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

[2022] SGHC 306

Originating Application No 381 of 2022 (Summons No 4184 of 2022)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Company Limited

… *Applicant*

Originating Application No 382 of 2022 (Summons No 4185 of 2022)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Pte Ltd

… *Applicant*

Originating Application No 383 of 2022 (Summonses Nos 4186 and 4325 of 2022)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Asia Pte Ltd

… *Applicant*

Originating Application No 384 of 2022 (Summons No 4187 of 2022)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Australia Pty Ltd

… *Applicant*

Originating Application No 385 of 2022 (Summons No 4188 of 2022)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

PT Zipmex Exchange Indonesia

… *Applicant*

BRIEF REMARKS

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Aedit Abdullah J
2 December 2022

6 December 2022

Aedit Abdullah J:

1 These brief remarks capture my determination of the application for extension of time of the moratoria operating in favour of the applicants as well as some observations about the conduct of the matter. It also records my concerns about an application for me to approve the creation of a class for administrative convenience ahead of an application for the Court's sanction of a "pre-packaged" scheme of arrangement under s 71 of the Insolvency, Restructuring and Dissolution Act 2019 (2020 Rev Ed) ("IRDA").

Background

2 The applications were made by companies in the Zipmex Group: Zipmex Asia Pte Ltd (the group holding company incorporated in Singapore), Zipmex Pte Ltd (a Singapore subsidiary, "Zipmex Singapore"), Zipmex

Company Limited, Zipmex Australia Pty Ltd ("Zipmex Australia") and PT Zipmex Exchange Indonesia ("Zipmex Indonesia"). The group operates a cryptocurrency exchange platform, which is accessed through an application known as the "Zipmex App", on which various cryptocurrencies are traded. The full details of the Zipmex Group's operations are outlined in *Re Zipmex Co Ltd and other matters* [2022] SGHC 196, which also captured this Court's decision in granting an extension of a moratoria operating in favour of the applicants.

Extension of time of moratoria

3 The applicants sought a further extension of time for the moratoria in place protecting them from proceedings. The principal justification was that the restructuring was progressing, with a high chance of success, with "pre-packaged" schemes of arrangement being pursued, and an investor taking shares through a share subscription agreement in exchange for liquidity injections into the Zipmex Group. As of the date of the oral hearing, no creditors expressed objections to the restructuring. The primary effect of the scheme of arrangement would be the customers being able to access and withdraw cryptocurrencies previously held in their accounts, in return for waiver and release of any claims in respect of the assets that they could not access.

4 I was of the view that the settled principles governing extension of moratoria pointed towards granting the extension as sought and did so. I was concerned however with transactions relating to Zipmex Indonesia where the applicants made arrangements to allow the unfreezing of the wallets. For these wallets operated by Zipmex Indonesia, full functionality was restored. This was done pursuant to the requirements of the Indonesian regulator. The fulfilment of regulatory obligations within Indonesia is a matter between the applicants and the Indonesian authorities, and this Court will have no role to play.

However, it would have been incumbent on Zipmex Indonesia, as well as the other applicants, to have informed the Court of what was transpiring, particularly as far as I could see, the unfreezing of the Indonesian wallets basically meant that the moratorium was no longer needed for Zipmex Indonesia. The Court should have also been apprised at the time whether there was any impact on the rest of the applicants, and the Court should have been given the opportunity to consider the impact on all the moratoria.

5 Not for the first time, and not just for this specific case, the Court does not seem to feature very prominently in the consideration of those involved. I would like to underline that those who invoke the Court's jurisdiction and powers should be mindful of the need to keep the Court informed, and bring pertinent matters to the attention of the Court promptly. I have no doubt that those involved needed to focus on the issues before them and had to contend with various commercial pressures. But where the Court's powers, and thus the State's powers, have been invoked, the Court should not be overlooked.

Creation of an administrative convenience class

6 The applicants sought in two of the summonses before me, Summonses Nos 4185 and 4187 of 2022 in respect of Zipmex Singapore and Zipmex Australia, to obtain Court approval of the classification of unsecured customers whose debt values are less than or equal to US$5,000 (at the despatch date of the pre-packaged scheme of arrangement) of these two entities as a separate class of creditors in the envisaged pre-packaged scheme of arrangement to be subsequently put forward under s 71 of the IRDA. These unsecured customer creditors are to constitute what is termed an administrative convenience class; they will not be entitled to vote on the s 71 pre-packaged scheme of arrangement and will be bound by the terms of the said scheme pursuant to s 71(2) of the

IRDA. In turn, several safeguards are proposed to ensure that their right are not compromised, such as an explanation for their exclusion and the effect of the proposed pre-packaged scheme of arrangement. This application is inspired by US law, namely s 1122(b) of the US Bankruptcy Code, which permits the US Courts to allow the creation of such a class, with the objective of reducing the burden on the restructuring company by grouping separately low value creditors. Thus, in the present case, with close to 70,000 customer creditors in all, the creation of the administrative convenience class will reduce substantially the number of creditors that would have to be managed in the pre-packaged scheme process and mitigate the logistical difficulties involved in the voting of the various pre-packaged schemes of arrangement. While the difficulties in dealing with such a large number of creditors are indeed clear, I had, however, two concerns with what the applicants were seeking to do.

7 Firstly, it was not clear what juridical basis existed for the Court to entertain an application for such an order. The applicant cited the inherent jurisdiction of the Court, and the general provisions under the Supreme Court of Judicature Act ("SCJA"). I indicated that neither was likely to be a sufficient basis. What was sought was the approval of the creation of a class for the purposes of envisaged pre-packaged schemes of arrangement, which are governed by a framework laid down by the IRDA in s 71. Given that the regime is statutory, one would have expected that any such application process would have been laid down expressly by the statute, or at least strongly implied as a matter of necessity to give effect to that statutory mechanism. In either case, there was no room for the Court to be given the jurisdiction to entertain such an application because of its inherent jurisdiction or general SCJA powers. The one alternative that was at all plausible was a declaratory order, but that was not

feasible, since the applicants would have had to join all the potentially affected creditors.

8 Secondly, it was also not clear what power existed for the court to make such an order before an application under s 71 of the IRDA is made. What the applicants were essentially seeking was a form of pre-application blessing or approval. The framework laid down in s 71 does not appear to contemplate any role for the Court before the application is put forward.

9 Given the concerns highlighted by the Court, no order was made as to the creation of an administrative convenience class at this juncture. I should emphasise, though, that I am not rejecting the concept of an administrative convenience class, as such. Should the issue be raised in an application under s 71, as presently advised, I would not think that the creation of an administrative convenience class is necessarily antithetical to the statutory framework, even in the absence of an express provision such as that in the US. As noted by the applicants, s 1122(b) of the US Bankruptcy Code was a codification of previous practice. What will be important to my mind in weighing whether such an administrative convenience class may be properly adopted in a pre-packaged scheme of arrangement are how the various interests are balanced, what trade-offs are incurred, and what safeguards are put in place. I will leave these questions for another day.

Sealing application

10 There was a separate sealing application in Summons No 4325 of 2022 in respect of an affidavit filed disclosing some commercially sensitive matters relating to the share subscription agreement involving the investor. Given the confidentiality required to move the restructuring forward, and the absence of

any apparent prejudice to the creditors, particularly as the document was disclosed to the Court, I granted the sealing order sought.

Conclusion

11 The applications in relation to the extension of time were accordingly allowed, with extensions granted until 2 April 2023. No orders were made as to the prayers seeking the approval of the creation of administrative convenience class for the purposes of an intended "pre-packaged" scheme of arrangement under s 71 of the IRDA. I was informed that a super-priority financing application would likely be made under s 67 of the IRDA. Directions were given for this to be heard on 21 December, or any other date confirmed by the Registry.

Aedit Abdullah
Judge of the High Court

Tang Yuan Jonathan (Morgan Lewis Stamford LLC) for the applicants.