

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

[2024] SGHC 216

Originating Summons (Bankruptcy) No 108 of 2023 (Registrar's Appeal No
33 of 2024)

Between

Chia Kok Kee

... Claimant

And

Tan Wah

... Defendant

GROUND OF DECISION

[Insolvency Law — Bankruptcy — Statutory demand]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	2
WHETHER THE SD SHOULD BE SET ASIDE	6
THE APPLICABLE LAW	6
CHIA’S CASE	7
<i>The first ground: Chia’s dispute with respect to BC 189.....</i>	<i>7</i>
<i>The second ground: Chia’s cross claim against Tan.....</i>	<i>8</i>
CONCLUSION.....	18

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Chia Kok Kee

v

Tan Wah

[2024] SGHC 216

General Division of the High Court — Originating Summons (Bankruptcy)
No 108 of 2023 (Registrar's Appeal No 33 of 2024)
Chua Lee Ming J
18 March, 3 July 2024

20 August 2024

Chua Lee Ming J:

Introduction

1 Disputes between the claimant, Mr Chia Kok Kee (“Chia”), and the defendant, Mdm Tan Wah (“Tan”), over a co-investment in the People’s Republic of China (“PRC”) in 1995 led to various court proceedings in Singapore. These proceedings resulted in several costs orders against Chia, which were not paid.

2 Tan issued a statutory demand against Chia for payment of the outstanding costs. Chia applied in these proceedings to set aside the statutory demand, primarily on the ground that he had a cross demand against Tan that exceeded the amount of the debts specified in the statutory demand.

3 The Assistant Registrar (“AR”) dismissed Chia’s application. I heard the appeal against the AR’s decision and dismissed the appeal. Chia has appealed against my decision.

Facts

4 In 1995, Chia was looking for potential co-investors in a joint venture in a hydroelectric power plant in the PRC. The joint venture was held by a PRC-incorporated company called Sichuan New Dujiang Electrical Power Co. Ltd (“SND”).

5 Chia’s mother, Mdm So Lai Har (“SLH”) and Tan were the directors and shareholders of a Singapore-incorporated company, HX Investment Pte Ltd (“HX”), which was incorporated to invest in SND. SLH held 40% of the share capital in HX and Tan held 60%. HX invested in a 25% stake in SND (the “Investment”). In so far as Tan was concerned, Chia had a 40% share in the Investment as SLH held her 40% shareholding in HX as Chia’s nominee.

6 Subsequently disputes arose between Chia and Tan. One of the disputes concerned Chia’s claim that Tan had agreed to give him (from her 60% share) an additional 10% share as a bonus and another 10% share as a facilitation fee. Another dispute was over the accounting of dividends that SND had paid to HX between October 1995 and November 2003.

7 A litany of legal proceedings by Chia ensued, including the following:

- (a) HC/S 558/2005 (“S 558”) in which Chia claimed that (among other things) the additional 20% share in the Investment that Tan was alleged to have agreed to give him (see [6] above). The High Court dismissed S 558 with costs: *Chia Kok Kee v HX Investment Pte Ltd (So*

*Lai Har (alias Chia Choon), third party in issue) (Tan Wah, third party in counterclaim) [2007] SGHC 164.*¹ The costs were subsequently taxed pursuant to HC/BC 189/2009 (“BC 189”).²

(b) Chia’s appeal to the Court of Appeal in CA/CA 127/2007 (“CA 127”) against the dismissal of S 558 was dismissed with costs. The costs of the appeal were taxed pursuant to HC/BC 190/2009.³

(c) Dissatisfied with the outcome in CA 127, Chia filed CA/OS 331/2010 in which he applied to set aside the decisions in S 558 and CA 127 and for leave to commence a fresh suit. Chia alleged that Tan had misled the High Court Judge in S 558 during the trial. The Court of Appeal dismissed Chia’s application with costs. Chia’s subsequent application in HC/OS 937/2012 to set aside the Court of Appeal’s order of costs was dismissed with costs.⁴

(d) Chia next commenced HC/S 97/2011 (“S 97”) alleging fraud against Tan in omitting to record his investment contribution and further alleging that HX’s auditor and Tan’s solicitor were in collusion in the fraud. The AR struck out S 97 on the ground that Chia’s claims of fraud would amount to a re-litigation of issues tried in S 558 and OS 331. The High Court dismissed Chia’s appeal against the AR’s decision: *Chia Kok Kee v Tan Wah and others* [2012] 2 SLR 352.

(e) Chia filed CA/CA 158/2011 (“CA 158”) to appeal against the striking out of S 97. The Court of Appeal allowed the appeal to the

¹ Tan’s affidavit affirmed on 15 January 2024, at pp 12–46.

² Tan’s affidavit affirmed on 27 December 2023, at pp 19–20.

³ Tan’s affidavit affirmed on 27 December 2023, at pp 23–24.

⁴ Tan’s affidavit affirmed on 27 December 2023, at pp 38–41.

limited extent that leave was granted to Chia to file a fresh action in respect of the following:⁵

- (i) to rectify HX’s record to show (among other things) that Chia held 31% in HX, SLH held 9% and Tan held 60%; and
- (ii) to obtain an account of dividends received by Tan or HX after the judgment in S 558 and a disclosure of all documents related to SND’s refusal to pay dividends in 2010 and thereafter.

The appeal against the striking out of S 97 was otherwise dismissed and Chia was ordered to pay costs of the appeal. The Court of Appeal also noted that pursuant to the judgment in S 558, Chia was to pay around RMB 2.87m to Tan (being the underpayment of Tan’s share of dividends paid by SND) and costs.

(f) Subsequently, the Court of Appeal in CA 158 made the following orders (among others):⁶

- (i) any sale of the Investment had to be agreed to by all the shareholders of HX, and
- (ii) there be a global stay on all payment obligations and costs orders between the parties except for an order for Tan to pay SLH RMB 684,024.59.

The purpose of the global stay order was to “facilitate the resolution of the long-standing dispute between [Chia and Tan], which may be

⁵ Tan’s affidavit affirmed on 27 December 2023, at pp 28–33.

⁶ Chia’s affidavit affirmed on 15 April 2024, at pp 34–35.

resolved by the sale of the [Investment]”.⁷ The Court of Appeal also noted the confirmation by the respondents (including Tan) that there were no outstanding costs orders against SLH in relation to S 558.

8 On 10 September 2021, the People’s Court of Dujiangyan City, Sichuan Province, PRC, approved a restructuring plan for SND pursuant to which the Investment was disposed of.⁸

9 Following the approval of the restructuring plan, Tan applied to lift the global stay order made in CA 158 (see [7(f)(ii)] above). On 6 November 2023, the Court of Appeal granted the application.⁹

10 On 7 December 2023, Tan served a statutory demand on the claimant (the “SD”).¹⁰ The SD demanded payment of \$886,275.69, being the total amount of (a) costs payable by Chia pursuant to several orders of court (including those mentioned in [7] above), (b) the amount of RMB 2.87m (see [7(e)] above), and (c) interest.

11 On 19 December 2023, Chia filed the application in the present proceedings to set aside the SD. On 1 February 2024, the AR dismissed the application and on 15 February 2024, Chia appealed against the AR’s decision.

⁷ Tan’s affidavit affirmed on 15 January 2024, at pp 122–124 (at para 1(a)).

⁸ Tan’s affidavit affirmed on 15 January 2024, at para 30 and pp 115–117.

⁹ Tan’s affidavit affirmed on 15 January 2024, at pp 122–124.

¹⁰ Tan’s affidavit affirmed on 27 December 2023, at pp 9–16.

Whether the SD should be set aside

The applicable law

12 Rule 68(2) of the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 provides as follows:

The Court must set aside a statutory demand if —

- (a) the debtor in question appears to the Court to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand;
- (b) the debt is disputed on grounds which appear to the Court to be substantial;
- ...
- (e) the Court is satisfied, on any other ground, that the demand ought to be set aside.

13 It is well established that a statutory demand may be set aside under r 68(2)(a) or (b) if the counterclaim, set off or cross demand or the disputed debt raises a triable issue: *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 (“*Chimbusco*”) at [16]–[17]; *Goh Chin Soon v Oversea-Chinese Banking Corporation Limited* [2001] SGHC 17 at [7]. As the Court of Appeal explained in *Chimbusco* (at [17]), citing *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491, a winding up or bankruptcy court is generally not in the best position to adjudicate on the merits of a commercial dispute without a proper ventilation of the eventual disputes through a trial.

14 Paragraph 160(3) of the Supreme Court Practice Directions 2021 (“SCPD 2021”) also states that the court will normally set aside the statutory demand if, in its opinion, on the evidence there is a genuine triable issue with respect to the counterclaim, set off or cross demand, or the disputed debt (not

being a debt subject to a judgment or order). Paragraph 160(2) SCPD 2021 clarifies that where the statutory demand is based on a judgment or an order, the court will not go behind the judgment or order and inquire into the validity of the debt.

Chia's case

15 As stated earlier, the debts specified in the SD arose from unpaid costs orders made by the court. Before the AR, Chia relied on two grounds for his application to set aside the SD:

(a) First, he alleged that BC 189 (see [7(a)] above) had been taxed on the wrong basis and consequently the amount that he had to pay was inflated.

(b) Second, he alleged that he had a cross claim against Tan that exceeded the amount of the debts specified in the SD.

The AR rejected both grounds.

The first ground: Chia's dispute with respect to BC 189

16 Before me, Chia did not pursue this ground and confirmed that he did not dispute the debts specified in the SD (including the costs taxed pursuant to BC 189). Chia was correct not to pursue this ground. It was clear that the SD could not be set aside on this ground.

17 Chia's complaint before the AR was that BC 189 had erroneously stated that with respect to S 558, SLH was to pay certain costs to Tan when, in fact, the court had ordered Tan to pay costs to SLH. Chia asserted that therefore the costs payable pursuant to BC 189 were costs payable by SLH and him, and the

SD was wrong in attributing the full amount payable under BC 189 to him. However, as the AR noted, there was no evidence that the error had led the court in BC 189 to tax the costs (that Chia had to pay to HX and Tan) on the wrong basis.

18 Further, as the AR also noted, pursuant to para 160(2) of SCPD 2021, the court will not go behind a judgment or order and inquire into the validity of the debt. The Registrar’s Certificate in respect of BC 189 certified the amount of costs that Chia had to pay.¹¹ Chia did not make any application to a judge to review the amount of costs allowed pursuant to the taxation, even after he was given an extension of time to do so.¹²

19 In any event, any dispute over the costs payable pursuant to BC 189 was not a sufficient ground to set aside the SD. Even if those costs were excluded, the total amount of the undisputed remaining debts in the SD was more than \$200,000.

The second ground: Chia’s cross claim against Tan

20 On 16 April 2018, another investor in SND, State Grid Dujiangyan Power Supply Company Limited (“SGDPS”), commenced bankruptcy proceedings in the PRC against SND in connection with a debt of about RMB 33.7m.¹³ In the course of the bankruptcy proceedings, a restructuring plan for SND was proposed. Under the restructuring plan, a new investor, Sichuan Tongda Railway Engineering Co., Ltd. (“Tongda”), would pay RMB 7.5m to

¹¹ Chia’s affidavit affirmed on 19 December 2023, at pp 6–7.

¹² Tan’s affidavit affirmed on 27 December 2023, at pp 39–41.

¹³ Chia’s affidavit affirmed on 15 April 2024, at pp 13–14.

pay off all the debts of SND in return for which Tongda would acquire all the equity of SND.¹⁴

21 The restructuring plan was approved at a creditors’ meeting on 6 September 2021 (the “Creditors’ Meeting”).¹⁵ As stated earlier, on 10 September 2021, the restructuring plan was approved by the People’s Court of Dujiangyan City, Sichuan Province, PRC.¹⁶

22 Before the AR, Chia argued that he might have a cross claim against Tan in that she might have received moneys in return for voting in favour of the restructuring plain at the Creditors’ Meeting.¹⁷ In response to the fact that the restructuring plan did not involve any payment to HX or Tan, Chia argued that an ongoing investigation by the Central Commission for Discipline Inspection of the Communist Party (“CCDI”) that might vindicate his suspicions about the restructuring plan.¹⁸ The AR rejected both submissions on the ground that they were speculative.

23 At the first hearing of the appeal against the AR’s decision, I gave Chia permission to file a further affidavit to adduce evidence (which he claimed to have) that:

- (a) Tan had entered into a settlement agreement under which the Investment was sold for RMB 6.25m;

¹⁴ Tan’s affidavit affirmed on 15 January 2024, at p 101 (para IV(III)) and p 102 (para V(III)).

¹⁵ Tan’s affidavit affirmed on 15 January 2024, at p 120.

¹⁶ Tan’s affidavit affirmed on 15 January 2024, at para 30 and pp 115–117.

¹⁷ Transcript of hearing before the AR on 1 February 2024, at p 12 (para 6).

¹⁸ Transcript of hearing before the AR on 1 February 2024, at p 12–13 (para 7).

- (b) the value of the Investment was RMB 21m, and
- (c) certain parties in the PRC had confirmed that the sum of RMB 6.25m was paid to Tan.

24 Subsequently, Chia filed an affidavit exhibiting (among other things):

(a) a transcript of his conversation with SND’s liquidation manager, Ms Xu Yi (“Xu”), on 11 September 2020 during which Xu told Chia that:¹⁹

- (i) she was planning to go from bankruptcy to restructuring, which meant that investors would buy SND’s debt and equity;
- (ii) SGDPS had to fully agree to the plan, and
- (iii) the tentative buyback ratio (with respect to the Investment) was 1:1;

(b) an unsigned agreement between HX and Tongda under which HX was to sell the Investment to Tongda for RMB 3.75m (the “Unsigned Agreement”);²⁰ Chia said that he received the Unsigned Agreement on 22 April 2021,²¹ and

(c) a WeChat message dated 11 May 2021 from Xu saying that she had met with Tan’s lawyer in the morning and that the latter had agreed in principle to the agreement, but some procedural details needed to be ironed out with Tan.²²

¹⁹ Chia’s affidavit affirmed on 15 April 2024, at pp 19–20.

²⁰ Chia’s affidavit affirmed on 15 April 2024, at pp 27–28.

²¹ Chia’s affidavit affirmed on 15 April 2024, at para 16.

²² Chia’s affidavit affirmed on 15 April 2024, at p 32.

25 No evidence was adduced with respect to Chia’s previous allegation that there was confirmation that that RMB 6.25m had been paid to Tan. In his further affidavit, Chia made the bare allegation that in November 2021, Xu told him that the new investor had paid Tan for the Investment.²³ Chia’s affidavit did not state whether Xu mentioned any specific amount.

26 At the next hearing before me, Chia submitted that he had a cross claim against Tan for fraud and/or conspiracy to injure and/or conspiracy to harm and the damages exceeded the amount claimed in the SD. Chia’s case appeared to be that Tan had sold the Investment without his (and SLH’s) agreement and that Tan was therefore liable to him (and SLH) for their share of the value of the Investment. Chia made the following allegations in support of his case:

(a) The bankruptcy application was fraudulent and the PRC parties, Xu and Tan had acted in collusion. Chia had lodged a complaint to the CCDI against the judge in the People’s Court of Dujiangyan, Xu and SGDPS’s legal representative, “for their roles in the bankruptcy of SND, which ultimately lead [*sic*] to the illegal disposal of [the Investment]”.²⁴

(b) Chia had “strong suspicions that [Tan had] clandestinely agreed to a deal to sell [the Investment] to the new investors introduced during the restructuring of SND”.²⁵

(c) The Unsigned Agreement showed that Tongda wanted to buy the Investment. The amount of RMB 3.75m that was payable under the

²³ Chia’s affidavit affirmed on 15 April 2024, at para 26.

²⁴ Chia’s affidavit affirmed on 2 January 2024, at para 22.

²⁵ Chia’s affidavit affirmed on 2 January 2024, at para 23.

Unsigned Agreement was exactly what Tan had paid for her 60% stake in HX (and consequently, in the Investment).²⁶

(d) In November 2021, Xu told him that Tongda had paid Tan for the Investment.²⁷ Chia believed that Tan would have been paid “in excess of RMB 6.25m” because Tan had valued SND at around RMB 21.9m in a mediation in the PRC in June 2015.²⁸

(e) As the value of the Investment was RMB 21m, Chia’s and SLH’s combined 40% share of the Investment amounted to RMB 8.4m, which exceeded the total amount claimed in the SD.

With respect to (e) above, Chia could only rely on his 31% share of the Investment for purposes of his cross claim in the present proceedings. However, I noted that based on the alleged value of the Investment being RMB 21m, the value of his 31% share would still exceed the total amount claimed in the SD.

27 To set aside the SD on the basis of the alleged cross-claim, Chia had to show that there were triable issues with respect to (a) whether Tan had sold the Investment without Chia’s (and SLH’s) agreement, and (b) whether the Investment was worth RMB 21m. In my judgment, Chia’s alleged cross claim did not raise any triable issues.

28 First, Chia’s case was contradicted by the minutes of the Creditors’ Meeting.²⁹ As stated in [20] above, under the restructuring plan, Tongda would

²⁶ Chia’s affidavit affirmed on 15 April 2024, at para 16.

²⁷ Chia’s affidavit affirmed on 15 April 2024, at para 26.

²⁸ Chia’s affidavit affirmed on 15 April 2024, at para 27 and pp 44–45.

²⁹ Tan’s affidavit affirmed on 15 January 2024, at p 85–110.

acquire the Investment and HX would receive no compensation for it (above).

The minutes stated as follows:

IV Restructuring investors

...

(III) Restructuring investor's quotation

Tongda Company has committed to paying off all the debts of [SND] with a lump-sum payment of 7.5 million yuan. Tongda Company will acquire all the equities of [SND] as a consideration of the restructuring investment.³⁰

...

V Plan to modify the contributors' equity

...

(III) The plan to modify the contributors' equity

Under the restructuring plan, [SND's] contributors' equity will be reduced to zero, and the investor, Tongda Company, will acquire all the equity of [SND] once fulfilling the debt repayment obligations stipulated in this restructuring plan.³¹

...

29 The fact that the Investment had been disposed of pursuant to the restructuring plan was acknowledged by the Court of Appeal in CA 158. Following the approval of the restructuring plan by the People's Court of Dujiangyan City (see [21] above), Tan applied to lift the global stay order made in CA 158 (see [7(f)(ii)] above). The Court of Appeal granted the application. In its brief grounds, the Court referred to the approval of the restructuring plan by the People's Court of Dujiangyan City and stated that the purpose of the global stay order, which was to keep the status quo pending the disposal of the

³⁰ Tan's affidavit affirmed on 15 January 2024, at p 101.

³¹ Tan's affidavit affirmed on 15 January 2024, at p 102.

Investment, had been rendered moot because the Investment had been disposed of.³²

30 It was clear that the Investment was disposed of pursuant to the restructuring plan. Tan could not have disposed of the Investment illegally as alleged by Chia. Neither was there any reason whatsoever for Tongda to have made any payment to Tan for the Investment. Chia confirmed that he attended the Creditors' Meeting with his PRC lawyer via video link and that he voted against the restructuring plan.³³ He must have known how the restructuring plan affected the Investment.

31 Chia alleged that he found out that “the interest of HX would need to be ‘sacrificed’ and that no compensation would be given to HX” only after the Creditors' Meeting.³⁴ I rejected his bald allegation. Chia had voted against the restructuring plan at the Creditors' Meeting.³⁵ He must have understood what the plan was about before he voted. It was clearly explained at the Creditors' Meeting that under the restructuring plan, SND's contributors' equity would be reduced to zero (see [28] above).

32 Chia also disputed the translation of part of the minutes of the Creditors' Meeting that was adduced by Tan. The translation adduced by Tan stated that Tongda had committed to paying off all the debts of SND and that it “will acquire all the equities of [SND] as a consideration of the restructuring investment.”³⁶ Chia claimed that the correct translation was that Tongda “**must**

³² Tan's affidavit affirmed on 15 January 2024, at pp 122–124 (at para 1b).

³³ Chia's affidavit affirmed on 7 May 2024, at paras 12–13.

³⁴ Chia's affidavit affirmed on 2 January 2024, at para 20.

³⁵ Chia's affidavit affirmed on 7 May 2024, at para 13.

³⁶ Tan's affidavit affirmed on 15 January 2024, at p 101 (para IV.(III)).

acquire all equities of [SND] as a consideration of the restructuring investment” (emphasis in original).³⁷ Chia argued that this meant Tongda had to acquire all the shares in SND for value.

33 I rejected Chia’s translation as it was not a certified translation. In addition, it was not clear why the change from “will” to “must” meant that Tongda had to acquire the shares in SND for value. Further, if the proposal was that Tongda would acquire all the shares (including the Investment) for value, there was no reason why Chia would have voted against it. The minutes of the Creditors’ Meeting also did not show any discussions about what would be paid for the shares. In any event, it was also clearly stated in *another part* of the minutes of the Creditors’ Meeting that under the restructuring plan, SND’s contributors’ equity would be reduced to zero.³⁸

34 Chia further alleged that after voting on the restructuring plan, he was told that the Creditors’ Meeting would resume after a short break and when he tried to rejoin the meeting, he was told that meeting had ended.³⁹ In my view, this allegation was of no consequence since he had already voted on the restructuring plan.

35 For completeness, I should explain that at the Creditors’ Meeting, there was a dispute over whether Tan or Chia was authorised to represent HX. In the event, given that the Court of Appeal had ordered that the Investment could not be disposed of unless agreed to by all the shareholders of HX (see [7(f)(i)] above), it was decided at the Creditors’ Meeting that Chia and Tan would each

³⁷ Chia’s affidavit affirmed on 7 May 2024, at para 10.

³⁸ Tan’s affidavit affirmed on 15 January 2024, at p 102 (para V.(III)).

³⁹ Chia’s affidavit affirmed on 7 May 2024, at paras 13–16.

have one vote and if their votes were not unanimous, HX would be treated as having voted *against* the restructuring plan.⁴⁰ The restructuring plan was approved by all the creditors and the shareholders (excluding HX) who represented 75% of the shareholding in SND.⁴¹ As Tan voted for the restructuring plan but Chia voted against, HX was treated as voting against the restructuring plan.⁴²

36 Second, the further evidence adduced by Chia (see [24] above) was a far cry from the evidence that he had claimed he could adduce. At best, the further evidence showed that (a) as of 11 September 2020, the *tentative* proposal was for the Investment to be sold at cost (which was RMB 6.25m), (b) by April 2021, that tentative proposal had changed to a proposal to sell the Investment for RMB 3.753m, and (c) as of 11 May 2021, there was a *conditional* in principle agreement. The minutes of the Creditors' Meeting showed that the discussions up to May 2021 were superseded by the restructuring plan that was approved at that meeting, which was held on 6 September 2021.

37 In addition, Tan explained that by the time she received the Unsigned Agreement from Chia in April 2021, she was tired of dealing with him and the many lawsuits he had spawned; she was agreeable to the proposal in the Unsigned Agreement as she saw it as a way to end the relationship between Chia and her.⁴³ However, Chia did not agree to the Unsigned Agreement and consequently, Tan could not and did not proceed with the Unsigned

⁴⁰ Tan's affidavit affirmed on 15 January 2024, at paras 23–24 and pp 91 and 110.

⁴¹ Tan's affidavit affirmed on 15 January 2024, at para 28 and p 120.

⁴² Tan's affidavit affirmed on 15 January 2024, at p 120.

⁴³ Tan's affidavit affirmed on 29 April 2024, at paras 15–16.

Agreement.⁴⁴ Tan's explanation was consistent with the objective evidence. Chia had persisted in taking Tan to court even on matters that had already been dealt with by the Court of Appeal (see [7] above). Although what happened after Tan received the Unsigned Agreement from Chia was in dispute, it was not disputed that Chia (and SLH) did not agree to the Unsigned Agreement.⁴⁵

38 Third, in my view, I agreed with Tan that Chia's alleged cross claim against Tan was an afterthought. In his letter to Tan dated 16 November 2021, Chia referred to the Creditors' Meeting and the approval of the restructuring plan by the People's Court of Dujiangyan City.⁴⁶ Clearly, by 16 November 2021, Chia knew that the restructuring plan had been approved. As stated earlier, Chia knew how the plan affected the Investment. Yet, as Tan pointed out, Chia did not make any allegations of fraud or collusion against Tan until after the SD was served on him.

39 Fourth, there was no evidence that the Investment was worth RMB 21m at the time it was allegedly disposed of by Tan. Chia relied on (a) the fact that Tan had valued SND at RMB 21.9m in a mediation in the PRC in June 2015, and (b) that SGDPS' parent company had valued SGDPS' 61.99% stake in SND at RM 50m in a notice to HX dated 23 November 2018.⁴⁷

40 The alleged illegal disposal of the Investment could not have happened before April 2021 (when Chia received Unsigned Agreement). Leaving aside the fact that the valuation of RMB 21.9m was for the purposes of a mediation,

⁴⁴ Tan's affidavit affirmed on 29 April 2024, at paras 23–24.

⁴⁵ Tan's affidavit affirmed on 29 April 2024, at para 23 and p 16; Chia's affidavit affirmed on 7 May 2024, at para 9.

⁴⁶ Tan's affidavit affirmed on 29 April 2024, at pp 20–21 (at p 21).

⁴⁷ Chia's affidavit affirmed on 15 April 2024, at paras 27–28.

that valuation was in June 2015 and was clearly of no relevance to the valuation of SND in 2021. By 2021, SND was subject to bankruptcy proceedings, which had been commenced in 2018 (see [20] above). The Unsigned Agreement provided evidence of the value of the Investment as of April 2021. Based on that value, Chia's cross claim (assuming it to be arguable) would not have exceeded the amount claimed under the SD.

41 As for the 2018 notice to HX, that notice sought HX's retrospective waiver of its first right of refusal to a transfer of shares in SND *in 2011*.⁴⁸ The valuation of RMB 50m was the transfer price and therefore reflected the value in 2011. Again, that valuation too had no relevance to the valuation of SND in 2021.

Conclusion

42 For the above reasons, I dismissed Chia's appeal and affirmed the AR's decision dismissing Chia's application to set aside the SD. I ordered Chia to pay costs fixed at \$10,500 all in.

Chua Lee Ming
Judge of the High Court

⁴⁸ Chia's affidavit affirmed on 15 April 2024, at pp 48–49.

Lim Tean (Carson Law Chambers) for the claimant;
Lim Yun Heng and Jolene Song Zhu Yi (Yuen Law LLC) for the
defendant.
