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

[2024] SGHC(A) 6

Appellate Division / Originating Application No 58 of 2023

Between

Da Hui Shipping (Pte) Ltd (in creditors' voluntary liquidation)

… *Applicant*

And

An Rong Shipping Pte Ltd (in liquidation)

… *Respondent*

JUDGMENT

[Civil Procedure — Appeals — Leave]
[Insolvency Law — Winding up — Company wound up — Whether permission is required to proceed with an appeal against the company where lower court previously granted permission to commence action or proceeding against the company — Section 133(1) Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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v
An Rong Shipping Pte Ltd (in liquidation)

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Appellate Division of the High Court — Originating Application No 58 of 2023
See Kee Oon JAD, Audrey Lim J
1, 20 December 2023

19 February 2024 Judgment reserved.

Audrey Lim J (delivering the judgment of the court):

1 AD/OA 58/2023 ("OA 58") is the application of Da Hui Shipping (Pte) Ltd ("Da Hui") for permission to appeal against the decision of the Judge in the General Division of the High Court (the "Judge") dismissing HC/OA 418/2023 ("OA 418"). OA 418 was an application brought by Da Hui against An Rong Shipping Pte Ltd ("An Rong").

2 The application for permission to appeal ("PTA Application") raises the question of whether, under s 133(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), permission is required to appeal against a decision arising from an action or proceeding, where permission to proceed with or commence that action or proceeding had previously been granted by a court under s 133(1). Having considered the matter, we answer this in the negative and thus dismiss the PTA Application. We take this opportunity

to set out our reasons as this question does not appear to have been previously considered in the context of s 133(1) of the IRDA.

Background

3 OA 418 arose because Da Hui had entered into a loan agreement ("Loan Agreement") with An Rong as joint and several borrowers. The lender under the agreement was Bank of America N.A., Singapore Branch ("BOA"). The loan was split into three tranches, with each tranche to be applied for the refinancing of a different vessel; one vessel was owned by Da Hui while two vessels were owned by An Rong. The loan was also secured by mortgages over the three vessels. Da Hui's vessel was thereafter sold, and the proceeds were applied to fully repay one tranche of the loan (pertaining to Da Hui's vessel), with the remaining proceeds being applied towards the other two tranches of the loan (pertaining to An Rong's vessels). An Rong's vessels were subsequently subject to admiralty *in rem* proceedings ("ADM Proceedings") and a judicial sale of the vessels was ordered. Third-party creditors also intervened in the ADM Proceedings. The court in the ADM Proceedings ordered various sums to be paid out, including to BOA.

4 Da Hui then commenced OA 418. In OA 418, Da Hui applied first for leave to commence and continue OA 418 against An Rong pursuant to s 133(1) of the IRDA, as An Rong was then in liquidation. In OA 418, Da Hui also applied for: (a) a declaration that An Rong was indebted to it for a certain sum (the "Debt") being Da Hui's claim in contribution against An Rong arising from the Loan Agreement; and; (b) a declaration that Da Hui be entitled to be subrogated to any extinguished securities held by BOA pursuant to the Loan Agreement, including its mortgage over An Rong's vessels, to satisfy the Debt (collectively, "the Declarations").

5 The Judge granted permission for Da Hui to "commence and continue the action herein [*ie*, OA 418] against [An Rong]" but dismissed its prayers for the Declarations. Suffice to say, the Judge's reasons for so doing are immaterial for present purposes. Da Hui then brought the PTA Application (for permission to appeal against the Judge's decision in OA 418 dismissing its prayers for the Declarations) "as a matter of caution and for good order" as it was of the view that permission to appeal might be required pursuant to s 133(1) of the IRDA read with O 19 r 26 of the Rules of Court 2021 ("ROC 2021"). For completeness, Da Hui also relied on O 18 r 29 of the ROC 2021 in its submissions for permission to appeal. An Rong did not file any submissions or seek to oppose the PTA Application.

Whether permission to appeal is required

6 We hold that permission to appeal is not required and dismiss the application on this basis. We set out our reasons for doing so below.

7 Where a company is in liquidation, s 133(1) of the IRDA provides that "no action or proceeding may be proceeded with or commenced against the company except … by permission of the Court …". The predecessor provision to s 133(1) of the IRDA is s 262(3) of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA 2006") which is similar in wording to s 133(1) of the IRDA. A similar provision could be found in s 76(1)(*c*) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) (the "BA 2009"), pertaining to the commencement or continuation of an action or proceedings against a bankrupt. The latter two provisions were then replaced by s 133(1) and s 327(1)(*c*) of the IRDA respectively, when these provisions in the IRDA came into operation on 30 July 2020, and which resulted in the repeal of the corresponding provisions in the CA 2006 and the BA 2009.

8 In the above regard, the case law pertaining to s 262(3) of the CA 2006 and its corresponding provision in the BA 2009 are instructive. In *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR(R) 671 ("*Korea Asset Management*") at [36], VK Rajah JC (as he then was) explained the rationale for the leave requirement under s 262(3) of the Companies Act (Cap 50, 1994 Rev Ed), which was the similarly-worded predecessor provision to s 262(3) of the CA 2006, as follows:

> The rationale for [the provision] is axiomatic: it is to prevent the company from being further burdened by expenses incurred in defending unnecessary litigation. The main focus of a company and its liquidators once winding up has commenced should be to prevent the fragmentation of its assets and to ensure that the interests of its creditors are protected to the fullest extent. In other words, returns to legitimate creditors should be maximised; the process of collecting assets and returning them to legitimate creditors should be attended to with all practicable speed. Unnecessary costs should not be incurred …

The court's observations in *Korea Asset Management* were endorsed by the Court of Appeal in *An Guang Shipping Pte Ltd (judicial managers appointed) and others v Ocean Tankers (Pte) Ltd (in liquidation)* [2002] 1 SLR 1232 ("*An Guang*") at [10] in relation to s 133(1) of the IRDA.

9 Pertinently, the Court of Appeal in *Caltong (Australia) Pty Ltd (formerly known as Tong Tien See Holding (Australia) Pty Ltd) and another v Tong Tien See Construction Pte Ltd (in liquidation) and another appeal* [2002] 2 SLR(R) 94 ("*Caltong*") at [51], considered the question of leave in the context of s 76(1)(*c*)(ii) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) which was the similarly-worded predecessor provision to s 76(1)(*c*) of the BA 2009. The Court of Appeal held as follows:

> This court had in *Overseas Union Bank v Lew Keh Lam* [1998] 3 SLR(R) 219 stated that the purpose of s 76(1)(*c*)(ii) was to prevent the liquidators or administrator's task from being made

> more difficult due to a scramble among creditors in taking action or obtaining decrees against the debtor or his assets. The requirement to obtain leave is to ensure that the court could guard against any inequity on account of such a scramble. *It must follow that once leave is obtained to commence an action against a bankrupt debtor, that leave should hold good until the final determination of the proceeding, including any appeal. There is really no good reason why leave should be obtained at every stage.*
>
> [emphasis in italics]

10 We agree with the Court of Appeal's approach in *Caltong* pertaining to a company which has been wound up, following from the rationale for the leave provision in the Bankruptcy Act (Cap 20, 2000 Rev Ed) which is essentially the same rationale for the leave provision in the CA 2006 or the IRDA. We hold that similarly for the purposes of s 133(1) of the IRDA, once permission has been obtained to proceed with or commence an action or proceeding against a company that has been wound up, that permission should remain effective until the final determination of the action or proceeding including any appeal therefrom. To give effect to the purpose of s 133(1) of the IRDA, the phrase "action or proceeding" in that section should be construed broadly to include every stage of the action or proceeding until its final determination by way of any appeal. As Da Hui had previously been granted permission under s 133(1) of the IRDA to commence and continue OA 418 or "the action", this permission would remain effective until the final determination of that action including any appeals therefrom. Hence, there is no need for Da Hui to take out the PTA Application.

11 In the above regard, Da Hui's reliance on *An Guang* to obtain leave to appeal under s 133(1) of the IRDA is misconceived. *An Guang* did not deal with a situation in which permission had been obtained to commence an action against a company (under s 133(1) of the IRDA) and which thus necessitated

the court to determine whether an appeal against that action required a fresh permission under s 133(1) of the IRDA.

12 As we have determined that permission to appeal is not required, it follows that O 19 r 26 of the ROC 2021 is not engaged. Order 19 r 26 states that "[w]here permission to appeal against a decision is required … a party must apply for such permission from the appellate Court". Given that permission to appeal is not required under s 133(1) of the IRDA in this case (as permission to "commence and continue the action herein against [An Rong]" had already been obtained and "action" would include any appeal therefrom), O 19 r 26 of the ROC 2021 would be inapplicable.

13 For completeness, we briefly address Da Hui's reliance on O 18 r 29 of the ROC 2021 to obtain permission to appeal, which again we find to be misplaced. The decision intended to be appealed against, which is essentially the dismissal of Da Hui's substantive causes of action in OA 418, does not fall within the meaning of a "decision" or an "application" under O 18 r 1 or O 18 r 26 of the ROC 2021.

Conclusion

14 We note that An Rong did not file any submissions to resist the PTA Application and had apparently taken no position in respect of the application. Notwithstanding that, for the reasons we have stated above, we do not agree that allowing the PTA Application would have been appropriate.

15 Accordingly, we dismiss OA 58 but direct Da Hui to file its notice of appeal, if any, within 14 days of this decision. We also make no order as to the costs of OA 58. The usual consequential orders apply.

See Kee Oon Judge of the Appellate Division	Audrey Lim Judge of the High Court

Daniel Tan Shi Min (Daniel Chen Shimin), Hoang Linh Trang, Ee Yong Chun Bernard and Suresh Viswanath (Shook Lin & Bok LLP) for the applicant;
The respondent unrepresented.