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

[2024] SGHC(A) 3

Appellate Division / Originating Application No 54 of 2023

Between

Pradeepto Kumar Biswas

… *Applicant*

And

(1) Sabyasachi Mukherjee
(2) Gouri Mukherjee

… *Respondents*

JUDGMENT

[Civil Procedure — Extension of time — Applicable legal principles for extension of time to file an application for permission to appeal — Prospect of success]

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v
Sabyasachi Mukherjee and another

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Appellate Division of the High Court — Originating Application No 54 of 2023
See Kee Oon JAD and Audrey Lim J
27 December 2023

31 January 2024 Judgment reserved.

Audrey Lim J (delivering the judgment of the court):

1 By AD/OA 54/2023 (the "EOT Application"), the Applicant, Mr Pradeepto Kumar Biswas, seeks an extension of time to file an originating application for permission to appeal against the decision of Goh Yihan J (the "Judge") in HC/SUM 268/2023 ("SUM 268"). While the four factors applicable to an application for extension of time are well-settled and not in dispute, in our view, the relevant considerations pertaining to the third factor (*ie*, the prospect of success) merit some clarification in the context of an application for extension of time to file an application for *permission* to appeal.

Background and the decision in SUM 268

2 We begin by briefly setting out the relevant procedural background.

3 On 1 December 2022, the Assistant Registrar (the "AR") adjudged the Applicant a bankrupt in HC/B 2425/2021 ("B 2425"). The AR at the same time dismissed the Applicant's other applications:

(a) in SUM 3718/2022 ("SUM 3718") to stay the proceedings in B 2425 pending the determination of HC/OA 152/2022 (being the Applicant's application for pre-action discovery against other parties); and

(b) in SUM 4306/2022 ("SUM 4306") to dismiss B 2425 which the Applicant claimed to be based on a false case HC/S 1270/2014 ("Suit 1270").

4 In Suit 1270, the Applicant was found liable to the defendants (who are the Respondents in the EOT Application) on certain claims (the "Suit 1270 Judgment") and was ordered to pay the Respondents US$3.45m plus interest (the "Judgment Debt"). As the Applicant did not pay the Judgment Debt, the Respondents sent several reminders, then issued a statutory demand (the "SD"), and finally filed B 2425 on 8 October 2021.

5 The Applicant then appealed against the decisions of the AR in SUM 3718, B 2425 and SUM 4306 by way of RA 343/2022, RA 344/2022 and RA 348/2022 (collectively the "Three RAs").

6 Additionally, the Applicant filed SUM 268 on 1 February 2023, to adduce fresh evidence contained in his supporting affidavit of the same date (the "1/2/23 Affidavit"), for the hearings of the Three RAs. The Applicant stated that the fresh evidence relates to "how the hearing" of the applications before the AR "proceeded [on 1 December 2022] and how natural justice was breached" (the "Natural Justice Evidence"), and further contains evidence of how the

Applicant is "a person of means and is not insolvent and why a bankruptcy order against him should never have been made" (the "Means Evidence").

7 On 15 September 2023, the Judge dismissed SUM 268 along with the Three RAs. In doing so, the Judge stated in his written judgment in *Sabyasachi Mukherjee and another v Pradeepto Kumar Biswas and another matter* [2023] SGHC 262 (the "Judgment") as follows:

(a) The Natural Justice Evidence was more akin to submissions which the Applicant was entitled to make but should not have been characterised as "evidence". Hence, SUM 268 should not have been made at all on this matter, as there was no "evidence" to admit (see the Judgment at [32]).

(b) Even if the Applicant was seeking to adduce evidence, he had failed to satisfy the requirements of the test in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"). Applying the principles in *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*"), the present case fell within the middle of the spectrum identified in *Anan Group* as the Three RAs involved a hearing of the merits but did not bear the characteristics of a trial. The criteria of non-availability should be applied strictly in the present case, as the applications before the AR were intended to finally dispose of the dispute between the parties (see the Judgment at [33]).

(c) Apart from the Natural Justice Evidence (assuming it constituted "evidence"), the other parts of the 1/2/23 Affidavit, such as the documents annexed thereto, had all been available prior to 1 December 2022, and the Applicant had not explained why he could not have obtained them with reasonable diligence for use at the hearing

before the AR. Hence, these documents failed the non-availability requirement in *Ladd v Marshall* (see the Judgment at [34]).

(d) In any event, having perused the AR's minute sheets in relation to the applications, natural justice was not breached at the hearing on 1 December 2022. Hence, the Natural Justice Evidence failed the second requirement in *Ladd v Marshall* as it was irrelevant and would not have had an important influence on the result of the Three RAs (see the Judgment at [35]).

(e) The Means Evidence was not relevant. If the Applicant had the means to satisfy the SD, it was inexplicable why he had not done so since it was issued in July 2019, or even paid the Judgment Debt when it first arose in December 2018 to prevent the issuance of the SD. Second, the basis of B 2425 was that the Applicant failed (either because he had no means or because he had intentionally refused) to satisfy the SD; in either scenario the basis of the bankruptcy order (made on the Applicant's failure to satisfy the SD) was met (see the Judgment at [36]).

(f) Even if the Means Evidence was relevant, the Applicant had no means to satisfy the SD. Although he had asked the AR for six weeks to satisfy the SD on 1 December 2022, more than six months had since passed. If he had the means, the Applicant could have easily raised funds in this period to do so, but he did not. Thus, the Means Evidence also failed the second requirement in *Ladd v Marshall* (see the Judgment at [36]).

(g) Further, the Means Evidence provided in the 1/2/23 Affidavit was not supported by adequate documentary evidence, and thus failed

to satisfy the third requirement in *Ladd v Marshall* as it was not apparently credible (see the Judgment at [37]–[38]).

8 The Judge also dismissed the Three RAs.

9 On 9 October 2023, the Judge dealt with costs of the matters and awarded costs on an indemnity basis to the Respondents.

Applicant's attempt to file an application for permission to appeal against SUM 268

10 On 23 October 2023 (which was the last date for an application for permission to appeal to be filed against the Judge's decision in SUM 268), the Applicant's lawyers ("A/C") attempted to file an application for permission to appeal (the "PTA Application").

11 On 24 October 2023, A/C was informed that the filing was rejected for non-compliance with the requirements in the Supreme Court Practice Directions, because, among other things, the cover page on the submissions was not filed and the written submissions failed to include submissions on costs. The Applicant and A/C acknowledged that A/C had inadvertently omitted to include the cover page on the submissions at the time of filing. The Applicant, however, asserted that the draft written submissions did contain submissions on costs and that it was the Service Bureau which had "inadvertently missed out a page which contained the submissions on costs" when the Service Bureau did the filing on 23 October 2023.

12 On 25 October 2023, A/C attempted to re-file the PTA Application. On the same day, A/C was informed that the re-filing was rejected as it was filed out of time, and that security for costs should have been provided for each set

of opposing party represented by a different set of lawyers. Based on the cover page, there were three respondents in the PTA Application, namely the Respondents of the EOT Application (represented by one set of lawyers) and the Official Assignee (the "OA"). In the affidavit supporting the EOT Application, the Applicant explained that the OA was not actually made a respondent to the PTA Application, but his name appeared on the cover page of the PTA Application because he was a named party in B 2425. Hence there was no reason to provide security for costs for the OA.

13 Thus, on 27 October 2023, A/C re-filed the PTA Application again, this time without naming the OA as a party/respondent to that application. However, on 30 October 2023, A/C was again informed that the filing had been rejected because it was out of time.

14 The Applicant thus filed the EOT Application on 31 October 2023.

The parties' respective arguments in the Application

15 It is not disputed that the PTA Application was not filed in time.

16 The Applicant submits that the delay was *de minimis* and was due to human error. The Applicant further asserts that it was the Service Bureau's error in omitting the costs submissions from the written submissions filed and that security for costs did not have to be provided for the OA who was not a party to SUM 268 (see [11]–[12] above). The Applicant submits that, moreover, the intended PTA Application is not hopeless and has good prospects of succeeding. Finally, the Applicant submits that there would be no prejudice to the Respondents if the extension of time is granted.

17 The Respondents submit that the EOT Application should be dismissed. Whilst the delay was not inordinately long and the Applicant had explained that it was caused by errors on the part of A/C and the Service Bureau in filing the intended PTA Application, such circumstances are, without more, insufficient to grant an extension of time. The Respondents further submit that the intended PTA Application is a hopeless one as the alleged errors identified by the Applicant pertaining to the Judge's decision in SUM 268 are not errors of law and there is no question of public importance. The Applicant was essentially raising the same issue which had been raised and ventilated in past proceedings. Lastly, it has been almost five years since the Suit 1270 Judgment and the Applicant has not paid the outstanding costs orders made against him amounting to some $129,299.60. Yet, he seeks to put the Respondents to further costs of defending the EOT Application.

Our decision

18 Having considered the matter, we dismiss the EOT Application.

19 In arriving at our decision, we take into account the four well-settled factors (which the Applicant and Respondents do not dispute), namely: (a) the length of delay; (b) the reasons for the delay; (c) the applicant's chances of success; and (d) any prejudice that the respondent would suffer if the extension of time is granted (see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [18], citing *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 at [45]). We examine each one in turn.

Length of delay

20 In relation to the length of delay, we do not agree with the Applicant that it was *de minimis*. That said, the Respondents accept (and we agree) that the delay was not inordinately long. The EOT Application was filed eight days after the expiry of the timeline to file the PTA Application by 23 October 2023.

Reasons for delay

21 As for the reasons for delay, errors were made by A/C's firm which led to the Service Bureau rightly rejecting the filing (and re-filing) of the PTA Application, and which thus led to the current state of affairs. In particular, the Applicant admits that A/C had inadvertently omitted to include the cover page on the submissions which he had attempted to file on 23 October 2023. Hence, even if the Applicant claims that the Service Bureau erred in rejecting the filing of the PTA Application for other reasons such as having omitted to file the page which contained submissions on costs, the first attempt to file the application would nevertheless have been rejected due to the Applicant's non-compliance with the requirement to file a cover page.

22 As for the Applicant's subsequent attempt to re-file the PTA Application on 25 October 2023, it cannot be said that his application was wrongly rejected for failing to provide security for costs for the OA given that the Applicant had named the OA as a party in the PTA Application. In this regard, when the PTA Application was again rejected on 25 October 2023 (see [12] above), the court also informed the Applicant that the re-filing of the PTA Application was already out of time, and hence rejected it also on that basis. It should have been abundantly clear by then to the Applicant that the proper course would have been to promptly file an application for extension of time to file the intended

PTA Application, instead of re-filing the PTA Application again on 27 October 2023.

23 That said, procedural mistakes, even if *bona fide*, are insufficient in themselves to justify the grant of an extension of time for leave to appeal (*Pearson Judith Rosemary v Chen Chien Wen Edwin* [1991] 2 SLR(R) 260 at [20]). A mere assertion of an oversight is insufficient and can lead to an abuse of process (*Lee Hsien Loong* at [22]); and there must be some extenuating circumstances or explanation offered to mitigate or excuse the oversight (*Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [8]). We are cognisant that A/C had attempted to file the PTA Application by the stated timeline, and when his subsequent attempts to re-file (made rather quickly thereafter) were rejected on two occasions because the timeline had by then been breached, A/C had filed the EOT Application the next day. Hence, this factor, in itself, does not weigh against the Applicant, but it also does not assist him.

Prospect of success

24 We turn to the third factor (*ie*, the prospect of success) in relation to an application for extension of time to file an application for permission to appeal. In our view, the relevant considerations pertaining to this factor require some clarification.

25 The Court of Appeal in *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 1 SLR(R) 510 ("*Hong Huat*") at [39] held that the prospect of success relates to the success of *the appeal* or whether the intended appeal itself is hopeless, and not just the success of obtaining an extension of time to file an application for leave; this is because the object of the extension

of time is not to obtain leave *per se* but to appeal. *Hong Huat* concerned a case for an application for extension of time to apply for leave to appeal against an award under s 28 of the Arbitration Act (Cap 10, 1985 Rev Ed) (the "AA 1985").

26 However, in *Tay Eng Chuan v United Overseas Insurance Ltd* [2009] 4 SLR(R) 1043 at [41], Judith Prakash J (as she then was) re-phrased the test (also in the context of arbitration proceedings) as one of whether the *application for leave to appeal* could be said to be hopeless, and not whether the appeal itself would be hopeless. This was followed in *Ng Tze Chew Diana v Aikco Construction Pte Ltd* [2020] 3 SLR 1196 ("*Diana Ng*"), whereby Ang Cheng Hock J held (at [56]) that the grant of leave to appeal was a necessary precursor to the applicant's appeal succeeding; and it was fruitless to consider whether the substantive appeal would be hopeless without first considering whether the application for leave to appeal was hopeless. As the court observed in *Diana Ng* (at [57]) and with which we agree, the Court of Appeal in *Hong Huat* had in fact considered the requirements relevant to obtaining leave to appeal. Section 28(4) of the AA 1985, which was under consideration in *Hong Huat*, required first that a question of law was raised, and second that the determination of the question of law concerned could substantially affect the rights of the parties to the arbitration, before leave of court could be granted to appeal against an award. The court had thus considered both these requirements (at [39]–[52]) before granting the extension of time for leave to appeal (and also proceeded to grant leave to appeal).

27 It must be remembered that the four factors (stated at [19] above) originated from a line of cases dealing with the question of extension of time to file *an appeal*, and not an extension of time to file an *application for leave (or permission)* to appeal (see *Lee Hsien Loong* and the cases cited by the Court of Appeal therein at [18]–[20]). Hence, in determining whether to grant an

extension of time to file an appeal, the court must consider the prospect of success of the appeal (or whether the appeal is hopeless). In our view, the correct approach in an application for extension of time to file an application for permission to appeal is to first consider whether the application for permission to appeal could be said to be hopeless, before considering whether the substantive appeal will be hopeless. If the court finds that an applicant is unlikely to succeed in obtaining permission to appeal, then granting an extension of time to file an application for permission to appeal would be futile and a waste of resources for all concerned (see *Lee Hsien Loong* at [20]).

28 The above approach seems to have been adopted by the Appellate Division of the High Court in *Leow Peng Yam v Kang Jia Dian Aryall* [2022] 2 SLR 725. In that case, the appellant learnt at the hearing of the appeal that permission to appeal was required and made an oral application for an extension of time to seek such permission. In light of this background, the appellant did not rely on the usual three grounds for permission to appeal as set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*LKY v TLH*") at [16], but instead strove to show that there was merit in the appeal. Nonetheless, in determining whether to grant the extension of time, the court considered the grounds for leave to appeal as set out in *LKY v TLH*, before concluding that there was also no merit in the appeal (at [31]–[38] and [58]).

29 In fact, in the present case, the parties have submitted their respective positions on the basis of the prospect of success of the PTA Application and considered the grounds for permission to appeal as set out in *LKY v TLH*.

30 The Applicant submits that his PTA Application has good prospects of succeeding as there were *prima facie* errors made by the Judge. In particular, the Judge:

(a) dismissed the application on the erroneous ground that the 1/2/23 Affidavit did not contain evidence but submissions;

(b) was wrong in deciding that the 1/2/23 Affidavit should be disregarded entirely as some documents in the affidavit had been adduced in other hearings before and were not fresh evidence which could not have been produced for the hearing before the AR on 1 December 2022; and

(c) was wrong to conclude that the Applicant's evidence that he was a person of means was irrelevant, or that the Applicant was not a person of means.

31 The Applicant further submits that there is a question of public importance upon which further argument and a decision of a higher tribunal would be to the public advantage, *ie*, whether a court can disregard *prima facie* evidence that the judgment creditors have not been truthful about the access and control of assets in the course of bankruptcy proceedings, and if the court decides this question in the Applicant's favour, the Applicant would succeed on appeal.

32 The Respondents submit that any intended PTA Application is a hopeless one, for the following reasons:

(a) First, the alleged errors claimed by the Applicant are not errors of law. The decision in SUM 268 was based on an application of the principles in *Ladd v Marshall*. The Applicant does not contend that the correct legal principles were applied.

(b) Second, the so-called question of public importance is essentially the same issue the Applicant had raised in past proceedings and ventilated at all levels of the Singapore Courts, *ie*, that the Respondents had allegedly had the benefit of the investments which the Applicant had been held liable for in the initial decision in Suit 1270 and that the Judgment Debt was thus invalid. Seen in this context, there is no question of public importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

33 In this regard, we find that the third factor weighs against the Applicant, and that the intended PTA Application is without merit, rising to the threshold of being "hopeless" (*Lee Hsien Loong* at [20]).

34 The Applicant has not specified what the *prima facie* error *of law* made by the Judge is. The Applicant submits that it is not the principles in *Ladd v Marshall* but those in *Anan Group* that should apply. In this regard, we find that the Judge had correctly identified the law in relation to the adducing of fresh evidence.

35 In our view, the Judge had correctly considered the principles in *Anan Group* which enunciated how the test in *Ladd v Marshall* should apply depending on the nature of the proceedings (in this case, the three applications before the AR being B 2425, SUM 3718 and SUM 4306). In particular, we are satisfied that the Judge had correctly identified that the proceedings fell in the middle of the spectrum identified in *Anan Group*, as the three applications involved a hearing of the merits which did not bear the characteristics of a trial, but nonetheless that the criterion of non-availability should apply because the applications were intended to finally dispose of the dispute between the parties (see the Judgment at [29] and [33]). In particular, B 2425 was the Respondents'

application to make the Applicant a bankrupt, with the Applicant's corresponding application in SUM 4306 to dismiss B 2425.

36 Further, the general principle is that the *prima facie* error must be one of law and not of fact, although it may be that in exceptional circumstances, leave to appeal may be granted if there is an error of fact which is obvious from the record (*Engine Holdings Asia Pte Ltd v JTrust Asia Pte Ltd* [2022] 1 SLR 370 at [10]). In this regard, such errors must be "clear beyond reasonable argument … [T]he court should not have to delve into the facts in detail" (*Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2022] SGHC(A) 16 at [10], citing *Essar Steel Ltd v Bayerische Landesbank and others* [2004] 3 SLR(R) 25 at [26] and *Bellingham, Alex v Reed, Michael* [2021] SGHC 125 at [100]). In the present case, we do not find any obvious error of fact from our perusal of the record.

37 We see no reason to disagree with the Judge's conclusion that the Natural Justice Evidence which the Applicant intended to adduce was more akin to submissions. Nevertheless, the Judge went further and determined that the Applicant had not satisfied the requirements for adducing that evidence. The Judge also did not err in finding that the documents exhibited in the 1/2/23 Affidavit were available prior to 1 December 2022 and that the Applicant did not explain why those documents could not have been obtained with reasonable diligence for use at the hearing before the AR. Indeed, a substantial number of those documents formed part of the court record of proceedings and included documents which had been prepared by the Applicant himself or which he was in possession of prior to 1 December 2022.

38 In the above regard, the Applicant contends that the Judge should at least have allowed the parts of the 1/2/23 Affidavit which clearly set out what had

transpired at the hearing before the AR, which evidence would only have been available during that hearing. We do not see how the Judge had erred in this regard. The Judge had perused the AR's minute sheets of the three applications in determining that natural justice had not been breached. The Judge also found that the Applicant had ample opportunity to present his case before the AR and the courts, given the multiple applications he had filed since the Suit 1270 Judgment was granted on 11 December 2018 (see the Judgment at [35]).

39 In the round, we find no obvious errors in the Judge's determination that the Natural Justice Evidence presented in the 1/2/23 Affidavit would not have had an important influence on the result of the appeals in the Three RAs.

40 We next deal with the Applicant's argument that the Judge erred in concluding that the Means Evidence was irrelevant and in failing to take into account that the making of the bankruptcy order prevented the Applicant from accessing his assets. Again, we find no obvious errors of fact made by the Judge, whose determination was supported by the reasons set out at [7(e)] to [7(g)] above. Particularly, the Judge had expressly considered the Applicant's argument about not being able to access his assets and stated that "the fact remains that the [Applicant] has had ample opportunity to pay up even before the bankruptcy order was made but chose not to do so" (see the Judgment at [36]). Hence, we see no reason to disagree with the Judge that the Means Evidence would not have had an important influence on the result of the appeals before him and in any event, was also not credible; thus failing to satisfy the second and third requirements in *Ladd v Marshall* for such evidence to be admissible.

41 As for the Applicant's claim that there is a question of public importance, we agree with the Respondents that the Applicant is merely raising

issues already raised in past proceedings before the courts. As can be seen from the intended PTA Application, the Applicant has sought (under this claim of a question of public importance) essentially to challenge the decision of the trial judge in Suit 1270, and to claim that the Suit 1270 Judgment was obtained by the judgment creditors (the Respondents) through perjured evidence, thereby claiming that the SD (which led to the Applicant's bankruptcy) is "false". The Applicant is not entitled to go by the back door and attempt to re-litigate this matter. He had previously attempted to do so (in *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another and another matter* [2022] 2 SLR 340 ("*Pradeepto (2022)*") and after the avenue for appeal (for Suit 1270) had been exhausted.

42 In sum, the Applicant's intended PTA Application (and, we add, the intended appeal) is hopeless.

Prejudice

43 Turning to the fourth factor in *Lee Hsien Loong*, we are of the view that the Respondents would be prejudiced if the extension of time is granted.

44 We agree with the Respondents that it has been some five years since the Suit 1270 Judgment, from which the Judgment Debt arose. In the meantime, and after the Suit 1270 Judgment, the Applicant commenced various proceedings essentially to challenge the Suit 1270 Judgment (including applying for a re-trial of Suit 1270) and to set aside the SD. All these proceedings have been set out comprehensively by the Judge in the Judgment.

45 The evidence also indicates on balance that the prejudice to the Respondents might not be compensated or sufficiently compensated with costs. The Respondents have pointed out numerous costs orders which were made

against the Applicant since *September 2021* and which the Applicant has failed to pay, amounting to over $129,000. The Applicant has not disputed this. We agree with the Respondents that, given the Applicant's prior conduct, there is little assurance that the Applicant would pay any cost orders made against him if the Respondents were successful in defending the EOT Application. The Applicant's conduct is further aggravating because he claims to be a person of means – if so, there was no reason why he would withhold the payment of costs which the Respondents are entitled to pursuant to numerous court orders.

46 Indeed, we note the Judge's observations – that the courts have repeatedly found that the Applicant's applications were intended to vex the Respondents and constitute a clear abuse of process; and that they were baseless and spurious attempts to delay the enforcement of the Suit 1270 Judgment and the ensuing bankruptcy order in B 2425. The Judge also observed that the Applicant had failed to show respect for the court and its decision, having labelled the AR's decision as a "sham judgment and order" and the court as "corrupt" (see the Judgment at [50]–[51]). We note that the Applicant has, in his submissions before us, denied that he had accused the courts of being "corrupt", despite the transcripts of the notes of evidence (as recorded by the AR at the hearing on 1 December 2022) showing otherwise.

Conclusion

47 For the above reasons, we dismiss the EOT Application with costs to the Respondents.

48 The Respondents seek costs on an indemnity basis. They argue that this is another case of the Applicant abusing the process of the court and oppressing the Respondents.

49 An order for indemnity costs is appropriate only in exceptional circumstances (*BIT Baltic Investment & Trading Pte Ltd (in compulsory liquidation) v Wee See Boon* [2023] 1 SLR 1648 at [83], citing *CCM Industrial Pte Ltd v Uniquetech Pte Ltd* [2009] 2 SLR(R) 20 at [32]). In deciding whether to order indemnity costs, the court will have regard to all the circumstances of the case, with the touchstone being that of unreasonable conduct, as opposed to conduct that attracts moral condemnation (*Lim Oon Kuin and others v Ocean Tankers (Pte) Ltd (interim judicial managers appointed*) [2022] 1 SLR 434 at [36]). From our observations of the Applicant's conduct, we find it appropriate to award costs against him on an indemnity basis. The Applicant has failed to satisfy numerous outstanding costs orders and seeks to put the Respondents to further costs of defending the EOT Application with little assurance that he will make good any costs ordered against him. He has also been found on more than one occasion to have abused the court process (*ie*, by the Judge in SUM 268, and by the Court of Appeal in *Pradeepto (2022)* at [95]). We repeat our observations at [45]–[46] above.

50 As such we award costs on an indemnity basis fixed at $12,000 inclusive of disbursements. This takes into account that the assessment of whether the EOT Application should be granted necessitated an assessment of the merits of the intended PTA Application as well. The usual consequential orders apply.

See Kee Oon
Judge of the Appellate Division

Audrey Lim
Judge of the High Court

Lim Tean (Carson Law Chambers) for the applicant;
See Chern Yang and Joshua Quek Wen Chieh (Drew & Napier LLC)
for the first and second respondents.
