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

[2024] SGHC(A) 36

Appellate Division / Civil Appeal No 58 of 2024

Between

Chia Kok Kee

… *Appellant*

And

Tan Wah

… *Respondent*

In the matter of Originating Summons (Bankruptcy) No 108 of 2023
(Registrar's Appeal No 33 of 2024)

Between

Chia Kok Kee

… *Claimant*

And

Tan Wah

… *Defendant*

JUDGMENT

[Insolvency Law — Bankruptcy — Statutory demand]

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Chia Kok Kee
v
Tan Wah

[2024] SGHC(A) 36

Appellate Division of the High Court — Civil Appeal No 58 of 2024
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
5 September 2024

2 December 2024

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of a judge of the General Division of the High Court (the "Judge"), whose grounds of decision are set out in *Chia Kok Kee v Tan Wah* [2024] SGHC 216 (the "GD"). For the reasons set out below, we dismiss the appeal.

Background to the dispute

2 Mdm Tan Wah ("Mdm Tan"), the respondent, and Mr Chia Kok Kee ("Mr Chia"), the appellant, are shareholders of HX Investment Pte Ltd ("HX"), holding 60% and 31% of the shares in HX respectively.

3 In early 1995, Mr Chia sought potential co-investors in a joint venture in a hydro-electric power plant in the People's Republic of China ("PRC"). In

May 1995, pursuant to an oral agreement, Mr Chia and Mdm Tan agreed to invest in the joint venture. A PRC company, Sichuan New Dujiang Electrical Power Co Ltd ("SND"), was incorporated as the investment vehicle to acquire and hold the joint venture. On 14 June 1995, HX was incorporated for the purpose of investing in SND. The directors and initial shareholders of HX were: (a) Mdm Tan; and (b) Mr Chia's late mother, Mdm So Lai Har ("Mdm So"). HX invested RMB6,225,369, equivalent to 25% of the share capital in SND (the "Investment").

4 Subsequently, disputes arose between Mr Chia and Mdm Tan, resulting in a litany of legal proceedings by Mr Chia. These proceedings, as summarised in the GD at [7], include:

(a) HC/S 558/2005 ("S 558"), in which Mr Chia claimed an additional 20% from Mdm Tan's 60% share in the Investment that Mdm Tan allegedly agreed to give him. The High Court dismissed S 558 with costs to be paid by Mr Chia to Mdm Tan: *Chia Kok Kee v HX Investment Pte Ltd (So Lai Har (alias Chia Choon), third party in issue) (Tan Wah, third party in counterclaim)* [2007] SGHC 164. Subsequently, the costs were taxed pursuant to HC/BC 189/2009 ("BC 189").

(b) Mr Chia's appeal to the Court of Appeal in CA/CA 127/2007 ("CA 127") was dismissed with costs which were taxed pursuant to HC/BC 190/2009.

(c) Mr Chia filed CA/OS 331/2010, in which he applied to set aside the decisions in S 558 and CA 127 and for leave to commence a fresh suit. Mr Chia alleged that Mdm Tan had misled the High Court in S 558 during the trial. The Court of Appeal dismissed Mr Chia's application

with costs. Mr Chia's subsequent application in HC/OS 937/2012 to set aside the Court of Appeal's order of costs was dismissed with costs.

(d) Mr Chia next commenced HC/S 97/2011 ("S 97"), alleging fraud against Mdm Tan in omitting to record his investment contribution and further alleging that HX's auditor and Mdm Tan's solicitor were in collusion in the fraud. An Assistant Registrar ("AR") struck out S 97 on the ground that Mr Chia's claims of fraud would amount to a re-litigation of issues tried in S 558 and OS 331. The High Court dismissed Mr Chia's appeal against the AR's decision: *Chia Kok Kee v Tan Wah and others* [2012] 2 SLR 352.

(e) Mr Chia filed CA/CA 158/2011 ("CA 158") to appeal against the striking out of S 97. The Court of Appeal allowed the appeal to the limited extent that leave was granted to Mr Chia to file a fresh action in respect of the following:

(i) to rectify HX's record to show (among other things) that Mr Chia held 31% in HX, Mdm So held 9% and Mdm Tan held 60%; and

(ii) to obtain an account of dividends received by Mdm Tan or HX after the judgment in S 558 and a disclosure of all documents related to SND's refusal to pay dividends in 2010 and thereafter.

The appeal against the striking out of S 97 was otherwise dismissed, and Mr Chia was ordered to pay the costs of the appeal. The Court of Appeal also noted that pursuant to the judgment in S 558, Mr Chia was to pay RMB2,870,775.40 to Mdm Tan (being the underpayment of Mdm Tan's share of dividends paid by SND) and costs.

(f) Subsequently, the Court of Appeal in CA 158 made the following orders (among others):

(i) any sale of the Investment had to be agreed to by all the shareholders of HX; and

(ii) there be a global stay on all payment obligations and costs orders between the parties except for an order for Mdm Tan to pay Mdm So RMB684,024.59 (the "global stay order").

The purpose of the global stay order was to "facilitate the resolution of the long-standing dispute between [Mr Chia and Mdm Tan], which may be resolved by the sale of the [Investment]". The Court of Appeal also noted the confirmation by the respondents (including Mdm Tan) that there were no outstanding costs orders against Mdm So in relation to S 558.

5 On 16 April 2018, another investor of SND, State Grid Sichuan Dujiangyan Electric Power Supply Company Limited ("SGSDEPS"), filed a bankruptcy application in the PRC against SND in connection with a debt of RMB33,671,487.07. In the course of the bankruptcy proceedings, a restructuring plan for SND was proposed. Under the restructuring plan, a new investor, a PRC company, Sichuan Tongda Railway Engineering Co Ltd ("Tongda"), would pay off all the debts of SND in the sum of RMB7.5m and, in return, it would acquire all the equity of SND.

6 On 6 September 2021, the restructuring plan was approved at a creditors' meeting (the "Creditors' Meeting"). This outcome was recorded in the "Notice of Voting Results at the Third Creditors' Meeting". On 10 September 2021, the restructuring plan was approved by the People's Court

of Dujiangyan City, Sichuan Province, PRC, pursuant to which the Investment was disposed of.

7 Following the approval of the restructuring plan, Mdm Tan applied in CA/SUM 25/2023 ("SUM 25") to lift the global stay order made in CA 158. The Court of Appeal allowed this application on 6 November 2023.

8 On 7 December 2023, Mr Chia received a statutory demand from Mdm Tan for the sum of $886,275.69 (the "statutory demand"). This amount comprised: (a) costs payable by Mr Chia pursuant to several orders of court arising from the various disputes (see above at [4]); (b) the amount of RMB2,870,775.40 (see above at [4(e)]); and (c) interest.

HC/OSB 108/2023

9 On 19 December 2023, Mr Chia filed HC/OSB 108/2023 ("OSB 108") to set aside the statutory demand on two grounds:

(a) First, he alleged that BC 189 (see [4(a)] above) had been taxed on the wrong basis and, consequently, the amount that he had to pay was inflated.

(b) Second, he alleged that he had a cross claim against Mdm Tan that exceeded the amount of the debts specified in the statutory demand.

10 On 1 February 2024, an AR dismissed OSB 108 and ordered Mr Chia to pay costs fixed at $6,000 (all-in) to Mdm Tan. The AR's decision on the first ground is summarised at [16]–[19] of the GD. We say no more about it, as Mr Chia rightly decided not to pursue this ground before the Judge.

11 Mr Chia's second ground centred on the proceedings in the PRC, which led to the disposal of the shares held by HX in SND as part of the restructuring of SND. Before the AR, Mr Chia submitted that he might have a cross claim or counterclaim against Mdm Tan, in that she might have received moneys in return for voting in favour of the restructuring plan at the Creditors' Meeting, and these moneys ought to be apportioned between all the shareholders of HX, including Mr Chia. Mr Chia also claimed that an ongoing investigation by the Central Commission for Discipline Inspection of the Communist Party ("CCDI") might vindicate his suspicions about the restructuring plan.

12 The AR rejected this argument as it was speculative and contradicted by documentary evidence. Mr Chia's doubts and the alleged investigation, which had yet to conclude, were not sufficient for the AR to find that there was a valid cross claim that warranted setting aside the statutory demand.

HC/RA 33/2024

13 On 15 February 2024, Mr Chia filed HC/RA 33/2024 ("RA 33") to appeal against the decision of the AR in OSB 108.

14 On 18 March 2024, at the first hearing before the Judge, Mr Chia obtained permission to file a further affidavit to adduce fresh evidence (which he claimed to have) of the following (see GD at [23]):

(a) the "settlement agreement" that Mdm Tan had entered into pursuant to which the Investment was sold for RMB6.25m;

(b) the value of the Investment being RMB21m; and

(c) correspondence from parties in the PRC confirming that RMB6.25m had been paid to Mdm Tan pursuant to the "settlement agreement".

15 Mr Chia filed an affidavit affirmed on 15 April 2024 exhibiting, among other things (see GD at [24]):

(a) a transcript of his telephone conversation with the liquidation manager of SND, Ms Xu Yi ("Ms Xu") on 11 September 2020;

(b) an unsigned agreement between HX and Tongda under which HX was to sell the Investment to Tongda for RMB3.75m (the "Unsigned Agreement"); and

(c) a WeChat message dated 11 May 2021 from Ms Xu to Mr Chia (the "WeChat message").

16 At the next hearing before the Judge, Mr Chia submitted that he had a cross claim against Mdm Tan for fraud and/or conspiracy to injure and/or to harm and that the damages would amount to $1,585,000, which exceeded the amount claimed in the statutory demand. In gist, Mr Chia's case was that Mdm Tan had sold the Investment without his (and Mdm So's) agreement and that Mdm Tan was therefore liable to him (and Mdm So) for their share of the value of the Investment. According to Mr Chia, Mdm So's stake and his stake in the Investment had been "stolen … by the collusion between [Mdm Tan] and the Chinese parties, including [Ms Xu] and/or [SGSDEPS] and/or the new investor". He made the following claims:

(a) SGSDEPS had fraudulently commenced bankruptcy proceedings against SND on the basis of "falsified debts".

(b) During Mr Chia's conversation with Ms Xu on 11 September 2020 (see above at [15(a)]), Ms Xu proposed an arrangement for investors to buy HX's Investment with a buyback ratio of 1:1. On 22 April 2021, Mr Chia received the Unsigned Agreement. He said he was shocked to receive it as he and Mdm So had never agreed to sell the Investment for RMB3.75m. He forwarded a copy of the Unsigned Agreement to Mdm Tan on 24 April 2021. On 30 April 2021, Mr Chia rejected the Unsigned Agreement. On 11 May 2021, in the WeChat Message (see above at [15(c)]), Ms Xu informed Mr Chia that Mdm Tan had agreed in principle to the agreement for Tongda to buy out HX's Investment in SND.

(c) Only after the Creditors' Meeting, Mr Chia found out that, under the restructuring plan, "the interest of HX would need to be 'sacrificed' and that no compensation would be given to HX".

(d) Yet, in November 2021, Ms Xu informed him that Tongda had paid Mdm Tan for the Investment. Ms Xu refused to disclose the amount that Mdm Tan had received as consideration.

(e) Mr Chia believed that Mdm Tan would have been paid "in excess of RMB6.25m" because Mdm Tan had valued the Investment at around RMB21.9m in a mediation in the PRC in June 2015. Further, in a notice from SND's parent company, Dujiangyan Shudian Investment Co Ltd, to HX dated 23 November 2018, SGSDEPS's 61.99% stake in SND had been valued at RMB50m. Correspondingly, HX's 25% stake would have been valued at RMB20,164,542.

(f) As the value of the Investment was approximately RMB21m, Mr Chia and Mdm So's combined 40% share of the Investment was

worth at least RMB8.4m or $1,585,000, which exceeded the total amount claimed in the statutory demand.

(g) On 22 June 2023, Mr Chia lodged a complaint to the CCDI against the judge in the People's Court of Dujiangyan, Ms Xu and SGSDEPS's legal representative "for their roles in the bankruptcy of SND, which ultimately lead [*sic*] to the illegal disposal of [the Investment]".

17 Mdm Tan denied the existence of any agreement under which she received money for the disposal of the Investment. Instead, Mdm Tan submitted that Mr Chia's claim was an afterthought designed to frustrate the due process of Mr Chia's bankruptcy proceedings. Further, Mdm Tan disagreed with Mr Chia's valuation of the Investment. In any event, even if Mdm Tan received moneys from the disposal of the Investment, Mr Chia's claim would fall short of the amount claimed in the statutory demand.

Decision below

18 On 3 July 2024, the Judge dismissed Mr Chia's appeal in RA 33. The GD was issued on 20 August 2024. The Judge held that Mr Chia's alleged cross claim did not raise any triable issues under r 68(2)(*a*) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 ("PIR"). There were no triable issues in respect of: (a) whether Mdm Tan had sold the Investment without Mr Chia's (and Mdm So's) agreement; and (b) whether the Investment was worth RMB21m (GD at [27]).

19 In relation to the first issue, Mr Chia's case was contradicted by the minutes of the Creditors' Meeting, which mentioned that under the restructuring plan, Tongda would acquire the Investment and HX would receive no

compensation for it (GD at [28], [30]–[31]). This fact was acknowledged by the Court of Appeal when it granted Mdm Tan's application in SUM 25 to lift the global stay (GD at [29]). The Judge rejected Mr Chia's claim that he only found out *after* the Creditors' Meeting that he would receive no compensation pursuant to the restructuring plan because Mr Chia had attended the Creditors' Meeting and voted against the restructuring plan (GD at [31]). The Judge also rejected Mr Chia's claim that the translation of the meeting minutes was incorrect (GD at [32]). The Judge also mentioned that there was a dispute at that meeting about whether Mdm Tan or Mr Chia was authorised to represent HX. It was decided that each of them would have one vote and if their votes were not unanimous, HX would be treated as having voted against the restructuring plan. Accordingly, since Mdm Tan voted for and Mr Chia voted against the restructuring plan, HX was treated as having voted against the plan. However, the plan was approved by all creditors and by shareholders who represented 75% of the shareholding in SND (GD at [35]).

20 Second, the Judge noted that the further evidence adduced by Mr Chia in his affidavit affirmed on 15 April 2024 (see above at [15]) showed, at best, a *conditional* in-principle agreement for the Investment to be sold. The minutes of the Creditors' Meeting showed that the discussions up to May 2021 were superseded by the approved restructuring plan (GD at [36]). Mdm Tan's evidence was consistent with the objective evidence. She was initially agreeable to the proposal in the Unsigned Agreement so as to end her fraught relationship with Mr Chia. However, as Mr Chia and Mdm So did not agree to the Unsigned Agreement (which was undisputed by Mr Chia), Mdm Tan could not proceed with the Unsigned Agreement (GD at [37]).

21 Third, the Judge agreed with Mdm Tan that Mr Chia's alleged cross claim against Mdm Tan was an afterthought. Mr Chia did not make any

allegations of fraud or collusion against Mdm Tan until after the statutory demand was served on him (GD at [38]).

22 On the second issue, there was no evidence that the Investment was worth RMB21m at the time Mdm Tan allegedly disposed of it. The two valuations relied on by Mr Chia (see above at [16(e)]) were irrelevant. Although the Unsigned Agreement provided evidence of the value of the Investment as of April 2021, based on that value, Mr Chia's cross claim would not have exceeded the amount claimed under the statutory demand (GD at [39]–[41]).

23 The Judge ordered Mr Chia to pay Mdm Tan costs, which were fixed at $10,500 all in (GD at [42]).

Issue before this court

24 On 15 July 2024, Mr Chia filed the present appeal in AD/CA 58/2024 ("AD 58") against the whole of the Judge's decision. AD 58 was wrongly filed under O 18 of the Rules of Court 2021 (2020 Rev Ed) (the "ROC"), as opposed to O 19 of the ROC. Nonetheless, because RA 33 centred on a single issue and a limited amount of evidence was adduced below, on 31 July 2024, the court directed that AD 58 should proceed under the rules governing O 18 appeals, pursuant to O 19 r 29(1) of the ROC.

25 On appeal, Mr Chia maintains his case before the Judge. The issue that arises for the determination of this court is whether Mr Chia's cross claim raises any triable issues and, in particular, whether there are triable issues in respect of: (a) whether Mdm Tan sold the Investment without Mr Chia's (and Mdm So's) agreement; and (b) whether the Investment was worth RMB21m.

Relevant legal principles

26 Rule 68(2) of the PIR sets out the circumstances in which the court must set aside a statutory demand:

> **Hearing of application to set aside statutory demand**
>
> …
>
> (2) The Court must set aside a statutory demand if —
>
> (*a*) *the debtor in question appears to the Court to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand*;
>
> (*b*) the debt is disputed on grounds which appear to the Court to be substantial;
>
> …
>
> (*e*) the Court is satisfied, on any other ground, that the demand ought to be set aside.
>
> [emphasis added]

27 A statutory demand must be set aside under rr 68(2)(*a*) or 68(2)(*b*) of the PIR if the "counterclaim, set-off or cross demand" or disputed debt raises a triable issue. The applicable standard is no more than that for resisting a summary judgment application (see also paragraph 160(3) of the Supreme Court Practice Directions 2021). This is because a bankruptcy court is generally not in the best position to adjudicate on the merits of a commercial dispute without a proper ventilation of the evidential disputes through a trial: *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 at [16]–[17], citing *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491 at [16]–[17]. Nonetheless, the court retains a residual discretion under r 68(2)(*e*) to set aside a statutory demand even if it is satisfied that there are no triable issues. This discretion is analogous to the court's power to deny summary judgment if it

feels that there ought to be a trial for "some other reason". However, while this power exists, the circumstances where it is exercised in insolvency proceedings will be rare: *Chimbusco International Petroleum (Singapore) Pte Ltd v Jalalludin bin Abdullah and other matters* [2013] 2 SLR 801 at [46].

The decision

28 In our view, Mr Chia's cross claim does not raise any triable issues – it is made without adequate evidence and is contrary to his conduct as we elaborate below. We agree with the Judge's decision to dismiss RA 33. In addition to the analysis canvassed by the Judge, we highlight the following matters that are material to our decision.

29 First, after the creditors' meeting on 6 September 2021, Mr Chia wrote a letter to Mdm Tan dated 16 November 2021 (the "16 November Letter"), in which he referred to the allegedly fraudulent bankruptcy application, the Unsigned Agreement, the Creditors' Meeting and the approval of the restructuring plan by the People's Court of Dujiangyan City. In this letter, Mr Chia sought Mdm Tan's agreement to re-open a suit against SGSDEPS pertaining to the allegedly fraudulent bankruptcy application and to "work together to safeguard [the Investment]". Notably, however, the 16 November Letter was silent on the issue of Mdm Tan having disposed of the Investment without the consent of Mr Chia (or Mdm So) and the issue of Mdm Tan receiving compensation in exchange for the Investment. On Mr Chia's own case, Ms Xu informed him of this fact in November 2021. If Mr Chia had known about the clandestine payment when he wrote the letter, it would have been expected of him to express his unhappiness towards Mdm Tan. Yet, no mention of the payment was made. One possible explanation that Mr Chia could have offered was that he only learned about the payment *after* he wrote the letter.

However, this was not the explanation he gave to the Judge. Instead, Mr Chia claimed that although he was suspicious of Mdm Tan by that point, he kept silent in the 16 November Letter as he needed Mdm Tan's consent for him to "relaunch HX's claim against [SGSDEPS] in order to scuttle the 'Restructuring'". However, according to Mr Chia, as early as April 2021, when he received the Unsigned Agreement from Ms Xu, it was "clear" to him that Mdm Tan had colluded with the various PRC parties.

30 In our view, Mr Chia's explanation is not believable. He himself said that he had "learned to his horror" that Mdm Tan received payment from Tongda for the Investment and was "totally shocked" by this discovery. This makes it implausible that he would keep mum about this revelation. Furthermore, Mr Chia claims that Mdm Tan went behind his back to collude with the PRC parties, including SGSDEPS, to steal his and Mdm So's stake in the Investment. If Mr Chia truly believed this, it would beggar belief for him to think that Mdm Tan would assist him in bringing a claim against SGSDEPS, *ie*, one of the parties that she was colluding with. It would be even more inconceivable for Mdm Tan to work with Mr Chia to "scuttle" the restructuring plan, as she was a beneficiary of this alleged scheme. Therefore, Mr Chia's failure to make any allegation about the payment against Mdm Tan in the 16 November Letter contradicts his claim that he found out about the payment in November 2021 (and before he wrote the 16 November Letter). This allegation was a bare assertion by Mr Chia as Ms Xu did not give direct evidence of Mdm Tan receiving payment from Tongda. This, in turn, casts doubt on Mr Chia's allegation.

31 Second, when Mdm Tan applied in SUM 25 to lift the global stay order made in CA 158, Mr Chia was served with the application. Yet, Mr Chia also did not mention the alleged collusion involving Mdm Tan. Before the AR on

1 February 2024, Mr Chia confirmed that he did not raise the CCDI investigation in SUM 25 during the hearing of OSB 108. His explanation to the AR was simply that he "was on MC after an operation", and he "thought that the stay was permanent". Again, we find Mr Chia's explanation to be unsatisfactory. The Court of Appeal granted Mdm Tan's application in SUM 25 on the basis that the Investment had been disposed of pursuant to the approved restructuring plan. The purpose of the global stay order, "which was to keep the status quo pending the disposal of [the Investment]", had been "rendered moot" by HX's disposal of the Investment. If Mr Chia was of the opinion that he had been "played out" by Mdm Tan and had not received his share of the sale proceeds of the Investment, he ought to have raised these grievances as a basis for objecting to SUM 25. After all, the global stay order was "intended to facilitate the resolution of the long-standing dispute between the parties", which the Court of Appeal considered could be "resolved by the sale of the [Investment] held by [HX] in [SND]". Mr Chia's failure to mention the alleged collusion in SUM 25 buttresses the point that his cross claim was a mere afterthought.

32 Third, throughout the proceedings, Mr Chia failed to paint a consistent picture of Mdm Tan's alleged wrongdoing. In his first supporting affidavit dated 19 December 2023 for OSB 108, Mr Chia did not mention that Mdm Tan had colluded with the other parties, which led to the under-the-table sale of the Investment. Instead, Mr Chia only mentioned that the CCDI investigation could shed light on the "illegal disposal of HX's Investment". In the same affidavit, Mr Chia refers to a letter he sent to the Supreme Court Registry dated 11 December 2023. However, this letter also does not mention the alleged collusion or otherwise implicate Mdm Tan. In fact, in the letter, Mr Chia states that the CCDI complaint was lodged against the judge in the People's Court of Dujiangyan, a "Judiciary Manager" of SND, Ms Xu and SGSDEPS's legal

representative, "for their roles in the bankruptcy of SND, which ultimately lead [*sic*] to the illegal disposal of [the Investment]". Mdm Tan's name was noticeably absent. It was only in Mr Chia's affidavit dated 2 January 2024 that he first expressed his "suspicions that [Mdm Tan] clandestinely agreed to a deal to sell HX's [Investment] to the new investors". This was reiterated in Mr Chia's written submissions dated 25 January 2024. However, again, Mr Chia did not allege that there was a conspiracy between Mdm Tan and the PRC parties to deprive Mr Chia and Mdm So of their share of the Investment. At the hearing before the AR on 1 February 2024, Mr Chia reiterated his belief that Mdm Tan "collected a sum of money" which "should be apportioned between all the shareholders" of HX. He said that the basis for this claim was "the proposal to buy HX's shares". Once again, Mr Chia did not allude to any collusion between Mdm Tan and the PRC parties. It was only at the appeal before the Judge that Mr Chia suggested for the first time that Mdm Tan "had been colluding with [SGSDEPS] and/or [Ms Xu] to defraud [Mdm So] and [Mr Chia] of [their] stake in SND". In our view, this allegation came too little, too late.

33 In the proceedings before the Judge, Mr Chia also provided an inconsistent account of his case. At the first hearing on 18 March 2024, Mr Chia claimed that he had correspondence from the parties in the PRC confirming that RMB6.25m had been paid to Mdm Tan. However, at a subsequent hearing on 3 July 2024, counsel for Mr Chia clarified that Mr Chia "got it wrong the last time" and he confirmed that there was no such correspondence. Counsel for Mr Chia could only refer to Mr Chia's assertion in his affidavit dated 15 April 2024 that Ms Xu had informed him of the sale in November 2021. In essence, at the later hearing, the allegations made by Mr Chia had taken on a different complexion. In fact, at the earlier hearing before the AR on 1 February 2024, Mr Chia had also mentioned that he had "oral recordings of conversations with

the asset manager *and the judge in China* regarding the proposal". No evidence relating to the conversations with the said judge was put before the court.

34 Fourth, Mr Chia's criticisms of the minutes of the Creditors' Meeting are unfounded. In RA 33, Mr Chia disputed the translation of part of the minutes that Mdm Tan had adduced. This translation of the minutes stated that Tongda had committed to paying off all the debts of SND and that it would "acquire all the equities of [SND] as a consideration of the restructuring investment." Mr Chia claimed that the correct translation was that Tongda "**must** acquire all equities of [SND] as a consideration of the restructuring investment" [emphasis in original], and this meant Tongda had to acquire all the shares in SND for value. This argument was rightly rejected by the Judge (see GD at [32]–[33]). In any case, we find that even if Mr Chia's translation was accurate, it is not mutually exclusive with HX receiving *no* consideration for the disposal of the Investment. In other words, Mr Chia's translation does not suggest that Tongda necessarily acquired all the shares in SND *for value*. We also highlight that, before the AR, Mr Chia accepted that there was no suggestion in the restructuring plan that Mdm Tan or HX received any moneys and that the papers were "very clear". Therefore, it was disingenuous of Mr Chia to find fault with the translation of the minutes in RA 33.

35 Before this court, Mr Chia no longer pursues the argument that the minutes of the Creditors' Meeting were inaccurately translated. However, he maintains that Mdm Tan, Ms Xu and/or the "other Chinese parties" fabricated parts of the minutes. Similarly, in OSB 108, Mr Chia said that he doubted the veracity of the minutes. His rationale was that he was not given a copy of the minutes after the meeting. In our view, this factor, in and of itself, is insufficient to justify a finding that the minutes were fabricated. Without more, Mr Chia's argument on this point must be rejected.

36 In response to the Judge's finding that his cross claim was belated, Mr Chia points to his alleged complaint to the CCDI. This was allegedly lodged on 22 June 2023, *ie*, before the statutory demand was served on him on 7 December 2023. We reject this argument. First and foremost, Mr Chia has failed to produce *any* document relating to the alleged CCDI investigation; not even the notice of receipt of the complaint that he claims to have received from the CCDI on 30 June 2023. Given that Mr Chia's cross claim relies so heavily on the CCDI investigation, he should have exhibited some relevant documentation, or at least an English translation of the complaint. Further, even if Mr Chia had filed the complaint, there is no evidence that he named Mdm Tan as a subject of his complaint or alleged that she had colluded to procure the restructuring of SND to receive moneys from Tongda. In fact, Mr Chia concedes that he did not file a complaint against Mdm Tan. According to Mr Chia, this is because the subject of a complaint must be a member of the PRC Communist Party, and, in any event, Mr Chia named Mdm Tan in the *contents* of his complaint to the CCDI. Again, both of these claims are bare allegations that appear contrived. We also note that it is only in AD 58 that Mr Chia brings up for the first time that he named Mdm Tan in his complaint to the CCDI.

37 As a whole, we find Mr Chia's cross claim to be an afterthought concocted to set aside the statutory demand. For completeness, we agree with the Judge's analysis that there was no evidence that the Investment was worth RMB21m at the time it was allegedly disposed of by Mdm Tan (see GD at [39]–[41]; see also above at [22]). Mr Chia's cross claim simply presents no triable issue.

Conclusion

38 For the foregoing reasons, we dismiss Mr Chia's appeal. In our view, indemnity costs are warranted in the present case. Mr Chia should not have pursued this entirely unmeritorious appeal, causing Mdm Tan to incur additional costs: see *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 at [71]. His cross claim is irreconcilable with the contemporaneous documents (see *Tan Chin Yew Joseph v Saxo Capital Markets Pte Ltd* [2013] SGHC 274 at [99(5)] and [99(8)(f)]) and his prior conduct. As stated above, his cross claim was an afterthought designed to frustrate the due process of the bankruptcy proceedings against him. We award costs fixed at $20,000 (all in) in favour of Mdm Tan on an indemnity basis. The usual consequential orders will apply.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Lim Tean (Carson Law Chambers) for the appellant;
Cai Enhuai Amos, Lim Yun Heng and Jolene Song Zhu Yi (Yuen Law LLC) for the respondent.