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

[2024] SGHC 40

Originating Application No 28 of 2024

In the matter of section 370 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Order 4, Rule 7 of the Rules of Court 2021

(1) Chan Kwong Shing, Adrian
(in his capacity as the joint and several trustee of the bankruptcy estate of Ng Yu Zhi)
(2) Lai Seng Kwoon
(in his capacity as the joint and several trustee of the bankruptcy estate of Ng Yu Zhi)

… *Applicants*

And

Invidia Capital Pte Ltd (in creditors' voluntary liquidation)

… *Respondent*

JUDGMENT

[Insolvency Law — Bankruptcy — Seizure of bankrupt's books, papers or records]

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Chan Kwong Shing Adrian (in his capacity as the joint and several trustee of the bankruptcy estate of Ng Yu Zhi) and another
v
Invidia Capital Pte Ltd (in creditors' voluntary liquidation)

[2024] SGHC 40

General Division of the High Court — Originating Application No 28 of 2024
Goh Yihan J
8 February 2024

9 February 2024 Judgment reserved.

Goh Yihan J:

1 The applicants, Mr Chan Kwong Shing, Adrian and Mr Lai Seng Kwoon, are the joint and several trustees (the "Private Trustees") of the bankruptcy estate of Mr Ng Yu Zhi ("NYZ"). This is their application against the respondent, Invidia Capital Pte Ltd (in creditors' voluntary liquidation) ("ICPL"), for, among other orders, the primary order that ICPL's liquidator (the "Liquidator") provide copies of certain emails (the "Extracted Email Results") to them.

2 Following discussions between the applicants and the Liquidator, the latter agreed to provide the Extracted Email Results to the former. However, the Liquidator asked that this be done by way of a consent application and for an order of court to be obtained for good order. The applicants have therefore

brought this consent application for the Liquidator to provide the Extracted Email Results pursuant to s 370(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").

3 While the present application is a consent application, the court still needs to be independently satisfied that it is appropriate to make the order premised on s 370(1) of the IRDA. After considering the applicants' submissions, I make an order in terms of the prayers sought in the present application. I provide my reasons in this judgment to offer some observations on the legal issues that the applicants have canvassed in their written submissions.

Background facts

4 By way of background, ICPL was placed into creditors' voluntary liquidation on 25 May 2021. NYZ was a director and majority shareholder of ICPL. Indeed, NYZ and his wife held all of ICPL's shares.

5 In the course of the applicants' investigations in their capacities as the Private Trustees of NYZ's bankruptcy estate, they concluded that ICPL functioned as NYZ's investment vehicle. The applicants therefore wrote to ICPL to request for NYZ's devices and/or emails, that were in ICPL's possession. The applicants made this request because they believed that such devices and/or emails would contain information relating to NYZ's personal affairs, dealings, and/or property.

6 So as to filter and extract only emails relating to NYZ's personal affairs, dealings, and/or property, the applicants proposed a list of keywords for ICPL to search the emails with. The keyword searches resulted in a total of

6,171 relevant emails. However, because NYZ's ICPL email only contained 5,547 emails, there was likely to have been some degree of duplication in the search results. Thus, the Liquidator only extracted a total of 4,177 unique emails out of the 6,171 relevant emails found by the keyword searches. These 4,177 unique emails constitute the "Extracted Email Results" that I have referred to above.

7 The applicants have thus filed the present consent application against the above background.

Whether the applicants require permission pursuant to s 170(2) of the IRDA to commence this application

The applicable law

8 The applicants raise, as a preliminary point, whether they require permission from the court pursuant to s 170(2) of the IRDA to commence this application. In this regard, s 170(2) provides as follows:

> **Property and proceedings**
>
> **170.**—(2) After the commencement of the winding up, no action or proceeding may be proceeded with or commenced against the company except by the permission of the Court and subject to such terms as the Court may impose.

I should observe that s 170(2) is similar to s 133(1) of the IRDA, in that both provisions contemplate that an action or proceeding may not be proceeded with or commenced against the company concerned except by the permission of the court. However, s 170(2), as opposed to s 133(1), is the correct provision in the present application because ICPL has commenced a creditors' voluntary winding up. In contrast, s 133(1) is applicable "[w]hen a winding up order has

been made or a provisional liquidator has been appointed" under a winding up by the court.

9 It is well-established that the primary purpose of s 170(2) of the IRDA is "to prevent the company from being further burdened by expenses incurred in defending unnecessary litigation" (see the High Court decision of *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR(R) 671 at [36]–[37], in which V K Rajah JC (as he then was) discussed s 262(3) and s 299(2) of the Companies Act (Cap 50, 1994 Rev Ed), which are similar to s 133(1) and s 170(2) of the IRDA). From this primary purpose, s 170(2) is meant to (a) prevent the fragmentation of the company's assets and protect its creditors' interests to the fullest extent; (b) prevent an unsecured creditor from "stealing a march" on his fellow unsecured creditors; and (c) maximise returns to the creditors at all practical speed (see Harold Foo and Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation (Corporate Insolvency)* (Academy Publishing, 2023) at paras 10.176–10.177).

10 With the above in mind, whether permission is needed for the present application pursuant to s 170(2) must be informed by these purposes behind the provision.

My decision: permission is not required to commence the present application under s 370(1) of the IRDA

11 In my view, the applicants do not require permission to commence the present application under s 370(1) of the IRDA.

12 First, the application does not involve litigating a claim against ICPL for the purposes of obtaining payment and/or an interest. In this regard, the Court of Appeal held in *An Guang Shipping Pte Ltd (judicial managers appointed)*

and others v Ocean Tankers (Pte) Ltd (in liquidation) [2022] 1 SLR 1232 (at [19]) that an application commenced by the judicial managers of Ocean Tankers (Pte) Ltd (in liquidation) ("OTPL") to obtain directions from the court as to whether certain charterhire debts enjoyed priority over unsecured debts was not a "proceeding … against the company" as the expression is used in s 133(1) of the IRDA. Instead, the Court explained (at [20]) that the application concerned was in relation to the administration of winding up and not a claim against OTPL. Similarly, the present application does not involve the laying of any claim on ICPL's assets. As such, the primary purpose behind s 170(2) is not engaged.

13 Second, the application is really to obtain the court's declaration as to the applicants' rights in the administration of ICPL's liquidation. This is in view of the applicants' rights under the IRDA to NYZ's property and personal affairs. Indeed, ICPL had itself *requested* for the present application to be made and for a court order to be granted for good order. Accordingly, this fortifies the conclusion that the present application is not a "proceeding … against the company", as that expression is used in s 170(2) of the IRDA.

14 Accordingly, I conclude that the applicants do not require permission to commence the present application under s 370(1) of the IRDA. However, this does not mean that every application under s 370(1) will not require the court's permission under s 133(1) and s 170(2) of the IRDA.

Whether the applicants are entitled to the Extracted Email Results

The applicable law

15 I turn now to consider whether the applicants are entitled to the Extracted Email Results. The present application is taken out under s 370(1) of the IRDA, which provides as follows:

> **Seizure of bankrupt's property held by bankrupt or other person**
>
> **370.**—(1) At any time after a bankruptcy order has been made, the Official Assignee or any person authorised by the Official Assignee may take an inventory of and seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt (including any which would be privileged from disclosure in any proceedings) or any other person who is required to deliver the property, books, papers or records to the Official Assignee.

16 Section 370(1) is meant to give effect to s 369(1), which provides that the Official Assignee "must forthwith after the bankruptcy order, take possession of the deeds, books and documents which relate to the bankrupt's estate or affairs, and which belong to the bankrupt or are under the bankrupt's control" (under s 369(1)(*a*)), along with "all other parts of the bankrupt's property capable of manual delivery" (under s 369(1)(*b*)). Section 370(1) gives effect to s 369(1) because it empowers the Official Assignee or any person authorised by the Official Assignee to "take an inventory of and seize any property comprised in the bankrupt's estate".

17 In order to come within s 370(1), the Official Assignee or any person authorised by the Official Assignee (collectively, the "Official Assignee") must fulfil two requirements. First, the Official Assignee must show that the article which it wants to "take an inventory of and seize" is either (a) property

comprised in the bankrupt's estate; or (b) books, papers or records relating to the bankrupt's estate or affairs. This requires a consideration of the definition of "property" in s 370(1). Second, the Official Assignee must show that the article that belongs to either (a) or (b) is "in the possession or under the control of the bankrupt … or any other person who is required to deliver the property, books, papers or records to the Official Assignee". In my view, breaking down s 370(1) in this manner assists in its practical application.

My decision: the applicants are entitled to the Extracted Email Results

18 In my view, the applicants are entitled to the Extracted Email Results under s 370(1) of the IRDA.

The Extracted Email Results come within the articles defined in s 370(1) of the IRDA

19 To begin with, I am satisfied that the Extracted Email Results constitute either (a) property comprised in the bankrupt's estate; or (b) books, papers or records relating to the bankrupt's estate or affairs, as those expressions are used in s 370(1) of the IRDA.

20 First, s 2 of the IRDA defines "property" to include "money, goods, things in action, land and every description of property, wherever situated", as well as "obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to property". This is similar to the definition of property in s 436(1) of the Insolvency Act 1986 (c 45) (UK) ("UK Insolvency Act 1986"). In this regard, Arnold J in the English High Court decision of *Shlosberg v Avonwick Holdings Ltd* [2017] Ch 210 ("*Shlosberg"*) pointed out (at [55]) that the courts have repeatedly emphasised the width of this definition. However, despite the width of this definition, it may not be

boundless. Thus, as Morritt LJ stated in *In re Celtic Extraction Ltd (in liquidation)* [2001] Ch 475 ("*In re Celtic Extraction*") (at [26]):

> The word "property" is not a term of art but takes its meaning from its context: see *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014, 1051; *Kirby v Thorn EMI plc* [1988] 1 WLR 445, 452. In the context of insolvency there is, as Lord Atkinson observed in *Hollinshead v Hazleton* [1916] 1 AC 428, 436, a well established "principle of public policy, which has found expression in the provisions of the Bankruptcy Codes of … England … as estimable and as conducive to the welfare of the community as any. *It is this, that in bankruptcy the entire property of the bankrupt, of whatever kind or nature it may be, whether alienable or inalienable, subject to be taken in execution, legal or equitable, or not so subject, shall, with the exception of some compassionate allowances for his maintenance, be appropriated and made available for the payment of his creditors".* Thus in successive statutes dealing with bankruptcy and insolvency the definition of "property" has been progressively extended (*Morris v Morgan* (unreported) 31 March 1998; Court of Appeal (Civil Division) Transcript No 524 of 1998); though however wide the definition *it is subject to the implied exclusion of rights of the bankrupt with reference to his body, mind or character* (*Heath v Tang* [1993] 1 WLR 1421, 1423).
>
> [emphasis added]

21 It is not necessary for me to consider if such a limitation applies to the definition of "property" in particular contexts within the IRDA. However, I do see the sense in considering some limitations to the otherwise wide definition of "property". This especially so when one considers that the purpose behind s 370(1) is, among other things, to seize property so as to pay off the bankrupt's creditors (see *In re Celtic Extraction* at [26]). This purpose may mean that "property" which is "peculiarly personal" to the bankrupt should not be property that forms part of the bankrupt's estate for the purposes of s 370(1) (see also *Shlosberg* at [57]–[61], and the authorities cited within). These cannot be conceivably sold off to repay creditors. Also, given that s 370(1) draws a distinction between "property comprised in the bankrupt's estate" and "books,

papers or records relating to the bankrupt's estate or affairs", it may not be satisfactory for an overly expansive definition of "property" to swallow up the second category of articles referred to in the provision. For present purposes, however, I do not need to decide whether such a limitation should be imposed. I am content, based on an expansive definition of "property" in the IRDA read with s 370(1), that the Extracted Email Results constitute "property" under s 370(1).

22 Second, as for the expression "books, papers or records relating to the bankrupt's estate or affairs", the English High Court in *Re Baxendale-Walker (A Bankrupt)* [2018] EWHC 3572 (Ch) ("*Re Baxendale-Walker*") had occasioned to consider the scope of the similar expression "books, papers and other records which relate to the bankrupt's estate" under s 311 of the UK Insolvency Act 1986. In that case, the bankrupt had applied for directions in respect of his trustees-in-bankruptcy's requests to several law firms for the bankrupt's solicitors-clients files. Deputy Insolvency and Companies Court Judge Agnello QC held that the trustees-in-bankruptcy were entitled to the range of documents sought, to the extent that even personal papers could be disclosed if they relate to the bankrupt's estate or affairs. In coming to his decision, the learned judge referred to Rattee J's observations in the English High Court decision of *Haig v Aitken* [2001] Ch 110 as follows (at [40]–[42]):

> 40. Rattee J commented on these words in *Haig v Aitken* at 119 as follows:
>
> > 'In my judgment the reference to the bankrupt's affairs in section 311(1) of the 1986 Act is a reference to his financial affairs or other affairs which may be relevant to the carrying out of the trustee's duties under the Act, or possibly even affairs relevant to the official receiver's independent duties under the Act. I reject entirely the proposition that the reference to affairs in section 311 can extend to all affairs concerning the bankrupt's conduct, even in relation to his own professional or

> other activities, except to the extent that that conduct may be relevant to the duties of the trustee, or possibly the official receiver, under the Act.'
>
> 41. Nonetheless, the trustee's purview under section 311(1) is wide. In *Haig v Aitken*, Rattee J also said at 118–119 that section 311(1):
>
> '… entitles the trustee to possession of documents relating to the bankrupt's estate, even though such documents are not themselves comprised in the estate. Indeed, the very terms of section 311 to my mind contemplate the possibility that there may be documents, belonging to the bankrupt, which are not part of his estate and for which, therefore, express provision has to be made by section 311(1).'
>
> 42. And at 120 …:
>
> 'It seems to me that, as I have already said, correspondence properly called "personal correspondence", whatever its subject matter, does not form part of the bankrupt's estate within the definitions in the Act. While some of it may relate to other assets within the bankrupt's estate or to his affairs properly regarded as limited to affairs relevant to the administration of the bankrupt's estate, that does not bring it within the definition of "estate". It does give the trustee a power to see such documents under section 311(1).'
>
> [emphasis in original omitted]

23 Accordingly, in order to come within the category of "books, papers or records relating to the bankrupt's estate or affairs" under s 370(1), these books, papers, or records must enable the Official Assignee to discharge his overriding function of realising and distributing the bankrupt's estate (see the English Court of Appeal decision of *Shlosberg v Avonwick Holdings Ltd* [2017] Ch 251 at [70]). Put another way, there must thus be some connection between those "books, papers or records" and the "bankrupt's estate or affairs" so as to enable the Official Assignee to discharge his duty in relation to the bankrupt's estate.

24 In the present case, I am satisfied that the Extracted Email Results constitute "books, papers or records relating to the bankrupt's estate or affairs". Indeed, the said Email Results were obtained after relevant keywords were used by the Liquidator to conduct the searches concerned. These keywords were derived from the applicants' information and findings from NYZ's bank and credit card statements, as well as their interviews with NYZ. As such, the Extracted Email Results containing such keywords must relate to NYZ's estate or affairs.

25 Accordingly, I conclude that the Extracted Email Results are either (a) property comprised in the bankrupt's estate, or (b) books, papers or records relating to the bankrupt's estate or affairs, in accordance with the terms of s 370(1).

The Extracted Email Results are in the possession or under the control of NYZ

26 As for the requirement that the Extracted Email Results are in the possession or under the control of the bankrupt, who is NYZ in this case, I am satisfied that this has also been met. It is clear that the Extracted Email Results belong to NYZ as he often conducted his affairs through ICPL. Indeed, the Extracted Email Results were from NYZ's email account at ICPL.

27 Since the applicants have fulfilled the two requirements in s 370(1) of the IRDA, it follows that they are entitled to the Extracted Email Results.

28 For completeness, while s 370(1) does not confer on the court the power to make an order to compel ICPL to provide copies of the Extracted Email Results, I find that this court possesses such a power by virtue of s 6(1) and s 6(2) of the IRDA.

Conclusion

29 For all the reasons above, I make an order in terms of the prayers sought in the present application pursuant to the consent application, with no order as to costs.

Goh Yihan
Judge of the High Court

Lin Weiwen Moses and Manvindar Kaur Sethi d/o Sarwan Singh
(Shook Lin & Bok LLP) for the applicants;
Woo Yin Loong Christopher and Chow Ee Ning
(Quahe Woo & Palmer LLC) for the respondent.