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

[2022] SGHC 137

Companies Winding Up No 257 of 2021

Between

(1) Andrew Grimmett
(2) Lim Loo Khoon
(3) Tan Wei Cheong

… *Plaintiffs*

And

HTL International Holdings Pte Ltd
(under judicial management)

… *Defendant*

And

(1) Phua Yong Tat
(2) Ideal Homes International Limited
(3) Yihua Lifestyle Technology Co Ltd
(4) Golden Hill Capital Pte Ltd

… *Non-parties*

JUDGMENT

[Insolvency Law — Winding up — Grounds for petition]
[Companies — Winding up — Just and equitable ground]
[Companies — Winding up — Suspending business for a whole year]

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Grimmett, Andrew and others
v
HTL International Holdings Pte Ltd (under judicial management) (Phua Yong Tat and others, non-parties)

[2022] SGHC 137

General Division of the High Court — Companies Winding Up No 257 of 2021
Aedit Abdullah J
15 March, 13 April 2022

13 June 2022 Judgment reserved.

Aedit Abdullah J:

1 The issue at the heart of this case is whether a company should be wound up on the application of its judicial managers in order to prevent a shareholder from unwinding the sale of assets of the company, namely, shares in its subsidiaries, to an investor. I dismiss the winding up application, but to protect the rescue effort, I extend the judicial management order to allow the judicial managers to consider what alternative course, if any, may be available.

Introduction

2 In the present proceedings, the judicial managers of HTL International Holdings Pte Ltd (under judicial management) ("HTLI") have applied to wind up HTLI on the ground that it is just and equitable to do so under s 125(1)(*i*) of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018)

("IRDA"). Further, and/or in the alternative, the judicial managers submit that HTLI has suspended its business for a whole year, and it should be wound up under s 125(1)(*c*) of the IRDA.[1]

3 Mr Phua Yong Tat ("Mr Phua YT") is the main unsecured creditor of HTLI (the "Creditor"). Mr Phua YT had previously extended a sum of US$3 million in May 2020 to HTLI as part of interim measures to keep HTLI afloat during the judicial management process.[2] Mr Phua YT supports the winding up application made by the judicial managers.

4 The sole shareholder of HTLI is Ideal Homes International Limited ("Ideal Homes"). Ideal Homes is a Hong Kong incorporated entity and a wholly-owned subsidiary of Yihua Lifestyle Technology Co Ltd ("Yihua"), a company incorporated in the People's Republic of China ("PRC").[3] Ideal Homes and Yihua (collectively, the "Shareholders") have opposed the winding up application on the grounds (amongst others) that the judicial managers have completed the objectives of the judicial management and that HTLI is a solvent company that should be returned to the Shareholders.

5 The judicial managers and the Creditor allege that the Shareholders are attempting to unravel the work that was done in the judicial management.

6 During the oral submissions, a subsidiary issue arose as to whether Golden Hill Capital Pte Ltd ("Golden Hill") was allowed to participate in the present winding-up proceedings.[4] Having considered the further submissions by

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1 Judicial managers' written submissions dated 8th March 2022 ("JMWS") at para 1.

2 1st Affidavit of Phua Yong Tat ("1-PYT") at para 10.

3 1st Affidavit of Tan Wei Cheong ("1-TWC") at para 11.

4 Minute Sheet in HC/CWU 257/2021 dated 15 March 2022 at p 10–11.

the parties, I allowed Golden Hill to participate formally in the proceedings as there was little prejudice caused to the Shareholders. Any prejudice occasioned could be addressed in a separate costs application.

Background facts

7 HTLI is an investment holding company with no other substantive business of its own.[5] Its only business was to hold shares in its revenue-generating subsidiaries which were mostly incorporated in the PRC. Before HTLI entered into judicial management, HTLI held shares in 15 wholly-owned subsidiaries and one indirectly-owned subsidiary (collectively, the "HTL Group").[6] These subsidiaries undertook the manufacturing, sales and distribution of upholstered furniture and essentially formed the core of the HTL Group's business.[7]

8 HTLI's founders and directors are Mr Phua YT and his brother, Mr Phua Yong Pin ("Mr Phua YP") (though they have not been managing HTLI since it was put into interim judicial management).[8] At present, HTLI has only two unsecured creditors consisting of Mr Phua YT (who is owed US$3 million) and HomesToLife Pte Ltd (which is owed a smaller sum of US$23,841.60).[9]

9 On 13 July 2020, HTLI was placed under judicial management.[10] The plaintiffs in this action, who were the interim judicial managers of HTLI, were

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5 1-TWC at para 12.

6 1-TWC at para 13.

7 1-TWC at para 14.

8 1-PYT at para 19(a).

9 1-PYT at para 10.

10 JMWS at para 15.

appointed as the judicial managers. As the court has extended the judicial management order until the final determination of the present winding-up application,[11] HTLI remains in judicial management.

10 One of the major decisions before the judicial managers was to decide whether, and if so, to whom to sell HTLI's assets consisting of the shares in its subsidiaries. To facilitate this potential share sale, the judicial managers conducted an internal restructuring of HTLI where the ownership of the shares in most of the subsidiaries was transferred to HTL Capital Pte Ltd ("HTL Capital"). HTL Capital was a newly incorporated entity and was wholly owned by HTLI.[12] The other remaining operating subsidiary of the HTL Group was HTL Manufacturing Pte Ltd ("HTLM"), which was the main revenue-generating subsidiary of the group.[13] Thus, after the internal restructuring, HTLI now owned just two subsidiaries – HTL Capital and HTLM.

11 The judicial managers then engaged in a transparent sale process which considered the competing offers. They exercised their commercial judgment and sold HTLI's shares in HTL Capital and HTLM to Golden Hill. The sale of the shares was completed on 7 September 2020 ("Share Sale").[14] What is also relevant is that Mr Phua YT and Mr Phua YP are the beneficial owners of Golden Hill.[15] The Shareholders objected to the sale of the shares and preferred the other offer from Man Wah Holdings Ltd ("Man Wah") instead.[16]

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11 JMWS at p 8; Order of Court No 276 of 2022 dated 17 January 2022 in HC/OS 425/2020.

12 1-TWC at para 21.

13 1-TWC at paras 17–18.

14 JMWS at paras 21–22.

15 *Ex tempore judgment* in CA/CA 1/2021 at [6].

16 JMWS at para 22.

12 Dissatisfied with the judicial managers' decision to sell the shares to Golden Hill instead of Man Wah, on 15 September 2020, the Shareholders brought an application in Originating Summons No 425 of 2020 (Summons No 3963 of 2020) to set aside the sale of the shares and to direct the judicial managers to accept Man Wah's offer. The application was dismissed in *Re HTL International Holdings Pte Ltd* [2021] 5 SLR 586 ("*HTL International (HC)*") as I found that the judicial managers' decision to prefer a sale to Golden Hill instead of Man Wah did not cause prejudice to the Shareholders as the sale was in the interests of the creditors and shareholders as a whole and fair consideration was given to both offers (at [47] and [83]). The Shareholders then filed an appeal against that decision. The Court of Appeal found that there was no merit to the appeal as the judicial managers did not act unfairly in selling the shares to Golden Hill instead of Man Wah, and dismissed it on 8 September 2021 in *Yihua Lifestyle Technology Co, Ltd and another v HTL International Holdings Pte Ltd and others* [2021] 2 SLR 1141 ("*HTL International (CA)*").[17]

13 In parallel with the proceedings in Singapore, when the judicial management order was made on 13 July 2020, Yihua had commenced legal proceedings abroad before the Shantou Intermediate People's Court of Guangdong province in Suit No 534 of 2020 ("PRC Suit 534") against Mr Phua YT and Mr Phua YP, and HTLI. Yihua alleged that there was mismanagement by HTLI in respect of two factories owned by Yihua, and this resulted in Yihua suffering a loss amounting to at least RMB99,480,100, which was claimed as damages.[18]

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17 JMWS at paras 23–27.

18 1-TWC at para 35(a); JMWS at para 17.

14 On 30 July 2020, Yihua commenced another set of legal proceedings in Suit No 635 of 2020 before the Shantou Intermediate People's Court of Guangdong province ("PRC Suit 635") against HTL Capital and joined HTLI as a third party in the action. Yihua alleged that Mr Phua YT, Mr Phua YP and HTL Capital had colluded to carry out the internal restructuring of HTLI to evade repayment of purported debts which were owed by HTLI to Yihua. Yihua claimed the same sum of RMB99,480,100 and sought a declaration that HTLI and HTL Capital should be jointly and severally liable for this sum.[19] Based on PRC Suit 635, Yihua obtained freezing orders against the shares of some subsidiaries in the PRC held by HTL Capital.[20]

15 What is significant to note at this juncture is that there are allegations that Yihua is seeking an order in PRC Suit 635 for the transfer of shares in the subsidiaries from HTLI to HTL Capital to be declared void and invalid.[21] This would have the effect of undermining the sale of the shares from HTLI to Golden Hill as the sale is premised on and given effect to by the internal restructuring, which transferred the ownership of the shares in the subsidiaries to HTL Capital. Effectively, this would mean that the Share Sale process conducted by the judicial managers will be rendered nugatory. Golden Hill would have purchased an empty shell should the transfer of shares in the subsidiaries from HTLI to HTL Capital be reversed.

Summary of judicial managers' case

16 Preliminarily, the judicial managers submit that they possess the standing to bring the winding up application. Section 124(1)(*h*) of the IRDA

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19 1-TWC at para 35(b); JMWS at paras 18–19.

20 1-TWC at para 34; JMWS at para 20.

21 JMWS at paras 120–121.

provides that a company may be wound up by the court on an application by the "judicial manager appointed under this Act for the company". This standing is not limited to any particular ground for winding up under s 125(1) of the IRDA, as opposed to the Minister whose standing is limited to specific grounds set out in s 124(1)(*g*) of the IRDA.[22]

17 The powers, duties, roles and responsibilities of a judicial manager extend beyond merely achieving the statutory aims of the judicial management. The judicial manager has the obligation to ensure that steps taken in pursuit of the aims of judicial management are not undermined or jeopardised.[23]

18 HTLI should be wound up on just and equitable grounds under s 125(1)(*i*) of the IRDA, and specifically, on two different bases: (a) that there was a loss of substratum and/or (b) that it is in the public interest to do so.[24]

19 There was a loss of substratum as HTLI was incorporated as an investment holding company for the HTL Group and was never intended to carry on any business of its own.[25] Following the sale of the HTL Group's business, including all its subsidiaries to Golden Hill on 7 September 2020, HTLI has essentially become a dormant shell company and all the assets had been converted into cash deposits in HTLI's bank.[26] While the Shareholders have asserted that they have "commercial intentions" for HTLI and that it should be kept alive, this appears to be a mere afterthought to oppose the

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22 JMWS at paras 37–38.

23 JMWS at paras 44.

24 JMWS at paras 89.

25 JMWS at paras 93.

26 JMWS at paras 97.

winding-up petition and is similar to the situation in *Chua Kien How v Goodwealth Trading Pte Ltd and another* [1992] 1 SLR(R) 870 ("*Goodwealth Trading (CA)*").[27] The only "intention" that the Shareholders have is to be paid the shareholder surplus (*ie*, the amount to be returned to shareholders after the settlement of the claims of the creditors of HTLI as well as other contingent claims, and the fees and expenses of the judicial managers).[28] Further, keeping HTLI alive in view of the ongoing proceedings in the PRC does not support the position that there has been no loss of substratum.[29]

20 Regarding the public interest basis, winding up would be just and equitable to preserve the integrity of the court process and to uphold commercial morality.[30] The commencement of PRC Suit 534 and PRC Suit 635 (collectively, the "PRC Suits") was a calculated move to reverse the Share Sale by the judicial managers as the Shareholders preferred the offer by Man Wah over Golden Hill.[31] As long as PRC Suit 635 remains, there is the possibility of the shares (which are subject to a freezing order) being sold to a third party to fulfil the monetary debt of RMB99,480,100. If HTLI was returned to the Shareholders instead of being wound up, the Shareholders would cause HTLI to consent to judgment in the PRC Suits. This would allow enforcement against the frozen shares, which would effectively reverse or undermine the Share Sale.[32] Further, there are extracts from the Shareholders' lawyers demonstrating that they are seeking an order in PRC Suit 635 to void and invalidate the Share

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27 JMWS at paras 99.

28 JMWS at paras 100.

29 JMWS at paras 101.

30 JMWS at para 105.

31 JMWS at para 105.

32 JMWS at para 115–117.

Sale.[33] It is in the public interest to ensure that the outcome of the judicial management and the decisions of the Singapore courts in *HTL International (HC)* and *HTL International (CA)* relating to the Share Sale are not undermined.[34] Commercial morality is upheld by winding up HTLI. HTLI should not be returned to the management of Yihua given the wrongdoings discovered by the China Securities Regulatory Commission and the penalties meted out.[35]

21 Further and/or alternatively, HTLI should be wound up on the suspension of business ground under s 125(1)(*c*) of the IRDA. HTLI has suspended its business since the Share Sale was completed on 7 September 2020 and no longer carries out any investment holding activities.[36]

22 In further written submissions, the judicial managers submit that a finding of loss of substratum may be made even if the shareholders subsequently attempt to resurrect the company. The decisions of *Ma Wai Fong Kathryn v Trillion Investment Pte Ltd and others and another appeal* [2019] 1 SLR 1046 ("*Kathryn Ma*") and *Goodwealth Trading (CA)* were cited in support of this proposition.[37] Thus, it is immaterial that the Shareholders have commercial plans to resurrect HTLI, and the fact of the matter is that HTLI's substratum as an investment holding company has ceased to exist.[38] In any event, the judicial

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33 JMWS at para 120–121.

34 JMWS at para 122.

35 JMWS at paras 129–131.

36 JMWS at paras 108–109.

37 Judicial managers' further written submissions ("JMFWS") at paras 6–8.

38 JMFWS at para 9.

managers reiterate that the "commercial plans" for HTLI were an afterthought, and there was no longer any business or goodwill remaining in HTLI.[39]

23 Lastly, "public interest" grounds can be relied upon by the judicial manager in an application to wind up a company despite the presence of s 125(1)(*g*) of the IRDA – which only makes reference to "an inspector appointed under Part IX of the Companies Act" being of the opinion that it is in the "interests of the public" that the company should be wound up. This argument is supported by Australian authorities such as *Deputy Commissioner of Taxation (Cth) v Casualife Furniture International Pty Ltd* [2004] VSC 157 ("*Casualife*").[40] These Australian authorities are argued to be relevant as s 125(1)(*g*) of the IRDA is *in pari materia* with s 461(1)(h) of the Australian Corporations Act 2001 (Cth) (the "Australian Corp Act").[41]

Summary of Creditor's case

24 The Creditor supports the judicial managers' standing under s 124(1)(*h*) of the IRDA to bring an application for winding up. This is based on a plain reading of the provision and no further requirements are specified therein other than being a judicial manager.[42] While s 124(2) of the IRDA limits the grounds on which certain classes of applicants may rely on for a winding-up application, there are no such restrictions for a judicial manager.[43] However, with reference to foreign authorities, there is the suggestion that the judicial managers must

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39 JMFWS at paras 10–11.

40 JMFWS at paras 15–20.

41 JMFWS at para 17.

42 Phua Yong Tat's written submissions dated 8 March 2022 ("PYTWS") at paras 31 and 36.

43 JMWS at para 36.

demonstrate "sufficient interest" in the relief sought and that the "interest" must arise *qua* their position as judicial managers.[44] Even if such a requirement is necessary in Singapore, the "sufficient interest" threshold is satisfied. The judicial managers have an interest in ensuring that the purpose of judicial management is achieved, that the statement of proposal by the judicial managers to wind up HTLI after the Share Sale is carried to fruition, and that the work done by the judicial managers is not undermined by Yihua's attempts to reverse the Share Sale.[45]

25 On the substantive grounds of winding-up, it is just and equitable to wind up HTLI under s 125(1)(*i*) of the IRDA as there was a loss of substratum.[46] After the Share Sale had been completed, there was no longer any business left in HTLI as HTLI's only purpose was to hold shares in the subsidiaries of the HTL Group.[47] A decision of the Eastern Caribbean Court of Appeal in *Delco Participation BV v Green Elite Limited* (BVI HCMAP 2017/0018) ("*Delco*") was raised and an analogy was drawn to the present case. The facts of *Delco* also involved an investment holding company that was eventually ordered to be wound up on the basis of loss of substratum when all the shares were sold off and the only remaining asset was the proceeds of sale.[48] While the Shareholders have alluded to the "commercial intentions" which they have for HTLI, this was a bare and unsubstantiated assertion.[49]

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44 PYTWS at paras 32–34.

45 PYTWS at paras 37–38.

46 PYTWS at paras 39 and 43.

47 PYTWS at para 43.

48 PYTWS at para 43–45.

49 PYTWS at para 45.

26 In addition to this, the circumstances demonstrate that the Shareholders intend to use their control of HTLI to undermine the Share Sale through the PRC Suits.[50] If HTLI is returned, Yihua will direct HTLI to concede the claims brought against it in the PRC Suits and seek an order invalidating the transfer of shares of the subsidiaries from HTLI to HTL Capital. This would, in turn, undermine the Share Sale and the Court of Appeal's decision in *HTL International (CA)* to uphold the judicial managers' commercial decision to prefer Golden Hill's offer over Man Wah's offer.[51] There was also an offer made by HTLI to pay the sum of RMB99,480,100 and costs to Yihua (*ie*, the exact sum which Yihua seeks in PRC Suit 635) in full and final settlement of claims in exchange for Yihua discontinuing the actions abroad (along with other terms), but this offer was rejected by Yihua on the basis that HTLI is not the sole defendant in the PRC Suits.[52] This was surprising given that it was Yihua's own position that the sum of RMB99,480,100 is the underlying debt being owed by HTLI in the first place.[53] Thus, the only reasonable conclusion to be drawn is that the PRC Suits were not commenced with the objective of being repaid the debt of RMB99,480,100, but were instead, to avoid and invalidate the Share Sale.[54]

27 Further to the above, the just and equitable ground of winding up is satisfied as the return of HTLI to the Shareholders would undermine the interests of Mr Phua YT and Mr Phua YP, as well as Golden Hill (collectively,

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50 PYTWS at para 46–47.

51 PYTWS at para 47.

52 PYTWS at paras 50–54.

53 PYTWS at para 54.

54 PYTWS at para 55.

the "Phua Group").[55] The Phua Group was already put through months of court proceedings before the High Court and Court of Appeal and was finally able to get the Share Sale approved. Mr Phua YT is also HTLI's largest unsecured creditor and has reason to believe that liquidation is the only route by which he can recover the sum owed by HTLI.[56]

28 Lastly, it would be in the public interest to wind up HTLI on just and equitable grounds.[57] There is a want of commercial morality as Yihua is using the corporate structure of HTLI to undermine a court-approved Share Sale and the outcome of the judicial management.[58]

Summary of Shareholders' case

29 Responding to the contention that HTLI had suspended its business for the past one year under s 125(1)(*c*) of the IRDA, the Shareholders argue that it is not mandatory for the court to order a winding-up even if the conditions are met as the provision uses the term "may". Further, the present facts are exceptional as the suspension of HTLI's business is directly attributable to the judicial managers' conduct in controlling the company since 5 May 2020.[59] The Shareholders also have commercial intentions for HTLI once they regain control of the company.[60]

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55 PYTWS at para 57.

56 PYTWS at paras 58–59.

57 PYTWS at para 62.

58 PYTWS at para 63.

59 Shareholders' written submissions dated 8 March 2022 ("SWS") at paras 6–7.

60 SWS at para 8.

30 There is also no basis to argue that HTLI should be wound up on just and equitable grounds under s 125(1)(*i*) of the IRDA.[61] The just and equitable ground of winding up is usually invoked in cases where there is a deadlock or breakdown of trust and confidence between the shareholders.[62] Other instances include situations where the minority shareholders are being oppressed or being treated unfairly by the controlling shareholders and have justifiably lost confidence in the management of the company.[63] Even in cases concerning the loss of substratum, the court would only grant a winding-up order where it is unfair to keep the aggrieved shareholders locked into a company which is no longer carrying out the business it set out to do – the unfairness lies in holding the shareholders to the association despite the loss of substratum.[64] The present facts are different as the sole shareholder of Yihua, Ideal Homes, is willing to continue running HTLI as a going concern.

31 There is no need for HTLI to be wound up insofar as payment of the outstanding debts to Mr Phua YT and HomesToLife Pte Ltd are concerned as the judicial managers can avail themselves of the mechanism found in s 227G(6)(*a*) of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act") to discharge the debts.[65]

32 Further, regarding the allegations that the Share Sale would be unwound because of the PRC Suits, it is unclear how this would happen as the judicial managers have not offered anything more than mere speculation regarding the

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61 SWS at para 16.

62 SWS at para 13.

63 SWS at para 14.

64 SWS at para 15.

65 SWS at paras 24–28.

outcome of those suits and the anticipated actions of the Shareholders after regaining control of HTLI.[66] The judicial managers have not provided a credible basis to show that the PRC courts would not recognise the decision made by the Singapore Court of Appeal in *HTL International (CA)* and/or that the PRC Suits will result in a reversal of the Share Sale.[67] The judicial managers could have sought a stay of the PRC Suits or even a striking out order if there was such a threat to the Share Sale, but they did not do so.[68] The judicial managers should not use the Singapore courts to pre-emptively stymie ongoing litigation in a competent foreign jurisdiction by winding up HTLI as that would be against public policy.[69]

33 In further written submissions by the Shareholders, it was also reiterated that HTLI had not lost its substratum as there were future commercial plans for the company which were evidenced by a sealed affidavit, and hence, there was a legitimate purpose for HTLI to operate as a going concern.[70] There is no public interest element to justify winding up HTLI and there has yet to be any decided case in Singapore where a company was wound up on this basis.[71] The existence of s 125(1)(*g*) of the IRDA also disentitles the judicial managers from relying on "public interest" as a basis for winding up, as that provision only makes reference to "an inspector appointed under Part IX of the Companies Act".

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66 SWS at para 32.

67 SWS at para 33.

68 SWS at paras 33–34.

69 SWS at para 35.

70 Shareholders' further written submissions filed on 29 March 2022 ("SFWS") at para 14.

71 SFWS at para 15.

Hence, only such inspectors can rely on public interest grounds to seek a winding up, but not judicial managers.[72]

Decision

34 I conclude that it would not be appropriate to order the winding-up as sought by the judicial managers. The grounds for winding up are not made out and the application is dismissed.

35 However, I am satisfied that the restructuring efforts should be given some protection from the possible actions of the Shareholders in unwinding what has been wrought by the judicial managers. Not giving such protection would put the credibility of the judicial management regime at risk and undermine the confidence of investors involved in corporate rescues. In the circumstances of this case, I am of the view that the judicial management order should be extended for six months to allow the judicial managers the time to consider the appropriate application (if any) to protect the corporate rescue.

Analysis

Standing of judicial managers to apply for winding up on various grounds

Just and equitable

36 The judicial management order for HTLI was granted under the previous regime within the Companies Act on 13 July 2020 (HC/ORC 3852/2020). The purposes of judicial management are limited to the statutory objectives listed under s 227B(1)(*b*) of the Companies Act (now under s 89(1) of the IRDA) and this includes: (a) ensuring the survival of the company, or the whole or part of

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[72] SFWS at para 17.

its undertaking, as a going concern, (b) obtaining approval of a compromise or an arrangement between the company and the relevant persons, (c) obtaining a more advantageous realisation of the company's assets or property than on a winding up. These purposes are meant to be exhaustive.

37 The protection of the corporate rescue is not one of those objectives. Given the identified objectives of judicial management, at first blush, it is doubtful that the judicial managers have the appropriate standing generally to apply for winding up on just and equitable grounds under s 125(1)(*i*) of the IRDA (the IRDA governs the winding-up application as it was made after the commencement of the IRDA).[73] It may be thought that where the company had been rehabilitated to solvency, as in this case, the purpose of the judicial management has been achieved and the company should not be wound up. Instead, the company should be returned to the shareholders.

38 Nevertheless, I note that there is nothing inherent in the language of s 124(1)(*h*) of the IRDA which limits the grounds for winding up which may be relied upon by the judicial managers. This is in contrast to the Minister's position under s 124(1)(*g*) of the IRDA where certain prescribed grounds in s 125(1) of the IRDA are expressly stated, and also in relation to a contributory under s 124(1)(*d*) of the IRDA where restrictions are set out in s 124(2)(*b*). This would suggest that the judicial manager is not limited to any specific ground of winding up, other than the one excluded ground in s 125(1)(*b*) where there is a default made by the company in lodging a statutory report or holding the statutory meeting (by virtue of s 124(2)(*c*) of the IRDA).

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[73] See originating summons in HC/CWU 257/2021 dated 20 December 2021.

39 The ability for the judicial manager to make an application to wind up a company was first introduced by way of an amendment to the previous s 253(1) of the Companies Act in the Companies (Amendment) Bill (Bill No 9/1986) via clause 57. The explanatory statement to the bill provided that: "Clause 57 amends section 253 and enables a judicial manager appointed under Part VIIIA to petition for a winding up". However, no further mention of this amendment was made in the relevant parliamentary debates and speeches. All that can be gathered is that the judicial manager was given standing to petition for winding up and nothing suggests that this is limited to specific grounds.

40 The only other restrictions on a petitioner's right to apply for a winding up of the company are judge-made in nature. For example, in *Re Ah Yee Contractors (Pte) Ltd* [1987] SLR(R) 396, it was held at [11] that a fully-paid shareholder who applied to wind up a company on just and equitable grounds must show that he had a "tangible interest" in the relief sought, *ie*, the winding up. If there were no surplus assets left for distribution to the shareholder when the company was wound up (after payment of the company's debts and liabilities), then the fully-paid shareholder is not entitled to present the petition (at [10]). That rule has since appeared to be overridden by Parliament under s 128(1)(*c*) of the IRDA. No equivalent rule had been developed in relation to judicial managers that there must be a "tangible interest" in the relief sought.

41 Thus, it would appear that a judicial manager has standing to petition to wind up a company on just and equitable grounds under s 125(1)(*i*) of the IRDA.

Public interest

42 There does not appear to be any other application in which a court has ordered a company to be wound up on the ground that it would be in the public

interest to do so. There is no distinct ground of "public interest" present within the circumstances under which a company may be wound up under s 125(1) of the IRDA. However, it has been argued on occasion to be subsumed within the just and equitable ground, at least, within the Australian authorities.

43 An issue which arises is whether the presence of s 125(1)(*g*) of the IRDA would prevent the judicial manager from relying on "public interest" as a basis for the petition.[74] That provision provides as such:

> **Circumstances in which company may be wound up by Court**
>
> 125.—(1) The Court may order the winding up of a company if —
>
> …
>
> (*g*) an inspector appointed under Part IX of the Companies Act has reported that he or she is of the opinion —
>
> …
>
> (ii) that it is in the interests of the public, the shareholders or the creditors that the company should be wound up;

This provision should be read together with s 241(1) of the Companies Act which allows the Minister to apply to the court for the winding up of the company after an inspector has made his report (and the Minister has standing under s 124(1)(*f*) of the IRDA). On the face of it, it appears that the Minister considering the report of the inspector appointed under the Companies Act has been tasked with considering whether it is in the interests of the public to petition for winding up. This would suggest that the judicial managers should not be allowed to petition on public interest grounds, for it amounts to the usurpation and encroachment of that role.

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[74] SFWS at para 17.

(1) The position in the United Kingdom

44 Looking to the position abroad, under the United Kingdom's Insolvency Act 1986 (c 45) (UK) (the "UK Insolvency Act"), there is a specific provision for winding up on the grounds of public interest under s 124A of the UK Insolvency Act. That provision provides in the relevant part:

> **124A Petition for winding up on grounds of public interest.**
>
> (1) Where it appears to the Secretary of State from—
>
> (a) any report made or information obtained under Part XIV (except section 448A) of the Companies Act 1985 (company investigations, &c.),
>
> (b) any report made by inspectors under …
>
> …
>
> that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

The Secretary of State may present a petition for winding up where it is "expedient in the public interest" and the court "thinks it just and equitable" for it to do so. It has been held in *Re Millennium Advanced Technology Ltd* [2004] 1 WLR 2177 ("*Re Millennium*") that only the Secretary of State is entitled to present a petition under this section as he has been identified by Parliament as the guardian or promoter of the public interest (at [33]). Parliament intended that the Secretary of State should act as a filter on petitions presented in pursuance of the public interest (at [37]). Thus, it is not for other petitioners (such as the local authority and creditor in that case), to pursue their own perception of the public interest and petition for winding up on these grounds. Instead, those other petitioners should "[bring] the matters complained of to the attention of the Secretary of State" (at [38]).

45 As noted in *Re Lubin, Rosen and Associated Ltd* [1975] 1 WLR 122 at 129, when petitioning for winding up under s 124A of the UK Insolvency Act (the predecessor provision in that case), the Secretary of State is necessarily acting not in his own interest but in the interests of the public at large. The court should give special weight to the views of the Secretary of State as he is a high officer of the State who is entrusted by Parliament to act in the public interest.

(2) The position in Australia

46 Regarding the position under the Australian Corp Act, it has been noted by the author of *McPherson & Keay's Law of Company Liquidation* (Sweet & Maxwell, 5th Ed, 2021) ("*McPherson & Keay*") at p 298 that s 461(1)(*h*) of the Australian Corp Act is similar to s 124A of the UK Insolvency Act. The equivalent provision in Australia empowers a court to make a winding-up order where the Australian Securities and Investments Commission has reported that it is of the opinion that it is in the interests of the public that the company be wound up:

> **General grounds on which company may be wound up by Court**
>
> (1) The Court may order the winding up of a company if:
>
> …
>
> (h) ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:
>
> (i) the company cannot pay its debts and should be wound up; or
>
> (ii) it is in the interests of the public, of the members, or of the creditors, that the company should be wound up; or
>
> …

47 However, unlike the English position, despite the existence of s 461(1)(*h*) of the Australian Corp Act, it appears that grounds of public

interests may be relied upon by petitioners other than the Australian Securities and Investments Commission. For example, in *Re JSSP Holdings Pty Ltd* [2021] VSC 33, the minority shareholder of the company sought to apply to wind up the company on the just and equitable ground (under the equivalent provision to Singapore's s 125(1)(*i*) of the IRDA) and raised public interest considerations. The court was willing to consider the "risk to public interest that warrants protection" (at [14(i)]) when deciding whether a just and equitable winding-up order should be made. The court observed that the "relevant interests to be balanced can also extend beyond the parties and encompass the broader public interest" (at [16]) when determining the relative justice of a winding up. Thus, where it was found that the business operated by the company posed a real risk to public safety (*ie*, having a poor record of injuries and operating without public liability insurance), it was held that the "safety of the community is a paramount public interest which would be protected by the making of a winding up order in this case" (at [61]).

48 Public entities other than the Australian Securities and Investments Commission are also entitled to raise public interest considerations. In *Casualife*, a case relied upon by the judicial managers in submissions (see above at [23]), the Deputy Commissioner of Taxation sought a winding-up petition in its capacity as a creditor (at [3]). The Deputy Commissioner brought the proceedings on the just and equitable ground (at [422]), but relied on public interest considerations (at [449]). The defendant companies argued that the Deputy Commissioner was not entitled to rely on public interest grounds as opposed to entities such as the Australian Securities and Investments Commission that is expressly charged with regulating corporate conduct (at [479]):

> 479 The defendants also submitted that the authorities relied upon by the Deputy Commissioner largely related to applications by ASIC or another public authority expressly charged with the power to regulate corporate conduct. Referring to comments by Santow J … that 'The public interest in bringing insolvent companies to winding up can be pursued by others, in particular the Australian Securities Commission … ,' the defendants submitted that the Deputy Commissioner, as a creditor, cannot rely on the public interest in the same way as ASIC. …

The court rejected that submission and accepted the position taken by the Deputy Commissioner "that there is a public interest factor to be taken account of in these circumstances" but that "there is a need to identify the aspects of the public interest that would be promoted by a winding up order" (at [488]). The court found that the Deputy Commissioner was entitled to raise public interests concerns about the company's poor tax payment history and the company controller's disdain for the obligation to pay tax (at [504]). In arriving at its decision, the court was willing to consider the public interest of due collection of revenue tax (at [488]), notwithstanding the fact that an entity other than the Australian Securities and Investments Commission was making the application.

(3) The law in Singapore

49 If the English position is followed, then it could be argued that by virtue of s 125(1)(*g*) of the IRDA, it is the Minister considering the report of the inspector appointed under the Companies Act who has been identified by Singapore's Parliament to be the guardian of the public interest. Consequently, the judicial manager (or other categories of petitioners for that matter) will not have the standing to make a winding-up petition on public interest grounds. Conversely, if the Australian model is adopted, then petitioners other than the Minister considering the report of the inspector appointed under the Companies

Act would have the standing to make public interest arguments (which can encompass a wide array of circumstances such as public safety).

50 To my mind, the English position should be followed, and the rationale espoused in *Re Millennium* ought to apply in Singapore. Public interest considerations can be wide-ranging and petitions have been filed for reasons such as: the affairs of a company being conducted fraudulently (*Re Golden Chemical Products Ltd* [1976] 3 WLR 1), the company being involved in an elaborate conspiracy to defraud customers (*Re Highfield Commodities Ltd* [1985] 1 WLR. 149), where the company has engaged in plainly unlawful activities (*Secretary of State for Trade and Industry v Bell Davies Trading Ltd and another* [2005] 1 BCLC 516), and where a company was conducting a pyramid selling scheme (*Re Alpha Club (UK) Ltd* [2002] 2 BCLC 612). What can be observed is that these situations are manifold and laden with polycentric considerations. A petitioner, other than the Minister acting upon the report of the inspector appointed under the Companies Act, may not be the best filter for what would be in the best interests of the public when making a winding-up application on this ground.

51 One other consideration is that Parliament appears to have demonstrated a desire to centralise petitions in the public interest through the Minister rather than private parties acting in their various capacities as contributories, creditors, *etc*. There will be occasions where it is in the public interest that a solvent (even profitable) company would be wound up (*Re A Company No.007923 of 1994* [1995] 1 WLR 953 at 957). Reserving the role of the pursuer of public interest to a holder of a high office, subject to public scrutiny, ensures propriety and presumably reduces substantially the possibility of an inappropriate application being made.

52 While judicial managers are officers of the court,[75] they would not have the same resources, or perspective as a holder of a high office, especially when compared to a Minister assisted with the report of the inspector appointed under the Companies Act. Furthermore, as noted in *McPherson & Keay* (at p 301), it is "highly debateable as to whether it is possible to provide one definition of 'the public interest' for all circumstances, as it appears that the concept cannot be regarded as normative", and hence, that task is best left to the Minister.

53 Additionally, a unique feature within the Singapore legislation is that, in addition to s 125(1)(*g*) of the IRDA, there is also the presence of s 125(1)(*n*) as a ground for winding up which would already encompass certain aspects of the public interest including where: "the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest". The predecessor provision was introduced by way of the Companies (Amendment) Bill (Bill No 16/1983), and the explanatory statement provides that it was "to enable the Minister to petition for the winding up of a company which is already registered under the Act if it is being used for an unlawful purpose or against the national interest, *etc*". It is clear that only the Minister has the standing to apply under this ground as well. The existence of s 125(1)(*n*) of the IRDA alongside s 125(1)(*g*) supports the proposition that for matters relating to the public interest, only the Minister may petition on such grounds.

54 Thus, a petitioner should not pursue his own perception of public interest and make an application for winding up on public interest grounds. He should instead, following the approach in *Re Millennium* being applied *mutatis mutandis*, bring matters complained of to the attention of the Minister. Thus, the

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[75] JMWS at para 87–88.

judicial managers in the present case do not have the standing to rely on the public interest ground when petitioning for winding up. The public interest arguments put forward will not be considered further.

Whether just and equitable ground made out – loss of substratum

55 Aside from the lack of standing (in relation to arguments touching upon public interest grounds), I am doubtful that just and equitable grounds are made out in the present case.

56 The jurisdiction of the court to order winding up on that ground should be triggered only where it involves some breakdown in the relationship between the shareholders of the company,[76] or some other basis going to the continued existence of the company. It cannot, to my mind, be sensibly extended to the present situation, which involves the interest of an investor or corporate rescuer. The gravamen of the complaint by the judicial managers and the Creditor is that the Shareholders may try to unwind and invalidate the Share Sale. That would, in turn, nullify and waste the US$100 million investment given as consideration by the corporate rescuer, Golden Hill.[77] The white knight investor who rescued HTLI will suffer great loss and the work done by the judicial managers would be undone.

57 However, the present circumstances do not fit neatly into the traditional framework in which a company is wound up on just and equitable grounds.[78] The starting point is that the words "just and equitable" in s 125(1)(*i*) of the IRDA (previously under s 254(1)(*i*) of the Companies Act) are words of the

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76 SWS at para 13.

77 PYTWS at para 1.

78 SWS at para 16.

widest significance and do not limit the jurisdiction of the court to any case (*Chow Kwok Chuen v Chow Kwok Chi and another* [2008] 4 SLR(R) 362 at [14] citing *In re Blériot Manufacturing Aircraft Company (Limited)* (1916) 32 TLR 253 at 255). However, as subsequently noted in *Perennial (Capitol) Pte Ltd and another v Capitol Investment Holdings Pte Ltd and other appeals* [2018] 1 SLR 763 ("*Perennial*") at [40], this broad phraseology does not give the court *carte blanche* and it is a jurisdiction that has to be exercised with caution.

58 While it is recognised that the circumstances in which it is just and equitable to wind up a company are not closed and that the court can superimpose equitable considerations (*Perennial* at [41]), there are a few broad categories of cases which fall within this ground. For illustration, these can be broken down as such:

(a) where the substratum of the company has been lost as the main objects for which the company was set up can no longer be achieved: *Goodwealth Trading (CA)*;

(b) where there is a deadlock in the management of a company: *Seah Chee Wan and another v Connectus Group Pte Ltd* [2019] SGHC 228;

(c) where the company is in truth a quasi-partnership, and there has been a breakdown of trust and confidence between the two groups of shareholders: *Chong Kok Ming and another v Richinn Technology Pte Ltd and others* [2020] SGHC 224;

(d) where the company's business had been carried on in a fraudulent manner: *Kathryn Ma*;

(e) where there is a loss of confidence in the directors on account of their lack of probity in the conduct and management of the company affairs: *Foo Peow Yong Douglas v ERC Prime II Pte Ltd* [2017] SGHC 299;

(f) where a shareholder has been excluded from management in breach of an understanding by the other shareholders: *Re Iniaga Building Supplies (S) Pte Ltd* [1994] 2 SLR(R) 416.

59 The judicial managers and Creditor have made the submission that HTLI should be wound up on the basis that there was a "loss of substratum" as HTLI was an investment holding company that has since sold off all its income-generating assets.[79] In opposition, the Shareholders argue that there is no unfairness in holding the shareholders to the association despite the loss of substratum, and hence, the guiding principle underlying a winding-up order is not applicable here.[80]

60 A company's substratum is the main object which it was formed to achieve, and the court must determine the real object for which the company was formed (*Re Goodwealth Trading Pte Ltd* [1990] 2 SLR(R) 691 ("*Goodwealth Trading (HC)*") at [25]). The objects clause in a memorandum of association of the company sets out the business that the company is authorised to carry on. If the memorandum has been drafted very widely to include as many objects as possible – as in the case of a shelf company that was formed with no particular object in mind to be used as a corporate vehicle later on – then little assistance is derived in ascertaining the substratum of the company from

79 JMWS at para 97; PYTWS at para 45.

80 SWS at paras 15–16.

construing the memorandum alone (*Goodwealth Trading (CA)* at [38]). Instead, the court will have to consider all the circumstances of the case to ascertain the main object of the company.

61 In *Goodwealth Trading (HC)*, it was unhelpful to determine the company's substratum by construing the memorandum of association alone as it contained a long list of objects. Instead, after analysing the surrounding circumstances of the case, it was held that the company's substratum was to run a restaurant business in a particular location (*Re Goodwealth (HC)* at [26]; *Goodwealth Trading (CA)* at [39]). In arriving at this conclusion, the court took into account the fact that the original shareholders wanted a corporate vehicle to carry on the restaurant at that location after a lease of the premises was secured, and that one of the shareholders was a friend of the general manager of the landlords. Thus, the company's substratum disappeared with the termination of the lease of the premises at that location as the shareholders only wanted the restaurant to be operated from that specific location and nowhere else.

62 In the present case, HTLI's constitution was drafted to include as many objects as possible and contained different objects ranging from chartering ships to constructing roads.[81] Construing the objects in the constitution alone would not be helpful and the other circumstances must be examined to determine its substratum. HTLI was incorporated by Mr Phua YT and Mr Phua YP as an investment holding company for the HTL Group. HTLI was never intended to carry on any business of its own and the HTL Group's business was solely

[81] 1st Affidavit of Chew Kwang Yong dated 27 April 2020 filed in HC/OS 425/2020 at pp 56–83.

carried on by its subsidiaries.[82] HTLI itself is not a revenue-generating entity,[83] and it was the subsidiary companies which undertook the manufacturing, sales and distribution of the furniture products.[84] Thus, it is clear that the substratum of HTLI was to function as an investment holding company in respect of the HTL Group's business. That substratum fell away following the sale of the shares in the subsidiaries to Golden Hill on 7 September 2020 and the applicant became a shell company holding the proceeds of the Share Sale in HTLI's bank account.

63 However, what is relevant to note is that the loss of substratum ground is ordinarily relied upon by disgruntled shareholders in a winding-up application (and not the judicial manager – as in the present case). The reason why this is so becomes clear when we examine the rationale underlying the rule. As noted by the Court of Appeal in *Kathryn Ma* at [65]:

> 65 … the guiding principle to bear in mind when assessing whether to wind up a company on the basis that it has lost its substratum is to consider whether there is unfairness in keeping the aggrieved shareholder (whatever her reason for becoming a member of the company) locked into a company which is no longer carrying out and/or can no longer carry out the business it set out to do.

Hence, the phrase "loss of substratum" can be rather misleading as it is not merely the falling away of the substratum that renders it just and equitable for the company to be wound up, but rather, it is the unfairness in locking-in shareholders into a business that they did not agree to. The unfairness does not arise from the loss of substratum *per se*, but "from a majority using its legal powers to maintain the association in circumstances to which the minority can

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82 1-TWC at paras 12 and 24.

83 1-TWC at para 12.

84 1-TWC at para 14.

reasonably say it did not agree" (*O'Neill v Phillips* [1999] 1 WLR 1092 at 1101H–1102A). As noted in *Woon's Corporations Law* (Walter Woon gen ed) (LexisNexis, 2021, Issue 26) at para 603, unfairness is present when one set of shareholders insist on having the other shareholders diversify into a different business that they did not agree to as the commercial risk would have changed. Those other shareholders should not have their capital locked in and should be entitled to pull out of the enterprise. Contrariwise, if the shareholders are not opposed to venturing into a different business, then there would be no unfairness. There would also be no unfairness when considering a situation of a sole shareholder of the company intending to pivot its business.

64 Further, the rationale underlying the rule becomes evident when we examine the cases cited in submissions. All of these cases involved shareholders who were opposed to each other on whether the business of the company should continue despite the failure of an object that the company was set out to do. None of them involved a situation concerning a sole shareholder.

65 The case of *Goodwealth Trading (HC)* involved a dispute between shareholders on whether the company running a restaurant at a specific location should be wound up. One of the shareholders objected to the winding-up application on the basis that the company could pursue running a restaurant at a different location. It was held that it was better for the shareholders to part ways and for the company to be wound up: "where the company's substratum has disappeared, and there is opposition by one of the two shareholder groups to continuing in business with the other, it is clearly 'just and equitable' that the company be wound up, so that the cash assets can be distributed and each of the two groups can go his own way" (*Goodwealth Trading (HC)* at [26]).

66 In *Kathryn Ma*, the executrix of the deceased shareholder applied to wind up two companies on the ground that there was a loss of substratum, but this was opposed by the other shareholders of the company (at [18]). Once more, this was a situation where shareholders had opposing views on whether the business venture should come to an end. The court also considered whether the unfairness of the aggrieved shareholder being locked into a company that had lost its substratum could be negated by utilising the appropriate exit mechanism in the company's articles of association (at [76]–[78]).

67 Turning to foreign authorities, the judicial managers cite the case of *Re Perfectair Holdings Ltd* [1990] BCLC 423 ("*Re Perfectair*").[85] In that case, the company was set up as a holding company which held property and its business was carried on through a wholly-owned subsidiary which traded the property. An agreement was reached between shareholders that the assets, in the form of shares in the subsidiary, would be sold off. After the sale process, the only assets remaining in the holding company consisted of cash. A winding-up petition was brought by one group of shareholders, but this was opposed by another group of shareholders. Thus, this case also involved shareholders who were opposed to one another on the future plans for the company after it lost its substratum.

68 The Creditor raises the case of *Delco*, an Eastern Caribbean Court of Appeal decision, where the investment holding company was ordered to be wound up as there was a loss of substratum after the underlying assets of the company, in the form of shares, were sold. However, again, the case is of little assistance because of the fact pattern – it involved a contest between two groups

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85 JMWS at para 68.

of shareholders over whether the company should be kept as a going concern after the sale (see [8]–[10]).

69 In contradistinction to the abovementioned cases, the present case involves a sole shareholder (Ideal Homes) that is willing to continue operating HTLI as a going concern and it is the judicial managers who are petitioning for winding up. There is no unfairness to any shareholder in this case as Ideal Homes voluntarily agrees to take on the commercial risk to diversify HTLI's business into other pastures. There is no issue of shareholders being locked into a different venture from what was envisaged and no unfairness ensues. As the notion of unfairness lies at the heart of the "just and equitable" jurisdiction (*Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 at [31]; *Perennial* at [40]), in the absence of unfairness, winding up would not be appropriate. It bears reiterating that it is important to have regard to the rationale underlying the rule (*Halsbury's Laws of Singapore – Company Law (Volume 6)* (LexisNexis Singapore, 2019) ("*Halsbury's Company Law*") at para 70.506):

> .. The commercial justification for this rule is straightforward: a businessman who puts his money into a particular business does his financial calculations on the basis of that business. It would be unfair if his money is used by the others in the company for some of the business that he has not agreed to and which may involve totally different risks and returns. …

This principle has no application where the sole shareholder voluntarily accepts taking on a different business, even though HTLI would no longer be operating as an investment holding company.

70 As pointed out by the Shareholders in oral submissions, the cases cited by the judicial managers and Creditor involved an underlying tussle between

shareholders, which is unlike the present case where the sole shareholder desires to continue running the company.[86]

71 The only perceivable "unfairness" in the present case concerns not the unfairness that would be occasioned to the shareholder of the company, but to the potential unwinding of the Share Sale through the PRC Suits which would undo the work done by the judicial managers and prejudice Golden Hill. However, "the notion of 'unfairness', though broad, does not give the Court a licence for capriciousness, and its powers should be exercised with caution" (*Phua Kiah Mai v The Kheng Chiu Tin Hou Kong and Burial Ground* [2022] SGHC 36 ("*Phua Kiah Mai*") at [13]). While I do think that the necessary safeguards should be implemented, as explained below at [73]–[77], it would not be appropriate for HTLI to be compulsorily wound up by the court where it has been rehabilitated to solvency and the shareholder intends for the company to continue operating as a going concern.

72 Further, a company will not be wound up on the "just and equitable" ground simply on the basis that a prominent purpose for the company is incapable of being achieved if other objects of the company are still capable of being achieved (*Phua Kiah Mai* at [43]). A similar statement was made in *Re Perfectair*, where it was accepted by the English court (at 435G) that a company would not be wound up even if the most important purpose was no longer capable of being achieved "if it were the case that other commercial purposes authorised by the memorandum remained capable of being achieved" and this was desired by shareholders of the company (at 435I–436A).

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86 Minute Sheet in HC/CWU 257/2021 dated 15 March 2022 at p 7.

73 Returning to the present case, the Shareholders have indicated that while HTLI would no longer operate as an investment holding company after the Share Sale, there is a legitimate purpose for the company to operate as a going concern.[87] A sealed affidavit was provided to the court which contained details of Ideal Homes' future plans for HTLI.[88] Without divulging any commercially sensitive details, what could be seen was that the Shareholders intended to leverage on HTLI's reputation as a home furnishing brand and embark on other initiatives. In the circumstances, there is no unfairness present to invoke the just and equitable jurisdiction of the court. The court should be slow to thwart the commercial plans of a solvent company that intends to diversify the business.

74 As noted in *Petroships Investment Pte Ltd v Wealthplus Pte Ltd (in members' voluntary liquidation) (Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd and another, interveners) and another matter* [2018] 3 SLR 687 at [132], a solvent company is to be liquidated primarily in the members' interest. A passage from *McPherson & Keay* was cited in that case which had provided in the relevant part (at p 6):

> … With a solvent company there is no one aim for the winding up. The aim of winding up is often to allow the shareholders who decide that the company has completed the purposes for which it was established to have the assets distributed to them after paying out the creditors. …

It is not disputed that HTLI is a company that had been rehabilitated to solvency with a significant amount of cash assets.[89] In the circumstances, the wishes of the shareholder in continuing to run the company as a going concern should be given weight and compulsory winding up would not be appropriate.

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87 SFWS at para 14.

88 Affidavit of Charanpreet Kaur.

89 JMWS at para 3; PYTWS at para 2; SWS at para 24.

75 At this juncture, it is apposite to reference the Court of Appeal's decision in *Foo Peow Yong Douglas v ERC Prime II Pte Ltd and another appeal and other matters* [2018] 2 SLR 1337 ("*Douglas Foo*"). The relevant company in question, ERC Prime II Pte Ltd ("ERCP II"), was an investment holding company and its principal business was to acquire and develop a hotel project (at [5]). ERCP II had no business of its own. Subsequently, the hotel property was sold with most of the investment returns being distributed. It was thus argued that ERCP II had lost its substratum and should be wound up on just and equitable grounds. However, the Court of Appeal rejected this argument and made the following observation (at [63]):

> 63 … The loss of substratum ground is usually invoked where the company's original purpose is *frustrated or no longer practicable*. In a situation where the substratum has been *fulfilled*, it appears to us, at least provisionally, that the better course is for the company to be wound up voluntarily rather than compulsorily by order of court. …
>
> [emphasis in original]

76 Some parallels can be drawn to the present case. One could characterise the situation at hand as one where HTLI has fulfilled its substratum rather than it being frustrated. An investment holding company is set up to hold investments such as properties or shares and generates income from its underlying assets. However, it could also choose to realise those assets in future and distribute returns to shareholders, bringing the venture to an end. Here, the underlying assets have been sold via the Share Sale and the substratum of the company has been fulfilled. In the circumstances, a voluntary winding up initiated by Ideal Homes as the sole shareholder would be more appropriate than compulsory winding up by the court.

77 The risk of the Shareholders trying to unwind the Share Sale to Golden Hill Capital is a separate matter which can be more appropriately addressed by

other means. This background should not be conflated with the company law rationale in winding up a company. Hence, this ground of winding up is not made out.

Whether suspension of business ground made out

78 The judicial managers also raise the ground of suspension of business for a whole year to wind up the company under s 125(1)(*c*) of the IRDA.[90] This ground is rarely utilised in Singapore. As noted in *Halsbury's Company Law* at para 70.506: "This ground seems to be little used nowadays. It is easier (and cheaper) just to let the company slide into dormancy. After several years of suspended animation, the Registrar of Companies may be induced to strike the company off as a defunct company." The position appears to be the same in England, where it is said that a "company is seldom wound up on the basis that it has suspended its business" (Edward Bailey and Hugo Groves, *Bailey and Groves: Corporate Insolvency – Law and Practice* (LexisNexis, 5th Ed, 2021) at p 17).

79 To my knowledge, *Lau Yu Man v Wellmix Organics (International) Pte Ltd* [2007] SGHC 96 is the only published decision in Singapore which dealt with the suspension of business ground for winding up, but the case did not fully flesh out the intricacies of this ground. It seems that there are only a handful of English authorities of former vintage that could help illuminate the relevant principles.

80 In *Re Middlesborough Assembly Rooms Co* (1879) 14 Ch D 104 ("*Re Middlesborough*"), the company was incorporated with the aim of erecting

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90 JMWS at paras 103–104.

some assembly rooms. Due to a trade depression, the company did not engage in construction work for three years. A member sought a winding-up order relying on the predecessor English Insolvency Act's equivalent of s 125(1)(*c*) of the IRDA, but a large majority of shareholders opposed the petition. The order was not granted as the court said that it was not certain that the company had absolutely no intention of carrying on the business and the majority of shareholders wished to go on (at 111):

> … It is true that there is no evidence that the company will proceed with their building within any given time, but I cannot look upon the delay as arising from anything but a wish to wait for a time when the business can be carried on more profitably than at present. Under these circumstances, I think that a winding-up order ought not to be directed when a vast majority of the shareholders wish to go on, and the only result of a compulsory winding-up would be a great and unnecessary expense.

Hence, the court will generally defer to the wishes of the majority shareholders even if the company has laid dormant for a period of time.

81 To establish this ground, the court will enquire whether the business has been abandoned in its entirety, either wilfully or simply due to the inability to carry on trading for other reasons (see *Re Madrid and Valencia Railway Co* (1850) 19 LJ Ch 260). Consequently, there is no suspension of business when the cessation of business activities can be satisfactorily explained on other grounds, such as, for example, that the company does very little business in the winter months (*Re Tomlin Patent Horse Shoe Co Ltd* (1886) 55 LT 314), or that trade in the area of operation is depressed and the directors are waiting for better times (*Re Middlesborough*).

82 From the abovementioned, a common thread running through the cases is that the petition will generally be dismissed if the majority of shareholders

are opposed to winding up and the company's inactivity can be explained (*Re Metropolitan Railway Warehousing Co Ltd* (1867) 36 LJ Ch 227). This ground for winding up is designed primarily to provide shareholders with a means of recovering their investment from a company which fails to engage in its intended business (*McPherson & Keay* at p 253).

83 Applying the principles above to the present facts, it is not disputed that HTLI has suspended its business for over a year, since the Share Sale was completed on 7 September 2020. HTLI no longer carries on any investment holding activities and remains an empty shell with only cash assets. However, as mentioned above at [73], the commercial plans for HTLI had been submitted to the court in a sealed affidavit where the Shareholders expressed their intention to carry on business in HTLI in some form and are opposed to the winding up of the company. This alone would suffice to dispose of this ground. Further, the inactivity of HTLI can also be explained on the basis that it was placed in judicial management for the past few years (since 13 July 2020),[91] and the company was waiting to be rehabilitated into a solvent state. There was no intention to abandon the business entirely and the Shareholders have indicated that they have commercial intentions for HTLI once they regain control.[92] Hence, this ground of winding up is also not made out.

The conduct of the Shareholders

84 Nonetheless, the conduct of the Shareholders is of some concern. Looking at the chronology of events, there is some indication that they are attempting to reverse the Share Sale.

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91 SWS at para 7.

92 SWS at para 8.

85 After the Share Sale was completed on 7 September 2020, Yihua and Ideal Homes filed an application challenging the judicial managers' decision to proceed with the Share Sale to Golden Hill under s 227R of the Companies Act in HC/SUM 3963/2020 on 14 September 2020. An order was sought to set aside the sale to Golden Hill and to direct the judicial managers to accept an offer from Man Wah instead (the preferred buyer of the Shareholders). I gave my decision in *HTL International (HC)* on 24 November 2020 and held that the judicial managers' decision to prefer a sale to Golden Hill instead of Man Wah was in the interests of the creditors and shareholders as a whole and that fair consideration was given to both offers (at [47] and [83]). The Share Sale was not set aside. Yihua and Ideal Homes then appealed the decision, but the Court of Appeal dismissed the appeal on 8 September 2020 in an *ex tempore* judgment as the Shareholders failed to show that the judicial managers had erred in concluding that Golden Hill's offer would yield higher shareholder returns than Man Wah's offer (*HTL International (CA)* at [20]–[24]). Clearly, what can be observed was that the Shareholders were discontented with the Share Sale to Golden Hill and wanted to unwind it.

86 In parallel with these Singapore proceedings, the PRC Suits were commenced to hedge against any decision made by the judicial managers with regard to the Share Sale. On 28 May 2020, the then interim-judicial managers of HTLI (later appointed as the judicial managers) had already executed a sale and purchase agreement to sell the shares in the subsidiaries of the HTL Group to Golden Hill.[93] Subsequently, on the exact same day that the judicial management order was made on 13 July 2020, Yihua had commenced PRC Suit 534 against Mr Phua YT, Phua YP and HTLI, and sought a monetary claim

[93] 1-TWC at para 20.

amounting to RMB99,480,100 for the alleged mismanagement of factories in the PRC that were owned by Yihua.[94] A few weeks later on 30 July 2020, PRC Suit 635 was then initiated against HTL Capital and HTLI was joined as a third party. It was alleged that HTL Capital had colluded with HTLI and caused HTLI to transfer its shares in the subsidiaries at a low price to HTL Capital so that HTLI would be able to evade repayment of purported debts due to Yihua (*ie*, the subject of PRC Suit 534 or the RMB99,480,100).[95] Yihua was able to obtain a freezing order against the shares of some of the subsidiaries of the HTLI Group being held by HTL Capital.[96] Thus, as long as PRC Suit 635 remains, there is the possibility of the frozen shares being sold to a third party to fulfil the monetary debt of RMB99,480,100.[97] This was a basis by which Yihua and Ideal Homes could nullify the Share Sale.

87 The contingent debt of RMB99,480,100 would materialise immediately should the judicial managers return HTLI to the Shareholders, who could then simply cause HTLI to consent to judgment in the PRC Suits. Yihua can then enforce the judgment against the frozen shares and undermine the Share Sale.[98] There is some evidence that this might occur.

88 First, a proposal was made by the judicial managers to resolve matters between all parties by giving effect to the claims made by Yihua in the PRC Suits whilst allaying the concerns that the Share Sale would be undermined. Part of the proposal envisaged the settlement of the PRC

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94 JMWS at para 17.

95 JMWS at para 18.

96 JMWS at para 20.

97 JMWS at para 115.

98 JMWS at para 117.

proceedings and provided that HTLI would pay the sum of RMB99,480,100 plus costs to Yihua (*ie*. the exact sum which Yihua is seeking) in full and final settlement of any claims which Yihua may have against HTLI. In exchange, Yihua will do the necessary to discontinue or withdraw the PRC Suits together with the freezing order and HTLI will be returned to the Shareholders.[99] That would have resolved the entire matter. However, this proposal was rejected by Yihua on the basis that liability should be apportioned by the PRC court and HTLI should not bear the entire liability as Mr Phua YT and Mr Phua YP were also defendants in PRC Suit 534.[100] However, it is not immediately clear why apportionment is necessary if the liability between the defendants in PRC Suit 534 was joint and several,[101] and the inference is that Yihua wanted to keep the PRC Suits alive to jeopardise the Share Sale.[102] Nevertheless, this fact alone is not suspicious but becomes so when considered with the other evidence.

89 Second, Yihua's own PRC lawyers confirmed in a legal opinion to Yihua dated 5 February 2022 that PRC Suit 635 was commenced with a view to undermining the Share Sale. The relevant portion of the legal opinion is as follows:[103]

> … therefore the Company are and ***will be applying*** to the PRC Courts for declarations and judgments that such ***Equity Transfers are void and invalid***; or ***that it was unlawful*** for the various Administrations for Market Regulation to approve the industrial and commercial registration of such Equity Transfers and thereby the Company shall be seeking redress for the losses and damages.

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99 SWS at para 27; PYTWS at para 19.

100 SWS at para 30–31; PYTWS at para 23.

101 JMWS at para 147.

102 JMWS at para 151.

103 1st Affidavit of Sim Ling Renee at p 47.

> In fact, the ***Company has begun one such legal proceedings*** in an action for claims for loss and damage at the Guangdong Provincial Shantou Intermediate People's Court (***Case No. (2020) Guangdong 05 Civil First No. 635***). …
>
> [emphasis added in bold italics]

It seems that Yihua is attempting to obtain an order from the PRC court to invalidate the transfer of shares of the subsidiaries from HTLI to HTL Capital. Yihua's own lawyers have stated on affidavit that PRC Suit 635 was initiated to invalidate the entire equity transfer which was pivotal for the Share Sale and internal restructuring. There could other be future actions initiated in the PRC as well.

90 Third, although the judicial managers and Mr Phua YT have asserted in their respective affidavits that the Shareholders will cause HTLI to admit to the claims in the PRC Suits once the company is returned (which will jeopardise the Share Sale), the Shareholders have yet to unequivocally deny this adverse assertion. Only cryptic and non-committal responses have been given: "In the scenario raised by Mr Phua YT at [19(d)] of [his] Affidavit [*ie*, Yihua procuring HTLI to concede to the claim in PRC Suit 635], the Company is also likely to face repercussions if it admits to the claim brought in PRC Suit 635. As the sole shareholder of the Company, the Shareholder will not undermine its own interests."[104] The statement is vague and there is no outright denial that Yihua will not procure HTLI to concede to the PRC Suits. All that can be seen is that legal recourse may be continued: "As the stakeholders of the Company, the Shareholders have a right to avail themselves to any legal recourse that is an option for them."[105]

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104 2nd Affidavit of Sim Ling Renee at p 10–11.

105 6th Affidavit of Mr Liu Zhuangchao at para 16.

91 Looking at the entire circumstances, the inference is that the Shareholders are trying to frustrate the corporate rescue by the judicial managers. As the judicial managers have chosen to sell HTLI's assets to a party which Yihua and Ideal Homes did not support (*ie*, Golden Hill instead of Man Wah), it appears that the PRC proceedings were pursued rigorously to undermine this.

92 There is a logical sequence of events. The Shareholders had invoked the jurisdiction of the Singapore courts to challenge the judicial managers' decision to sell the assets in the subsidiaries to Golden Hill and tried to unwind the Share Sale, but had failed to do so. Yihua also sought to invoke the jurisdiction of the PRC courts in parallel to mount a collateral attack on the Share Sale and had already obtained a freezing order against some of the PRC subsidiaries. While I would not go so far as to suggest that the Shareholders would definitely cause HTLI to consent to the claims in the PRC Suits (should HTLI be returned to them instead of being wound up), there is to my mind, a real risk of this happening.

93 Hence, some protection of the corporate restructuring should be effected so that the work done by the judicial managers in rehabilitating the company is not undermined and there is no invalidation of the Share Sale. I turn now to determine the appropriate order in this case.

Protection of the restructuring

94 Winding up HTLI would not be appropriate here. In the present case, even if the statutory grounds for winding up are made out (contrary to the analysis above at [55]–[83]), I would be loath to compulsorily wind up a

company that had been rehabilitated to solvency, albeit not trading, and where the sole shareholder wanted to continue business in some form.

95 Even where the statutory grounds have technically been established, the court retains the residual discretion to consider whether, having regard to all relevant factors including the utility and effect of the winding-up order and the overall fairness, the company concerned should be wound up (*Lai Shit Har and another v Lau Yu Man* [2008] 4 SLR(R) 348 at [33]; *Perennial* at [82]; *Douglas Foo* at [59]). This stems from the language of s 125(1) of the IRDA as the "use of the word 'may' instead of 'shall' indicates a discretionary power in the court to order a winding up" (*BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 at [5]). This discretion had been exercised in *Seah Chee Wan v Connectus Group Pte Ltd* [2019] SGHC 228 at [111], where it was held, *inter alia*, that there was an ongoing business and the company was taking steps to remedy its cashflow issues (despite being found unable to pay its debts which had fallen due to a creditor).

96 Instead of winding up, the real complaint in the present case is the need to protect the restructuring so that it is not nullified. There are substantial consequences on the restructuring regime if that protection is not given. Credibility in the restructuring would be lost and Golden Hill would suffer prejudice as the white knight investor. Where the judicial managers have implemented the aims of judicial management, those aims should not be compromised.

97 The judicial managers have already spent significant time trying to rehabilitate HTLI to solvency and carefully assessed the competing offers by Golden Hill and Man Wah in conducting the Share Sale. Allowing the Shareholders to undermine the Share Sale will undo all of the work done thus

far, resulting in further protraction of matters between the parties even after the discharge of judicial management. There would be a substantial waste of time and resources. The proper arrangements must be put in place to ensure that what the judicial managers have done to achieve the objectives of judicial management for HTLI is not rendered nugatory.

98 Confidence in the court process will also be eroded. Having failed in their attempts to set aside the Share Sale twice in *HTL International (HC)* and *HTL International (CA)*, the Shareholders should not be allowed to undermine the Singapore court processes which they themselves had invoked by pushing forward in the PRC Suits. That would be a backdoor attempt at obtaining what the Shareholders had failed to accomplish in the Singapore proceedings and getting an illegitimate second bite of the cherry. Moreover, it would amount to a collateral attack on the judgments rendered in Singapore which, in effect, approved the Share Sale to Golden Hill.

99 One possible response that comes to mind is an injunction of some sort against the Shareholders to prevent them from pursuing anywhere any action or causing anything to happen that would unwind the corporate rescue. This does not offend the demands of the winding-up regime and most directly serves the identified interest at risk, namely, the protection of the rescue. However, the judicial managers have not argued on this basis, nor have the Shareholders had the opportunity to respond to any such application. It may be that the requirements for an injunction cannot be made out on the facts.

100 Nonetheless, as I have assessed that there is a real risk of the rescue being negated, and the objective of the judicial management being undermined, what I am able to do at the moment is to extend the judicial management by six months or other order of court, to allow the judicial manager to consider what

appropriate application may be made to protect that rescue, with the judicial managers and the advisors continuing to be entitled to such compensation out of the company for their work.

Conclusion

101 I had previously granted an extension of the judicial management order (HC/ORC 3852/2020) until the present winding-up application is finally determined.[106] However, for the reasons mentioned above, the judicial management should continue for another six months and the winding-up application is dismissed as the grounds are not made out.

Aedit Abdullah
Judge of the High Court

Pillai Pradeep G, Lin Shuling Joycelyn, Wong Shi Rui Jonas (PRP Law LLC) for the plaintiffs;
The defendant unrepresented;
Harpreet Singh Nehal SC, Jordan Tan and Victor Leong (Audent Chambers LLC) (instructed), Cheng Wai Yuen Mark, Chew Xiang, Ho Zi Wei and Tan Tian Hui (Rajah & Tann Singapore LLP) for the first and fourth non-parties;
Henry Heng, Charmaine Ong and Charanpreet Kaur (Legal Solutions LLC) for the second and third non-parties.

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106 Order of Court No 276 of 2022 dated 18 January 2022 in HC/OS 425/2020.