Prospaq Group Pte Ltd
v
Yong Xing Construction Pte Ltd

[2018] SGHC 27

High Court — Companies Winding Up No 252 of 2016
Pang Khang Chau JC
27 March, 24 April, 12 May, 9, 30 June, 7, 21 July, 11 August, 8, 22 September, 6 November, 18 December 2017, 15 January 2018

Companies — Winding up

5 February 2018

Pang Khang Chau JC:

Introduction

1 Companies Winding Up No 252 of 2016 ("CWU 252/2016") was an application commenced on 9 November 2016 by Pan-United Concrete Pte Ltd ("Pan-United Concrete") for the winding up of Yong Xing Construction Pte Ltd ("the Defendant"). After several adjournments and substitution of plaintiffs, I ordered the winding up of the Defendant on 15 January 2018 on the application of the substituted plaintiff, Prospaq Group Pte Ltd ("Prospaq Group").

2 Prospaq Group based its application on a judgment in default of appearance dated 23 November 2016 for the sum of $206,647.80 ("the Judgment Debt") and a statutory demand issued on 29 November 2016 for the

Judgement Debt, which statutory demand remained unsatisfied as of 15 January 2018.

3 At the hearing on 15 January 2018, the Defendant did not dispute the Judgment Debt. Instead, it sought an adjournment to negotiate a settlement with Prospaq Group and other creditors. Prospaq Group and two other creditors opposed the adjournment while the remaining creditors took no position. No creditors spoke in favour of an adjournment. Considering that the Judgment Debt was undisputed and that the Defendant had already been given more than a year to settle it, I declined to exercise my discretion in favour of a further adjournment and decided to accede to Prospaq Group's application to wind up the Defendant. The Defendant has appealed against my decision.

Background

The Defendant

4 The Defendant was incorporated in 2004 as an exempt private company limited by shares. Its principal activity was building construction. Its sole director and sole shareholder was one Mr Li AnQuan.

5 According to information filed in court by the Defendant in support of its application for the court to order a meeting of creditors to consider a proposed scheme of arrangement ("OS 283/2017"):

(a) the Defendant had a paid up capital of $6.5 million;

(b) in 2014, it generated $41,915,216 in revenue from which it made a profit of $3,010,061. Its net assets at the end of 2014 was $6,824,692;

(c) in 2015, it generated $39,790,299 in revenue from which it made a *loss* of $4,790,538. Its net assets at the end of 2015 was $2,034,154;

(d) *in 2016, it generated $24,350,006 in revenue from which it made a* ***loss*** *of $4,438,116. Its net* ***liabilities*** *at the end of 2016 was $2,093,049*;

(e) as of March 2017, *the Defendant was owing creditors more than $14 million* and was continuing to incur monthly operating expenses in the region of $200,000 to $300,000.

6 The financial information for 2014 and 2015 were based on audited financial statements while that for 2016 was not. The court had not been provided with any other information about the Defendant's financial position in 2017.

Procedural history

Moratorium granted to allow proposal of scheme of arrangement

7 After Pan-United Concrete filed CWU 252/2016, the Defendant applied in Originating Summons 1277 of 2016 ("OS 1277/2016") for a moratorium pursuant to s 210(10) of the Companies Act ("CA"). I heard OS 1277/2016 on 15 December 2016 and granted a 12-week moratorium. Proceedings in CWU 252/2016 were stayed while the moratorium remained in force.

Dismissal of application for scheme of arrangement

8 On 9 March 2017, I extended the moratorium for a further four weeks to allow the Defendant more time to file its application under s 210(1) of the CA for the court to order a meeting of creditors to consider a scheme of arrangement proposed by the Defendant. This application (*ie*, OS 283/2017)

was filed on 13 March 2017 and heard by me on 20 March 2017. On 27 March 2017, I dismissed OS 283/2017 with the following brief oral grounds:

> First, I have serious concerns about the level of transparency for the entire process.
>
> To give an example, at the hearing in December last year, the company filed a supplementary affidavit which included the salary slips for all the workers in order to demonstrate that the withdrawal from the Company's bank accounts that took place shortly before the hearing were all for payment of salary. The company was very careful to include salary slips of only the construction workers but not those of the office staff of the Company thereby avoiding any disclosure of the amount of salary which Mr Li and his family members were drawing from the company. It was several hearings later when I kept pressing for further breakdown of the salary information that finally, in late February, we received information about how much monthly salary Mr Li and his family members were getting from the Company over the last several months.
>
> When the figures comparing the liquidation scenario and the scheme scenario were presented last December, the only operating expenses taken into account in the proposed scheme scenario were the salary of staff. This clearly cannot be right because the expenses of company cannot be just the salary of staff, so again I had to press the Company to disclose what other operating expenses there were. This is another example of the Company not being upfront and transparent with information.
>
> Then, there was a late discovery of half a million worth of GST owed to the government and at the most recent hearing last week, I was informed that there was half a million worth of debts owed to sub-contractors which were not previously mentioned.
>
> And the status of the debt which the Company owes to the director, Mr Li Anquan, and how that was to be treated if the scheme was to be approved was not really explained until I pressed for it at the hearing last week.
>
> One of the features of the scheme that was touted since the December hearing was that the scheme manager's cost would be paid for by Mr Li and would not come from the Company. The scheme document does not actually reflect this or in any way seek to make this a binding condition which the creditors can rely on. Instead, the scheme manager continues to be listed as a creditor of the company, and a creditor that is not bound by the scheme proposal.

> Coming to the feature of the scheme itself, in December, the rough scheme proposal painted a picture that under the scheme scenario, there would be a payout of close to S$ 8 million which, based on the calculations at that time, would have amounted to a 68% recovery for the unsecured creditors. The proposal that was on the table at last week's hearing involved a payout of $4 million. That is half the amount. And even though the scheme document says this $4 million represented a 40% recovery, that was based on the assumption that the amount of debt was $10 million. But we heard at the last hearing that up to the filing of the last affidavit, the independent accountant had acknowledged that the debts were $ 14 million and could continue to increase.
>
> I have looked at the documents sent in by creditors after the aging summary of the debts prepared by the independent accountant were distributed to creditors. Many creditors disputed the amount of debt set out in the aging summary. And if you were to look at the amount in dispute, they could easily add another $1 million to the total debt. So the payout of $4 million, would be a recovery rate of 28.7% if you assume the debt is $14 million and this could drop to 26.8% if you assume the debt is $15 million.
>
> Using the $15 million figure as the rule of thumb, the recovery rate in the liquidation scenario is going to be 16.4%. The liquidation scenario in the scheme document actually doesn't take into account the value of movable assets in the Company's possession such as plants and equipment. So if you include the movable assets, there is a possibility that the recovery rate in the liquidation scenario could go up to close to 20%.
>
> So what we are really looking at is a scheme which essentially asks creditors to wait for another 2.5 years for a chance to get possibly 7% to 10% more payout of their debt amounts than in the liquidation scenario. But during this period of 2.5 years, there are many many more risks that the creditors are being asked to bear, like the risk of projects not completing, the risk of the company not being able to get payments from its debtors, and the risk of UOB winding up the company because Mr Li may not be good for his personal guarantee for the shortfall of $350k.
>
> I accept that the applicable legal principle is that the court at the s 210(1) stage should not consider the attractiveness of the scheme or the benefits that the scheme would bring to the creditors but it is equally a principle that the court at the s 210(1) stage should not act in vain. So the court is entitled to form the opinion that calling a meeting would be an exercise in futility and not agree to let the meeting proceed.

> The classic statement of when the court would exercise this discretion is when it is obvious that at least 25% in value of the creditors would oppose the scheme, as that obviously means that there is no point calling the meeting. But that cannot be the only scenario where the court will exercise such a discretion. From the many creditors who spoke out at the last hearing, a large number opposed the scheme. None spoke out in favor of it. So even though, the value represented at the last hearing did not amount to 25% of the debts, the remarks of counsel for the creditors at the hearing gave me a sufficient idea of how the vote is likely to go if the meeting is called.
>
> I am also mindful that even if the creditors were to vote in favor of the scheme, the court retains a discretion under s 210(3) not to approve the scheme. And at that point, the court can take into account the fairness of the scheme and whether a reasonable person would have gone along with the scheme. These principles are well established in case law. In order for the court not to act in futility, the court is entitled to look ahead to what it might do at the s 210(3) stage. Therefore, having regard to the features of the scheme I have just described, I am of the view that the scheme is unlikely to receive sanction of the court under s 210(3).
>
> For the foregoing reasons, I am dismissing the application.

Moratorium lifted

9 With the dismissal of OS 283/2017, the moratorium was lifted. At the restored hearing for CWU 252/2016 on 27 March 2017, Pan-United Concrete sought and obtained a four-week adjournment to get its papers in order.

Substitution of plaintiffs

10 At the hearing on 24 April 2017, the court was informed that Pan-United Concrete and the Defendant had agreed to seek a two-month adjournment to allow the Defendant to explore funding options. Supporting creditor Lai Yew Seng Pte Ltd ("Lai Yew Seng") objected to a two-month adjournment and sought to be substituted as the plaintiff pursuant to r 33(1)(*b*) of the Companies (Winding Up) Rules ("CWUR"). I granted a three-week adjournment for Lai Yew Seng to file the necessary papers for the substitution application.

11 At the hearing on 12 May 2017, Pan-United Concrete sought leave to withdraw CWU 252/2016. Instead of allowing the application to be withdrawn, I ordered that Lai Yew Seng be substituted as plaintiff in place of Pan-United Concrete. Lai Yew Seng sought and obtained a three-week adjournment to get its papers for the winding up application in order.

12 At the hearing on 9 June 2017, Lai Yew Seng sought leave to withdraw. I ordered that Innovate Fabrication Pte Ltd ("Innovate Fabrication") be substituted as plaintiff in place of Lai Yew Seng. The Defendant sought and obtained a three-week adjournment to pursue negotiations with Innovate Fabrication.

13 At the hearing on 30 June 2017, Innovate Fabrication sought leave to withdraw. I ordered the substitution of Natural Cool Airconditioning & Engineering Pte Ltd ("Natural Cool") as plaintiff in place of Innovate Fabrication. I was also informed at this hearing that SinMetal Engineering Pte Ltd ("SinMetal") had commenced a separate winding up application against the Defendant ("CWU 120/2017") which had been fixed for hearing on 7 July 2017. I therefore adjourned CWU 252/2016 to 7 July 2017 so that both applications could be heard together.

14 At the hearing on 7 July 2017, Natural Cool sought a two-week adjournment as parties were close to settlement. This was granted. At the same hearing, SinMetal sought and obtained leave to withdraw CWU 120/2017.

15 At the hearing on 21 July 2017, Natural Cool sought leave to withdraw the application. This was opposed by Asia Mortar Pte Ltd ("Asia Mortar"), Chin Seng Engineering Pte Ltd ("Chin Seng Engineering"), Eltraco Roofing System Pte Ltd ("Eltraco Roofing") and ISO-Integrated M&E Pte Ltd ("ISO-

Intergrated"), all of whom expressed the wish to be substituted as plaintiff. I granted a three-week adjournment for creditors wishing to be substituted as plaintiffs to file the necessary papers.

16 At the hearing on 11 August 2017, I ordered the substitution of Eltraco Roofing as plaintiff in place of Natural Cool. I was also informed that KH Foges Pte Ltd ("KH Foges") had commenced a separate winding up application against the Defendant ("CWU 149/2017") which had been fixed for hearing on 8 September 2017. I therefore adjourned CWU 252/2016 to 8 September 2017 so that both applications could be heard together.

17 At the hearing on 8 September 2017, Eltraco Roofing informed that it was close to settlement with the Defendant and requested a two-week adjournment to iron out settlement terms. The adjournment was granted. At the same hearing, KH Foges sought and obtained leave to withdraw CWU 149/2017.

18 At the hearing on 22 September 2017, Eltraco Roofing sought leave to withdraw CWU 252/2016 as it had reached settlement with the Defendant. In response, Stars Engrg Pte Ltd ("Stars Engrg"), Kurihara Kogyo Co., Ltd ("Kurihara Kogyo") and Ribar Industries Pte Ltd ("Ribar") expressed the wish to be substituted as plaintiff. As an adjournment was needed for these creditors to file the necessary papers for substitution of plaintiff, the Defendant requested a six-week adjournment so that it could settle with as many creditors as possible. As no creditors objected to a six-week adjournment and as the Official Receiver's representative indicated that it would be good to give the Defendant some time to negotiate with the creditors, I granted a six-week adjournment.

Entered the white knight

19 At the hearing on 6 November 2017, I granted Prospaq Group's application to be substituted as plaintiff in place of Eltraco Roofing. The Defendant produced an affidavit from Li AnQuan informing the court that:

(a) he had been in negotiations with one Mr Toh Soon Hock ("Mr Toh") for the latter to buy 80% of the former's shares in the Defendant for a sum of $3 million;

(b) he would apply the $3 million to assist the Defendant in repaying its debts to its creditors;

(c) a letter of intent for the share purchase had been signed on 1 November 2017;

(d) under its terms, Mr Toh would make an upfront payment of $500,000 to Li AnQuan by 7 November 2017;

(e) Li AnQuan planned to put the Defendant into funds by transferring the said $500,000 into the Defendant's bank account.

(f) the share purchase was due to complete on 8 January 2018.

The Defendant sought a six-week adjournment. As no creditors objected, I granted the adjournment sought.

20 At the hearing on 18 December 2017, Prospaq Group sought a three-week adjournment to allow it to find a private liquidator, as the Official Receiver had declined to act as liquidator. The Defendant asked if a six-week adjournment could be granted instead, so as to allow the Defendant to close the deal with Mr Toh and settle all outstanding claims. Prospaq Group objected to

a six-week adjournment. It pointed out that, despite the claim in Li AnQuan's affidavit of 6 November 2017 that Mr Toh would make an upfront payment of $500,000 by 7 November 2017, there was no sign of the money. As no creditors spoke in favour of a six-week adjournment, I granted a four-week adjournment.

Proceedings on 15 January 2018

21 At the hearing on Monday 15 January 2018, Prospaq Group indicated that it wished to proceed with the winding up application. The Defendant requested a short adjournment, explaining that:

(a) it was expecting a progress payment of $250,000 that afternoon from one of its ongoing project; and

(b) in anticipation of the receipt of this payment, it had made a settlement proposal to Prospaq Group.

Prospaq Group pointed out that the Defendant's offer was made only on the previous Friday (*ie*, one working day before the hearing) even though the Defendant had almost a month since the last hearing to do so. Prospaq Group was not willing to accept the offer as it was not for the full settlement of the Judgment Debt.

22 At this point Mr Dhanwant Singh of S K Kumar Law Practice LLP stood up to address the court as counsel for Li AnQuan. Prospaq Group objected to Mr Dhanwant Singh's standing to address the court, as Li AnQuan had not filed a notice of intention to appear. Considering that Li AnQuan was both a creditor and a contributory of the Defendant, I decided to waive the requirement of notice of intention to appear and hear Mr Dhanwant Singh out. Mr Dhanwant Singh's proposal was for a short adjournment to be granted so that a meeting of

the Defendant's creditors could be convened to decide how best to proceed. This proposal received no traction with the creditors present.

23 Noting that the anticipated receipt of $250,000 exceeded the Judgment Debt of $206,647.80, I stood down the matter for 45 minutes to allow parties time for further discussions.

24 When the hearing resumed, the Defendant informed that it was offering to settle the Judgment Sum in full, but in two tranches - $150,000 immediately and the remainder by 15 February 2018. Prospaq Group's position remained that it wished to proceed with the winding up application unless there was full settlement of the Judgment Debt on 15 January 2018.

25 The Defendant explained that as it had ongoing projects under which it was receiving progress payments of $150,000 to $200,000 a month, it needed funds to pay for the operating expenses to keep these projects going. That was why the Defendant could not immediately pay off the entire Judgement Debt from the $250,000 progress payment it was receiving that day.

26 Among the supporting creditors, Kurihara Kogyo opposed an adjournment, JRP & Associates indicated that it did not object to an adjournment while counsel for the remaining creditors indicated that they had no instructions on the proposed adjournment.

27 As for the proposed sale of shares to Mr Toh, which was due for completion by 8 January 2018, the Defendant explained that completion was delayed as Mr Toh was still undergoing his due diligence exercise, including inquiries into the winding up applications against the Defendant. The Defendant was not able to provide the court with a new estimated completion date.

Analysis

Prospaq Group's standing

28 As Prospaq Group's Judgment Debt and statutory demand post-dated the commencement of CWU 252/2016 by Pan-United Concrete, a threshold question arose as to whether Prospaq Group was entitled to be substituted as plaintiff in CWU 252/2016. This was because r 33(1) of the CWUR provided that only someone with the "right to make *the* winding up application" could be substituted as a plaintiff.

29 A similar factual situation arose in *Re People's Parkway Development Pte Ltd* [1991] 2 SLR(R) 567 ("*People's Parkway*"). In that case, the petitioning creditor commenced winding up application against the debtor company on 27 June 1986. The winding up application was adjourned *sine die* on 30 November 1987 with the consent of the petitioning creditor. On 4 March 1991, the Attorney-General ("AG") applied to be substituted as the petitioning creditor. The AG's claim was for outstanding payments under a Government land sale which took place in 1981, for which the AG issued a statutory demand on 2 January 1991. L P Thean J (as he then was) held that:

> (a) only a person who had a right to present a winding up petition at the time the petition was originally presented may be substituted as the petitioning creditor;
>
> (b) even though the AG's statutory demand was issued after 27 June 1986, the underlying debt was in existence before 27 June 1986;
>
> (c) the AG was therefore a person who, on 27 June 1986, had a right to present a winding petition against the debtor company.

30 In the present case, the claim underlying Prospaq Group's Judgment Debt was for unpaid invoices for supply of construction materials between 1 June 2016 and 6 October 2016. The facts of the present case are therefore on all fours with those in *People's Parkway.* I was therefore persuaded that Prospaq Group was a person who had "a right to make *the* winding up application" for the purposes of r 33(1) of the CWUR.

Whether grounds for winding up made out

31 One of the grounds for ordering the winding up of a company is that the company is unable to pay its debts (s 254(1)(*e*) of the CA). Pursuant to s 254(2)(*a*) of the CA, a company shall be deemed unable to pay its debts if a statutory demand for a debt exceeding $10,000 was served on the company and the company had for three weeks thereafter neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor.

32 This ground has been satisfied in the present case as:

(a) the Judgment Debt exceeded $10,000;

(b) a statutory demand had been served on the Defendant for the Judgment Debt and the Defendant failed to pay (or to secure or compound it) for more than three weeks; and

(c) the Judgment Debt was not disputed by the Defendant.

33 Given the discussions at [28]-[30] above, it may be asked whether a statutory demand served after the commencement of the winding up application could properly be relied on as evidence of the defendant's inability to pay debts for the purposes of making the winding up order. Fortunately, this was not a

question I needed to decide, as I also found pursuant to s 254(2)(*c*) of the CA that the Defendant was unable to pay its debts.

34 According to s 254(2)(*c*), a company shall be deemed unable to pay its debts if:

> it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Under this provision, a company is deemed insolvent if it is either commercially insolvent or balance sheet insolvent (*Re Great Eastern Hotel (Pte) Ltd* [1988] 2 SLR(R) 276 at [85]). A company is commercially insolvent if it is unable to meet current demands upon it (*Re Dayang Construction and Engineering Pte Ltd* [2002] 2 SLR(R) 197 at [40]; *Malayan Plant (Pte) Ltd v Moscow Narodny Bank Ltd* [1979-1980] SLR(R) 511 at [12]). The Defendant was commercially insolvent, as evident from its inability to pay off its very substantial and long outstanding debts despite having been afforded more than a year since the commencement of CWU 252/2016 to do so.

Whether discretion should be exercised in favour of further adjournment

35 Prior to 15 January 2018, all adjournments I granted were either at the request or with the consent of the respective plaintiffs who were *dominus litis* at the time the adjournments were granted. The hearing of 15 January 2018 was the first occasion on which a request for adjournment by the Defendant was opposed by the plaintiff.

36 It was observed in Andrew Keay, *McPherson's Law of Company Liquidation* (Sweet & Maxwell, 2nd Ed, 2009) at [3.079] that:

> … the court is averse, except in very special circumstances, to permitting a lengthy adjournment because of the adverse effect on the affairs of the company; the company cannot enter into transactions with certainty that they will stand, because if a winding-up order is made they will probably be invalid. … The principles that should guide a court in relation to an application for an adjournment are the same as those guiding courts when exercising their discretion to refuse a winding-up order.

On the latter point, the Court of Appeal held in *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 ("*Jurong Shipyard*") at [15] that:

> The general rule is that, where a company is unable or deemed to be unable to pay its debts, the creditor is *prima facie* entitled to a winding-up order *ex debito justitiae*

One of the special circumstances recognised in *Jurong Shipyard* as justifying an adjournment is the case of a temporarily insolvent but commercially viable defendant company who merited being allowed time to resolve issues at hand or to seek alternative measures (at [19]-[20]).

37 In the present case, the Defendant could by no stretch of the imagination be described as "temporarily insolvent". The Defendant had the benefit of ten months' of adjournment following three months' of moratorium and yet it was not able to resolve its outstanding debts within this very generous time frame. The hope of a white knight investor held out by the Defendant also turned out to be no more than a mere hope. In the circumstances, it would not be in the interest of the general body of creditors to allow matters to drag on indefinitely. I therefore declined the requests for a further adjournment.

Decision

38 In the light of the foregoing, I ordered that the Defendant be wound up. Pursuant to s 255(2) of the CA, the winding up is deemed to have commenced on 9 November 2016.

Events after the making of the winding up order

39 On the same day that the winding up order was made, the Defendant:

(a) discharged its solicitors and appointed Mr Dhanwant Singh to act for it;

(b) filed a notice of appeal against the winding up order; and

(c) filed an application for stay of execution of the winding up order pending appeal ("the Stay Application").

40 As the summons for the Stay Application was issued with a return date of 30 January 2018, the Defendant applied to the Duty Registrar on 16 January 2018 for an earlier hearing date. The Duty Registrar sought my directions and I agreed to hear parties on 17 January 2018.

Grant of interim stay on 17 January 2018

41 At the hearing on 17 January 2018, I was informed that the Judgment Debt had been fully paid on 16 January 2018 and that Prospaq Group was not opposing the Stay Application. Observing that only the Defendant and Prospaq Group attended the hearing, I informed them that:

(a) winding up was an *in rem* proceeding, as it was provided in s 262(4) of the CA that a winding up order operated in favour of all the creditors;

(b) I therefore could not grant a stay of the winding up order simply because the plaintiff, Prospaq Group, was not opposing the stay;

(c) it was necessary to hear the other creditors before a decision on the Stay Application could be made.

42 Mr Dhanwant Singh explained that he had served the Stay Application on all represented creditors who attended the 15 January 2018 hearing. However, as the return date stated on the summons was 30 January 2018, he was not sure if the other creditors were aware of the 17 January 2018 hearing. He proposed that the matter be adjourned to 30 January 2018 and that an interim stay be granted until then. I agreed.

43 To facilitate the creditors' consideration of the stay application, I directed the Defendant to file an affidavit to provide:

(a) a schedule of all outstanding debts, listing down the amounts owed and to whom they were owed; and

(b) a schedule of expected receivables over the next six months.

Disclosures made by the Defendant on 26 & 29 January 2018

44 The Defendant filed an affidavit from Li AnQuan on 26 January 2018 ("the 26 January Affidavit") to inform that:

(a) it had outstanding debts of $1.6 million owed to nine creditors;

(b) it owned three immovable properties which together was worth $4.2 million;

(c) two of these immovable properties were in the process of being sold and the net proceeds from the sales would amount to $619,961.

(d) it had ongoing projects worth $9 million.

45 I had the following observations to make about the three immovable properties mentioned in the 26 January Affidavit:

(a) The two immovable properties which the 26 January Affidavit claimed was in the process of being sold (10 Admiralty Street #03-29 and 100 Lorong 23 Geylang #05-01) were already mentioned in Li AnQuan's affidavit of 9 December 2016 filed in OS 1277/2016. It was stated in that affidavit that the two immovable properties were in the process of being sold and the estimated completion dates for the sales were January / February 2017.

(b) The third immovable property mentioned in the 26 January Affidavit was a property in Sungei Kadut held under a 30-year JTC lease commencing from 16 June 1995 (*ie*, there were 7.5 years remaining in the lease). In the draft scheme of arrangement filed in OS 283/2017, it was stated that this property would not be sold under the scheme as it would be retained to house the Defendant's ongoing operations.

46 As the 26 January Affidavit did not contain a schedule of expected receivables over the next six months, I asked the Registry to point this out to the Defendant. The Defendant filed a further affidavit on 29 January 2018 to inform that it was expecting to receive $3.6 million over the next six months under five ongoing projects with the Ministry of Education. However, the further affidavit failed to provide a breakdown of how the expected receipt of this $3.6 million would be phased out over the next six months.

47 I pause here to note that if the Defendant was expecting to receive $3.6 million over the next six months, this would work out to an average of $600,000 per month. This figure did not gel with Defendant's counsel's submission on 15 January 2018 that the Defendant was receiving progress payments of $150,000

to $200,000 every month. It also did not gel with the projection given by the Defendant in OS 283/2017 that it was expecting to collect project monies of about $4.3 million *from July 2017 to December 2018*.

The hearing on 30 January 2018

48 At the hearing on 30 January 2018, the Defendant submitted that it was not insolvent as it had assets exceeding $5 million in value and was expecting to receive $3.6 million in payment over the next six months, compared to the outstanding debts of merely $1.6 million. The Defendant therefore asked the court to either rescind the winding up order or grant a three-month stay so that the Defendant could approach all the creditors to reach settlement with them.

49 Several creditors informed the court that their debts had not been listed in the 26 January Affidavit. Kurihara Kogyo noted that the affidavit had inaccurately recorded its debts as having been negotiated down from $47,101 to $34,000, when there was in fact no such settlement. Eltraco Roofing informed the court that although it had reached settlement with the Defendant earlier, the settlement terms had been breached in that the post-dated cheques given to Eltraco Roofing by the Defendant as part of the settlement had been dishonoured. A number of creditors also pointed out that neither the claimed expected receivables of $3.6 million nor the claimed asset value of $5 million was supported by documentary evidence.

50 After hearing that creditors had been omitted from the 26 January Affidavit, Mr Dhanwant Singh sought and was given permission to consult with Li AnQuan. Pursuant to the said consultation, Mr Dhanwant Singh informed the court the Defendant had started the process with $17 million of outstanding debts, and this had since been reduced to $5 million. Upon hearing this

explanation, I remarked that the latest debt figure of $5 million disclosed by the Defendant was roughly three times the $1.6 million disclosed in the 26 January Affidavit. At this point, Mr Dhanwant Singh requested a two-week adjournment to sort out the factual discrepancies. Mr Dhanwant Singh also assured the court that, if time was granted, the Defendant would provide full information and make full and frank disclosures.

51 Of the eight creditors who addressed the court, five were opposed to granting a stay, one was in favour of granting an interim stay of three months to allow the Defendant to attempt settlement with creditors while the remaining two had no instructions. The Official Receiver's representative submitted that, unless the Defendant was able to show that it could pay off all the creditors and had a plan in place to do so, a stay should not be granted.

52 Considering the piece meal and less than candid disclosure of information by the Defendant, the overall conduct of the Defendant in these proceedings, the vast amount of time already given to the Defendant to resolve matters and the lack of evidence that the Defendant would be able to settle its debts in the foreseeable future, I declined the request for a two-week adjournment and proceeded to dismiss the Stay Application.

Pang Khang Chau
Judicial Commissioner

Nicholas Aw and Annsley Wong (Clifford Law LLP) for the plaintiff;
Eugene Thuraisingam, Suang Wijaya and Teo Shermin (Eugene

Thuraisingam LLP) for the defendant;
Dhanwant Singh (S K Kumar Law Practice LLP) for Li AnQuan;
Sheryl Ang and Claire Yuen (WongPartnership LLP) for creditor, Stars Engrg Pte Ltd;
Chermaine Tan Si Ning (Patrick Ong Law LLC) for creditor, Kurihara Kogyo Co., Ltd;
Gopal Perumal (Gopal Perumal & Co) for creditors, Ribar Industries Pte Ltd and Jua Seng Engineering Works Pte Ltd;
Peng Yin-Chia (Jusequity Law Corporation) for creditor, Yew Hup Construction Pte Ltd;
Vinna Yip (Tan Kok Quan Partnership) for creditor, TSL Transport & Engineering Pte. Ltd.;
Favian Kang and Chia Xin Hui (Eldan Law LLP) for creditor, Chin Seng Engineering Pte Ltd;
Darren Tan (TSMP Law Corporation) for creditor, JRP & Associates;
Christopher Goh (Goh Phai Cheng LLC) for creditors, Greencast Pte. Ltd and Architects Team 3 Pte Ltd;
Mark Lam and Beitris Yong (Central Chambers Law Corporation) for creditor, Eltraco Roofing System Pte Ltd;
Madeline Yeo and Spring Tan (KhattarWong LLP) for creditor, Pan-United Concrete Pte Ltd;
Mirza Namazie and Ong Ai Wern (Mallal & Namazie) for creditors, Lai Yew Seng Pte Ltd, Natural Cool Airconditioning & Engineering Pte Ltd and Innovate Fabrication Pte Ltd;
Ho Shao Hsien and Lorenda Lee (Eldan Law LLP) for creditor, ISO-Integrated M&E Pte. Ltd. (formerly known as Rongshun Engineering & Construction Pte Ltd;
Raymund Anthony (Gateway Law Corporation) for creditor, Hock Seng Hoe Metal Pte Ltd;
Shu Shin Yee (Malkin & Maxwell LLP) for creditor, Air-related services Pte Ltd;
Justin Phua (Justin Phua Tan & Partners) for creditor, Asia Mortar Pte Ltd;
Wong Tian Ying (Fortis Law Corporation) for creditor, Normet Singapore Pte Ltd;
Timothy Ong (Timothy Ong & Partners) for creditor, SinMetal Engineering Pte Ltd;
Elvis Lim and Juliet Chee (in persons) for creditor, Sign Mechnic Pte Ltd;
Joanna Wan (in person) for creditor, Transvert Scaffold;
Thetsunaing (in person) for creditor, Sasco Engineering;
Pillai Vik (in person) for creditor, Panacea International;
and
Wileeza A Gapar for the official receiver.
