

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

[2023] SGHC 236

Originating Application No 29 of 2023 (Summons No 2439 of 2023)

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

Lemarc Agromond Pte Ltd

... Applicant

FOUNDATIONS OF DECISION

[Insolvency Law — Schemes of arrangement — Extension of moratoria]

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Re Lemarc Agromond Pte Ltd

[2023] SGHC 236

General Division of the High Court — Originating Application No 29 of 2023
(Summons No 2439 of 2023)

Hri Kumar Nair J

22 August 2023

25 August 2023

Hri Kumar Nair J:

1 This was Lemarc Agromond Pte Ltd’s (the “Company’s”) application for a second extension of a moratorium under s 64(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the “IRDA”). The moratorium was first granted by me on 10 February 2023 for a period of four months, and subsequently extended to 31 July 2023.¹ The Company sought a further extension to 15 September 2023. I dismissed the application and provide these grounds to explain my decision.

Background

2 The Company is a wholly-owned subsidiary of Lemarc Agromond Limited (“LMA HK”), a company incorporated in Hong Kong. It specialises in agricultural commodity trading. The Company’s business and operations are

¹ HC/ORC 669/2023 and HC/ORC 2925/2023.

conducted through a group of approximately 20 subsidiaries incorporated across various countries including Singapore and Hong Kong (collectively, the “LMA Group”).² LMA HK was wound up by the Hong Kong courts on 12 December 2022.³

3 The Company explained that it encountered difficulties in early 2020, when financiers involved in commodity trading reduced their appetite for lending due to the Covid-19 pandemic and after a series of scandals involving commodity trading giants such as Hin Leong and Agritrade surfaced which adversely affected the entire commodity trading industry. The reduced access to capital had a cascading effect on the entire commodity trading industry, including the LMA Group. In particular, the LMA Group’s overall business and operations were affected as the LMA Group faced difficulties with funding committed trades by advance payment and/or the LMA Group’s cash.⁴

4 LMA Group’s business and operations were also affected by the Russia-Ukraine war which started in early 2022. This severely disrupted supply chains and affected the LMA Group’s ability to trade products which originate from Ukraine, such as corn and grain.⁵

5 The Company was not able to secure the financing required to support its activities.⁶ It also faced a winding up petition filed in the Singapore courts (see [8] below).

² 1st Affidavit of Chow Wai San dated 12 January 2023 (“CWS-1”) at para 7.

³ CWS-1 at para 8.

⁴ CWS-1 at para 11.

⁵ CWS-1 at para 12.

⁶ CWS-1 at para 15.

OA 29

6 On 13 June 2022, one of the Company’s creditors, Olam International Limited (“Olam”) served a statutory demand on the Company in respect of a debt of US\$4,083,718.32.⁷ The Company did not satisfy the demand within 21 days or thereafter.⁸

7 On 8 September 2022, the Company appointed Mr Chow Wai San (“Mr Chow”) as director. Mr Chow is an experienced insolvency practitioner and was appointed to spearhead the restructuring of the Company.⁹

8 On 13 September 2022, Olam applied to wind up the Company in HC/CWU 189/2022 (“CWU 189”).¹⁰ The Company did not dispute its debt to Olam, nor claim that it had the means to satisfy it. The Company sought and obtained several adjournments of CWU 189 to allow it to work on its restructuring plans.¹¹

9 On 12 January 2023, the Company filed OA 29/2023 (“OA 29”) under s 64(1) of the IRDA, seeking a 6-month moratorium.¹² In Mr Chow’s 1st affidavit filed on 12 January 2023 (“Chow’s 1st Affidavit”) in support of the application, he, *inter alia*, stated that:

- (a) since his appointment as the sole director of the Company, he had been working with the Company’s former employees and the

⁷ 1st Affidavit of Jeroen Wiskerke dated 3 February 2023 (“JW-1”) at paras 5–6.

⁸ JW-1 at para 7.

⁹ CWS-1 at p 27.

¹⁰ JW-1 at para 7.

¹¹ JW-1 at paras 10–14.

¹² HC/OA 29/2023 at para 2.1.

founders of the LMA Group, David Ollech and Zalman Ollech (collectively, the “Founders”) to understand the affairs of the LMA Group and to assist with the formulation of a potential restructuring plan;¹³

(b) progress had been made towards tabling a commercially viable restructuring plan which would benefit the creditors of the Company;¹⁴

(c) over the past 3 months, the Founders and Mr Salzberg Ron Rene (“Mr Salzberg”) had identified a potential new business which could help the LMA Group generate positive cash flow (the “New Business”);¹⁵

(d) since CWU 189 was filed, the Founders and Mr Salzberg had been engaged in intense negotiations with the various stakeholders, including financiers, asset owners, industry experts and key customers with a view towards finalising the details and structure of the New Business;¹⁶

(e) in late December 2022, the parties involved in the New Business reached an understanding on the commercial framework for the New Business and were presently working on the documentation for the New Business;¹⁷

¹³ CWS-1 at para 23.

¹⁴ CWS-1 at para 24.

¹⁵ CWS-1 at para 24(b).

¹⁶ CWS-1 at para 24(c).

¹⁷ CWS-1 at para 24(f).

(f) the implementation of the New Business would be an important step towards a successful restructuring of the LMA Group and the Company’s liabilities because the New Business would enable the LMA Group and the Company to generate positive cash flow, which could be used to restructure the existing liabilities of the LMA Group and the Company;¹⁸ and

(g) the Founders envisaged that the Company would enter a scheme of arrangement pursuant to which the income generated by the New Business could be channelled towards restructuring and repaying the outstanding liabilities of the Company (the “Proposed Scheme”).¹⁹

10 The Company stated that it would, as soon as practicable, make an application under s 210(1) of the Companies Act 1967 (2020 Rev Ed) (“the CA”) for a meeting of the creditors or class of creditors to be summoned in relation to the compromise or arrangement mentioned in ss 64(1) or 71(1) of the IRDA to approve the compromise or arrangement mentioned in s 64(1) of the IRDA.²⁰

11 I heard OA 29 on 10 February 2023. I harboured some doubts about the viability of the exercise. The Company’s plans lacked detail and it was also unable to produce any relevant financial statements. All the finance staff of the Company had resigned or left, and Mr Chow was effectively managing the process on his own, albeit with the support of the Founders.

¹⁸ CWS-1 at para 25.

¹⁹ CWS-1 at para 27.

²⁰ CWS-1 at para 37(c).

12 Nonetheless, I granted the moratorium for a period of 4 months, *ie*, until 10 June 2023.²¹ In doing so, I considered that:

- (a) the proposed restructuring was not straightforward and involved third parties, and the Company would need some time to develop it;
- (b) a restructuring appeared to present the creditors with a better outcome as compared to a winding up of the Company, which would likely result in no or negligible recovery for all unsecured creditors – this was not disputed by the creditors which appeared at the hearing; and
- (c) a 4-month moratorium was not opposed by the Company’s creditors, including Olam. Indeed, some creditors, including SCCF (“Horizon”) – the Company’s only secured and largest creditor, and The Access Bank UK – one of its largest unsecured creditors, supported the application.

13 As I wanted an update of and oversight over the restructuring efforts, I directed the Company to:

- (a) file the necessary validation application to enable it to employ personnel for its finance team²² – this was previously objected to by Olam, which now indicated it would not oppose the same; and
- (b) file an affidavit within two months to update when the Company would be able to produce information relating to its financial affairs.²³

²¹ HC/ORC 669/2023.

²² HC/ORC 669/2023 at para 2.

²³ HC/ORD 669/2023 at para 4.

14 On 10 April 2023, the Company filed Mr Chow Wai San’s 5th affidavit (“Chow’s 5th Affidavit”), which stated “[t]he draft management financial statements for the period from 1 October 2020 to 31 December 2021 and 1 January 2022 to 31 August 2022 respectively should be available shortly after assuming that the issue of unlocated bank statements and password protected bank statements is resolved expediently”.²⁴ In the event, the said draft financial statements were made available to the creditors on 27 July 2023.²⁵

The New Business

15 As explained by Mr Chow, the restructuring of the LMA Group and the Company was dependent on the Founders succeeding in negotiating and implementing the New Business, with the intention that a portion of its profits would ultimately flow to the Company to pay its creditors.

16 The details of the New Business were set out in two memoranda of understanding (“MOUs”) – the Horizon MOU dated 1 February 2023 and the Varamar MOU, which is currently being negotiated.

17 The parties to the Horizon MOU are AVIV Shipping Pte Ltd (“AVIV”), Horizon, and the Company.²⁶ In essence, AVIV intends to acquire and manage ten ships and thereafter enter a sale and lease back arrangement with its financiers and simultaneously enter bareboat charters for a period of ten years with the financiers.²⁷ Horizon will provide a guarantee to the financiers, and will

²⁴ 5th Affidavit of Chow Wai San dated 10 April 2023 (“CWS-5”) at para 8.

²⁵ 7th Affidavit of Chow Wai San dated 8 August 2023 (“CWS-7”) at para 27; Minute Sheet dated 22 August 2023 at p 2.

²⁶ 2nd Affidavit of Chow Wai San dated 30 January 2023 (“CWS-2”) at para 14(a).

²⁷ CWS-2 at para 14(d).

be entitled to receive 40% of the profits of AVIV, which would go towards servicing the Company's existing indebtedness to Horizon.²⁸ The fleet size will increase once the operations for the business have been implemented.²⁹ It is projected that AVIV will generate a net profit of approximately US\$6.54m per annum, of which 40% will be transferred to the Company (*ie*, US\$2.6 m).³⁰ Of this sum, the Company expects to have, after paying expenses, between US\$1.6 m and US\$2.1 m (the "Surplus") and intends to use 70% of the Surplus to repay its creditors.³¹ The Company expected to finalise the scheme document and explanatory statement for the Proposed Scheme by the end of June 2023.³²

18 In his 6th Affidavit filed on 9 June 2023 (filed in support of the application for the first extension of the moratorium), Mr Chow stated that the Founders had informed him that AVIV was in negotiations with Horizon and Varamar (a Belgium-incorporated shipping company)³³ ("Varamar") on the Varamar MOU. This is a separate (proposed) deal from that contemplated under the Horizon MOU. The structure of this deal was however similar: Varamar and AVIV would form a joint venture through a special purpose vehicle ("SPV"); the SPV would charter vessels which both Varamar and AVIV would operate; both Varamar and AVIV would procure financing from interested ship financiers to fund the bareboat charter payments; Horizon would provide a guarantee against each charter of a vessel for which Horizon would be allocated 60% of the profits derived from the operation of such vessel; and the remaining

²⁸ CWS-2 at para 14(e).

²⁹ CWS-2 at para 14(d).

³⁰ CWS-2 at para 15.

³¹ CWS-2 at para 16(d).

³² CWS-2 at para 18.

³³ CWS-6 at para 9; CWS-7 at p 14.

40% of the profits would be divided between Varamar and AVIV.³⁴ It was expected that part of the profits received by AVIV would be used to repay the Company's creditors.³⁵ However, the terms of the proposed deal were vague: for example, it was not stated how many vessels would be involved, what the projected profits were, what percentage of the profits allocated to AVIV would flow to the Company or what the mechanism would be to facilitate that flow. In any event, the Varamar MOU was not signed by Horizon.³⁶

SUM 1728 – the first extension

19 On 9 June 2023, the Company filed Summons 1728/2023 (“SUM 1728”) for an extension of the moratorium until 10 September 2023 or until further orders. I allowed an extension only until 31 July 2023.³⁷ In my grounds, I noted that:³⁸

- (a) not much progress on the restructuring had been made since the moratorium was granted on 10 February 2023;
- (b) while it had been asserted that the restructuring of the Company was critical to the LMA Group, and the Company's winding up would affect the restructuring of the LMA Group, it did not appear that the LMA Group, or the Founders, had devoted sufficient resources to supporting Mr Chow's efforts;

³⁴ 6th Affidavit of Chow Wai San dated 9 June 2023 (“CWS-6”) at para 9.

³⁵ CWS-6 at para 10.

³⁶ Minute Sheet dated 22 August 2023 at p 2.

³⁷ HC/ORC 2925/2023.

³⁸ Minute Sheet dated 27 June 2023 at p 3.

(c) only the draft management financial statements for the financial period 1 October 2020 to 31 December 2021 were ready, and even then, these were prepared on a “best efforts” basis and Mr Chow could not certify their accuracy;

(d) there were still no meaningful details of the proposed restructuring. In particular, it was still unclear how the profits from the New Business would be channelled to the Company to pay its creditors. Further, I disregarded the Varamar MOU as that had not been signed by Horizon, whose participation was important to the venture; and

(e) it was evident that the Company was nowhere close to making a s 210(1) CA application and could not say when one would likely be filed.

20 I therefore made it clear that any application for a further extension would not be looked upon favourably unless there was significant progress in the restructuring efforts, coupled with a definitive and realistic timeline as to when a s 210(1) CA application would be made.³⁹

My decision on SUM 2439

21 The principles governing this application are clear.

22 Section 64(1) of the IRDA enables a company which intends to propose a scheme of arrangement to apply to court to restrain proceedings against it. In *Re All Measure Technology (S) Pte Ltd (RHB Bank Bhd, non-party)* [2023] SGHC 148 (at [8]–[10]), it was held that cases which

³⁹ Minute Sheet dated 27 June 2023 at p 3.

interpreted s 211B(1) of the Companies Act (Cap 50, 2006 Rev Ed), which is the predecessor provision to s 64(1) of the IRDA, continue to be applicable.

23 In *Re IM Skaugen SE and other matters* [2019] 3 SLR 979 (“*IM Skaugen*”) at [57], the court held that in determining whether such an application should be granted, “the court undertakes a balancing exercise between allowing the applicant the requisite breathing space and ensuring that the interests of creditors are sufficiently safeguarded”. In that regard, the court does not at this stage delve into a detailed assessment of the reasonable prospect of the proposed scheme working, but only undertakes a broad-based assessment: *Re Babel Holding Ltd and other matters* [2023] SGHC 98 at [17]. As observed by the court in *IM Skaugen* at [57], it is not uncommon that the restructuring efforts of a company applying for a moratorium “are nascent or certainly not at a level of maturity to be placed before a duly called scheme meeting”. That observation equally applies where the applicant is seeking an extension of a moratorium, although such an application should in addition be supported with sufficient detail on what the applicant has done so far, how much longer it anticipates it will need and what it reasonably believes it can accomplish in the extended period.

24 This application for a further extension to 15 September 2023 failed to deal with the concerns I had earlier expressed in allowing the first extension. The Company still did not offer any plan which allowed even a broad-based assessment as to its viability or its benefit for the creditors. In fact, it appeared that its restructuring plans had stalled, or had failed to progress meaningfully, and the Company had no solution to advance the same. I make the following observations.

25 First, SUM 2439 was filed on 8 August 2023 *after* the moratorium had expired on 31 July 2023, and was therefore out of time – see s 64(7) of IRDA. While s 13 of IRDA allowed me to grant the Company an extension of time, it is trite that an extension should only be granted if good grounds are shown. In Mr Chow’s 7th Affidavit filed in support of SUM 2439 (“Chow’s 7th Affidavit”), he states the Company was unable to apply for the extension of the moratorium before 31 July 2023 because “[he] was still in the midst of obtaining updates from the Founders Team on the progress of the restructuring efforts, and therefore the developments on this front were still unclear to (him) at that point. [He] also [understood] from the Founders Team that they were still working on progressing the restructuring efforts, which culminated in the email to Horizon on 4 August 2023, as set out above”.⁴⁰

26 This did not adequately explain why the application could not be filed before 31 July 2023. The email to Horizon on 4 August 2023 did not evidence any specific milestone achieved or progress in the restructuring, other than vague expressions of optimism of a deal. There was also no explanation as to whether anything had changed between 31 July 2023 and 4 August 2023 (or even 8 August 2023) to justify or explain why an application to extend the moratorium could only reasonably have been made after the deadline had passed.

27 Second, it appeared from Chow’s 7th Affidavit that Mr Chow was not involved in, much less leading, the restructuring efforts. All he appeared to be doing was to relay information about those efforts which he was receiving from the “Founders Team”. The Company’s counsel confirmed that Mr Chow was

⁴⁰ CWS-7 at para 24.

“marginally involved” in the restructuring efforts.⁴¹ The language employed in Mr Chow’s affidavits demonstrated that he was reliant on the Founders to update him on the negotiations in respect of the New Business, and that he was not in a position to confirm the accuracy of those updates.

28 In any event, the issue of an extension of time to file SUM 2439 was moot as I was not prepared to grant a further extension of the moratorium. I had indicated at the previous hearing that an application for a further extension would not be looked on favourably unless there was significant progress in the restructuring efforts. There was clearly none.

29 First, there was no indication as to when a s 210(1) CA application would likely be made. The earlier estimate of end June 2023 (see [17] above) had long passed, and no new estimated date had been offered.

30 Second, with respect to the Horizon MOU, Mr Chow’s evidence was that progress had been delayed on account of “regulatory issues in Japan and constantly evolving market conditions” which led to the Company encountering “some commercial difficulties with the shipowners and the contracts in relation to the Horizon MOU have therefore still not been signed as at the date of this affidavit”.⁴² There was no indication that the Company could resolve these issues, although they were known at least as early as April 2023.⁴³ All Mr Chow did was to give the vague assurance that “[the Company] (represented by the Founders Team) is continuing to discuss and/or negotiate with the relevant

⁴¹ Minute Sheet dated 22 August 2023 at p 1.

⁴² CWS-7 at para 8.

⁴³ CWS-5 at para 15.

parties to navigate around these issues”.⁴⁴ Crucially, the Company did not say it had an alternative to advance the proposed business in the event that the issues could not be resolved.

31 Third, there were no material developments with respect to the Varamar MOU. Horizon had still not executed it or stated that it would do so. It remained, at best, only a broad proposal. The Company said it was exploring ways to eliminate Horizon’s participation in the venture, but no details were offered. There was also no evidence that the parties to the Varamar MOU were able or prepared to proceed without Horizon’s support. The best Mr Chow could say was that the Founders were “continuing to work on getting [Horizon] to agree to the Varamar MOU”.⁴⁵ In this regard, it is significant that Horizon’s support for the Company had waned – it took no position on this application for an extension of the moratorium, a change from its active support in February 2023 – see [12(c)] above.

32 Fourth, only one vessel was identified to “plug into the framework under the Varamar MOU”.⁴⁶ But the terms for the financing for this vessel had not even been agreed. Further, neither the Varamar MOU nor Chow’s 7th Affidavit stated how many vessels would be necessary to make the venture viable – as observed above at [18], the Varamar MOU was lacking in detail. It was therefore not known whether this one vessel, even if secured, would make a significant impact at all.

⁴⁴ CWS-7 at para 11.

⁴⁵ CWS-7 at para 14.

⁴⁶ CWS-7 at para 18.

33 Fifth, the Company made vague assertions about raising financing in respect of the Varamar MOU. It was stated in Chow’s 7th Affidavit that he understood “that the Founders Team have approached a broker to conduct an equity raise for the purposes of the ship acquisitions contemplated under the Varamar MOU”.⁴⁷ This was plainly insufficient to give assurance that there was a reasonable prospect that the business would be viable.

34 Sixth, as stated above at [18], no projections were offered as to the profits to be generated from the Varamar MOU, or how those profits would be distributed to benefit the Company. All that was stated was that 40% of the profits would be allocated to Horizon and 60% would be divided between Varamar and AVIV.⁴⁸ No details were given of that division, or the amount which would then flow to the Company.

35 Seventh, even though the question had been raised when OA 29 was first heard on 10 February 2023, it had still not been explained *how* the profits from the New Business would be made available to the Company. Indeed, the Varamar MOU, unlike the Horizon MOU, did not even state that the profits generated in respect of that venture would be paid to the Company.

36 I stress that most of the above is not even an analysis of the Proposed Scheme, but the viability of the New Business which the Proposed Scheme (when presented) will be entirely dependent on. Despite Mr Chow having been appointed about a year ago to restructure the Company, it remained uncertain how or when that restructuring would be achieved. The lack of any meaningful

⁴⁷ CWS-7 at para 19.

⁴⁸ CWS-7 at para 16.

progress thus far was telling. As things stood, the New Business envisaged in the Horizon MOU and the Varamar MOU appeared dead in the water.

37 Finally, there was no explanation as to why the Company was seeking an extension of the moratorium to 15 September 2023. That was only about three weeks from 22 August 2023, when this application was heard. The Company’s counsel candidly informed me that he was not aware of anything that was planned or likely to happen before 15 September 2023. Chow’s 7th Affidavit also did not deal with the issue. The date appeared arbitrary and seemed, at best, an attempt to kick the can down the road.

38 There was also no progress in respect of the Company’s draft financial statements. As noted above at [19(c)], the financial statements for: (a) 1 October 2020 to 31 December 2021, and (b) 1 January 2022 to 31 August 2022, had been prepared on a “best efforts basis”, and were therefore of limited value. This was even though the Company had been permitted through a validation application to hire finance staff to prepare its accounts. It appeared that Mr Chow was unable to certify the accuracy of the draft financial statements because of missing documents and information. As the Company’s counsel informed me, this was the situation Mr Chow “inherited”. But the Company was not an insubstantial entity – as at the financial year ended 30 September 2020, the Company and its subsidiaries generated a revenue of over US\$1.6bn.⁴⁹ It was therefore surprising that it was unable to produce reliable financial statements. No affidavit was filed by the Founders to explain the state of the Company’s documentation. While the Company argued that Mr Chow and it had “taken effort(s)” to produce the drafts, progress is not measured by best efforts but by tangible results.

⁴⁹ CWS-1 at para 9.

39 In summary, this application was an exercise in futility and simply delaying the inevitable.

Conclusion

40 I therefore dismissed SUM 2439.

Hri Kumar Nair
Judge of the High Court

Sim Chong and Chen Sixue (Sim Chong LLC) for the applicant;
Chara Lam Hui Xin (AsiaLegal LLC) for White Oak Trade Finance
LLC (non-party creditor);
Loong Tse Chuan and Jung Sol (Allen & Gledhill LLP) for Olam
International Ltd (non-party creditor);
Chen Yi-Tseng (Rajah & Tann Singapore LLP) for Engelhart CTP
Switzerland SA (non-party creditor);
Lee Jin Loong (Setia Law LLC) for Stenn Assets UK Ltd (non-party
creditor);
Juliana Lake (Lu Zhixuan) (TSMP Law Corporation) for Alma Stone
Opportunities Ltd (non-party creditor).
