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

[2023] SGHC 253

Originating Application No 148 of 2023

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

And

In the matter of Sections 90, 91 and 92
of the Insolvency, Restructuring and
Dissolution Act 2018

Between

X Diamond Capital Pte Ltd

… *Applicant*

And

Metech International Limited

… *Non-party*

JUDGMENT

[Insolvency Law — Judicial management — Judicial management order]
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8 September 2023 Judgment reserved.

Goh Yihan JC:

1 This is the applicant's (X Diamond Capital Pte Ltd or the "Company") application for a judicial management order (the "JM Order") pursuant to Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"). Metech International Limited ("Metech") opposes the application in its capacity as one of the Company's creditors.

2 Having heard the parties and considered the relevant documents, I allow the Company's application for the reasons below.

Background facts

3 The brief background to Metech's opposition is as follows.

4 On 13 May 2019, the Company was incorporated in Singapore. It is principally engaged in the business of selling jewellery made from precious

metals and stones, and the manufacturing of piezo-electric devices. Mr Deng Yiming ("Mr Deng") is the sole director of the Company.

5 On or around 27 September 2021, the Company entered into a joint venture agreement with Asian Green Tech Pte Ltd ("AGT"), which is a wholly owned subsidiary of Metech. Pursuant to the joint venture, the Company and AGT incorporated a company in Singapore known as Asian Eco Technology Pte Ltd ("AET"). AET is principally engaged in the business of manufacturing and distributing lab-grown diamonds. At the time of AET's inception, the Company held 245,000 shares in it, while AGT held 255,000 shares in it. The Company therefore owned 49% of the shares in AET. As set out in the joint venture agreement, AGT will operate and manage AET, while the Company will provide technical support to AET.

6 On 22 October 2021, the Company, Metech, and AET entered into a Loan and Guarantee Agreement (the "LG Agreement"). Pursuant to the LG Agreement, Metech agreed to grant AET loans of a total principal amount not exceeding $4m. In turn, the Company agreed to guarantee 49% of any amount outstanding from AET to Metech. In various tranches since 27 October 2021, AET has drawn down, and Metech has disbursed, a total of $3,851,439. AET has since repaid a sum of $1,286,223. This leaves an outstanding principal sum of $2,565,216.

7 On 21 November 2022, Metech's previous solicitors sent a letter, on Metech's behalf, to AET demanding payment of the outstanding sum of $2,627,318.27 due under the LG Agreement, which comprised the principal sum of $2,565,216 plus interest. Metech's demand remains unsatisfied to date.

8 On 26 January 2023, Metech served a statutory demand to the Company, in the latter's capacity as a guarantor under the LG Agreement, for payment of $1,301,023.06, being 49% of the total outstanding sum under the LG Agreement. The Company has not repaid or satisfied the sum demanded, nor secured or compounded the same to the reasonable satisfaction of Metech. The debt of $1,301,023.06 is allegedly 23.58% of the total debt owed by the Company to all of its creditors.

9 It is under these circumstances that the Company is applying for a JM Order. In particular, the Company says that the making of a JM Order would likely achieve two of the purposes set out in s 89(1) of the IRDA, namely: (a) the survival of the Company, or the whole or part of its undertaking, as a going concern; and (b) the interests of the creditors would be better served otherwise than by resorting to a winding up as the Company's creditors will be able to realise a more advantageous realisation of the Company's assets or property than on a winding up.[1]

The relevant issues

10 As set out in s 91(1) of the IRDA, a court may make a judicial management order if: (a) the court is satisfied that the company is or is likely to become unable to pay its debts; and (b) the court considers that the making of the order would be likely to achieve one or more of the purposes of judicial management mentioned in s 89(1) of the IRDA. Further, s 91(3) of the IRDA lists the considerations a court must take into account when appointing a judicial manager, including the court's discretion to reject a nominee (see s 91(3)(*c*))

[1] Applicant's Further Submissions dated 31 July 2023 ("AFS") at para 2(b).

and the court's discretion to adopt a nominee proposed by the majority in number and value of the creditors (see s 91(3)(*d*)).

11 Therefore, in relation to the proposed JM Order, I will deal the following issues in turn:

(a) whether the Company is, or is likely to become, unable to pay its debts;

(b) whether there is a real prospect that one or more of the purposes of judicial management would be achieved;

(c) whether there is clear support by a majority of the creditors;

(d) whether the present application was brought in bad faith; and

(e) whether the proposed judicial manager is qualified.

My decision: the Company's application is allowed

The Company is unable to pay its debts

12 First, I am satisfied that the Company is unable to pay its debts. In this regard, Mr Deng has attested in his first affidavit that the Company is "presently unable to pay its debts as they fall due" due to its cash flow issues.[2] In the same affidavit, Mr Deng also states that "Metech is entitled to present a winding up application against the Company"[3] because "the Company is unable to meet the

2 1st Affidavit of Deng Yiming dated 21 February 2023 at para 8.

3 1st Affidavit of Deng Yiming dated 21 February 2023 at para 21.

alleged debt under the statutory demand from Metech".[4] Indeed, Metech has not challenged this aspect of Mr Deng's evidence.

13 Accordingly, I am satisfied, on the basis of the documents before me, that the Company is unable to pay its debts.

There is a real prospect that one or more of the purposes of judicial management would be achieved

14 Next, I am satisfied that there is a real prospect that one or more of the purposes of judicial management would be achieved with the making of the JM Order. In this regard, I begin by considering the purposes of judicial management, which are set out in s 89(1) of the IRDA:

> **Purpose of judicial management and judicial manager**
>
> **89.**—(1) The judicial manager of a company must perform the judicial manager's functions to achieve one or more of the following purposes of judicial management:
>
> (*a*) the survival of the company, or the whole or part of its undertaking, as a going concern;
>
> (*b*) the approval under section 210 of the Companies Act 1967 or section 71 of a compromise or an arrangement between the company and any such persons as are mentioned in the applicable section;
>
> (*c*) a more advantageous realisation of the company's assets or property than on a winding up.

This must be read with s 91(1)(*b*) of the IRDA, where the court considers whether "the making of the order would be likely to achieve one or more of the purposes of judicial management mentioned in section 89(1)".

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4 1st Affidavit of Deng Yiming dated 21 February 2023 at para 23.

15 As a preliminary point, I note that s 91(1)(*b)* of the IRDA (and its predecessor provision found in s 227B(1)(*b*) of the Companies Act (Cap 50, 2006 Rev Ed)) uses the term "would be likely" to describe the prospect that a judicial management order might fulfil one or more of the purposes of judicial management set out in s 89(1). Nevertheless, the Court of Appeal has held in *Deutsche Bank AG and another v Asia Pulp & Paper Co Ltd* [2003] 2 SLR(R) 320 (at [15]–[17]), in the context of the Companies Act, that the test is that of a "real prospect", which I note is a lower threshold than the balance of probabilities test, and the applicant need not establish that the purpose in question will more probably than not be achieved if a judicial management order is made. For completeness, I also observe that the "real prospect" threshold has also been applied in the context of the IRDA (see the High Court decisions of *Yap Sze Kam v Yang Kee Logistics Pte Ltd and another matter* [2023] SGHC 43 at [28] and [37] and *Point72 Ventures Investments LLC v FinLync Pte Ltd (Klein, Peter Selig and another, non-parties)* [2023] SGHC 122 ("*Point72*") at [36]).

16 Applying this standard, I find that the JM Order sought would have a real prospect of allowing the Company to survive with the whole or part of its undertaking, as a going concern, or in achieving a more advantageous realisation of the Company's assets than on a winding up. I elaborate on these below.

Survival of the Company

17 First, there is a real prospect that the making of the JM Order might result in the survival of the Company, or the whole or part of its undertaking, as a going concern. This is because the Company has potential assets in the form of two white knight proposals from Mr Lin Changxin and Shenzhen Baojia

Investment Co Ltd (the "Proposals"). Metech objects to the Proposals principally on the grounds that: (a) the Proposals are not genuine proposals and are based on an excessive valuation of the Company;[5] and (b) the Proposals are based on false or incorrect information regarding the Company's present state.[6]

18 Having considered them carefully, I do not find Metech's objections to be persuasive. In the first place, given the standard of a "real prospect" in the relevant test, I find that the Company has furnished sufficient evidence in the form of the respective letters of intent from the investors.[7] In this regard, as the English High Court held in *Baltic House Developments Ltd v Cheung and another* [2018] Bus LR 1531 ("*Baltic*") (at [36]), the burden lies on the party applying for judicial management to show a real prospect that the statutory purpose of judicial management will be achieved. This does not require the applicant to show that "it is more likely than not that such a result will be achieved", but instead that "there must be something more than speculation". Applying this standard, the court in *Baltic* found (at [38]) that two letters of interest provided by potential investors were neither cogent nor compelling because no details had been given of funding or resources and no commitment had been made to move the matter forward (see also *Point72* at [36]). The court therefore concluded (at [39]) that the applicant had not shown a real prospect of the statutory purpose of judicial management being achieved. In contrast, in the present application, the letters of intent set out sufficient details as to the Proposals, including the arrangements for due diligence and audit assessment. I am satisfied that this is sufficient to demonstrate a real prospect of the

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5 1st Affidavit of Hua Lei dated 17 April 2023 at paras 19–36.

6 1st Affidavit of Hua Lei dated 17 April 2023 at paras 37–51.

7 2nd Affidavit of Deng Yiming dated 3 April 2023 at Tabs 4 and 6.

investments materialising, and with that, the survival of the Company, or the whole or part of its undertaking, as a going concern.

19 Moreover, about eight to nine months prior to the filing of the present application, Metech was in formal discussions with the Company to acquire all of its shares, and had, in the SGX announcement published on 2 June 2022, indicated that it agreed that the initial valuation of the entire issued share capital of the Company would be $65m.[8] This shows that even Metech had regarded the Company to be worth that sum, which is in the ballpark of the present valuation of $62m to $63m by the Company that Metech now rejects.[9] In his oral submissions, counsel for Metech, Mr Yam Wern-Jhien ("Mr Yam"), sought to distinguish Metech's proposed acquisition of the Company with the Proposals by suggesting that while Metech had agreed to acquire the Company at a satisfactory price subject to due diligence, no such price had actually been agreed upon in the current Proposals. However, as mentioned above, because the Company bears the burden of showing only a real prospect, I am of the view that this distinction does not assist Metech's case.

20 Finally, as for Metech's allegation that the Proposals are based on false or incorrect information, Mr Deng has explained in his second affidavit that he had not updated the slides shown to the investors but had explained the updates to them.[10] I am satisfied that this is a reasonable explanation.

21 In any event, while I note that Mr Deng has not explained why the Company values itself at $65m despite purporting a desire to do so in his third

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8 Agreed Bundle of Affidavits dated 3 August 2023 at p 552.

9 1st Affidavit of Hua Lei dated 17 April 2023 at para 37.

10 2nd Affidavit of Deng Yiming dated 3 April 2023 at para 7(a).

affidavit, it remains, as I will explain later, that the Company has at least $4m in receivables. Thus, even absent the Proposals, the benefits of the Company coming under judicial management remain clear.

Realisation of assets

22 Second, there is also a real prospect that the making of the JM Order will achieve a more advantageous realisation of the Company's assets than on a winding up. In this regard, Metech raises the issue of how the Company can remain a going concern since its assets are fixed. The Company's assets consist of: (a) a judgment debt against Mr Wu Yongqiang ("Mr Wu") arising from HC/OC 9/2023 ("OC 9"); (b) shares in AET; and (c) potentially, the Proposals. Metech submits that if the assets of a company include revenue to be earned by contracts, the company will be a going concern and should not be wound up. Conversely, if the assets of a company are mostly fixed, as is the case here, the company should instead be wound up.

23 Despite Mr Yam's able arguments on behalf of Metech, I am satisfied that the Company can remain a going concern. Although the Company has fixed assets, these are major assets, which must surely point towards the benefit of it being a going concern. I say this for the following reasons. First, the Company has a $4m receivable from Mr Wu. This is for the sale of 20% of shares in AET, out of the 49% of AET shares owned by the Company. The Company has obtained final judgment in OC 9 to recover this sum from Mr Wu. While Metech has argued that it is unclear whether the Company can even recover this sum of $4m, and whether it is sufficient to satisfy the Company's total debt, the point is that this sum, together with the other possible receivables, attest to the viability of the Company remaining as a going concern, as opposed to being wound up. Second, after the sale of 20% of its shares in AET, the Company still

has 1,488,468 ordinary shares in AET, representing approximately 29% of the total shareholding of AET. The Company says that under the hands of a judicial manager, appropriate steps can be taken to recover these shares which allegedly have been wrongfully transferred by AGT. Finally, the Proposals are estimated to contribute at least $28,137,630 to the Company's assets, which would only be plausible should the Company remain a going concern.

There is clear support from the majority of creditors

24 Next, I am satisfied that there is clear support from the majority of creditors, which is a strong factor in favour of granting the JM Order. As a starting point, the presence of creditor support is a factor to be considered by the court in granting a judicial management order (see *Point72* at [43]). Indeed, this is because "a company whose debts far exceed its assets in effect belongs to its creditors", and so the "court must show great heed to the wishes and views of such creditors" (see the High Court decision of *Re Genesis Technologies International (S) Pte Ltd* [1994] 2 SLR(R) 298 ("*Re Genesis*") at [8]). However, the relevance of creditor support will differ from case to case. For instance, if the survival of a company is entirely dependent on loans extended by creditors, the extent of creditor support will undoubtedly be of greater relevance. On the other hand, if the company proposes to rehabilitate itself through capital injections, whether there is creditor support will be of lesser relevance.

25 Before explaining why I am satisfied that there is clear support from the majority of creditors, I address Metech's submission that some of the Company's debts are not valid. Metech raises the following points. First, Metech alleges that the debts to Mr Deng, Ms Fiona Xu ("Ms Xu"), and Ms Zhou Kejie ("Ms Zhou") arise from loans given to the Company's subsidiaries. On this basis, Metech argues that the debts of Mr Deng, Ms Xu,

and Ms Zhou should not be taken into consideration in assessing creditor support, and that Metech should therefore be regarded as the majority creditor in value. Second, Metech submits that the Company cannot be allowed to rely on the support of the very creditors whose claims have not been admitted by the Company and that, in any event, the evidence demonstrating the alleged creditor support is hearsay and therefore inadmissible.

26 I do not accept Metech's submission regarding the debts to Mr Deng, Ms Xu, and Ms Zhou. The Company executed letters of guarantee over the loans, the latter of which were dated 30 August 2019. There is thus a *prima facie* claim by these individuals as creditors against the Company. Metech then states that it has serious doubts as to the authenticity of these letters of guarantee because they were not disclosed earlier during Metech's own due diligence into the Company's business and finances when Metech was contemplating acquiring shares in the Company. However, Metech never completed the due diligence exercise. Although there is a possibility that the Company's failure to submit the letters of guarantee was a reason why Metech never completed the due diligence exercise, it is not for the court to speculate as to why the letters of guarantee were not disclosed in that aborted transaction. The fact remains that, for the present application, the Company has provided the letters of guarantee, which establish a *prima facie* case of the claims made by the relevant individuals. Also, given that the letters of guarantees were tendered in response to Metech's opposition, I do not think that they can be described as being late. As such, Metech remains the only one of the 12 alleged creditors who opposes the present application.

27 I also do not accept Metech's submission on the Company's position regarding the alleged creditor support. First, in my view, the Company did not take an inconsistent position, in so far as the Company had been engaged in

discussions for the Proposals. It is therefore understandable that the Company's position may shift depending on the outcome of the discussions.

28 Second, for the evidence demonstrating the alleged creditor support, which takes the form of email correspondence between the solicitors of the Company and the solicitors of the alleged creditors, I am satisfied that they may be admitted. As I mentioned in my earlier decision of *Re X Diamond Capital Pte Ltd (Metech International Ltd, non-party)* [2023] SGHC 201 at [20], oral evidence provided on assertions made outside of court and tendered in court as evidence as to the truth of the contents, whereby the maker of the assertion is not called as a witness, is inadmissible hearsay evidence. The Evidence Act 1893 (2020 Rev Ed) (the "EA") does not apply to the present application because it is determined by affidavit evidence alone (see s 2(1) of the EA), but what will apply are rules of evidence at common law that are not inconsistent with the EA (at [21]). The applicable rule is O 15 r 25(1) of the Rules of Court 2021 (the "ROC 2021"), where "evidence on information or on belief is *prima facie* inadmissible in proceedings commenced by originating application where the rights and liabilities of the parties are determined with finality" (at [22]).

29 If the EA applied to the present application, I may have found that the evidence falls under s 32(1)(*b*)(iv) of the EA, which provides as follows:

> **32.**—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:
>
> …
>
> (*b*) when the statement was made by a person in the ordinary course of a trade, business, profession or other occupation and in particular when it consists of —
>
> …

> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation,
>
> and includes a statement made in a document that is, or forms part of, a record compiled by a person acting in the ordinary course of a trade, business, profession or other occupation based on information supplied by other persons;

In this regard, the Court of Appeal decision of *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 is instructive. In its analysis of s 32(1)(*b*)(iv) of the EA, the court observed at [94] that this exception covers "information supplied by other persons", such that multiple hearsay to an unlimited degree may be admitted without safeguards concerning the knowledge of the persons involved in transmitting the information. The court held that s 32(1)(*b*)(iv) was therefore *prima facie* broad enough to permit the admission of an inspection report for the purposes of proving that the coal shipped on board a vessel was of the quality stated in the report (at [95]). However, the court noted that this was not the end of the matter and that s 32(3) of the EA still required the court to examine whether it should exercise its discretion to exclude the report in the interests of justice (at [95]). In the premises, the court eventually found that it was not in the interests of justice to admit that report pursuant to s 32(3) of the EA (at [120]).

30 As such, if s 32(1)(*b*)(iv) were to apply in the present application, I may have been satisfied that the email correspondence forms part of a record compiled by the solicitors acting in the ordinary course of business based on information supplied by their clients, *ie*, the alleged creditors. Because s 32(1)(*b*)(iv) allows multiple hearsay to an unlimited degree, it is immaterial that the email correspondence was between the solicitors of the Company and the solicitors of the alleged creditors, and not directly between the Company

and the alleged creditors. Moreover, given that there is no evidence as to why it would not be in the interests of justice to admit the email correspondence, I would have declined to exercise my discretion under s 32(3) of the EA to exclude the email correspondence.

31 However, since the EA does not apply to the present application (because it is determined by affidavit evidence alone), I can only apply rules of evidence at common law that are not inconsistent with the EA. It has been observed that the business statement exception as codified in the EA "is wider than that in the common law" (see Singapore Academy of Law, *Report of the Law Reform Committee on Reform of Admissibility of Hearsay Evidence in Civil Proceedings* (May 2007) (Chairperson: Philip Jeyaretnam SC) at para 14). There is therefore no rule at common law that has the same effect as s 32(1)(*b*)(iv) of the EA. While this may suggest that the common law business statement exception is inconsistent with the EA, it appears to me that this a proper case to make a principled expansion of the common law business statement exception to match the scope of s 32(1)(*b*)(iv) of the EA. Indeed, if this application had been determined by way of a trial, and therefore had been subject to the EA, it is likely that s 32(1)(*b*)(iv) of the EA would apply. It cannot be the case that evidence in an application determined by affidavit evidence alone, and in which there are *no material disputes of fact* (see O 6 r 1(2) of the ROC 2021), is subject to stricter scrutiny as compared to evidence in an application determined by way of a trial.

32 In any event, even if I am wrong and the evidence must be inadmissible for being hearsay evidence, I do not think it changes my decision in the present application. Quite apart from the clear support from the majority of creditors, which is what the evidence goes towards showing, there are other factors in the present application that lean towards granting the JM Order.

33 With the above discussion in mind, I turn to address why I am satisfied that there is clear support from the majority of creditors. Apart from Metech, none of the other alleged creditors of the Company have objected to the present application. Indeed, 11 out of 12 of the alleged creditors, which constitute 76.42% in value of all alleged creditors, are not opposing the present application. More specifically, nine of 12 of the alleged creditors, which constitute 74.37% in value of all alleged creditors, support the present application, whereas two of 12 of the alleged creditors, which constitute 1.97% in value of all alleged creditors, take no position in respect of the present application. Although Mr Yam argued that the success of the Proposals was not dependent on creditor support, as I suggested to Mr Yam during the hearing, creditor support in the form of inaction will affect whether the Proposals may materialise. Thus, the fact that no alleged creditor other than Metech has objected to the present application is a strong factor in favour of the granting of a JM Order.

34 For completeness, in so far as Metech's main concern appears to be whether its debt can be repaid, the making of a JM Order will not be inconsistent with that concern. This is because if the purposes of judicial management in s 89(1) of the IRDA can be achieved, the Company will be able to repay the debt it owes to Metech. On the contrary, without a JM Order, and if the Company is wound up, there would be greater uncertainty as to whether Metech's debt can be repaid by the Company.

The present application is not brought in bad faith

35 Finally, I turn to the issue of whether the Company brought the present application in bad faith. Before me, Mr Yam submitted that the Company brought the present application in bad faith for two reasons. First, Mr Yam

referred to *Re Genesis*, where the court dismissed the application for judicial management because "the company … [had] failed to credibly demonstrate how it got into the quagmire it was in and how the situation was to be improved" (at [11]). The company in that case had also omitted to include the claims of two opposing creditors, which were substantial, in its list of creditors (at [16]). Similarly, in Mr Yam's submission, the Company failed to disclose its list of creditors. Second, Mr Yam compared an application for judicial management under s 91 of the IRDA with an application for a moratorium for a scheme of arrangement under s 64 of the IRDA. Because s 64(4) of the IRDA requires the Company to provide information such as evidence of creditor support and a list of all secured and unsecured creditors, Mr Yam submitted that the court may infer that, in the absence of such information, the Company is bringing the application for judicial management in bad faith.

36 I reject both these arguments. As a preliminary point, and as Mr Yam accepted, the finding that a company is bringing an application in bad faith is a serious one that the court will make only in sufficiently exceptional circumstances. The present application does not involve such exceptional circumstances. First, *Re Genesis* may be distinguished. The application for judicial management in *Re Genesis* was dismissed because the company there had failed to provide a satisfactory explanation for why it had omitted to include the debts of two opposing creditors whose claims were substantial. I do not think that the Company has done any such thing in the present application. Contrary to Metech's submission, the Company has provided the court with a list of its alleged creditors.[11]

[11] 7th Affidavit of Deng Yiming dated 26 July 2023 at pp 125–130.

37 Second, I do not accept that the requirements for an application under s 64 of the IRDA apply to an application under s 91 of the IRDA. It is trite that Parliament does not legislate in vain, and "the court should therefore endeavour to give significance to every word in an enactment" (see the Court of Appeal decision of *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]). Thus, in so far as the detailed requirements for an application under s 64 are not reproduced in s 91, it cannot be the case that Parliament intended for those requirements to apply to s 91, let alone for the *failure* to satisfy those requirements to lend to an inference of bad faith.

38 Further, as a matter of principle, an application for judicial management is fundamentally different from an application for a scheme of arrangement in that a company under judicial management cedes control to an external judicial manager, while a company under a scheme of arrangement continues to be supervised by its internal management. One cannot expect that the statutory disclosure requirements will be the same for two entirely different regimes.

39 For all of these reasons, I am satisfied there is a real prospect that one or more of the purposes of judicial management would be achieved. I accordingly make the JM Order as prayed for by the Company, save to decide whether the proposed judicial manager should be appointed.

The appointment of the Company's proposed judicial manager is appropriate

40 As for the choice of a judicial manager, it is clear that a court will consider three factors when making the appointment, namely: (a) the choice of the largest creditor; (b) the independence or perceived independence of the nominees; and (c) the skill and expertise of the judicial managers (see the High

Court decision of *Re Hodlnaut Pte Ltd* [2022] SGHC 209 ("*Re Hodlnaut Pte Ltd*") at [11]–[12]).

41 In this regard, the Company has proposed Mr Tam Chee Chong ("Mr Tam") to be suitably qualified. Metech opposes this nomination and has proposed its own nominee, whom I will come to below.

42 The Company raises as a preliminary issue of whether Metech can even be heard in opposition. The Company submits that on a "strict reading" of s 91(3)(*d*) of the IRDA, unless the creditors opposing a company's nomination of the judicial manager constitute a majority in number and value of the creditors, the court "need not take heed to the opposing creditor(s) [*sic*] opposition to the company's nomination of the [judicial manager]".[12] Section 91(3)(*d*) of the IRDA states as follows:

> (3) In any application for a judicial management order under subsection (1), the following apply:
>
> …
>
> (*d*) where a nomination is made by the company —
>
> (i) a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination; and
>
> (ii) the Court may, if satisfied as to the number and value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate another person in place of the applicant's nominee and, if the Court sees fit, adopt their nomination;

43 I agree with the Company's interpretation, which is consistent with the legislative history behind s 91(3)(*d*). As stated in the *Report of the Select*

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12 AFS at para 28.

Committee on the Companies (Amendment) Bill (Bill No 9/86) (Parl 5 of 1987, 12 March 1987) (at p A-92), the Companies Act (Cap 50, 1985 Rev Ed) had originally required that a proposed judicial manager be approved by the majority of a company's creditors. However, due to concerns that it could be unwieldy and costly if the company *always* had to seek the approval of majority of its creditors in nominating a judicial manager, the Companies Act was amended to allow the company to nominate a judicial manager but leaving the creditors the right to oppose this nomination and suggest another nominee (at pp A-113 to A-114). Eventually, via the Companies (Amendment) Act 1987 (Act 13 of 1987), s 227B(3)(*c*) was enacted and remained unchanged in the Companies Act (Cap 50, 2006 Rev Ed) until it was reproduced in its current form in s 91(3)(*d*) of the IRDA.

44 With that being said, and while this was not an interpretation advanced by the Company, I do not think that s 91(3)(*d*) obliges the court to appoint an unqualified judicial manager just because a majority of the creditors failed to oppose such an appointment. This would reduce the court to a rubber-stamp of the majority creditors' wishes and cannot be right.

45 Therefore, in my view, the proper interpretation of s 91(3)(*d*) of the IRDA is as follows. As a starting point, the company applying for judicial management may nominate a judicial manager. If there is a majority in number and value of the creditors opposing this nomination, they may suggest another nominee. The court may consider this nominee but is not bound to approve of him or her. However, the converse is not true, such that even if there is *no* majority in number and value of the creditors opposing the company's nomination, the court need not automatically approve of the company's nominee. The court will still consider factors such as the independence of the nominee, as well as the skill and expertise of the nominee. Indeed, as the High

Court in *Re Hodlnaut Pte Ltd* observed (at [13]), the appointment of a judicial manager is "a fact sensitive exercise, with the court having to consider different factors from case to case".

46 Because Metech is not a majority creditor of the Company either in number or in value, Metech cannot rely on s 91(3)(*d*) of the IRDA to oppose the Company's nomination. Indeed, as Mr Yam clarified during oral submissions, Metech was seeking to rely only on s 91(3)(*c*) of the IRDA, which provides that the court "may reject the nomination of the applicant and appoint another person in place of the applicant's nominee".

47 However, as Mr Yam correctly acknowledged, s 91(3)(*c*) of the IRDA does not give Metech the standing to oppose the Company's proposed nominee. Instead, all it does is to provide that the court may exercise its own discretion in considering the Company's proposed nominee and, if necessary, appoint an alternative judicial manager. In my view, it could not have been the legislative intent for s 91(3)(*c*) to act as a backup plan where s 91(3)(*d*) cannot be invoked, which is essentially what Metech is seeking to do. This is because Parliament is presumed not to have intended an unworkable or impracticable result (see *Tan Cheng Bock* at [38]). I think it would be an impracticable result for a creditor who cannot satisfy the requirement in s 91(3)(*d*) to be able to rely on s 91(3)(*c*).

48 Having dealt with the procedural points above, I appoint Mr Tam as the judicial manager for the following reasons. First, having considered the possibility that "[Mr] Deng himself may be responsible for providing funding to [the Company] to make payment of the judicial manager's professional fees,"[13] I find that it is not at all clear that Mr Deng will provide such funding.

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13 1st Affidavit of Hua Lei dated 17 April 2023 at para 62.

49 Second, even if Mr Deng does so, it is even more inappropriate to appoint Metech's nominee, Ms Ellyn Tan ("Ms Tan"), given that Metech's controlling shareholder, Mr Wu, is actually embroiled in litigation with the Company in OC 9. Moreover, the judicial manager would need to consider possible enforcement actions against Metech and its subsidiary, AGT. Therefore, on balance, it may be less inappropriate to appoint Mr Tam, who has no links to Metech and AGT, rather than Ms Tan.

50 More broadly, I do not think that Metech has cast any valid aspersions on Mr Tam's actual or perceived independence. Indeed, Metech's only point in this regard is that Mr Deng *may* have wrongfully caused the Company's downfall. As such, the judicial manager appointed should be "free from any association with [the Company] in order to eliminate any notions of perceived bias as the judicial manager may need to conduct investigations into [Mr] Deng himself to uncover any potential wrongdoing on his part".[14] I do not agree with this because this point, if accepted, would mean that any company, which seeks judicial management because its fortunes have taken a turn for the worse due to internal mismanagement, cannot put forward its own nominee because that nominee may feel, or be perceived to feel, hindered in conducting thorough investigations. Given that a judicial manager is an independent officer of the court, this is not a tenable position to take without serious evidence (see s 89(4) of the IRDA and the High Court decision of *Re Halley's Department Store Pte Ltd* [1996] 1 SLR(R) 81 at [19]). In any event, the allegation that Mr Deng may have engaged in any wrongful conduct is, at this point, entirely speculative. In contrast, it is undeniable that Mr Wu is *actually* involved in various legal disputes with the Company.

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14 Non-party's Supplementary Written Submissions dated 1 August 2023 at para 33.

51 Finally, I do not consider it a satisfactory reason to reject the appointment of Mr Tam on the basis that he is overqualified, as Metech suggested. Again, returning to the text of the IRDA, ss 91(3)(*a*) and 91(3)(*b*) merely require the nominee to be a licensed insolvency practitioner who is not in a position of conflict of interest. There is no statutory limit on the maximum level of qualification a nominee may have. This is for good reason. If a nominee were to be rejected for being overqualified, experienced judicial managers who possess the necessary skills and expertise would be passed over for less experienced judicial managers. This is entirely contrary to the judicial management regime, where judicial managers rely on their business experience to achieve the objectives of the IRDA (see the High Court decision of *Re HTL International Holdings Pte Ltd* [2021] 5 SLR 586 at [40]).

Conclusion

52 For the reasons above, I allow the Company's application for a JM Order and appoint Mr Tam as the judicial manager. In closing, I thank Mr Zhulkarnain bin Abdul Rahim, who appeared for the Company, and Mr Yam, for their very helpful submissions, which were ably and reasonably advanced.

53 Unless the parties are able to agree on the appropriate costs order, they are to write in with their submissions, limited to seven pages each, within 14 days of this decision.

Goh Yihan
Judicial Commissioner

Low Chai Chong, Zhulkarnain bin Abdul Rahim, Sean Chen Siang En, Cheong Wei Wen John and Shermaine Lim Jia Qi (Dentons Rodyk & Davidson LLP) for the applicant;
Yam Wern-Jhien and Lee Jin Loong (Setia Law LLC) for the non-party.
