

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

[2023] SGHC 231

Originating Application No 726 of 2023

In the matter of Part 5 of the Insolvency,
Restructuring and Dissolution Act 2018

And

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

Logistics Construction Pte Ltd

... Applicant

FOUNDATIONS OF DECISION

[Companies — Schemes of arrangement — Whether a moratorium should be granted]

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Re Logistics Construction Pte Ltd

[2023] SGHC 231

General Division of the High Court — Originating Application No 726 of 2023

Goh Yihan JC
14 August 2023

18 August 2023

Goh Yihan JC:

1 This was Logistics Construction Pte Ltd's ("the applicant") application for, among other things, a six-month moratorium pursuant to s 64(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA").

2 At the end of the hearing before me on 14 August 2023, I allowed the applicant's application but only for a three-month moratorium. Due to the numerous creditors in the present matter, I provide these brief grounds to explain my decision, especially for the creditors who may not have attended the aforesaid hearing.

Background facts

3 I begin with the background facts leading to the applicant's application. The applicant is a private company incorporated in Singapore on 25 April 1992.

The applicant has a track record of general building for more than 25 years in Singapore. The applicant is also a wholly owned subsidiary of Boldtek Holdings Limited (“BHL”). BHL has been listed on the Catalist of the Singapore Exchange since 12 January 2013. For convenience, I will refer to BHL and its subsidiaries, which include the applicant, as the “Group”.

4 The applicant pointed to the COVID-19 pandemic, and the ensuing governmental restrictions in Singapore and Malaysia, as factors that severely affected the Group’s business. Despite these difficulties, the Group’s recovery was on an upward trajectory. Indeed, the Group’s order book from general building and precast manufacturing stood at about \$79.4m as of 25 October 2022. In addition, the Group was awarded construction contracts worth approximately \$119.1m for the period between June 2022 and January 2023.

5 Despite these positive developments, the Group’s recovery efforts came to a stop when BHL called for a trading halt in January 2023, which was later converted into a voluntary suspension in the same month. This was necessitated by its independent auditor’s inclusion of a qualified opinion in its report on the Group’s audited financial statements for the financial year ended 30 June 2022. While the voluntary suspension of BHL’s trading persisted, several of the applicant’s contractors became much more stringent with their payment terms. Some even threatened legal proceedings to demand for payment. The Group also faced difficulties in raising finance.

6 More specifically, the applicant presently faces several demands for payment. It is also involved in several legal proceedings, including originating claims brought in the General Division of the High Court and the District Court, as well as adjudication proceedings brought under the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed).

The applicant's application

7 It was under these circumstances that the applicant sought a moratorium in the present application. The applicant asked for a moratorium of six months so as to complete its negotiations with its creditors, investors, and to prepare the relevant applications. More specifically, the applicant said that the Group has been in discussions with three investors for an investment of up to \$6m into the Group.¹

8 The applicant has also appointed scheme managers, and the proposed scheme is likely to involve: (a) partial settlement of unsecured debt in cash by way of scheduled repayments in several tranches; (b) issuance and allotment of new ordinary shares in BHL to the unsecured creditors; and (c) all unsecured debt and liabilities of the applicant to be extinguished upon the scheme coming into effect, in consideration of the aforementioned repayment plan.² The restructuring may also involve a rescue lender providing rescue financing to alleviate the Group's liquidity issues pending implementation of the scheme.

9 As for the level of creditor support for the moratorium, it is relevant to note that the applicant has one secured creditor, Oversea-Chinese Banking Corporation Limited ("OCBC"), which is by far the applicant's largest creditor. Its top 20 unsecured and unrelated creditors include several banks and construction/engineering companies. OCBC, as well as some of the other creditors, have indicated support for a six-month moratorium. Other creditors have indicated support for a shorter three-month moratorium, whereas others

¹ 2nd Affidavit of Phua Lam Soon dated 31 July 2023 at pp 12–14.

² 3rd Affidavit of Phua Lam Soon dated 8 August 2023 at para 25.

have either objected or taken no position on the moratorium which the applicant sought.

The applicable principles

10 With the above background in mind, I turn now to the applicable principles governing OA 350. It is clear that s 64(1) of the IRDA allows a company which intends to propose a scheme of arrangement to apply to court to restrain proceedings against it. As I mentioned in the High Court decision of *Re All Measure Technology (S) Pte Ltd (RHB Bank Bhd, non-party)* [2023] SGHC 148 (at [8]–[10]), in interpreting s 64(1) of the IRDA, the cases which interpreted s 211B(1) of the Companies Act (Cap 50, 2006 Rev Ed), which is the predecessor provision to s 64(1), continue to be applicable (see the High Court decision of *Re Zipmex Co Ltd and other matters* [2022] SGHC 196 (“*Re Zipmex*”) at [7]).

11 As Kannan Ramesh J (as he then was) observed in the seminal High Court decision of *Re IM Skaugen SE and other matters* [2019] 3 SLR 979 (“*IM Skaugen*”), a moratorium is “an extraordinary relief holding in abeyance the enforcement of the legitimate rights of creditors against the company that is seeking to restructure” (at [44]). That said, a moratorium should be granted in cases where a company seeks protection from its creditors in order to implement its rehabilitative efforts. As such, in determining whether such an application should be granted, the learned judge held in *IM Skaugen* (at [57]) that “the court undertakes a balancing exercise between allowing the applicant the requisite breathing space and ensuring that the interests of creditors are sufficiently safeguarded”.

12 In carrying out this balancing exercise, it is not disputed that there are both procedural and substantive requirements that must be met before a moratorium can be granted under s 64(1) of the IRDA. The procedural requirements are set out in ss 64(2), 64(3), and s 64(4). I will not discuss the procedural requirements below since there is no dispute that they have all been satisfied in the present case. As for the substantive requirements, the substantive test to determine if a moratorium should be granted is whether, on a broad assessment, there is a reasonable prospect of the proposed or intended compromise or arrangement working and being acceptable to the general run of creditors (see *IM Skaugen* at [57] and *Re Zipmex* at [7]). In order for a court to make this broad assessment, a moratorium application must contain sufficient particulars (see the Court of Appeal decision of *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77 at [48]).

My decision: the application was allowed

13 For the reasons that follow, I allowed the applicant's application but limited the length of the moratorium to three months, instead of the six months it prayed for.

14 First, I was convinced that the present application was brought in good faith and was a genuine attempt by the applicant to seek protection from its creditors while it sought to restructure its liabilities. Indeed, I noted that the applicant has voluntarily sought disclosure orders in the present application so as to place the full picture of its rehabilitation as it progresses in the next few months. I also observed that while the potential investments were couched in tentative terms, there was no evidence to suggest that these were either not genuine or completely implausible funding options.

15 Above all, I did not think that the objections raised by the various creditors disproved this central finding. For instance, several creditors questioned the applicant's *bona fides* in making the present application, on the basis that the applicant had failed to meet the payment schedules. They pointed to the applicant's issuance of postdated cheques that the applicant subsequently failed to fulfil.³ The creditors also raised the concern that the applicant had failed to pay them since 2018.⁴ In response, the applicant argued that it had sought to manage its financial difficulties through settlements with individual creditors and raising further financing.⁵ In relation to these concerns that the applicant had failed to meet the payment schedules, it should be noted that the very premise of an application for a moratorium is that a company is unable to pay its debts such that it requires temporary protection from its creditors while it engages in the restructuring of its liabilities. As such, the mere fact that the applicant has failed to repay its debts cannot be determinative of the present application. Rather, the pertinent question is whether the applicant has advanced a viable scheme that has a reasonable prospect of success.

16 Second, I found that the support of OCBC, which is the largest creditor by far, to be important. While HYY Engineering (Pte) Ltd, one of the applicant's creditors, pointed out that OCBC's support is not decisive because OCBC was merely holding the applicant's physical premises as security (unlike in *IM Skaugen*, where one of the largest creditors was holding the applicant company's vessels as security, without which the applicant company could not continue its operations), I did not find this objection persuasive. This was

³ 1st Affidavit of Ong Cheng Chuen dated 4 August 2023 at para 24.

⁴ 1st Affidavit of Lim Chuen Yang dated 4 August 2023 at para 16.

⁵ 3rd Affidavit of Phua Lam Soon dated 8 August 2023 at para 16.

because a large creditor's support for the moratorium must be critical to the success of the applicant's rehabilitation efforts (see *IM Skaugen* at [58] and [63]). Indeed, this may explain the requirement for an applicant to furnish a list of all secured creditors and 20 of the largest unsecured creditors so that the court could properly weigh and support the explanation of the importance of that support provided by an applicant (see *IM Skaugen* at [58]). As such, at the present stage, it could be said that the proposed scheme is likely to be acceptable to the general run of the applicant's creditors.

17 Third, while I found the particulars in the proposed scheme to be sufficient for present purposes, they did appear to be short of specific details. In saying this, I recognised that because the applicant's restructuring effort is at an early stage, the proposed scheme may be subject to change. However, this has to be balanced against the creditors' right to know how and when they will be repaid, if at all. Quite understandably, several creditors voiced their concerns at the hearing before me that the lack of details raised more questions than answers, such as whether particular groups of creditors are being preferred in relation to others. For instance, Buildforms Construction (Pte) Ltd argued that details of the proposed scheme were insufficient, uncertain,⁶ and inconsistent across the applicant's various affidavits.⁷ It was also unclear the extent to which the applicant could recover the contract sum of \$119.1m during the proposed moratorium period.⁸ Further, HYY Engineering (Pte) Ltd was doubtful as to the certainty of capital injections from the three investors. In particular,

⁶ 1st Affidavit of Lim Chuen Yang dated 4 August 2023 at paras 12–15.

⁷ 1st Affidavit of Phua Lam Soon dated 21 July 2023 at para 41; 2nd Affidavit of Phua Lam Soon dated 31 July 2023 at para 13; 3rd Affidavit of Phua Lam Soon dated 8 August 2023 at para 25.

⁸ 1st Affidavit of Lim Chuen Yang dated 4 August 2023 at para 14(a).

HYY Engineering (Pte) Ltd submitted that the applicant had failed to provide details about the individual investor, such that it was uncertain how and why that investor would invest \$2m. As such, I found that a relatively shorter moratorium of three months will balance the interests of the applicant and its creditors. If the applicant requires an extension of the moratorium, the onus is on the applicant to show, in three months' time when the moratorium lapses, that there is a reasonable prospect of the scheme working. While the applicant submitted that a longer moratorium would allow it to conserve resources as it focuses on its restructuring efforts, I did not think that an application for an extension of the moratorium is so resource-intensive so as to become a severe drain on the applicant's efforts. Indeed, such an application would only become a drain if things were not going well and it would be right in that instance for the applicant to account to its creditors.

Conclusion

18 In conclusion, for all the reasons given above, I therefore granted an order in terms of the main prayer for a moratorium, save that the length of the moratorium be shortened to three months, as well as other ancillary prayers, including the voluntary disclosures sought by the applicant.

Goh Yihan
Judicial Commissioner

Lee Lieyong Sean and Chua Peili Jacelyn
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Chong Kuan Keong, Tay Yan Xia and Loh Pei Wen Bernadette Rena
(Chong Chia & Lim LLC) for Kandenko Co Ltd;
Kong Hui Xin Annette (Salem Ibrahim LLC) for Maginet Plumbing
Contractor Pte Ltd;
Oh Shi Jie Jonathan (Dentons Rodyk & Davidson LLP) for
Hongkong and Shanghai Banking Corporation Ltd;
Foong Han Peow (Rajah & Tann Singapore LLP) for DBS Bank Ltd;
Muhammad Imran bin Abdul Rahim and Christabelle Arya Gerard
(Eldan Law LLP) for Buildforms Construction (Pte) Ltd;
Lee Kok Weng Mark and Tan Han Ru Amelia
(WHM Law Corporation) for HYY Engineering (Pte) Ltd;
Tan Jia Jun James (Covenant Chambers LLC) for
Golden Landscape & Construction Pte Ltd;
Lailatulqadriah binte Jaffar (Harry Elias Partnership LLP) for
MKV Engineering and Trading Services Pte Ltd;
Lye Yu Min (Rajah & Tann Singapore LLP) for Oversea-Chinese
Banking Corporation Limited;
Darren Neo Eng Jye for Vertical Green Pte Ltd in person;
Wang Yulong for SG Façade Engineering Pte Ltd in person;
Jeffrey Lee Soon Quan for Wireka Sdn Bhd in person;
Chan Kok Yeow for Archilite Engineering Pte Ltd in person.
