate".[52] Whether such an express or implied delegation of authority actually occurred is for the tribunal to determine.

114 In support of the argument regarding apparent authority, the Respondents rely on the case of *Viet Hai Petroleum Corp v Ng Jun Quan* [2016]

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48 RCS at para 49.

49 ABOD Volume 5 at p 2749, section 2.02(e).

50 ABOD Volume 5 at p 2749, section 2.02(e).

51 ABOD Volume 5 at p 2750.

52 ABOD Volume 5 at p 2775, section 13.01.

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3 SLR 887 ("*Viet Hai*"). In that case, the court considered whether there was a *prima facie* case that two individuals had the authority to sign the relevant agreement on behalf of the partnership. One of the individuals was the chief operation officer ("COO") of the partnership. The court concluded that the *prima facie* threshold had been met, as the title of COO was a representation that the individual "had a sufficiently senior appointment that carried with it the authority to bind [the partnership]" (at [38]).

115 Similarly, in the present case, Mr X, by virtue of his senior status in the Claimant Group and his role as a director of the BVI Manager and the Cayman Manager, held positions indicating that he had the capacity to bind the underlying funds, and particularly the Claimant. Further, when pressed, Mr X agreed with the characterisation that he was the *de facto* CEO of the Claimant Group.[53] Mr Y confirmed that he reported to and took instructions from Mr X during the separation negotiations as well.[54]

116 For apparent authority to be established, no express communication by the principal is required (*Viet Hai* at [34]). Further, the indoor management rule in *Royal British Bank v Turquand* (1856) 6 E&B 327 entitles the Respondents to assume that internal fund-level approvals have been obtained properly. These factual and legal arguments are sufficient to establish a *prima facie* case of apparent authority.

117 The Claimant argues that the existence of a generalised authority is distinct from the actual exercise of authority in relation to a particular

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53 14 May 2026 Transcript at p 13, line 24.

54 13 May 2026 Transcript at p 69, lines 19–25 and p 70, lines 1–6.

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transaction, relying on *MCH International Pte Ltd v YG Group Pte Ltd* [2019] SGHC 43 ("*MCH International*").

118 In *MCH International*, the court held that an agent's authority to bind the principal does not mean every contract signed by that agent is binding on the principal, even where the principal is not expressed as a contracting party (at [79]). Thus, the fact that an individual is the "controlling mind and will and *de facto* managing director" and therefore has the authority to bind the company in general may not be sufficient to bind the company to a specific agreement. Whether a specific agreement imposes obligations on the company would depend on a proper interpretation of that agreement (at [79]).

119 The proposition stated in *MCH International* makes perfectly good sense and applies to the negotiations surrounding the Waiver Deed, although it should be noted that *MCH International* was decided on the usual civil standard. The fact that the Cayman Manager, the BVI Manager or Mr X appear to have had the general authority to bind the Claimant does not necessarily mean that such authority was in fact exercised in relation to the Waiver Deed. Despite that possibility, the evidence before the court is sufficient when assessed under the *prima facie* standard.

120 The email exchange between Mr Y and Mr Z demonstrates that the question of whether the Claimant's claims were covered by the Waiver Deed was considered and contested during the drafting process. While drafts were being exchanged, Mr Y sought to verify what he said was a common understanding among the parties that claims of the investment funds (including the Claimant) were not to be affected by the Waiver Deed. Mr Y asserts that this underlying premise of the separation transactions had been consistently communicated to Mr Z and other representatives of the HoldCo during calls and

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meetings.[55] However, the only written record that Mr Y was able to produce was the email he sent to [name redacted] on 26 June 2024, which reads as follows:[56]

> Dear [name redacted],
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> Further to our discussion, please find attached our proposed edits for your consideration. based our common understanding that [the Claimant Parties and the BVI Manager Parties] cannot, by virtue of this waiver deed, be put in a position of conflict when acting as an investment manager for any entity that might, now or in the future, pursue any claim against any [entity of the Respondent Group]. *Accordingly, no waivers can be given by or on behalf of any entity that a [Claimant Party and a BVI Manager Party] is an investment manager of ("Fund")*, and no [Claimant Party and BVI Manager Party] can indemnify any [entity of the Respondent Group] for any claim against any [entity of the Respondent Group] by any Fund. …
>
> [emphasis added]

121 Mr Z promptly and forcefully disagreed with that characterisation, denying any such understanding and rebuffing Mr Y's attempt to introduce clarifying language to the Waiver Deed. Mr Z's response on 27 June 2024 was definitive:[57]

> [Mr Y] it is very antagonistic to try to slide an email saying "our common understanding" when (a) the whole purpose of the attached waiver is to get to "our common understanding" in writing (b) you did not get our agreement on this language (so unilateral statement) and (c) therefore [the Respondent Group's] "common understanding" shall be the language in that is agreed and signed in the waiver. Please this type of "let me try to slide things into an email" is offensive and trying to put words into [the Respondent Group's] mouth. We do not have much to go and are on a path to finish, so let's finish. TO BE CLEAR, [the Respondent's Group] common understanding on this matter will be in the executed/signed waiver, not in a unilateral email provided. …

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55 ABOD Volume 5 at p 2953, paras 15 and 18.

56 ABOD Volume 5 at p 2971.

57 ABOD Volume 5 at p 3005.

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122 Mr Z's strongly worded response contradicts Mr Y's assertion that the parties had reached a common understanding that the Waiver Deed would not apply to the fund-level entities. It is telling that Mr Y did not press the issue further, instead choosing to respond as follows:[58]

> Dear [Mr Z],
>
> Thank you and noted on your response. We are not trying to be antagonistic here in the slightest, but my email below would encapsulate our position that was communicated to you. It would be sufficient that you understand our position and that the latest edits were made for this reason.
>
> We look forward to final discussions on the waiver and to get the document to final form. Thank you! …

123 Mr Y's conciliatory response in the face of Mr Z's sharply worded rejection demonstrates that there does not appear to have been any agreement or plainly expressed common understanding among the parties that the Waiver Deed was intended to apply to the Loans. The disagreement over the scope of the waiver was left unaddressed and remains at the core of the ongoing controversy between the two corporate groups that are still sniping at each other.

124 The evidence indicates that both sides were facing economic pressure at the time of the separation negotiations and were struggling to make payroll.[59] Mr Y testified that while the initial drafts of the Waiver Deed were prepared by the Cayman law firm, [name redacted], on Mr X's instructions, he was the one who undertook the bulk of the drafting work in the subsequent versions. The reason for that change was to save time and costs.[60] In the interest of expediency,

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58 ABOD Volume 5 at p 3004.

59 12 May 2026 Transcript at p 131, lines 12–25; 13 May 2026 Transcript at pp 158–159; 14 May 2026 Transcript at pp 112–113.

60 13 May 2026 Transcript at pp 68–70.

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therefore, the Waiver Deed was signed without further editorial clarification, notwithstanding the presence of this now highly problematic loose end.

125 It is undisputed that the Claimant Parties, Mr X and the BVI Manager all knew that the document they were signing contained an arbitration clause, and they were on notice that their understanding regarding the intended scope and application of the Waiver Deed was disputed by Mr Z on behalf of the HoldCo.

126 The Claimant Parties therefore appear to have executed and agreed to be bound by the Waiver Deed as part of a mutually beneficial separation, despite being aware of a genuine misalignment regarding the proper scope of the Waiver Deed and its application to the Claimant and the Loans.

127 It is hard to ignore the fact that this question of scope and the true intentions of the parties easily could have been determined by adding some plain language providing that the Loans were excluded from and not affected by the Waiver Deed, or by explicitly stating that the Claimant is an investment fund that should not be treated as a subsidiary and should not be deemed bound by the Waiver Deed.

128 But Mr X, Mr Y and the Claimant Parties chose to live with the document as it was drafted (essentially acceding to the HoldCo's construction that the Loans were included) and to accept the consequences of the existing language, rather than pressing for a drafting change to achieve greater interpretive clarity consistent with their own wishes and expectations.

129 Given Mr Z's email response, they appear to have known that what they had hoped to confirm as a common understanding to exclude the Claimant and

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the Loans from the Waiver Deed had been firmly rejected, and that the existing language, while imperfect from their point of view, realistically amounted to a "done deal" that could not be changed. The pursuit of creditor remedies by the Claimant in Hong Kong and in the SICC may be an attempt to undo what had been done.

130 Against this backdrop, the unexpressed subjective intent of Mr X and Mr Y holds little weight. The court recognises the self-serving nature of Mr X's testimony and the fact that he is hardly a disinterested witness. He personally benefitted from the Waiver Deed, under which potential claims against him for alleged lapses in corporate governance were waived. He owed and continues to owe a duty to his investors. Perhaps for that reason, he has been the driving force in the insolvency proceedings against the Respondents in Hong Kong, and now, in Singapore.

131 It is also evident from Mr X's testimony that he feels strongly that he has (or should have) the continuing right to collect amounts claimed to be due on the Loans as he seeks to vindicate the commercial interests of the third-party investors in the Claimant.

132 That very conviction on Mr X's part may be the most compelling countervailing factor weighing in favour of proceeding with judicial management and against the stay relief being granted by the court. But conviction alone is not enough and does not override the *prima facie* showing made by the Respondents.

133 The Claimant has, throughout these proceedings, highlighted contemporaneous negotiations between the parties and documentary evidence that may imply conflicting intentions regarding the impact of the Waiver Deed

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on the Loans. Those inconsistencies, however, fail to rebut the Respondents' *prima facie* case regarding an agreement to arbitrate these disputed issues.

134 The Claimant refers to the Memorandum of Understanding dated 7 June 2024, which records the extension of the Loans as a transaction separate from the Waiver Deed, contending that it would be inconsistent for the parties to have simultaneously negotiated a waiver and an extension of the very same Loans.[61] It argues that the omission of the Claimant from the Waiver Deed was deliberate rather than accidental, relying on the fact that the Claimant was always expressly identified as the lender in the documentation of the Loans and their various extensions.[62] The Claimant also points to the Mutual Deed executed on 31 December 2024, shortly before the execution of the Waiver Deed, in which the loans to be waived were specifically particularised,[63] suggesting that the Loans would similarly have been identified had they been intended to fall within the scope of the Waiver Deed.[64]

135 The Respondents answer each point in turn. The loan extensions were executed to ensure compliance with audit requirements.[65] The delay in the execution of the Waiver Deed made it necessary to extend the Loans in the interim to avoid jeopardising the going concern status of the Respondents.[66] There was no temporal overlap between the Waiver Deed and the loan extensions, as the former was executed only on 16 January 2025, while the latter

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61 ABOD Volume 6 at p 3112–3115; CCS at para 113.

62 ABOD Volume 1 at pp 96, 159 and 187; CCS at paras 51–53 and 79.

63 ABOD Volume 2 at p 656.

64 CCS at paras 60 and 77.

65 RCS at paras 109–110.

66 RCS at para 109.

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expired on 31 December 2024.[67] As for the Mutual Deed, this was intended to capture undocumented working capital loans extended at the management level between the two corporate groups and bore no relation to the claims that were intended to be subject to the Waiver Deed.[68]

136 The Claimant also urges the court to have regard to the events that transpired after the execution of the Waiver Deed. Following the separation, the Claimant, along with other funds managed by the Claimant Group, jointly engaged Kroll Pte Ltd ("Kroll") in early 2025 to review the Respondents' financial position and to evaluate possible restructuring and recovery options.[69] That exercise culminated in a report which records the Loans as outstanding.[70] The Respondents' answer is that the report was prepared under a misapprehension that the Loans remained outstanding, which arose from the Claimant Group's own failure to disclose the existence of the Waiver Deed to Kroll.[71]

137 The court acknowledges that certain inconsistencies in the record do not entirely align with the sweeping assertions of the Respondents regarding the scope of the Waiver Deed and its effect on the enforceability of the Loans. The Respondents have provided an answer to each of them which suffices to meet the *prima facie* threshold. Those inconsistencies do not require resolution at this stage and are to be reconciled and determined by the arbitral tribunal.

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67 RCS at para 110.

68 RCS at para 89(d).

69 ABOD Volume 1 at pp 23–24.

70 ABOD Volume 1 at pp 406–407.

71 Minute Sheet dated 14 August 2026 at p 16.

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138 The Respondents have therefore established, at a *prima facie* level, that the Claimant is bound by the arbitration agreement in the Waiver Deed. The conflicting evidence on these issues is precisely what the arbitral tribunal will need to consider and evaluate.

Relief granted

139 The court therefore grants the stay applications in SUM 28 and SUM 29. The judicial management applications in OA 1 and OA 2 are stayed pursuant to s 6 of the IAA, and all disputes relating to the interpretation of the Waiver Deed and its impact on the enforceability of the Loans are hereby referred to the SIAC for determination.

140 In granting the stay under the *prima facie* standard, certain important points should be made clear.

141 First, this court has deliberately refrained from expressing any view on whether the Loans have been waived or remain outstanding and enforceable. Those questions remain entirely open and are to be determined by the arbitral tribunal on the usual civil standard, based on the evidence and arguments submitted to it. Nothing in this decision should be read as influencing or biasing the tribunal in carrying out its responsibilities to fairly and impartially decide the issues that are being referred to arbitration.

142 Second, the arbitral tribunal remains entitled to determine whether it has jurisdiction over the Claimant under the arbitration agreement in the Waiver Deed in the first instance. Nothing in this decision forecloses any jurisdictional objection by the Claimant, and recourse to the seat court following such a determination by the tribunal remains available to either party.

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143 Third, if the tribunal concludes that the Loans remain outstanding and enforceable, and the matter has not otherwise been resolved by agreement, the stay may be lifted to permit renewed prosecution of OA 1 and OA 2. The Claimant is also at liberty to apply to lift the stay if, for example, it can be shown that the Respondents have no genuine desire to arbitrate and are taking active steps to stifle or unreasonably delay the arbitration. This condition is imposed under s 6(2) of the IAA and accords with the Court of Appeal's guidance in *AnAn* at [111]. The Respondents have obtained the stay they sought and must now demonstrate their commitment to the arbitral process. While the Respondents cannot be compelled to do so, the Claimant is entitled to seek recourse from the court if the Respondents fail to live up to their self-avowed desire to arbitrate.

144 Fourth, the parties are directed to provide a written report to the Registry regarding the outcome of the arbitration or any agreed disposition of the issues. OA 1 and OA 2 shall remain open pending such report.

145 Having granted the stay under s 6 of the IAA, the request for a case management stay in the alternative does not require further consideration.

Conclusion

146 The court, upon consideration of the conflicting positions of the parties concerning the existence of a valid and binding arbitration agreement, has concluded that the *prima facie* standard is satisfied, notwithstanding the fact that the Claimant is not named in the Waiver Deed and has asserted that it is not a party and should not be deemed bound under agency principles.

147 While some doubt does exist as to the scope of the Waiver Deed and its impact on the enforceability of the Loans, the Claimant Parties, the BVI

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Manager and Mr X all entered into that agreement knowing that arbitration was the contractually chosen means for resolving any controversies that might arise with respect to the separation between the Claimant Group and the Respondent Group. The Claimant was represented by one of those parties and cannot credibly say that it was not represented in the negotiations and turn its back now on the agreement made by its fund manager to arbitrate. The stay is therefore granted and all disputes relating to the Loans shall be referred to arbitration.

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148 On costs, the court directs as follows:

(a) The Respondents are to file their submissions on costs within seven days of the date of this decision, limited to seven pages excluding any costs schedule.

(b) The Claimant is to file its submissions on costs seven days thereafter, limited to seven pages excluding any costs schedule.

(c) The Respondents are to file their reply submissions on costs (if any) within 7 days thereafter, limited to three pages.

James Michael Peck
International Judge

Lim Hui Li Debby and Kuan Jin Yin (Dentons Rodyk & Davidson LLP) for the claimant;
Chan Wei Meng, Lim Mingguan, Zeng Yu, Goh Sher Hwyn Rebecca and Nguyen Minh Tri (Drew & Napier LLC) for the respondents.

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