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

**[2024] SGHC 232**

Originating Summons (Bankruptcy) No 47 of 2024 (Registrar's Appeal No 120 of 2024)

In the matter of Part 14 of the Insolvency, Restructuring and Dissolution Act 2018

Between

Yap Shiaw Wei

… *Applicant*

And

(1) RHB Bank Bhd
(2) CIMB Bank Bhd
(3) Maybank Singapore Limited
(4) Resona Merchant Bank Asia Limited

… *Non-parties*

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# JUDGMENT

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[Insolvency Law — Bankruptcy — Interim order]

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# *Re* Yap Shiaw Wei (RHB Bank Bhd and others, non-parties)

**[2024] SGHC 232**

General Division of the High Court — Originating Summons (Bankruptcy) No 47 of 2024 (Registrar's Appeal No 120 of 2024)
Mohamed Faizal JC
26 August 2024

10 September 2024 Judgment reserved.

**Mohamed Faizal JC:**

## Introduction

1 HC/RA 120/2024 is an appeal against the decision of the learned Assistant Registrar Tan Ee Kuan (the "learned AR") dismissing an application by the appellant in HC/OSB 47/2024 for an interim order pursuant to Part 14 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA") in order to facilitate consideration of a proposed voluntary arrangement.

2 The issue that arises in this appeal is whether the draft proposal for a voluntary arrangement that has been advanced (the "Proposal") is "serious and viable" such that it is appropriate for the court to make an interim order under s 279(2) of the IRDA. The learned AR dismissed the application on the grounds that the Proposal was neither serious nor viable. Having considered the arguments that have been advanced before me on appeal, I agree with the

conclusions of the learned AR that the Proposal is neither serious nor viable and does not have any significant prospect of success.

## The facts

### *Background*

3 The background to this case can be stated in a brief compass. Ms Yap Shiaw Wei (the "Appellant") is a 50-year-old former financial professional who has, over some time, built up a business where she is the sole shareholder and director of various companies, one of which leases out residential units and/or rooms within a shared communal space under the "Hovoh" brand.[1] Collectively, the Appellant owns (either personally or indirectly as a result of beneficial ownership through companies wholly owned by the Appellant) eighteen different residential and retail/commercial properties in the heart of Orchard Road. Thirteen of these are located at Centrepoint Orchard at 176A Orchard Road (the "Centrepoint properties") and a further five of these properties are at Midpoint Orchard at 220 Orchard Road (the "Midpoint properties").[2]

4 In the course of building up and operating the business, the Appellant obtained a swathe of secured and unsecured loans from various banks, though most of these were in the form of business and commercial loans by the companies with her as personal guarantor.[3] In the proceedings before the learned AR, the Appellant contended that, as of May 2024, her estimated debts comprise slightly over $50.5m of secured loans (secured over the various

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1 Ms Yap Siaw Wei's affidavit dated 16 May 2024 ("16 May Affidavit") at paras 4 to 9.

2 16 May Affidavit at paras 5 and 7.

3 16 May Affidavit at para 38.

properties highlighted in the preceding paragraph) and approximately $26.3m in unsecured loans.[4]

5 On 29 February and 2 April 2024 respectively, two of the banks in question, *ie*, CIMB Bank Bhd ("CIMB") and RHB Bank Bhd ("RHB") (collectively, the "petitioning creditors"), commenced bankruptcy proceedings against the Appellant under the IRDA for being unable to pay the debts that are due and owing to them (the "bankruptcy applications"). As of the date of their petitions, CIMB and RHB were owed sums of approximately $8.4m and $25.9m respectively.[5]

6 The Appellant does not dispute the fact that she defaulted on the repayments of the loans that were extended by both banks to her. She similarly does not dispute the sums that CIMB and RHB claim to be due and owing.[6] Instead, at the hearing of the bankruptcy applications, she sought time to take out an application for an interim order to make a proposal to her creditors for an individual voluntary arrangement. I pause here to note that by virtue of ss 276(3) and 280(1) of the IRDA, the interim order, if granted, would serve as a temporary moratorium against any proceedings *vis-à-vis* the debtor pertaining to such debts pending the nominee's preparation of a report to the court stating whether, in the nominee's opinion, a meeting of the debtor's creditors should be summoned to consider the proposal.

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4 The Appellant's written submissions dated 3 June 2024 ("3 June AWS") at para 8.

5 16 May Affidavit at paras 42 to 44.

6 3 June AWS at para 13.

***The Proposal***

7 On 16 May 2024, the application seeking an interim order was filed (the "interim order application").[7] In the Appellant's first affidavit dated 16 May 2024 (the "16 May Affidavit"), she provided details of the Proposal. On 3 June 2024, the Appellant filed a further affidavit to update the court on various developments in the Proposal (the "3 June Affidavit"). In sum, the Proposal sought to repay creditors *via*: (a) the "bulk sale" or "collective sale" of the Centrepoint properties;[8] (b) the sale of the Midpoint properties;[9] and (c) the revenue generated from Hovoh and the sale of an equity stake in Hovoh.[10]

8 In the interim order application, the Appellant also proposed a nominee (the "Nominee") who would undertake the necessary steps as required under s 280 of the IRDA to submit a report to the court on whether a meeting of the creditors should be convened to consider the Proposal.[11]

*The collective sale of the Centrepoint properties*

9 The first plank of the Proposal consists of the "bulk sale" of the Centrepoint properties, whereby the sale of the 13 units owned by the Appellant in Centrepoint as a collective whole would allow her to fetch a significant premium over the sale of individual properties on their own. The Appellant assessed the Centrepoint properties to have a composite market valuation of $28.2m, and that a successful "bulk sale" of the Centrepoint properties may

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7 Originating Application (Bankruptcy) (HC/OSB 47/2024) dated 16 May 2024 at para 1.

8 16 May Affidavit at paras 25 to 30; 3 June AWS at paras 17 to 18.

9 16 May Affidavit at paras 31 to 33.

10 16 May Affidavit at para 39.

11 16 May Affidavit at para 40.

result in proceeds of more than $34m (*ie*, an approximate $6m surplus on top of the current market price).[12] These proceeds are subject to secured loan obligations (the creditors not being CIMB or RHB) of about $24,680,622.[13] According to the Appellant, the estimated timeline for the bulk sale of the Centrepoint properties is nine to ten months.[14] It later transpired that the "bulk sale" referred to an attempt to divest the Centrepoint properties as part of a broader collective sale of all the units in the Centrepoint development.[15]

10 The Appellant further represented herself to be a central player in such a collective sale. In gist, it was allegedly "necessary" for the Appellant to be involved in the collective sale process due to her relationship with a major property developer, and her relationship with the other owners of the units at Centrepoint.[16] According to the Appellant, she has "engaged with a publicly-listed major property developer" whom she shares a longstanding relationship with.[17] In the 3 June Affidavit, the Appellant contended that the feasibility of the collective sale lies in the attendant involvement of this particular "major property developer" to concurrently acquire two other discrete plots of land, namely, the front plot of Centrepoint (in which Decathlon is the anchor tenant) and 51 Cuppage Road (a development immediately beside Centrepoint), along with Centrepoint itself, to effectively redevelop the entire Centrepoint vicinity (the "broad re-development plan").[18] She claimed that there are "not many

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12 16 May Affidavit at paras 28 to 29.

13 16 May Affidavit at paras 15 to16.

14 16 May Affidavit at para 34.

15 Ms Yap Shiaw Wei's affidavit dated 3 June 2024 ("3 June Affidavit") at paras 10 to 11.

16 16 May Affidavit at para 30.

17 16 May Affidavit at para 25.

18 3 June Affidavit at para 15.

developers who would have sufficient ability and assets to re-develop the Centrepoint area", and that she was in "close contact with a major property developer" who is able to do so.[19] The Appellant asserted that, if the court declared her bankrupt, the "interested developer may re-consider its options due to the uncertainty [of] whether sufficient support in the collective sale can be obtained".[20]

11 Additionally, the Appellant stated that her discussion with the major property developer was on a "private and confidential basis",[21] and that the Nominee, once appointed, "will be able to verify the [the information provided by the Appellant, including that of the broad re-development plan] and provide [her] creditors [with] an objective assessment of [her] financial situation and assets".[22]

12 In her 3 June Affidavit, the Appellant provided an update that there "has been progress in the collective sale of the Centrepoint [properties] since [16 May 2024]".[23] The Appellant was allegedly notified on 29 May 2024 of the convening of an extraordinary general meeting ("EGM") (fixed on 18 June 2024) for all subsidiary proprietors of the units in Centrepoint to consider, among others, the collective sale of the properties in Centrepoint and the appointment of a collective sale committee to facilitate the sale.[24] The Appellant

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19 3 June Affidavit at para 17.

20 3 June Affidavit at para 18.

21 16 May Affidavit at para 25.

22 3 June Affidavit at para 19.

23 3 June Affidavit at para 20.

24 3 June Affidavit at para 9.

asserted that she estimates the chance of the collective sale proceeding "to be in excess of 80%".[25]

*The sale of the Midpoint properties*

13 For the Midpoint properties, the Appellant claimed the "real market value" of such properties to be $42.5m,[26] though the formal valuation of the property that she had adduced in evidence suggested a much more modest valuation of just $28m.[27] The Midpoint properties are solely mortgaged to RHB for approximately $25,857,718.52 in secured loans.[28] The Appellant asserted that the estimated timeline for the sale of the Midpoint properties is six to seven months.[29] The Appellant also asserted that her bankruptcy will allegedly affect the sale price of the Midpoint properties and reduce the surplus available to be paid to unsecured creditors.[30]

14 In the 3 June Affidavit, the Appellant claimed that, in the time since the 16 May Affidavit, her "plan [had] borne fruit" and that "there has been progress made", though she was unable to provide any details as the prospective buyers of the Midpoint properties have requested that the details and their identities remain confidential.[31] Nonetheless, she again noted that the Nominee will be granted access to the confidential information pertaining to the Midpoint

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25 3 June Affidavit at para 11.

26 16 May Affidavit at para 20.

27 16 May Affidavit at para 17.

28 16 May Affidavit at para 21.

29 16 May Affidavit at para 35.

30 16 May Affidavit at para 33.

31 3 June Affidavit at para 23.

properties, to "objectively assess [her] plan and be in a position to explain matters to [her] creditors".[32]

*The Hovoh business*

15 Finally, the Appellant contended that the Hovoh business is still in operation and generating revenue which can be used to repay outstanding debt, and there are also "plans for the sale of an equity stake in the Hovoh [b]usiness" though such negotiations for such a sale have been put on hold pending legal proceedings involving the Appellant.[33] In her 3 June Affidavit, the Appellant stated that she is in "discussions with an interested buyer" and she expects the sale of the equity stake in the Hovoh business to be "within the next [six] months".[34] Once more, no details or specifics were furnished. Instead, there was again the token allusion to the fact that the Nominee would be furnished with the necessary details regarding her discussions with the interested buyer.[35]

***Procedural history***

16 The interim order application was first heard on 4 June 2024, albeit before a different AR from the one who decided the matter. At this hearing, the Appellant sought an adjournment for the creditors to consider the Proposal, in view of the alleged progress made in the Proposal as set out in her 3 June Affidavit (which was filed only a day before the hearing).[36] Such an

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32 3 June Affidavit at para 23.

33 16 May Affidavit at para 39.

34 3 June Affidavit at para 25.

35 3 June Affidavit at para 26.

36 Minute sheet dated 4 June 2024 ("4 June Minute Sheet") at p 1.

adjournment was eventually granted in spite of objections from the various creditors to the same.[37]

17 On 25 June 2024, the learned AR heard the interim order application. During the course of submissions, the Appellant contended that the Proposal was a serious plan and that there will likely be a collective sale of the Centrepoint properties.[38] The petitioning creditors objected to the application.[39] Another creditor of the Appellant, Maybank Singapore Limited ("Maybank"), aligned with the petitioning creditors and similarly took the position that the application ought not to be granted.[40] It would appear that the Appellant's secured debt to Maybank is in excess of $13m.[41] The other creditors in attendance took no position on the Proposal.

18 The learned AR adjourned the hearing on 25 June 2024 for: (a) the petitioning creditors to file an affidavit recording their objections to the Proposal; and (b) for the learned AR to thereafter deliver his decision.[42] Subsequently, the petitioning creditors filed their affidavits (one on behalf of CIMB and another on behalf of RHB) indicating that they were formally rejecting the Proposal and, in any event, that their position would remain

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37 4 June Minute Sheet at pp 2 and 3.

38 Minute sheet dated 25 June 2024 ("25 June Minute Sheet") at p 2.

39 25 June Minute Sheet at p 2.

40 25 June Minute Sheet at pp 2 to 3.

41 16 May Affidavit at para 16; and letter to the court dated 5 June 2024 ("5 June Letter") at para 2.

42 25 June Minute Sheet at p 3.

unchanged "even if there are any changes or evolution" to the Appellant's Proposal.[43]

19 For completeness, the bankruptcy applications filed by the petitioning creditors have been kept in abeyance pending the resolution of the Appellant's interim order application.[44]

**The learned AR's decision**

20 The learned AR dismissed the interim order application on 8 July 2024.[45] The learned AR opined that the key issue in this case was whether it would be "appropriate" to make the interim order sought, and that this turned on whether the Proposal was "serious and viable" (*Re Sifan Triyono* [2021] 4 SLR 656 ("*Re Sifan Triyono*") at [29]).[46] The learned AR found that the application was plainly deficient on both these fronts.[47]

21 On the matter of the Proposal not being "serious", the learned AR observed that the Proposal did not have sufficient details from the outset to be entertained. In gist, the Appellant merely contended that she would be using the proceeds of the sale of the properties in question and the Hovoh business to repay creditors. The learned AR was of the view that this would not suffice, noting that there was no information whatsoever that was provided on the

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43 Mr Jonathan Lim's affidavit (on behalf of RHB) dated 27 June 2024 ("Mr Lim's Affidavit") at para 6; and Mr Phua Sim Guan's affidavit (on behalf of CIMB) dated 27 June 2024 ("Mr Phua's Affidavit") at para 6.

44 Minute sheet (HC/B 770/2024) dated 25 July 2024; Minute sheet (HC/B 1140/2024) dated 25 July 2024.

45 The learned AR's decision dated 8 July 2024 ("The AR's decision") at para 2.

46 The AR's decision at para 4.

47 The AR's decision at para 5.

amount to be repaid to the creditors or when those amounts would be repaid. The Proposal, in his view, was far less fleshed out than past instances where an interim order had been sought.[48]

22 The learned AR similarly opined that the Proposal was not "viable".[49] In summary, the learned AR observed that the petitioning creditors and Maybank, who collectively hold about 77.4% of the secured debt and 49.4% of the unsecured debt, were objecting to the Proposal. In fact, there were no known creditors who were, in principle, supportive of the Proposal.[50] Moreover, the Proposal lacked key details and it appeared unlikely that these would be resolved by the time any creditor's meeting needs to be convened, since the Proposal hinged on the collective sale of the Centrepoint properties which process would be protracted.[51] Consequently, it was "strongly improbable" that any proposal would be approved by at least 75% in value of the Appellant's creditors, as is required by law.[52]

**Arguments on appeal**

23 In her written submissions filed for the purposes of the appeal (the "Appellate Written Submissions"), the Appellant did not take any significant issue with the findings of the learned AR, save to assert that the petitioning creditors and Maybank collectively do not actually represent the majority

48 The AR's decision at para 11.

49 The AR's decision at para 13.

50 The AR's decision at paras 15(a) to 15(c).

51 The AR's decision at para 15(d).

52 The AR's decision at para 15.

creditors. Curiously, for the first time, the Appellant claimed the following in the Appellate Written Submissions, and not by way of affidavit:[53]

> … The [Appellant] has various other creditors and one such creditor is Black Rock Collection Pte Ltd which represents a large pool of individual creditors and whose total claims is [*sic*] in excess of $40,000,000. Hence, the [petitioning creditors] do not constitute the majority of the total outstanding liabilities due and payable by the [Appellant].

24 This was not the end of the surprising apparent turn of events that were sketched out in the Appellate Written Submissions. The Appellant also claimed that there has emerged a "white knight" who will be coming to her rescue: [54]

> The [Appellant] has managed to secure a "white knight" investor to inject capital into her companies. Towards this endeavour, a sum of $1,000,000 has been paid by the investor towards rental arrears and outstanding payments due and payable to another major creditor. Additionally, $1,000,000 from this white knight has been paid to a major property developer after lengthy negotiations, along with contributions from government agencies towards employees' CPF and levies.

25 Given that no affidavit was filed to support such factual assertions, all of the above matter of fact statements were stated as if the submissions could be taken as substantive evidence. Moreover, the submissions were written as if the matter was being heard by me without the need to consider the matter's historical baggage in the form of the path that the proceedings had traversed before the learned AR. There was nary a word in the entire submissions on how the learned AR may have decided anything in error. Indeed, I note that the Appellate Written Submissions barely acknowledged the existence of the proceedings before the learned AR, save for a matter of fact statement that the hearing before me was an appeal against his decision.

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53 The Appellant's written submissions dated 23 August 2024 ("23 August AWS") at p 2.

54 23 August AWS at p 2.

26 Apart from the two new points raised (see above at [23]–[24]), the Appellate Written Submissions reiterated the central importance of the Appellant's role in ensuring that maximum value can be derived from the sale of the Centrepoint and Midpoint properties, that the Proposal is a serious and viable one, and that the Appellant "sincerely and passionately believes that the planned collective sale of both property clusters" would resolve her financial woes and result in a "favourable repayment for all creditors".[55] In the oral hearing before me, the Appellant essentially repeated the points made in the Appellate Written Submissions that she should be given an opportunity to offer a deal to the creditors by way of a voluntary arrangement, and that an interim order should be granted to facilitate this.[56]

27 In their oral submissions, counsel for the petitioning creditors observed that there was nothing wrong with the learned AR's decision, and that the learned AR was correct to find that the Proposal was neither "serious" nor "viable": (a) a proposal to "wait and see" how the sale of the properties would pan out is not a serious one, and there was no chance of any further details being concretised in the duration of any interim order; and (b) the Proposal was not viable since it was clear that a majority of the debt holders would object to it. It was pointed out as well that, from the petitioning creditors' perspective, it appeared that the Appellant was trying to delay and frustrate the process, rather than seeking to substantively resolve the issues.[57]

28 Counsel for Maybank echoed the views of the petitioning creditors, and also highlighted that the new "facts" that have been set out in the Appellate

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55 23 August AWS at pp 3 and 14.

56 Minute sheet dated 26 August 2024 ("26 August Minute Sheet") at p 2.

57 26 August Minute Sheet at p 4.

Written Submissions (see above at [23]–[24]) reflect a fluid narrative crafted by the Appellant, and this itself further illustrated the lack of seriousness inherent in the request for an interim order.[58]

29 For completeness, there was another creditor who attended the proceedings before me on watching brief, but it did not take any position on the matter before the court.[59]

## My decision

### *The applicable law*

30 The applicable provisions for the granting of an interim order are ss 276 and 279 of the IRDA. For ease of reference, the relevant portions of these provisions read as follows:

> **Interim order of Court**
>
> **276.**—(1) Subject to subsection (2), any insolvent debtor who intends to make a proposal to the insolvent debtor's creditors for a composition in satisfaction of the insolvent debtor's debts or a scheme of arrangement of the insolvent debtor's affairs (called in this Part a voluntary arrangement) may apply to the Court for an interim order under this Part.
>
> …
>
> (3) During the period for which an interim order is in force —
>
> (*a*) where the interim order is in respect of an individual debtor —
>
> (i) no bankruptcy application may be made or proceeded with against the debtor; and
>
> (ii) no other proceedings, enforcement order or other legal process may be issued, continued or executed against the person or property of the debtor without the permission of the Court; and

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58 26 August Minute Sheet at p 5.

59 26 August Minute Sheet at p 2.

> …
>
> (4) An interim order ceases to have effect 42 days after the making of that interim order unless the Court otherwise directs.
>
> …
>
> **Conditions for making of interim order**
>
> 279.—(1) The Court must not make an interim order on an application under section 276 unless it is satisfied that —
>
> > (*a*) the debtor intends to make a proposal for a voluntary arrangement;
> >
> > (*b*) no previous application for an interim order has been made by or in respect of the debtor during the period of 12 months immediately before the date of the application; and
> >
> > (*c*) the nominee appointed by the debtor's proposal is qualified and willing to act in relation to the proposal.
>
> (2) The Court may make an interim order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

31 The law on when an interim order ought to be granted under these provisions is trite, and there is no dispute between the parties as to the analytical framework that the court should apply. In *Re Sifan Triyono* (at [26]), the court observed that the requirements set out in ss 276(1) and 279(1) of the IRDA serve as mandatory prerequisites, or "gateway conditions", before the court would even be allowed to consider whether such an order should be made. It is undisputed that the "gateway conditions" are satisfied in this case. Thus, the only issue to be determined is whether the court may make an interim order under s 279(2) of the IRDA, if it thinks it would be "appropriate" to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal (*Re Sifan Triyono* at [27]).

32 In assessing the propriety of such an order, the court will generally assess whether the debtor's proposal for a voluntary arrangement is "serious and

viable". In *Re Lim Wee Beng Eddie* [2001] SGHC 103 (at [56]), Tay Yong Kwang JC (as he then was), quoting John Briggs & Christopher Brougham, *Muir Hunter on Personal Insolvency* (Muir Hunter ed) (Sweet & Maxwell, 20th Ed, 1987) at pp 3018 and 3019, provided some guidance on what such an analysis essentially encompasses:

> … Little guidance is given as to the criteria of appropriateness which are to be applicable to the context. It may imply here that the proposal is more complicated than can be digested at the first hearing of the application, or that its terms are necessarily incomplete, and that time is needed to perfect them.
>
> In determining the "appropriateness" or otherwise of making an interim order, the court will consider whether the debtors [*sic*] proposal for voluntary arrangement to be put to his creditors is *serious and viable*. "If, in a particular case, the judge before whom the application for an interim order comes concludes that the proposal is not one which can be described as serious and viable, it would be expected that as a matter of discretion the judge would refuse to make an interim order. Judges must, I think, be careful not to allow applications for interim orders simply to become a means of postponing the making of bankruptcy orders, in circumstances where there is no apparent likelihood of benefit to the creditors from such a postponement": see *Hook v. Jewson Ltd* [1997] 1 B.C.L.C. 664, Scott, V.-C, following *Re A Debtor (Cooper v. Fearnley) (1 of 1994)* [1997] B.P.I.R. 20, Aldous J.
>
> [emphasis added]

33 I would add, for completeness, that the fact that the above reproduced text discusses statutory provisions in the UK, as opposed to Singapore, does not make it any less instructive on what the test in Singapore ought to be, given that the relevant provisions on voluntary arrangements that I have reproduced earlier (see above at [30]) are inspired by their British analogues (see, in this regard, the useful discussion on the genesis of Singapore's voluntary arrangements regime in *Re Sifan Triyono* at [24] and [28]).

34 In considering whether a proposal is one that is "serious", the proposal that is being advanced "must have substance and be one which is capable of

serious consideration by the creditors" (*EFG Private Bank Ltd v Babaee (Re Insolvency Act 1986)* [2024] EWHC 444 (Ch) ("*EFG Private Bank*") at [110], citing *Shah v Cooper* [2003] BPIR 1018 ("*Shah*") at [67]). This ineludibly requires the court to scrutinise the proposal, which in turn, necessarily assumes that the proposal in question contains sufficient specifics to warrant its serious consideration by creditors. Put differently, the seriousness of the proposal is anchored by the provision of detailed specifics, since a well-delineated plan shows preparedness, foresight and careful deliberation. In that sense, the depth and verifiable accuracy of the details of a proposal very much serves as a testament to the debtor's dedication to its successful execution.

35 A necessary corollary to the above is that a serious plan or proposal must almost, by definition, be a transparent one. This is because, absent full and frank disclosure of material facts, "proper consideration is incapable of being given to a proposal and it therefore cannot be said that a proposal is one which should seriously be considered by creditors" (*Shah* at [69]–[70]). In the domestic context, this finds jurisprudential expression in the refrain that a proposal seeking an interim order must contain "sufficient details at the outset" (*Re Sifan Triyono* at [33]) and that such proposal "cannot rely on hints and innuendo" (*Re Andrla, Dominic and another matter* [2019] SGHC 77 ("*Re Andrla*") at [25]).

36 On the other hand, the question of whether a proposal is "viable" turns on the matter of whether it is "realistic and capable of being implemented" (*Shah* at [74]). In my view, this means that the proposal must include a detailed strategy that would align with practical constraints such as available resources and timeframes, and be alive to prevailing conditions. While I accept that it is inevitable that some aspects of such proposals may be somewhat rough around the edges at times, this does not detract from the fact that the proposal, as a

whole, must be grounded in reality and avoid setting unattainable goals that appear impossible to ever achieve in real life.

37 In my judgment, the question of viability is also necessarily intertwined with the matter of the feasibility of creditor support for any such proposals. While I readily accept that the court need not be satisfied that the proposal will in fact be approved or survive any challenge to its approval (*Shah* at [75]), one cannot lose sight of the fact that, by virtue of s 282(1) of the IRDA (read with s 273(1)), any such proposal of this nature can only be approved by special resolution which would require support from a majority of the creditors holding at least three quarters of such value. Therefore, the court cannot be blind to any evidence before it that suggests that there is no realistic prospect of any such proposal, or similar variants thereof, being approved (*Tucker v Atkins* [2014] EWHC 2260 (Ch) at [32]–[33]). Having said that, as noted earlier, the mere fact that there is a somewhat hazy outlook on whether a proposal would be approved *per se* should not ordinarily result in the proposal being deemed unviable (see, in this connection, the comments of Kannan Ramesh JC (as he then was) in the context of schemes of arrangement for companies and applications for moratoria of proceedings against the company under s 210(10) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") in *Re Pacific Andes Resources Development Ltd and other matters* [2018] 5 SLR 125 ("*Pacific Andes*") at [70]). I consider this point in greater detail at a later juncture (see below at [54]–[57]).

38 One caveat may be in order. The court's role in assessing whether a plan is "viable" is not to *qualitatively* assess whether any such proposal is financially adequate or fair, in so far as it would make financial sense for creditors, save of course where such proposal is self-evidently derisory. Creditors may have a myriad of undisclosed or non-apparent considerations as to why an ostensibly

financially disadvantageous arrangement should be supported that may not always be apparent to the court. The court should therefore be slow to assume that it knows better, or to closely scrutinise the merit of any proposed voluntary arrangement. The creditors, not the court, should ultimately be the arbiters of whether a properly fleshed-out voluntary arrangement, however seemingly financially inadequate it may seem at first glance, is one worth supporting. As rightly observed in *Shah* (at [76] and [77]):

> Whilst it is not the function of the court when considering an [individual voluntary arrangement] proposal to simply 'rubber stamp' everything a debtor says, it is equally not the court's function to usurp the function of the creditors' meeting and to pre-empt the creditors' decision by itself deciding whether an offer is adequate (so as to render a proposal 'not' serious).
>
> …
>
> If the proposal is fit to be put to the creditors it is for [the creditors] to decide whether the offer on the table is acceptable, whether in financial terms or for other reasons.

39 Nonetheless, as seen from the extract in *Shah* in the preceding paragraph, the court's role is not to simply "rubber stamp" the proposal. The need for the court to play a supervisory role in assessing whether a proposal is, in fact, one that is "serious and viable", speaks to the understandable and self-evident motivations for individuals facing bankruptcy to be tempted to put forth an overly optimistic picture of the prospects for repayment that is largely detached from reality. Such proposals would be typified by emphasis on potential recoveries for creditors that are more aspirational than realistically achievable, and often provide tantalising allusions to unrealistic promises of significant valuations of properties that ultimately provide little to no context on how such a plan can be meaningfully executed in a reasonable amount of time. All too often, such proposals would also make reference to third party benevolent benefactors, whose identities are often unclear, who have suddenly come in to save the debtor from the clutches of financial ruin and whose roles

are often either insufficiently articulated and/or whose motivations are even more obscured than their identities. More often than not, all of this is done (at times, without any ill intent) with a view to delaying the inevitable.

40 The court's role, in exercising its discretion to make an interim order, is to filter out proposals which are not serious and viable, so as to avoid unnecessary and wasteful convening of creditors' meetings (*Re Sifan Triyono* at [34(b)]). Where the court finds that the evidential foundations for such proposals are non-existent, or that they are mired in a haze of non-information, the court is duty bound to decline to make any such order. If the evidence suggests that any proposal is neither serious nor viable, then the court should deny any attempt to delay the inevitable since this will only serve to "further waste … court time and the costs and expenses of a creditors' decision procedure" (*EFG Private Bank* at [114]). Instead, in such cases, the court should ensure that the interests of creditors are properly served by the making of a bankruptcy order which would allow for a full investigation of the debtor's affairs in a way that has the highest prospect of preserving as much of the assets as possible for the creditors. As noted in *Hook v Jewson Ltd* [1997] BPIR 100 (at 105):

> Judges must, I think, be careful not to allow applications for interim orders simply to become a means of postponing the making of bankruptcy orders in circumstances where there is no apparent likelihood of benefit to the creditors from such postponement.

41 Having sketched out the broad parameters of the applicable law, I now turn to the facts. In my view, for the reasons below, the Proposal is neither serious nor viable. Consequently, there is no basis to exercise my discretion under s 279(2) of the IRDA to facilitate the consideration and implementation of the debtor's proposal in this case by way of an interim order.

***The Proposal is not serious***

42 I agree entirely with the learned AR's view that the Proposal is far too vague to be given any serious consideration. Even taking the accounts set out in the Appellant's two affidavits at face value, all the Appellant has shown is that she is in discussions with respective parties about the prospect of a possible sale of the Centrepoint and Midpoint properties and the equity stake in the Hovoh business. The Proposal advanced is, with respect, long on professions of optimism but exceedingly short on concrete specifics. When reading the Appellant's affidavits, one cannot help but conclude that the sense of optimism inherent in her aspirations and hopes of how the entire matter would mature is entirely untethered to the practical realities. All of the details that are invariably necessary for any serious consideration of a proposal are absent from the Proposal:

(a) In relation to the collective sale of the Centrepoint properties, there is no information on the identity of the "major property developer", nor the basis to the Appellant's assertion that the chance of the collective sale proceeding is in excess of 80%. Moreover, the Appellant has not explained why the collective sale of the Centrepoint properties is feasible on an expedited basis of (nine to ten) months instead of years.

(b) In relation to the Midpoint properties, there is no information provided as to number or the identities of the prospective buyers, and no details are provided beyond an assertion that "there has been progress made" (see above at [14]).

(c) There is no information as to the identity of the buyer for the equity stake in the Hovoh business and at what ballpark price, even if

the full specifics may not yet be available. All these are left conveniently unexplained.

43 Even the new, entirely inexplicable details that emerge for the first time in the Appellate Written Submissions, *ie*, the sudden involvement of Black Rock Collection Pte Ltd ("Black Rock") and the newfound further debt of $40m that has hitherto never featured in the case, and the emergence of a benevolent "white knight", appear to be entirely unsupported by reality. For one, as I noted earlier (see above at [25]), these assertions are passed off as unexceptional references seemingly on the assumption that actual (*ie*, affidavit) evidence is not required of any of these purported facts.

44 For another, as I explained earlier (see above at [35]), full transparency is absolutely vital for the court to consider whether a proposal is in fact "serious". As the Court of Appeal noted in *Aathar Ah Kong Andrew v CIMB Securities (Singapore) Pte Ltd and other appeals and another matter* [2019] 2 SLR 164 ("*Aathar Ah Kong Andrew*") (at [76]), given the benefits of a voluntary arrangement to a debtor, such a debtor seeking the protection of a voluntary arrangement should not only be honest but should also take care to put all relevant facts before the creditors. The clear dearth of specifics regarding key aspects of the Appellant's Proposal makes it nothing short of impossible for any court, and any creditor by extension, to even begin to understand how precisely the voluntary arrangement is supposed to function, and what the broad parameters of an eventual outcome would even look like. Vague promises and abstractions of reality have no part to play in this discussion. In my mind, the Appellant's conspicuous decision to leave out key aspects of the Proposal, on the basis that they are all confidential, appears to be the quintessential use of "hints and innuendo" that this court in *Re Andrla* (at [25]) expressly frowned upon.

45 I would add that it is similarly not open for the Appellant to parry away the need for information at this stage by contending that the court is in no position to assess the merits of any proposal and that the creditors should be the one to do so pursuant to any voluntary arrangement that is proposed by the end of the duration of the interim order. The law is clear in this regard. In assessing whether an interim order should be made, the court is, in essence, considering whether it can justify a significant incursion into the rights of creditors to recover what is due and owing (*Re Sifan Triyono* at [34(a)]). Therefore, the court must satisfy itself that there are sufficient particulars from the outset for a proposal to amount to a "serious" plan. In that sense, it is not open for the Appellant, who is seeking the court to exercise such powers, to provide vague assurances that the creditors would be informed of the specifics in due course. "Trust me, I will share more when the time is right" is simply not a legal argument that the court can or should give weight to in this context.

46 In any event, it appears that the Appellant has in fact no intention to share any further information with the creditors. The Appellant repeatedly asserts in the 3 June Affidavit that the information she is in possession of is confidential and does not at any time suggest that she is ready to share this with the creditors as part of the Proposal.[60] On the contrary, it appears that the information will only be passed to the Nominee, who will then explain the matter to creditors (see above at [11], [14] and [15]).[61] Therefore, it would seem that the Appellant is urging creditors to accept a proposal that is, by design, missing all the key details. It is not apparent to me on what basis any sensible or reasonable creditor would accept such representations devoid of any specifics. In such circumstances where even the broad parameters of the

60 3 June Affidavit at paras 19, 23 and 24.

61 3 June Affidavit at para 19, 23 and 24.

Proposal are not clear, I am of the view that there is no realistic chance of the Proposal being acceptable to the general run of creditors.

47 Outside of the above, the little information the Appellant actually proffered to the court confuses more than it clarifies, and the many implausible contentions within the Proposal only reinforce the perception that the entire endeavour was not a serious one. I provide a few examples to underscore this point.

48 First, the Appellant claimed that any collective sale of the Centrepoint properties would take nine to ten months (see above at [9]). This is a statement that is so obviously untenable that it need only be stated to be rejected. Collective sales are by their nature, complex, issue-fraught and, by extension, extremely time-intensive processes. Even in the most straightforward of such sales, *ie*, one where all property owners are *fully ad idem* on the way forward, the necessary internal steps (including the convening of multiple EGMs), the need to appoint relevant professionals to apprise the property reserve price, the need to then obtain the requisite minimum consent of the other property owners, the method of apportionment amongst the respective property owners, the need to then find a buyer, and subsequently obtain the necessary approvals from the regulatory authorities, are so complicated and filled with numerous hurdles that even the most optimistic timeline that assumes a best-case scenario would surely be in the form of years, and not months.

49 Such a grandiose aim (*ie*, of completing the collective sale of the Centrepoint properties within nine to ten months) appears especially fanciful in light of the Appellant's concession that a proposal for a collective sale is only feasible if the "major property developer" is able to acquire and develop three discrete plots of land in the context of the broad re-development plan (see above

at [10]). Saying that one is in "close contact" with a "major property developer who is able to acquire and re-develop all [three] plots of land in the Centrepoint vicinity", as the Appellant asserts in the 3 June Affidavit, is, with respect, saying nothing at all. Even if I overlook the fact that the identity of such "major property developer" is kept shielded from the court, there is no meaningful evidence as to whether the developer is actually persuaded of the theoretical merits and financial viability of the broad re-development plan or is interested in getting into negotiations with the owners of the other two plots of land (let alone, whether such negotiations have in fact been held and/or are bearing fruit). Seen in the context of these other complex moving parts of the broad re-development plan, the collective sale of the Centrepoint properties appears to be an abstract theoretical possibility that, even in a realistic best-case scenario, would only take place years later, if at all.

50 Next, the Appellant contended that the Midpoint properties are worth a collective quantum of $42.5m. This represents a shockingly high premium of over 50% of the actual market value (*ie*, $28m) of such properties as evidenced by valuation reports obtained by the Appellant in 2023 (see above at [13]). What lies behind the Appellant's own self-evidently untenable mark-up of the valuation of her properties is left entirely unexplained. In the circumstances, one is left to conclude that such an elevated mark-up is informed by nothing more than a self-interested (but entirely unrealistic) desire to sell the properties at an elevated price.

51 Finally, as alluded to earlier, the Appellant played up the idea that she serves as the fulcrum to any collective sale of the Centrepoint properties, even going so far, at one point, to suggesting that the interested developer may reconsider pursuing this course of action if she were made bankrupt (see above at [10]). With the greatest of respect to the Appellant, her claims of central

significance in the entire exercise appears speculative at best, woven out of whole cloth at worse. It is manifestly clear that the primary player in any collective sale is the specific owner that allegedly owns more than half of the units in the Centrepoint development.[62] While I accept that the Appellant would have some role to play in a collective sale (as is the case with any owner of multiple properties in such a collective sale), it is self-evident that she is not half as central to the entire process, or as key to the entire transaction, as she would like this court to believe. All of this is above and beyond the obvious point that the Appellant is completely irrelevant to a collective sale of the *other two properties* that form part of the broad re-development plan that the major property developer is allegedly interested in.

52 For the reasons above, I am entirely in agreement with the learned AR that the Proposal is not a serious one.

***The Proposal is not viable***

53 The above would suffice to deal with this appeal. However, for completeness, I am similarly in agreement with the learned AR that the arrangements proposed were simply not viable. Much of what I have stated hitherto applies *mutatis mutandis* on dealing with the viability of the Proposal. A proposal that is hopelessly under-particularised, largely based on speculative valuations, that is self-evidently going to be considerably more protracted than it is represented to be, that does not provide any meaningful or clear exit strategy, and that is couched in secrecy on the premise that everything critical to making an informed decision must be withheld on grounds of confidentiality, can never be feasibly implemented. To use the words of Blackburn J in

62 3 June Affidavit at paras 10 to 11.

*Davidson v Stanley* [2005] BPIR 279 (at [42]), the Proposal is, for lack of a better way to put it, "an essay in make believe".

54 It is also clear to me that a voluntary arrangement that is bound to be rejected by a majority of creditors, as is the case here, would simply not be viable. On this, the Appellant contended that the views of creditors are irrelevant as such views are not conclusive until they are put to a vote at a creditors' meeting. In particular, before the learned AR, the Appellant relied on certain comments in *Pacific Andes*, albeit in the context of a company seeking a moratorium in advance of the company proposing a scheme of arrangement under s 210(1) of the Companies Act, which allegedly support the proposition that the court should not give weight to the fact that a significant number of creditors do not support the Proposal at this stage. The Appellant points out that in *Pacific Andes* (at [70]), the court made the following observations:

> It seems self-evident that *if the plan that is before the court for the purpose of a s 210(10) [of the Companies Act] application is liable to or capable of evolution and change because it is nascent and subject to discussion and negotiation, taking a straw poll of creditors at that stage would not be justified.* [Re *Conchubar Aromatics Ltd and other matters* [2015] SGHC 322] …. has warned against this, suggesting that a close scrutiny of the likely acceptance of the plan by creditors ought to be avoided when the court makes the broad assessment. It is a matter of common logic that as the plan evolves, creditors are prone to change their position based on their commercial motivations. Indeed, I note that one creditor, UOB, has changed its position from unequivocal opposition to neutrality. Accordingly, to make an assessment of creditor support at the stage of a s 210(10) application is premature.
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> [emphasis added]

55 With respect, the Appellant misunderstands the point being made by Ramesh JC (as he then was) in that case. I agree with the learned AR's observation that the comments in *Pacific Andes* must be understood in its proper context. Ramesh JC pointed out that, at the stage that a plan is before the court

for the purpose of an application for moratoria proceedings under s 210(10) of the Companies Act, a "*close scrutiny* of the likely acceptance of the plan by creditors ought to be avoided" [emphasis added] when the court makes a broad assessment, since such plans are by nature "nascent and subject to discussion and negotiation", and it is "a matter of common logic that as a plan evolves, creditors are prone to change their position based on their commercial motivations" (at [70]). However *Pacific Andes* does not stand for the proposition that creditor sentiment is completely irrelevant or that it cannot be taken into account in appropriate circumstances. Indeed, the court in *Pacific Andes* (at [65]) took pains to point out that "*[c]reditor opposition is obviously relevant* but in the face of significant creditor support for the plan, the court should not engage in a vote count" [emphasis added] and "[significant] support [for the plan] could be taken as an indicator that there is a reasonable prospect of the plan being acceptable to the general run of the creditors". The court in *Pacific Andes* (at [68]) ultimately granted the applications for moratoria on the basis that on "a broad assessment, [there was] a reasonable prospect that the [plan in that case] is acceptable to the general run of creditors" given that the applications received "significant support from some creditors". Seen in its proper context, *Pacific Andes* in fact supports the proposition that the court should be conscious of general creditor sentiment, though it need not be excessively analytical in doing so. For completeness, the court *Pacific Andes* noted that support for the moratoria applications does not necessarily equate to support for the plan, but saw no reason to distinguish them in that case (at [68]).

56 The position that the Appellant takes – that creditor sentiment, however well-informed, is completely superfluous at the stage of an interim order application – would do violence to the idea that the court, in deciding whether to grant an interim order, carefully balances the interests of creditors and the

debtor. By the Appellant's argument, the views of the creditors are of no salience in determining whether such order should be granted. Taking the Appellant's position on this, together with her concomitant suggestion that the court should be content to rely on vague promises of specifics of the plan being provided to the creditors in due course (see above at [44]–[46]), to their logical conclusion, it almost invariably means a court becomes nothing more than a paper tiger in the entire exercise, since it is duty bound to bless almost all requests for an interim order, no matter how seemingly unmeritorious on its face, on the basis that more details may come later and creditor sentiment may very well change in due course. With respect, this cannot be correct. In the premises, in understanding whether the court should grant an interim order, I am of the view that prevailing creditor sentiment is of some significance even if, as *Pacific Andes* cautioned, it should not generally be determinative where there is some evidence suggesting the possibility of substantial creditor support.

57 On the present facts, based on the arguments before the learned AR, the Proposal is overwhelmingly opposed by the petitioning creditors and Maybank holding 77.4% and 49.4% of the secured and unsecured debt respectively and not a single creditor (at least those before me) expressing support for such a proposal. Moreover, the petitioning creditors have stated that their positions will not change despite any changes to the Proposal.[63] In these circumstances, it is hard to see how the Proposal (or any further refinements thereof) that is almost entirely bereft of details, which the Appellant seems bent to not provide to creditors in any event, would have a reasonable prospect of being acceptable to the general run of creditors. This is especially so because, adopting the language of *Pacific Andes* (at [70]), even if the Proposal was capable at all of "evolution

63 Mr Lim's Affidavit at para 6; and Mr Phua's Affidavit at para 6.

and change", it can only do so on these facts in a way that makes it even less financially attractive for creditors. If the petitioning creditors and Maybank do not see even the wildly optimistic projections of the Appellant that are presently being presented as being sufficiently promising to support, it is hard to see how they would be enthused by any much more insipid (but somewhat more realistic) variant of the Proposal that the Appellant may present in future once she pares away the aspirational (but entirely unrealistic) portions of the Proposal. Seen in that context, there is clearly no realistic chance of any eventual proposal getting the requisite support from creditors to be passed.

58 I add a quick observation. As noted earlier (see above at [23]), the Appellant has, in her Appellate Written Submissions before me, suggested that she has even more creditors than previously declared and that her biggest creditor is Black Rock, who is acting for a set of creditors whose claims are in excess of $40m.[64] It is clear to me that the Appellant slipped this point in *via* her submissions in a bid to convince me that the petitioning creditors and Maybank are not the majority creditors. While there is no basis to give this any serious consideration as it was not an assertion that the Appellant appeared willing to even affirm on affidavit (which itself should reflect its lack of integrity), even if I accept this as fact, it actually further detracts from the viability of the Appellant's claims, rather than bolstering it. In this regard, I make two points specifically.

59 First, to the extent that there are, in fact, claims by a "large pool of"[65] unknown third party creditors to the tune of *an additional* $40m worth of debt hitherto undeclared, this only proves that the Appellant has been intentionally

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64 23 August AWS at p 2.

65 23 August AWS at p 2.

shielding material information from the outset about the number of creditors and the amount of debt she has. As I informed counsel for the Appellant during the hearing, the Appellant had previously placed on affidavit the specifics of the debt that is owed,[66] and even affirmed specific particulars of her secured and unsecured creditors exhaustively in a letter to the court dated 5 June 2024 (the "5 June Letter").[67] These simply cannot be reconciled with the existence of a further standalone debt of $40m. As such, if what she now says is true, it raises obvious question about whether the Appellant has been misleading the court this entire time and intentionally shielding material facts from the court. I note that counsel for the Appellant, who appeared to have recently come on board,[68] had no means of explaining why two different narratives of the debt quantum and list of creditors have been advanced, and he was even unaware of the 5 June Letter filed on behalf of his client which contradicted the Appellate Written Submissions.[69] In any event, if the Appellant does in fact have a further $40m worth of debt, then the entirety of the narrative that she has peddled so far falls apart. Her account, that a successful voluntary arrangement would not only lead to full re-payment of the debt while generating a surplus, would necessarily fail since the addition of $40m to the many millions worth of debt that she previously admitted to means she no longer has any realistic shot of paying her debts in full, even if her (overly) optimistic projections regarding the Proposal comes to fruition.[70]

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66 16 May Affidavit at paras 15 to 23.

67 5 June Letter at para 2.

68 Notice of change of solicitor dated 22 July 2024.

69 26 August Minute Sheet at pp 3 to 4.

70 4 June AWS at paras 40 to 41.

60 Second, as I also intimated to counsel for the Appellant in the course of the proceedings before me, I understand Black Rock appears to be a debt collection company.[71] Counsel was unable to take a position on this, though he accepted that Black Rock was acting on behalf of the creditors (*ie*, Black Rock itself was not a creditor).[72] The very fact that this apparently "large pool of individual creditors"[73] felt that they had little choice but to seek recourse to a debt collection company to obtain monies back from the Appellant is itself reflective of a very dire state of financial affairs on her part. In many ways, it only reinforces the view that the longer the delay in allowing the inevitable bankruptcy petition, the more the Appellant's creditors would end up being hurt, and the more urgent the concerns surrounding whether monies are being improperly used or otherwise dissipated in the lead-up to any eventual and inevitable bankruptcy.

61 I say this especially in view of the Appellant's sudden reference in the Appellate Written Submissions to a "white knight" who was making payments to some creditors[74] (payments which may be problematic should the Appellant eventually be made bankrupt), while other creditors, including the petitioning creditors, remain oblivious as to what these arrangements are.[75] This only reinforces the point that, at this stage, the interests of creditors are best served by the making of a bankruptcy order as there will likely be questions that can be asked about how the assets are being preserved (see above at [40]). Indeed, unless it is being suggested that the "white knight" is engaging in philanthropy,

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71 26 August Minute Sheet at p 3.

72 26 August Minute Sheet at p 4.

73 23 August AWS at p 2.

74 23 August AWS at p 2.

75 26 August Minute Sheet at p 5.

it would obviously be getting some reward for its sudden intervention. The fact that the Appellant remains coy about the identity and motivations of such a "white knight", and more importantly, what it had been promised, given or transferred from an insolvent Appellant or her business even at the doorstep of bankruptcy (assuming such "white knight" even exists) makes the need for bankruptcy proceedings, and a careful scrutiny of the movement of assets these past few months, even more glaring.

***The role of the Nominee***

62 I now turn to one last point. In various parts of the Appellant's 3 June Affidavit and submissions before the learned AR, the Appellant essentially stated that, while she would not be able to be disclose to the creditors the allegedly confidential details of the transactions or discussions she contends are taking place, she will do so to the Nominee to allow the Nominee to objectively assess the Proposal and for the Nominee to explain the situation to her creditors.[76] Such a contention is problematic on two levels. In so far as the Appellant is contending that the Nominee can scrutinise the Proposal and resolve the doubts within it at a later juncture, this will not suffice since a serious proposal must contain sufficient details *from the outset* (*Re Sifan Triyono* at [33] and [54]).

63 However, to the extent the Appellant is hinting at the idea that the Nominee may continue to shield certain (allegedly confidential yet important) information from view from the creditors, the Appellant has fundamentally misappreciated the role of a nominee in the voluntary arrangement process. Such a perception, *ie*, that the Nominee performs a sieving function for the

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[76] 3 June Affidavit at paras 19, 23 and 24; and 4 June AWS at paras 19, 20 and 35.

Appellant, is incorrect. The Nominee is not intended to be a proxy for the Appellant and therefore cannot, in principle, curate, or shield, information from the creditors as part of any proposed voluntary arrangement. On the contrary, a nominee is an *independent party* who is duty bound to stress-test the proprietary and feasibility of the debtor's proposal, the quality of the debtor's answers to the nominee to resolve doubts in the proposal, and the advantages and costs of further independent inquiry to resolve persisting doubts (*Aathar Ah Kong Andrew* at [77]). Central to these duties of a nominee is the idea that the nominee himself cannot shield vital information from creditors just because the debtor deems such information confidential. Indeed, a nominee has duties of diligence and scrutiny, which include casting a "critical eye" on the information provided by the debtor to assess whether the proposal is in accordance with the law (*Aathar Ah Kong Andrew* at [88]–[89]).

64 It is therefore clear that the use of a nominee does not reduce the level of transparency expected of a proposal but adds to it. This is very much by design. The nominee under the IRDA serves as a supervisor or administrator of sorts to ask questions of the debtor and ensure that a voluntary arrangement is administered properly. He is not "a rubber stamp" to effectively market what the Appellant wishes for him to peddle (*Aathar Ah Kong Andrew* at [77]). Indeed, it is precisely for this reason that the law requires that nominees must be licensed insolvency practitioners who, by virtue of s 50 read with s 277(2) of the IRDA, are generally either solicitors, public accountants or chartered accountants. There is, in my view, very little scope in the IRDA to allow a nominee to work with a debtor to provide creditors a bare-boned proposal for a voluntary arrangement on the premise that the nominee has been instructed by a debtor to shield whole swathes of information specific to the voluntary arrangement from the creditors. Quite apart from the fact that such an

arrangement between the debtor and nominee would make little logical sense in so far as it makes it impossible for any creditor to make a meaningful or informed decision of the merits of the voluntary arrangement (thereby invariably guaranteeing its failure), I fail to see how any nominee who agrees to be party to such arrangements would not almost automatically breach his duties *qua* nominee.

**Conclusion**

65 For the above reasons, I dismiss the appeal. Like the learned AR, I am of the view that the Proposal was neither serious nor viable and was merely seeking to delay the inevitable.

66 On the matter of costs, counsel for the petitioning creditors (as well as counsel for Maybank) took the position that they should be granted the exact same order of costs as was granted by the learned AR.[77] The learned AR granted costs all-in of $2,500 each to CIMB and RHB respectively, and costs of $2,000 to Maybank.[78] I accept that the costs should not be on the typical scale for appeals as much less work was done by the petitioning creditors (and Maybank) here than in a typical appeal. For avoidance of any doubt, I am not suggesting that their work was in any way insufficient or incomplete as they had made the sensible decision to only make brief oral submissions and not file any documents including submissions (a decision undoubtedly informed by the understandable desire not to escalate the costs in this case). Given that the quantum of costs sought is fair, I am making the same order for costs for the present appeal as was granted at first instance by the learned AR in the

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77 26 August Minute Sheet at p 5.

78 Minute sheet dated 8 July 2024 at p 2.

proceedings before him, *ie*, costs of $2,500 each (all-in) to CIMB and RHB respectively, and similarly costs of $2,000 (all-in) for Maybank.

67 I end off by observing that the fear of bankruptcy often looms large for individuals. This is understandable given that bankruptcy often carries with it the unfortunate (and often times, unwarranted) stigma of financial ruin and business failure, and various restrictions on matters such as financing and employment. For that reason, individual debtors have a tendency to fight tooth and nail to avert the bankruptcy process. In certain circumstances, granting relief in the form of an interim order under s 276(1) of the IRDA would be appropriate where finances can be salvaged, given that "[a] good voluntary arrangement benefits all involved, obviating the longer process and higher costs of bankruptcy administration" (*Re Sifan Triyono* at [24]).

68 However, just as a "good voluntary arrangement" benefits everyone, a "bad voluntary arrangement" benefits none. Where bankruptcy is inevitable, it is crucial for creditors, and society as a whole, that the process of bankruptcy is handled promptly. For creditors, swift bankruptcy proceedings would mean a quicker recovery of some portion of the sums (while ensuring a full account of the assets by the debtor), and for the debtor, as painful as the process may admittedly be, it enables them to receive the eventual fresh start to rebuild their financial lives without prolonged distress.

69 The Appellant has, in the course of her professional life, built a successful career in finance with an impressive portfolio of prime properties in the heart of Singapore's central shopping district. Given her background and ability, I am hopeful that she will, with the passage of time, bounce back. However, regrettably, the first step to that admittedly long process is not a voluntary arrangement as she has proposed, but bankruptcy. It is admittedly not

the easy option, but it is, for the reasons above, the only serious and viable option.

Mohamed Faizal
Judicial Commissioner

R Dilip Kumar (Gavan Law Practice LLC) (instructed), Dube Vinod Kumar (Whitefield Law Corporation) for the appellant;
Ng Yeow Khoon and Tham Xue Yi Fiona (Shook Lin & Bok LLP) for the first and second non-parties;
Lim Jun Rui Ivan (Allen & Gledhill LLP) for the third non-party.
Celestine Luke Tolention (Selvam LLC) for the fourth non-party (watching brief).