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

[2024] SGHC 58

Originating Application No 1164 of 2023

In the matter of Part 7 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 91 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Logistics Construction Pte Ltd

Logistics Construction Pte Ltd

… *Applicant*

JUDGMENT

[Insolvency Law — Administration of insolvent estates — Judicial management — Competing nominations for appointment of interim judicial manager — Whether interim judicial manager nominated by applicant company or creditors of company should be appointed]
[Companies — Receiver and Manager — Judicial management order — Competing nominations for appointment of interim judicial manager — Whether interim judicial manager nominated by applicant company or creditors of company should be appointed]

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Re Logistics Construction Pte Ltd

[2024] SGHC 58

General Division of the High Court — Originating Application No 1164 of 2023
Goh Yihan J
6 February 2024

4 March 2024 Judgment reserved.

Goh Yihan J:

1 This is Logistics Construction Pte Ltd's ("the applicant") application for, among other things, it to be placed under the judicial management of a judicial manager pursuant to a court order made under Part 7 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").[1] The applicant also nominates Ms Ellyn Tan Huixian ("Ms Tan"), care of Mazars Consulting Pte Ltd, to be appointed as the judicial manager.[2]

2 No creditor opposes the applicant's application to be placed under judicial management. However, Buildforms Construction (Pte) Ltd ("Buildforms"), which the applicant claims is a disputed creditor, opposes the

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1 Applicant's Written Submissions dated 31 January 2024 ("AWS") at para 2.

2 AWS at para 2.

applicant's nomination of Ms Tan as the judicial manager.[3] Instead, Buildforms nominates Mr Seshadri Rajagopalan, Mr Paresh Tribhovan Jotangia, and Ms Ho May Kee, care of Grant Thornton Singapore Private Limited, as the joint and several judicial managers of the applicant (collectively, the "Buildforms Nominees").[4]

3 After taking some time to consider the matter, I allow the applicant's application to be placed under judicial management, and for Ms Tan to be its judicial manager. I now explain the reasons for my decision.

Background facts

4 I begin with the background facts leading to the applicant's present application. The applicant is a private company incorporated in Singapore on 25 April 1992.[5] The applicant has a track record of general building for more than 25 years in Singapore.[6] The applicant is also approved by the Building and Construction Authority's workhead for General Building Works (CW01) to the highest grade, A1, by which it can bid for and execute large-scale projects of unlimited value.[7] The applicant is also a wholly owned subsidiary of Boldtek Holdings Limited ("BHL").[8] BHL, together with its subsidiaries (the "Group"), has been listed on the Catalist of the Singapore Exchange since 12 January

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3 AWS at para 3.

4 AWS at para 3.

5 AWS at para 8.

6 AWS at para 8.

7 AWS at para 8.

8 AWS at para 8.

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2013.[9] The applicant was the mainstay of the Group's general building segment, and contributed 99% of the Group's total revenue for its financial year ended 30 June 2022.[10]

5 The COVID-19 pandemic, and the ensuing governmental restrictions in Singapore and Malaysia, severely affected the Group's business.[11] Despite these difficulties, the Group's recovery was on an upward trajectory.[12] Indeed, the Group's order book from general building and precast manufacturing stood at about $79.4m as of 25 October 2022.[13] In addition, the Group was awarded construction contracts worth approximately $119.1m for the period between June 2022 and January 2023.[14]

6 However, the Group's recovery efforts came to a stop when BHL called for a trading halt on 12 January 2023.[15] This was necessitated by BHL's independent auditor's inclusion of a qualified opinion in its report on the Group's audited financial statements for the financial year ended 30 June 2022.[16] The trading halt was later converted into a voluntary suspension on 16 January 2023.[17] When the voluntary suspension of BHL's trading persisted,

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9 AWS at para 8.

10 AWS at para 8.

11 AWS at para 9; 1st Affidavit of Phua Lam Soon filed in HC/OA 726/2023 (application for moratorium under s 64 IRDA) dated 21 July 2013 ("1st Moratorium Affidavit") at para 15.

12 AWS at para 9.

13 1st Moratorium Affidavit at para 17.

14 1st Moratorium Affidavit at para 18.

15 AWS at para 9.

16 1st Moratorium Affidavit at para 20.

17 AWS at para 9.

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several of the applicant's contractors became more stringent with their payment terms.[18] The applicant had to deal with an increasing number of statutory demands for payment, as well as legal proceedings commenced by its creditors.[19] The situation was aggravated by the Group's difficulties in raising further financing to address its cashflow issues.[20]

7 As a result of these compounded difficulties, the applicant filed for moratorium relief pursuant to s 64 of the IRDA on 21 July 2023.[21] The applicant had asked for a moratorium period of six months. I heard this application on 14 August 2023 and granted a moratorium period of three months (see the High Court decision of *Re Logistics Construction Pte Ltd* [2023] SGHC 231). In brief, I granted the shorter moratorium for the following reasons. First, I was convinced that the moratorium application had been brought in good faith and represented a genuine attempt by the applicant to obtain protection from its creditors while it sought to restructure its liabilities. Second, I found the support of Oversea-Chinese Banking Corporation Limited ("OCBC"), which is the applicant's largest creditor, to be important. Third, while I found the particulars in the proposed scheme to be sufficient, they did appear to be short of specific details. As such, I found that a relatively shorter moratorium of three months would balance the interests of the applicant and its creditors. The moratorium expired on 14 November 2023.[22]

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18 1st Moratorium Affidavit at para 22.

19 AWS at para 9.

20 1st Moratorium Affidavit at para 23.

21 AWS at para 10.

22 AWS at para 10.

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8 Instead of seeking an extension to the moratorium, the applicant now applies to be placed under judicial management because its financial position has not improved. In particular, due to the public nature of its moratorium application, the applicant's financial woes became publicly known. This led to it not being awarded any new construction projects of significant value.[23] This also caused its subcontractors in its existing projects to terminate their sub-contracts.[24] All of these severely weakened the applicant's working capital position.[25] Indeed, the applicant has had to rely on its existing order book to generate cash and working capital so as to sustain its business operations.[26] Moreover, the three initial potential investors, whom the applicant mentioned at its moratorium application, withdrew their interest in investing in the applicant.[27]

9 Amidst these financial difficulties, the Group was approached by a new investor, one Mr Ee Chin Keong ("Mr Ee"), in late October 2023.[28] Mr Ee, a Malaysian businessman, was interested in investing in a Singapore-based construction company which had a construction licence to bid for large scale projects.[29] Therefore, Mr Ee and his nominees (the "Investor Group") entered into a non-binding term sheet with BHL on 16 November 2023 (the "Term

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23 AWS at para 11.

24 AWS at para 12.

25 AWS at para 13.

26 AWS at para 11.

27 AWS at para 13.

28 AWS at para 14.

29 AWS at para 14.

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Sheet") to set out their interest to purchase the applicant's entire share capital.[30] The Investor Group intends to restructure the applicant,[31] and envisages restructuring the liabilities of the applicant's trade creditors together with the judicial manager.[32] This will also involve the provision of $1m working capital to the applicant, so that up to $3m in value of the applicant's contract assets can be realised within two years, and the sums recovered (of up to $3m) can be distributed to trade creditors on a pro-rated basis.[33] As for the liabilities of the applicant's non-trade creditors, they will be restructured at BHL as most of these creditors have corporate guarantees with BHL.[34]

10 Against this background, the applicant filed the present application on 17 November 2023.[35] In its assessment, a management-led restructuring proceeding would not be appropriate in light of the Investor Group's intended investment.[36] At the same time, the applicant sought to be preserved as a going concern so as to maximise recovery from its existing projects.[37] On 14 December 2023, Buildforms filed an affidavit objecting to the applicant's

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30 AWS at para 14.

31 AWS at para 15.

32 AWS at para 15.

33 AWS at para 16.

34 AWS at para 15.

35 Originating Application (Without Notice) for HC/OA 1164/2023, filed 17 November 2023 at 3.47pm.

36 AWS at para 19.

37 AWS at para 19.

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nomination of Ms Tan as the judicial manager and proposed, in her stead, the Buildforms Nominees.[38]

Whether the applicant should be placed under judicial management

11 With the above background facts in mind, I turn first to consider whether the applicant should be placed under judicial management. I should note that no creditor has voiced any objection to the applicant being placed under judicial manager, even if Buildforms expresses some "concerns about the propriety" of the applicant's application.[39] Despite this, I still need to be independently satisfied that this is an appropriate case for the applicant to be placed under judicial management.

The applicable principles

12 I turn now to the applicable principles, which are not disputed.

13 To begin with, s 89(1) and s 91(1) of the IRDA provide the statutory requirements for the making of a judicial management order and the appointment of a judicial manager. For completeness, I set out the relevant parts of these provisions:

> **Purpose of judicial management and judicial manager**
>
> **89.**—(1) The judicial manager of a company must perform the judicial manager's functions to achieve one or more of the following purposes of judicial management:

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38 1st Affidavit of Mr Lim Chuen Yang filed in HC/OA 726/2023 (application for moratorium under s 64 IRDA) dated 14 December 2023 ("Buildforms's First Affidavit").

39 Buildforms Construction's Non-Party Written Submissions dated 31 January 2024 ("NPWS-1") at para 47.

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> (*a*) the survival of the company, or the whole or part of its undertaking, as a going concern;
>
> (*b*) the approval under section 210 of the Companies Act 1967 or section 71 of a compromise or an arrangement between the company and any such persons as are mentioned in the applicable section;
>
> (*c*) a more advantageous realisation of the company's assets or property than on a winding up.
>
> …
>
> **Power of Court to make judicial management order and appoint judicial manager**
>
> **91.—**(1) Where a company or its directors (pursuant to a resolution of its members or the board of directors) or any creditor (including any contingent or prospective creditor), pursuant to section 90, makes an application (called in this section an application for a judicial management order) for an order that the company should be placed under the judicial management of a judicial manager, the Court may make a judicial management order in relation to the company if, and only if —
>
> (*a*) the Court is satisfied that the company is or is likely to become unable to pay its debts; and
>
> (*b*) the Court considers that the making of the order would be likely to achieve one or more of the purposes of judicial management mentioned in section 89(1).
>
> …

14 The effect of s 89 and s 91 of the IRDA is that a court may make a judicial management order pursuant to s 91(1) if: (a) the court is satisfied that the company is or is likely to become unable to pay its debts; and (b) the court considers that the making of the order would be likely to achieve one or more of the purposes of judicial management mentioned in s 89(1) of the IRDA. Further, s 91(3) of the IRDA, which I will discuss in greater detail later in this judgment, lists the considerations a court must take into account when appointing a judicial manager. These considerations include the court's discretion to reject a nominee (see s 91(3)(*c*)) and the court's discretion to adopt

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a nominee proposed by the majority in number and value of the creditors (see s 91(3)(*d*)).

My decision: the applicant should be placed under judicial management

15 With the applicable principles in mind, I conclude that the applicant should be placed under judicial management.

The applicant is unable to pay its debts

16 To begin with, I am satisfied that the applicant is unable to pay its debts. Based on its Statement of Financial Position for the Financial Year ended 30 June 2023 ("FY23 Balance Sheet"), its current liabilities are $69,750,000 as against its current assets of $17,687,000.[40] This therefore leaves the applicant with net liabilities of $52,064,000 as of 30 June 2023.[41]

17 According to the applicant, its financial position has only deteriorated since the FY23 Balance Sheet. This is because, as I canvassed above, the applicant has faced significant financial issues since its application for a moratorium.[42] Accordingly, on the basis of the documents before me and applying the cashflow test set out in the Court of Appeal decision of *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478, in that a company is considered to be insolvent if its current liabilities exceed its current assets (within a 12-month timeframe) such that it

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40 4th Affidavit of Phua Lam Soon filed in HC/OA 726/2023 (application for moratorium under s 64 IRDA) dated 29 September 2023 ("4th Moratorium Affidavit") at p 9.

41 4th Moratorium Affidavit at p 9.

42 AWS at para 28.

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will be unable to meet all of its debts when they fall due, I am satisfied that the applicant is unable to pay its debts.

There is a real prospect that one or more of the purposes of judicial management would likely be achieved

18 Next, I am satisfied that, by placing the applicant under judicial management, there is a real prospect that one or more of the purposes of judicial management as set out in s 89(1) of the IRDA would likely be achieved. As the High Court explained in *Re X Diamond Capital Pte Ltd (Metech International Ltd, non-party)* [2023] SGHC 253 ("*Re X Diamond*") (at [15]), the use of the expression "would be likely" in s 91(1)(*b*) of the IRDA, to describe the prospect that a judicial management order might fulfil one or more of the purposes set out in s 89(1), connotes a "real prospect" test (see also the Court of Appeal decision of *Deutsche Bank AG and another v Asia Pulp & Paper Co Ltd* [2003] 2 SLR(R) 320 (at [15]–[17])). This is a lower threshold than a balance of probabilities test, and the applicant need not establish that the purpose in question will more probably than not be achieved if a judicial management order is made.

19 First, I agree with the applicant that placing it under judicial management would be likely to achieve its survival, or the whole or part of its undertaking, as a going concern. In this regard, the Investment Group's proposed investment will provide much needed working capital. This will enable the applicant to continue servicing and operating its existing projects. Also, the Investment Group has indicated its intention to continue the applicant's business in the construction industry after acquisition and restructuring, which will benefit from the applicant's Grade A1 construction licence.

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20 While Buildforms does not object to the applicant being placed under judicial management, it raises, amongst others, the concern that the Term Sheet does not provide sufficient details. For example, the purchase price for the acquisition of the applicant's shares has not been agreed.[43] Also, whereas the Investor Group's acquisition of the applicant's shares requires there to be "satisfactory completion" of "the agreement on the terms of a restructuring plan between [the applicant] and its creditors", it is "confusing" that the Investor Group also agrees that it will "work together" with the applicant to "propose the … non-exhaustive restructuring terms to the trade creditors of the [a]pplicant" after the acquisition.[44] I acknowledge Buildforms's concerns. Nonetheless, I am satisfied that the gist of the Term Sheet is clear: the Investor Group intends to purchase the applicant's entire share capital and provide $1m in working capital.

21 Second, I agree with the applicant that placing it under judicial management would be likely to achieve a compromise or an arrangement between it and its trade creditors pursuant to the relevant provisions in the Companies Act 1967 (2020 Rev Ed) or the IRDA. In this regard, the intended restructuring plan envisages that the liabilities of the applicant's trade creditors will be restructured through a compromise or arrangement. Based on an estimated trade debt of approximately $23,048,000, and a recovery of up to $3m, the estimated recovery rate of each trade creditor would be roughly about 13%.[45] This compares favourably to a liquidation scenario, where it is likely that the trade creditors would experience a lower recovery.

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43 NPWS-1 at para 47(d).

44 NPWS-1 at para 47(d).

45 Affidavit of Mr Phua Lam Soon supporting Application for Judicial Management Order dated 17 November 2023 ("1st JM Affidavit") at para 30.

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22 Again, Buildforms points out that it is "disconcerting" that the applicant and the Investor Group appear resolute to distribute only up to $3m to the trade creditors, even though the total liabilities of the applicant appear to be about $67,449,000.[46] In fact, Buildforms suggests that, in the absence of any new projects, the applicant's current ongoing projects will yield only $1,300,000.[47] This is but a small fraction of the total current debt. Again, while I acknowledge Buildforms's concerns, I am satisfied that there is likely to be a compromise or an arrangement between the applicant and its trade creditors because the alternative of winding-up is likely to lead to a lower recovery rate. Indeed, Buildforms implicitly recognises this since it is willing to support the applicant being placed under judicial management to "see if more of the [a]pplicant's contractual assets may be realised under judicial management".[48]

23 Third, for the same reasons in relation to the likelihood of a compromise or an arrangement, I also agree with the applicant that placing it under judicial management would be likely to achieve a more advantageous realisation of its assets or property than if it were to be wound up. In this regard, the applicant's assets are mainly in its existing contractual assets. Therefore, it is only by placing the applicant into judicial management that a judicial manager can continue operating its projects and realise these assets in collaboration with the Investor Group.

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46 NPWS-1 at para 48.

47 NPWS-1 at para 47(c).

48 NPWS-1 at para 49.

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There is support or at least no objection from a majority of the creditors

24 Next, I am satisfied that there is support, or at least no objection, from the majority of creditors, which is a factor in favour of placing the applicant under judicial management.

25 As a starting point, the presence of creditor support is a factor to be considered by the court in granting a judicial management order (see the High Court decision of *Point72 Ventures Investments LLC v FinLync Pte Ltd (Klein, Peter Selig and another, non-parties)* [2023] SGHC 122 at [43]). This is because "a company whose debts far exceed its assets in effect belongs to its creditors", and as a result, the "court must show great heed to the wishes and views of such creditors" (see the High Court decision of *Re Genesis Technologies International (S) Pte Ltd* [1994] 2 SLR(R) 298 (at [8]).

26 However, as in the present case, if a company proposes to rehabilitate itself through capital injections, creditor support would be of lesser relevance. Be that as it may, the fact that there is at least no objection to placing the applicant under judicial management amounts to a factor in support of an order being granted.

27 Accordingly, for all the reasons above, I am satisfied that the applicant should be placed under judicial management. However, the real controversy between the applicant and some of its creditors relates to the judicial manager to be appointed.

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Whether Ms Tan or the Buildforms Nominees should be appointed as the judicial manager

The applicable principles

28 The court's exercise of its power of appointment of a judicial manager is fact-sensitive (see the High Court decision of *Re Hodlnaut Pte Ltd* [2023] 4 SLR 862 ("*Re Hodlnaut*") at [10]). However, some factors that the court may consider when making the appointment include: (a) the choice of the largest creditor or group of creditors; (b) the independence or perceived independence of the nominees; and (c) the skill and expertise of the judicial managers (see *Re Hodlnaut* at [8]–[12]).

29 Against these factors, s 91(3) of the IRDA provides the specific procedure for the appointment of a judicial manager. The relevant portions of s 91(3) are as follows:

> **91.**—(3) In any application for a judicial management order under subsection (1), the following apply:
>
> (*a*) the applicant must nominate a person who is a licensed insolvency practitioner, but is not the auditor of the company, to act as a judicial manager;
>
> …
>
> (*c*) the Court may reject the nomination of the applicant and appoint another person in place of the applicant's nominee;
>
> (*d*) where a nomination is made by the company —
>
> (i) a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the nomination; and
>
> (ii) the Court may, if satisfied as to the number and value of the creditors' claims and as to the grounds of opposition, invite the creditors to nominate another person in place of the

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> applicant's nominee and, if the Court sees fit, adopt their nomination.

30 The effect of s 91(3) is that the court retains the overall discretion to appoint the judicial manager. To begin with, s 91(3)(*a*) provides that an applicant for judicial management *must* nominate a qualified person to be the judicial manager. However, the court is not bound by the applicant's nomination and, pursuant to s 91(3)(*c*), "may reject the nomination of the applicant and appoint another person in place of the applicant's nominee". In particular, where the nomination is made by the company concerned, s 91(3)(*d*) sets out that a majority of the creditors "in number and value" may be heard in opposition to the nomination and, if the stipulated circumstances are satisfied, they may be allowed to put forth their alternative nomination (see also *Re X Diamond* at [45]).

31 In the present application, Buildforms opposes the applicant's nomination of Ms Tan as the judicial manager. For the reasons that I will now discuss, I conclude that Ms Tan should be appointed as the judicial manager.

My decision: Ms Tan should be appointed as the judicial manager

Whether Buildforms has standing to be heard in opposition to the applicant's nomination of a judicial manager

32 As a preliminary matter, Buildforms appears to have based its standing to oppose the applicant's nomination of a judicial manager on s 91(3)(*d*) of the IRDA. It is therefore apposite to first consider whether Buildforms has the requisite standing under s 91(3)(*d*). In this regard, s 91(3)(*d*)(i) provides that only "a majority in number and value of the creditors (including contingent or prospective creditors)" may be heard in opposition to an applicant's nomination of a judicial manager. As such, in order to establish the requisite standing,

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Buildforms must establish that (a) it is a creditor, including being a contingent creditor or prospective creditor, *and* (b) it is part of the majority in number and value of such creditors. I turn now to consider each of these elements.

(1) Whether Buildforms is a creditor or contingent creditor of the applicant

(A) THE PARTIES' ARGUMENTS

33 The applicant argues that Buildforms is not its creditor and therefore does not have the standing to propose alternative nominees for the judicial manager.[49]

34 The applicant's alleged debt to Buildforms arose out of subcontracted works that Buildforms completed for the applicant between 2014 and 2018, amounting to an alleged total value of $3,815,603.91.[50] Buildforms brought legal proceedings in HC/OC 370/2023 ("OC 370") to recover the alleged outstanding debt of $2,806,365.31, and the applicant subsequently mounted a counterclaim.[51]

35 According to the applicant, the outstanding sum of $2,828,136.31 allegedly owed to Buildforms is "being contested in legal proceedings before the … [c]ourt, and is being included in its full amount in the interests of full disclosure".[52] The applicant did not previously dispute Buildforms's status as a creditor due to the High Court's adoption of a wider meaning of "creditor" in *RCMA Asia Pte Ltd v Sun Electric Power Pte Ltd (Energy Market Authority of*

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49 AWS at para 38.

50 NPWS-1 at paras 10–11.

51 NPWS-1 at paras 16, 18–19.

52 AWS at para 40; 4th Moratorium Affidavit at para 7, footnote 1.

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Singapore, non-party) [2020] SGHC 205 (at [22]–[24]). However, the applicant now questions Buildforms's status as a creditor on the basis of the recent Court of Appeal decision in *Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] SGCA 40 ("*Founder Group*") which adopted a narrower meaning of "creditor", albeit specifically in relation to the expression "contingent creditor" that appears in s 124(1)(*c*) of the IRDA. In *Founder Group,* the court held (at [49]) that "a claimant who relies on a debt, the existence of which is subject to a substantive dispute, cannot be said to have established its standing as a creditor for the purposes of a winding-up application". On the basis of *Founder Group*, Buildforms is not even a contingent creditor, let alone a creditor, as its claim against the applicant is premised on a liability that the applicant is contesting in legal proceedings in OC 370. Therefore, Buildforms does not have the standing to nominate alternative individuals as judicial manager.[53]

36 In response, Buildforms states that as it has a *prima facie* case against the applicant, it retains the discretion to express a position on the applicant's nomination for a judicial manager as one of the applicant's creditors.[54] In this regard, Buildforms submits that it had completed the subcontracted works for the applicant and issued invoices for the same.[55] Indeed, the applicant also allegedly made partial payments amounting to $990,000.[56] At the hearing, counsel for Buildforms, Mr Muhammad Imran bin Abdul Rahim ("Mr Imran"), clarified that Buildforms's primary position is that it is a creditor of the

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53 AWS at paras 39−50.

54 NPWS-1 at para 109.

55 NPWS-1 at para 113.

56 NPWS-1 at para 113.

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applicant, and that its fallback position is that, even if it were not found to be a creditor of the applicant, it should still be considered a contingent creditor of the applicant.

(B) MY DECISION: BUILDFORMS IS A CONTINGENT CREDITOR, BUT NOT A CREDITOR, OF THE APPLICANT

(I) BUILDFORMS IS A CONTINGENT CREDITOR OF THE APPLICANT

37 In my judgment, for the reasons that I will develop, I find that Buildforms is a contingent creditor of the applicant. Buildforms therefore has the standing to object to the applicant's nominee for judicial manager.

38 First, while the Court of Appeal in *Founder Group* was interpreting the expression "contingent creditor" in s 124(1)(*c*) of the IRDA, its reasoning is equally applicable to interpreting the same expression as it appears in the judicial management provisions. Indeed, s 91(3)(*d*) uses the same expression as in s 124(1)(*c*), "creditors (including contingent or prospective creditors)", to describe the individuals or entities who can be heard in opposition to a company's nomination of a judicial manager.

39 Second, the Court of Appeal's reasoning in *Founder Group* leads me to conclude that the disputed liability between the applicant and Buildforms is really a contingent liability. To begin with, the Court in *Founder Group* had to consider whether Founder Group (Hong Kong) (in liquidation) ("FGHK") had standing as a creditor under s 124(1)(*c*) of the IRDA to bring a winding-up application against Singapore JHC Co Pte Ltd ("JHC"). FGHK had argued that it had standing as a "contingent creditor" to do so, because JHC was obliged, under certain contracts, to make payment to FGHK. Furthermore, FGHK maintained that it still had standing even if JHC disputed the obligation. In this

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regard, JHC disputed the debt because the supposed payment obligations under the contracts were never meant to be enforced. Further, no deliveries had been made under them. Sundaresh Menon CJ, delivering the unanimous grounds of decision of the Court, held that FGHK was not a contingent creditor (although the Court later found that FGHK was, in fact, a creditor). Menon CJ explained (at [45]) that "a disputed liability may in principle be considered a contingent liability where the liability itself is not disputed and the only dispute is over whether the contingency that crystallises the liability has occurred". This was said to be consistent with Kitto J's observations in the High Court of Australia decision of *Community Development Pty Ltd v Engwirda Construction Co* (1969) 120 CLR 455 ("*Community Development*") (at 459) as follows:

> … there must be an existing obligation and that out of that obligation a liability on the part of the company to pay a sum of money will arise in a future event, whether it be an event that must happen or only an event that may happen. A building contract creates, as soon as it is entered into, an obligation upon the building owner to pay the contract price, either as a whole upon a future event or, more usually, by progress and final payments each of which is to be made on a future event. The event or events may not happen, but if and when one of them does happen the building owner, by force of the contractual obligation, must pay the builder a sum of money. It is, I think, nothing to the point that the event may be complex, as where the payment is agreed to be made when the whole or some part of the work has been done to the satisfaction of an architect as expressed in a certificate or to the satisfaction of an arbitrator as expressed in an award: the building owner is bound from the time the contract is made to pay money to the builder upon a contingency; and that in my opinion makes the builder a contingent creditor of the owner.

40 Applied to the present case, I find that Buildforms is a contingent creditor of the applicant notwithstanding the parties' dispute in OC 370. In OC 370, Buildforms claims the sum of $2,806,365.31 for works carried out under the so-called "MOE subcontracts and SEAB subcontract". It is important that the applicant, in its Defence filed in OC 370, does not deny that it had

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entered into the "MOE subcontracts" with Buildforms, even if it denies having entered into the "SEAB subcontract" with Buildforms. Rather, the applicant's defence in OC 370 is that Buildforms did not carry out works under the "MOE subcontracts", save for certain general repairs and redecoration works. Therefore, the applicant claims for damages arising from Buildforms's alleged breaches of the "MOE subcontracts", which it pleads as a set-off against Buildforms's claim. Thus put, the applicant does *not* actually dispute the existence of (at least) the "MOE subcontracts". To adopt the reasoning in *Community Development*, these contracts created an obligation upon the applicant to pay Buildforms contingent on a future event, which is Buildforms's completion of the specified works. Thus, the applicant was bound, from the time the "MOE subcontracts" were made, to pay money to Buildforms upon a contingency. While the parties dispute whether the contingency has occurred so as to crystallise the liability (see *Founder Group* at [45]), the fact remains that Buildforms is a contingent creditor of the applicant.

41 For completeness, I do not find the citation of the Court of Appeal decision of *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 ("*Metalform*") by counsel for the applicant, Mr Sean Lee ("Mr Lee"), to be of much assistance to his case. Mr Lee suggested that *Metalform* supports a broad proposition that where a debtor company's cross-claim is larger than a creditor's claim, the creditor is generally deprived of standing in the context of various insolvency and judicial management proceedings. I do not agree with Mr Lee's reading of *Metalform*.

42 In *Metalform*, the Court of Appeal was concerned with the question of when the court may restrain a creditor of an undisputed debt from presenting a winding-up petition against a debtor company, where that debtor company has

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an alleged cross-claim against that creditor (see *Metalform* at [1] and [63]). Chan Sek Keong CJ held that the debtor company only has to show that there is a "likelihood" that the petition might fail, or that it is "unlikely" that a winding-up order would be made, for a creditor to be restrained from presenting its winding-up application (see *Metalform* at [77] and [88]). The main policy consideration behind this approach is that "the commercial viability of a company should not be put in jeopardy by the premature presentation of a winding-up petition against it where it has a serious cross claim based on substantial grounds" (see *Metalform* at [82]). Having regard to Chan CJ's considerations, it is clear that the comments in *Metalform* were confined to the context of a winding-up application, and were not intended to apply more broadly across all manner of insolvency and judicial management proceedings, including the present case.

43 Third, my finding that Buildforms is a contingent creditor of the applicant does not, contrary to the applicant's concerns, determine OC 370 in any way. This is the whole point of differentiating a "contingency creditor" from a "creditor". Thus, while the applicant's liability to Buildforms is premised on the "MOE subcontracts" that the applicant does not deny entering into with Buildforms, whether that liability crystallises is contingent on Buildforms being able to make out its case in OC 370.

44 For all these reasons, I conclude that Buildforms is at least a contingent creditor under s 91(3)(*d*) of the IRDA. For completeness, and because the point was argued by the parties in their written and oral submissions, I go on to consider whether Buildforms is a creditor under s 91(3)(*d*) of the IRDA.

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(II) BUILDFORMS IS NOT A CREDITOR OF THE APPLICANT

45 In short, I find that Buildforms is not a creditor of the applicant, for reasons I shall develop below.

46 As a preliminary point, I take guidance from *Founder Group* in interpreting the meaning of the word "creditor" within s 91(3)(*d*) of the IRDA. This is because of the reason at [38] above, *ie*, that the same expression is used in s 91(3)(*d*) as in s 124(1)(*c*) of the IRDA. Again, for the reasons at [38] above, I find that the Court of Appeal's reasoning in *SAAG Oilfield Engineering (S) Pte Ltd (formerly known as Derrick Services Singapore Pte Ltd) v Shaik Abu Bakar bin Abdul Sukol and another and another appeal* [2012] 2 SLR 189, which adopted a broader meaning of "creditor" in the context of a scheme of arrangement in s 210 of the Companies Act (Cap 50, 2006 Rev Ed), is less relevant to the present case as compared to the Court's reasoning in *Founder Group*.

47 I then turn to the law as set out in *Founder Group*. The starting position is that a creditor must be owed a debt that is presently due (see *Founder Group* at [50] and [69]; see also *Goode on Principles of Corporate Insolvency Law* (Kristin van Zweiten gen ed) (Sweet & Maxwell, 5th Ed, 2018) ("*Goode on Principles of Corporate Insolvency Law*") at para 2−26). From this, it is relatively clear that the *legal test* for "creditor" status, distinguished from the concepts of "prospective" or "contingent" creditor within s 91(3)(*d*) of the IRDA, is that the alleged creditor must be owed a debt that is presently due. I find that this narrower definition of "creditor" is justified by the need to ensure that the expression "including any prospective or contingent creditors" in s 91(3)(*d*), and wherever else it occurs, is not rendered otiose. The outstanding question then becomes the *standard of proof* to which the existence of the debt

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must be established. Without belabouring the point, a standard of proof refers to the caution that must be exercised in making a positive finding of fact (see Ho Hock Lai, *A Philosophy of Evidence Law: Justice in the Search for Truth* (Oxford University Press, 2008) at p 173). This is to be distinguished from the concept of a "legal test", which broadly refers to a legal condition, or a set of legal conditions, that, if met, result in certain legal consequences.

48 This question on the applicable standard of proof arises because Buildforms's submissions appear to suggest that, for a creditor to have standing under s 91(3)(*d*) of the IRDA, the standard of proof to which it must establish its debt is only that of a "*prima facie* case".[57] Buildforms cites *Re X Diamond* as authority for this proposition.[58] For its part, the applicant does not appear to expressly disagree that the creditor only needs to prove its debt on a *prima facie* basis. However, the applicant submits that the debtor company can defeat such a finding of a *prima facie* debt by raising *triable issues* in relation to that debt.[59] Thus, if the debtor company successfully does so, the creditor would lose its standing under s 91(3)(*d*) of the IRDA.

49 To resolve this question on the applicable standard of proof, I take guidance from *Founder Group*, where the Court of Appeal made clear that an insolvency court generally cannot determine the underlying dispute where the facts and liability are heavily contested (at [28(a)]). More broadly, in hearings where a court relies only on affidavit evidence, "there can be no finding of fact on the balance of probabilities, but only on a *prima facie* basis" (see the Court

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57 NPWS-1 at para 109.

58 NPWS-1 at paras 109−112.

59 AWS at para 43.

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of Appeal decision in *The "Bunga Melati 5"* [2012] 4 SLR 546 at [129]). I am therefore bound to find that the applicable standard to which Buildforms must establish its debt, is that of a "*prima facie* standard". By this standard, a creditor will be deprived of its standing as a "creditor" to object to the appointment of a judicial manager under s 91(3)(*d*) of the IRDA if the debtor company manages to raise triable issues in relation to the alleged debt.

50 As to the scope of issues that can be properly considered under "triable issues", this is likely to be quite broad. Indeed, there is no reason why "triable issues" must relate solely to the *existence* of the debt in question. In my judgment, questions of potential set-off against the debt can properly fall within "triable issues", given that set-off is a recognised defence against a creditor in a winding-up or judicial management context (see s 219 of the IRDA).

51 Applying these principles to the present facts, it is clear that Buildforms has proven that the applicant owes it a debt, at least on a *prima facie* standard. I also find that the applicant has raised triable issues in relation to that debt, considering that the applicant is currently disputing its entire liability to Buildforms in OC 370,[60] and neither summary judgment nor striking out of the claim has yet been granted in the course of that dispute. As a result, Buildforms is not a creditor of the applicant within the meaning of s 91(3)(*d*) of the IRDA.

52 Therefore, I conclude that Buildforms is a contingent creditor, but not a creditor, of the applicant. However, the fact that Buildforms is a contingent creditor does not, by itself, give it the standing to be heard in opposition to the applicant's nomination of a judicial manager. This is because s 91(3)(*d*)(i)

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[60] See Defence and Counterclaim in HC/OC 370/2023 at para 11.

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clearly provides that only "a majority in number and value of the creditors (including contingent or prospective creditors)" may be so heard. I therefore turn now to consider if Buildforms satisfies this requirement in s 91(3)(*d*)(i).

(2) Whether Buildforms is part of a majority in number and value of the creditors (including contingent or prospective creditors)

(A) THE PARTIES' ARGUMENTS

53 The applicant argues that even if Buildforms is its creditor, Buildforms still fails to satisfy the requirement in s 91(3)(*d*) of the IRDA that only a majority in number and value of the creditors (including contingent or prospective creditors) may be heard in opposition to the applicant-company's nomination of a judicial manager.[61] For convenience, I shall term this as the "Majority Requirement". In this regard, the applicant points out that Buildforms has only gathered the support of five other creditors (excluding Buildforms) whose total debts amounted to $15,538,791.83 as of 31 January 2024.[62] This amount is less than half of the total value of claims that the applicant faces from 569 creditors, which is $67,449,000.[63] Thus, on both numerical and value bases, Buildforms does not satisfy the Majority Requirement.[64]

54 Buildforms is not ignorant that it has failed, at least on one reading of s 91(3)(*d*), to satisfy the Majority Requirement. It therefore urges me to adopt a different interpretation of s 91(3)(*d*). To begin with, Buildforms argues that s 91(3)(*d*) does not set out the group out of which the majority is to be derived,

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61 AWS at para 51.

62 AWS at para 52.

63 AWS at para 53.

64 AWS at para 54.

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that is, whether the majority is to be determined with reference to (a) all of the applicant's creditors, or (b) all of the applicant's creditors who expressed their positions on the nominations made by the applicant and Buildforms.

55 Due to the two apparently possible interpretations, Buildforms argues that I should adopt the latter for several reasons:

(a) First, Buildforms's interpretation would be consistent with other judicial management provisions. For instance, s 94(11)(*e*) makes clear that "a majority in number and value of the creditors of the company *present and voting*" [emphasis added] is required for the appointment of a judicial manager in the context of judicial management by resolution of creditors. Similarly, s 98(2)(*a*) requires a "majority [of creditors] in number and value, *voting either in person or by proxy*" [emphasis added] to fill the vacancy where there is a vacancy in the appointment of a judicial manager.[65]

(b) Second, Buildforms's interpretation would avoid conferring on a company an "unassailable advantage". This advantage is that a company may claim a substantial number of creditors, which may not be accurate, and if those creditors then take no position on the company's nomination for a judicial manager, the company can then claim that no majority of creditors oppose its nomination. Indeed, unlike the situations of a court-ordered winding-up and a scheme of arrangement, where there are checks in the form of court-appointed liquidators or appointed scheme managers to guard against abuse, a

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65 NPWS-1 at para 74.

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company who applies to place itself under judicial management can claim who its creditors are without having a third party do so or having a third party verify such a determination.[66]

(c) Third, Buildforms's interpretation makes good commercial sense because in the context of entities with a substantial number of creditors, many of those creditors may not be interested, or cannot afford to be involved, in the restructuring or winding-up of the entity concerned. It would therefore skew matters in favour of the company's nomination if the determination of a majority is made with reference to the body of creditors that includes these potentially disinterested creditors. Finally, it would not be realistic for a creditor, who is already owed moneys by the company, to spend even more money to canvass for its nominees by reaching out to as many creditors as it can.[67]

56 If Buildforms's interpretation of s 93(1)(*d*) is adopted, it submits that it would satisfy the Majority Requirement. This is because, to the best of its knowledge, Buildforms submits that the applicant's nomination of Ms Tan has the support of ten creditors who claim debts totalling $4,525,725.32, as opposed to Buildforms's nomination of the Buildforms Nominees, which has the support of six creditors who claim debts totalling $18,366,928.14.[68] Furthermore, in an *aide-mémoire* filed on 6 February 2024, Buildforms updated these figures to $4,696,330.20 (supporting Ms Tan) and $21,139,988.62 (supporting the

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66 NPWS-1 at paras 75−81.

67 NPWS-1 at para 82.

68 NPWS-1 at para 84.

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Buildforms Nominees, as claimed by the creditors), respectively.[69] As such, Buildforms submits that I should hear the opposing creditors, including itself, and consider their nomination of the Buildforms Nominees.

(B) SECTION 91(3)(*D*) OF THE IRDA ONLY ALLOWS A MAJORITY OF ALL CREDITORS TO BE HEARD IN OPPOSITION

57 Despite Buildforms's interesting arguments, I do not agree with its interpretation of s 91(3)(*d*) of the IRDA.

58 First, the purpose of s 93(1)(*d*) is to protect the company from *any* of its creditors' wishes as to the appropriate judicial manager. As such, it is no surprise that the section makes it difficult for creditors to be heard in opposition to the company's nomination. Indeed, the original version of s 227B(3) as proposed in the Companies (Amendment) Bill (Bill No 9/1986) had required that a proposed judicial manager be approved by the majority of a company's creditors:

> **Power of the Court to make a judicial management order and appoint a judicial manager**
>
> **227B.**—(3) In any application for a judicial management order under subsection (1), the applicant shall nominate a person who is an approved company auditor, who is not the auditor of the company, to act as the judicial manager. The Court may reject the person nominated by the applicant and appoint another person in his stead or it may invite the Minister to make a nomination, or the Minister may himself nominate a person to act as judicial manager, if he considers that the public interest so requires, and any such person appointed by the Court or nominated by the Minister need not be an approved company auditor. *In a case where the nomination is made by the company, the person nominated shall be approved by the majority of creditors.* In a case where the nomination is made by

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[69] Buildforms Construction (Pte) Ltd's *aide-mémoire* for HC/OA 1164/2023 dated 6 February 2024 ("NPWS-2") at para 3 and Annex A, pp 2 and 4.

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> the Minister he may be heard in support of the nomination and for this purpose may be represented.
>
> [emphasis added]

59 However, as observed in a representation to the Select Committee, it could be unwieldy and costly if the company *always* had to seek the approval of majority of its creditors in nominating a judicial manager. That same representation suggested that the proposed s 227B(3) be amended to permit the company to nominate a judicial manager, while leaving the creditors the right to oppose this nomination and suggest another nominee (see *Report of the Select Committee on the Companies (Amendment) Bill* (Bill No 9/86) (Parl 5 of 1987, 12 March 1987 at pp A-113 to A-114). This suggestion was accepted (at B-38, Minutes of Evidence dated 5 November 1986 para 151). Eventually, as the High Court noted in *Re X Diamond* (at [43]), s 227B(3)(*c*) was enacted via the Companies (Amendment) Act 1987 (Act 13 of 1987). This section remained unchanged in the Companies Act (Cap 50, 2006 Rev Ed) until it was reproduced in its current form in s 91(3)(*d*) of the IRDA. With this legislative history in mind, it is therefore understandable why it *should be* difficult for the creditors to be heard in opposition. As such, the mere fact that Buildforms finds it difficult to be heard in opposition is not a sufficient reason to adopt its interpretation of s 93(1)(*d*); that difficulty is by design.

60 Second, although s 94(11)(*e*) and s 98(2)(*a*) of the IRDA determine a majority based on the creditors who are "present and voting", that does not mean that a similar approach should be taken with respect to s 91(3)(*d*). In the first place, the words "present and voting" (or similar) do not appear in s 91(3)(*d*) as they do in s 94(11)(*e*) and (in a different form) in s 98(2)(*a*). It is not right for me to read into s 91(3)(*d*) what Parliament has seen fit to omit therefrom but inserted in other provisions. Yet, this is what Buildforms's interpretation would

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have me do. Moreover, that the determination of a majority is made with reference to creditors who are present and voting in s 94(11)(*e*) and s 98(2)(*a*) makes perfect sense in *those* contexts. This is because s 94(11)(*e*) is concerned with the appointment of a judicial manager by resolution of creditors at a *creditors' meeting* convened under s 94(7). It therefore makes sense that the majority is determined from those present at *that meeting*. As for s 98(2)(*a*), it is concerned with the appointment of a judicial manager in the event of a vacancy by way *of a vote*. It therefore makes sense for the majority to be determined by reference to those voting in person or by proxy. In contrast, the right to be heard in opposition to a company's nomination of a judicial manager under s 91(3)(*d*) is *not by a vote*. For completeness, I am unconvinced by Mr Imran's attempt, at the hearing before me, to draw an analogy between participation in a creditors' meeting and participation in or attendance at a court hearing to oppose the appointment of a judicial manager. After all, Mr Imran could not point me to, nor I could think of, any other provision in the IRDA or elsewhere where participation in court proceedings was treated as a vote at a meeting. Besides, accepting this proposition would run into the same difficulty as before: if the intention was for participation in the court proceedings under s 91(3)(*d*) to be treated akin to a "present and voting" requirement, Parliament could have easily included express words to that effect, or more simply, provided for a creditors' meeting to achieve that effect. However, Parliament has not done so.

61 Third, while I understand Buildforms's argument that the applicant's interpretation of s 91(3)(*d*) would confer an advantage on a company, I observe that Buildforms's interpretation could easily create serious disadvantages for the company. This is because it is conceivable that a very large creditor, who may not amount to a majority in number or value, could nominate a judicial

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manager. If, as Buildforms suggests, the other creditors were uninterested to participate in the restructuring or winding-up proceedings, then the company concerned would have to engage with this creditor even if it were not in the majority. This would defeat the very reason behind s 91(3)(*d*), which is to shield the company from such contrary nominations in most cases.

62 Finally, while I again understand Buildforms's argument that it is difficult for a creditor, particularly where there are, as in the present case, a large number of creditors, to garner sufficient support for its nomination, the fact remains that such difficulty is by design. And if Buildforms is suggesting that a different approach should be undertaken with respect to cases involving a large number of creditors, I am not sure how that can be accommodated within the relevant provisions of the IRDA, which do not make a distinction between cases that involve large and small number of creditors. Indeed, it would be impossible for a court to draw a line in the sand, in the absence of legislative guidance within the IRDA, as to when such a proceeding could be considered to involve a "large" or "small" number of creditors.

63 For all these reasons, I reject Buildforms's proposed interpretation of s 91(3)(*d*). In my view, the "majority" referred to in s 91(3)(*d*) must be determined by reference to all of the applicant's creditors, as opposed to all of the applicant's creditors who expressed their positions on the applicant's nominations.

(3) My decision: Buildforms does not have standing to be heard in opposition to the applicant's nomination of Ms Tan

64 It follows from my conclusion as to the correct interpretation of s 91(3)(*d*) of the IRDA, in particular as to how the "majority" is to be

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determined, is that Buildforms does not have standing to be heard in opposition to the applicant's nomination of Ms Tan as the judicial manager.

Whether Ms Tan is suitable to be the judicial manager

65 Technically, my conclusions so far mean that Buildforms's nomination of the Buildforms Nominees is not before the court. This follows from Buildforms's lack of standing to be heard in opposition and put forward its nomination. Although I now obviously know about the Buildforms Nominees, I do not think it is right for me to consider their suitability for appointment by way of s 91(3)(*c*) of the IRDA. As the court said in *Re X Diamond* (at [47]), it "could not have been the legislative intent for s 91(3)(*c*) to act as a backup plan where s 91(3)(*d*) cannot be invoked". Otherwise, a creditor who does not satisfy the Majority Requirement in s 91(3)(*d*) can always put forward a nomination even in the knowledge that it will fail under that section for lack of standing, but hope that the court will still consider its nomination via s 91(3)(*c*). That cannot be the case. It would render the requirements in s 91(3)(*d*) otiose. There is therefore no need for me to *compare* Ms Tan against the Buildforms Nominees in deciding on Ms Tan's suitability to be judicial manager.

66 That said, I still need to be independently satisfied that Ms Tan is a suitable judicial manager. I am satisfied that Ms Tan is so by virtue of the reasons advanced by the applicant.

67 First, while Mr Imran raised concerns about Ms Tan's seeming lack of experience as a judicial manager in the construction sector, I am satisfied by Ms Tan's curriculum vitae that she is an experienced insolvency and restructuring practitioner with over 15 years in the industry. Indeed, Ms Tan's record shows that she has worked with clients across a wide range of business

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sectors.[70] While the Buildforms Nominees may have more specific experience than Ms Tan in the construction sector, I do not, and should not, have to compare Ms Tan against them due to my interpretation of s 91(3)(*d*) of the IRDA.

68 Second, the Investor Group is supportive of her appointment because, amongst other reasons, she would also be advising BHL on its own restructuring. In fact, the Investor Group noted that "the appointment of other persons aside from [Ms Tan] as judicial manager … would slowdown the progress of [the applicant's] restructuring".[71]

69 Third, I do not think that there is a lack of independence stemming from Ms Tan's nomination by the applicant. I do not agree with Buildforms's allegation that the mere appointment of a judicial manager by an applicant results in the lack of independence, perceived, or real. Indeed, as the High Court pointed out in *Re X Diamond* (at [50]), this point, if accepted, would mean that "any company, which seeks judicial management because its fortunes have taken a turn for the worse due to internal mismanagement, cannot put forward its own nominee because that nominee may feel, or be perceived to feel, hindered in conducting thorough investigations". It makes no difference in the present case that the two controllers of the applicant are also creditors who have nominated Ms Tan. Indeed, given that a judicial manager is an independent officer of the court, this is not a tenable position to take without serious evidence (see s 89(4) of the IRDA and the High Court decision of *Re Halley's Departmental Store Pte Ltd* [1996] 1 SLR(R) 81 at [19]).

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70 1st JM Affidavit at p 47.

71 AWS at para 58.

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70 Fourth, I accept that the support of the trade creditors bears greater weight than that of the non-trade creditors. This is because the intended restructuring plan is envisaged to deal only with the liabilities of the applicant's trade creditors, with the liabilities of the non-trade creditors to be dealt with under the restructuring of BHL. Thus, the alleged lack of OCBC's support, if any, which admittedly is the largest and only secured creditor, is not as weighty a factor.

71 Fifth, and relatedly, Buildforms's case, that Ms Tan's appointment is opposed by creditors holding a substantial proportion of the applicant's debt,[72] is significantly undermined by Mr Imran's very fair concession at the hearing that OCBC, despite supporting the appointment of the Buildforms Nominees, also *does not oppose* Ms Tan's appointment as judicial manager.[73] Without OCBC (to whom $14.524m is owed), the debt owed by the applicant to creditors who support the Buildforms Nominees is $5,729,203.01 or $6,577,030.85 (calculated by Buildforms).[74] Furthermore, I note that a significant proportion of this debt is comprised of Buildforms's own alleged debt of $2,828,136.31. On the other hand, the debt owed by the applicant to creditors who support Ms Tan's nomination is allegedly $4,696,330.20 (as calculated by Buildforms).[75] This means that, out of the debt owed to creditors who have expressed a view regarding the appointment of a judicial manager (only), about 54−58% is owed to companies opposing Ms Tan's application as judicial manager. Indeed, if Buildforms's debt is removed from the calculation, since

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72 NPWS-1 at para 124.

73 HC/OA 1164/2023, Minute Sheet (6 February 2024) at p 5.

74 NPWS-2, Annex A at pp 3−4.

75 NPWS-2, Annex A at pp 1−2.

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this debt is being disputed on substantial grounds, this percentage drops to around 38−44%. This is hardly the overwhelming majority that Buildforms has sought to portray in its submissions.

72 For all these reasons, I therefore find that Ms Tan is suitable to be appointed as the judicial manager.

Conclusion

73 In conclusion, for all the reasons given above, I allow the applicant's application, both to be placed under judicial management and for Ms Tan to be its judicial manager, along with the consequential orders prayed for.

74 Unless the parties are able to agree on the appropriate costs order, they are to write in with their submissions, limited to seven pages each, within seven days of this decision.

Goh Yihan
Judge of the High Court

Lee Lieyong Sean, Tan Yan Liang, Janice Low Hui Yi and Matthew Tan Jun Ye (Aquinas Law Alliance LLP) for the applicant;
Muhammad Imran bin Abdul Rahim, Kuek Zihui, Ace Yuan Yong Long and Praveen Prathap (Eldan Law LLP) for Buildforms Construction (Pte) Ltd;
Kong Hui Xin Annette (Salem Ibrahim LLC) for Maginet Plumbing Contractor Pte Ltd;
Lye Yu Min (Rajah & Tann Singapore LLP) for Oversea-Chinese Banking Corporation Limited;

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Timothy Ang Wei Kiat (Rajah & Tann Singapore LLP) for
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Tan Jia Jun James (Covenant Chambers LLC) for
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Jo Tay Yu Xi (Allen & Gledhill LLP) for Berkshire Hathaway
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Stuart Ralph Lim Xiu Wu (Dentons Rodyk & Davidson LLP) for
Yi Sheng Foundation Pte Ltd;
Ong Li Cheng, Ng Min Hui and Teh Lik Yin for Civil Aviation
Authority of Singapore in person;
Toh Yang Wee for Reclaims Enterprise Pte Ltd in person;
Chan Kok Yeow for Archilite Engineering Pte Ltd in person;
Malaichamy Mani for MMM Contract & Services Pte Ltd in person;
Jennifer Ang for Samwoh Premix Pte Ltd in person.

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