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

[2025] SGHC 9

Originating Application No 1060 of 2024

In the matter of Section 15 of the Legal Profession Act 1966 (2020 Rev Ed)

And

In the matter of Court of Appeal / Civil Appeal No 54 of 2024

And

In the matter of Court of Appeal / Civil Appeal No 55 of 2024

And

In the matter of an application by Tom Smith, King's Counsel of England

Tom Smith KC

… *Applicant*

GROUNDS OF DECISION

[Legal Profession — Admission — Ad hoc]

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Introduction

1 When a lawyer is assessed to be sufficiently competent to represent a party in any given litigation, would that same lawyer be considered any less competent to address the *identical* issues on appeal simply because he did not prevail in the court below? This was in essence the reason which inspired the present application to admit Mr Tom Smith KC to act for the appellant in CA/CA 54/2024 ("CA 54") and CA/CA 55/2024 ("CA 55"). This decision thus provided an opportunity to consider this question, in the context of an application for the *ad hoc* admission of a foreign senior counsel.

2 Singapore's policy on the admission of foreign counsel has evolved over time (see Singapore Parl Debates; Vol 88, Sitting No 13; Page 1106 [14 February 2012] (K Shanmugam, Minister for Law)). Under the new statutory framework pursuant to the Legal Profession (Amendment) Act 2012

(Act 3 of 2012) (the "2012 Amendment"), the courts have been vested with greater discretion to determine the admission of foreign senior counsel. However, that is not to say that the approach towards the *ad hoc* admission of foreign senior counsel is any less rigorous. The key undergirding principle for such admission applications is that of "need". This is a fairly stringent standard which goes beyond mere desirability, preference or convenience (*Re Beloff Michael Jacob QC* [2014] 3 SLR 424 ("*Re Beloff*") at [42]).

3 Although the courts have considered numerous applications for the *ad hoc* admission of foreign senior counsel to date, most of these applications were to admit foreign senior counsel for the purpose of representing a party in first instance proceedings. In cases when the *ad hoc* admission of a foreign senior counsel had been sought for the purpose of representing a party in an appeal, the party seeking representation was unrepresented at first instance (see, *eg*, *Kassimatis, Theodoros KC v Attorney-General and another and another appeal* [2024] 2 SLR 410 ("*Kassimatis*")). It was, therefore, atypical for the *ad hoc* admission of a foreign senior counsel to be sought for the purpose of an appeal where the party seeking such representation continued to be represented by *the same* local counsel for the appeal proceedings.

Facts

4 This was Mr Tom Smith KC's (the "Applicant" or "Mr Smith") application for *ad hoc* admission under s 15 of the Legal Profession Act 1966 (2020 Rev Ed) (the "LPA") for the purpose of acting as instructed counsel for the appellant in CA 54 and CA 55 (collectively, the "Appeals").

Background to the Appeals

5 The appellant in the Appeals was UT Singapore Services Pte Ltd ("UTSS"). UTSS was the operator of a petroleum storage facility.

6 The respondents in the Appeals were Hin Leong Trading (Pte) Ltd ("HLT") and its joint and several liquidators, Mr Goh Thien Phong ("Mr Goh") and Mr Chan Kheng Tek ("Mr Chan") (collectively, the "Appeals Respondents"). HLT was a company primarily engaged in the business of oil trading.

7 CA 55 and CA 54 were appeals against the decision of a judge of the General Division of the High Court (the "Judge") to dismiss UTSS's application to set aside the court order granting leave for the liquidators of HLT to convene a scheme meeting for the creditors to consider and approve a scheme of arrangement (the "Scheme"), and to grant the Appeals Respondents' application for the Scheme to be sanctioned, respectively.

8 Between December 2018 and April 2020, HLT and UTSS entered into various Tankage and Storage Agreements and spot contracts (the "Storage Agreements"), for the lease of various tanks by UTSS to HLT for the storage of petroleum products.

9 HLT was placed under interim judicial management on 27 April 2020 and was subsequently placed under judicial management on 7 August 2020. On 5 February 2021, the judicial managers of HLT applied for HLT to be compulsorily wound up. On 8 March 2021, the court ordered for HLT to be wound up and appointed Mr Goh and Mr Chan as the joint and several liquidators of HLT (collectively, the "Liquidators").

10 When HLT was placed under interim judicial management, some of the oil purportedly belonging to it was stored in various storage facilities: (a) tanks in UTSS; (b) tanks in storage facilities operated by Ocean Tankers (Pte) Ltd ("Ocean Tankers"); (c) ships chartered by HLT and operated as floating storage units; and (d) ships controlled by Ocean Tankers. Some of the oil was subject to several competing claims, which formed the subject of various interpleader proceedings. Proceeds were obtained from the sale of cargo from the tanks and vessels which were not subject to any interpleader proceedings (the "Uninjuncted Proceeds").

11 Of the oil products stored in UTSS's tanks, some of the products also became subject to court injunctions, while the remaining products were eventually consolidated into 11 tanks (the "Filled Tanks"). The products in the Filled Tanks were sold by the Liquidators and the proceeds obtained from the sale formed part of the Uninjuncted Proceeds.

12 On 20 May 2020, UTSS terminated the Storage Agreements on account of an event of termination (*ie,* HLT's insolvency). UTSS made a demand for, amongst others, S$26,673,150 as "compensation" for UTSS's early termination of the Storage Agreements. UTSS also asserted that it had a lien over the products in the Filled Tanks pursuant to the terms of the Storage Agreements, and that it was entitled to the proceeds obtained from the sale of the Filled Tanks' products in satisfaction of its claims against HLT (and consequently the Uninjuncted Proceeds).

13 Various banks which had financed HLT's purchase of oil products (the "Financing Banks") also asserted security claims over the Uninjuncted Proceeds.

14 On 31 August 2021 and 14 March 2022, the Liquidators filed various summonses to seek the court's directions on the validity of the alleged security interests of the Financing Banks and UTSS, respectively. At the time of this application, these summonses had yet to be heard by the General Division of the High Court.

15 On 17 May 2024, the Liquidators presented the proposed Scheme to the creditors of HLT. The Scheme sought to distribute US$80m of the Uninjuncted Proceeds (the "Scheme Consideration") to HLT's creditors.

16 Two voting classes were contemplated under the proposed Scheme:

(a) Scheme creditors who asserted a security interest over the Uninjuncted Proceeds (the "Potential Secured Creditors"). The validity of the Potential Secured Creditors' respective securities was the subject matter of interpleader proceedings and/or summonses to be determined.

(b) Scheme creditors who did not assert any security interest over the Uninjuncted Proceeds (the "Unsecured Creditors").

17 Under the proposed Scheme, the Scheme Consideration of US$80m was to be distributed to both classes of Scheme creditors on a *pari passu* basis. The Scheme further provided for all Potential Secured Creditors to irrevocably and irreversibly waive any security interests that they may have over the Uninjuncted Proceeds.

18 As of 6 June 2024, the Liquidators received in-principle approval of the Scheme from: (a) 15 out of 25 in number of the Potential Secured Creditors (representing 55% in value of that class); and (b) 19 out of 125 in number of the

Unsecured Creditors (representing 87% in value of that class). As of 6 June 2024, there were no creditors who had raised any objections to the Scheme.

19 On 6 June 2024, the Liquidators applied by way of HC/OA 555/2024 ("OA 555") for leave to be granted for HLT to convene a scheme meeting for the creditors to consider and, if they thought fit, to approve the proposed Scheme (the "Convening Application"). On 1 July 2024, the Judge granted the Convening Application (the "Convening Order").

20 On 15 July 2024, UTSS applied by way of HC/SUM 1957/2024 ("SUM 1957") to: (a) set aside the Convening Order; (b) re-classify UTSS for the purpose of voting on the Scheme and to reduce the quantum of the Scheme Consideration by US$42.4m (*ie*, the sum over which UTSS claimed security); and (c) defer the scheme meeting on 22 July 2024 to after the determination of SUM 1957, amongst other things. The Judge declined to defer the scheme meeting, but adjourned the remaining prayers to be heard with the application for the sanction of the Scheme.

21 The Liquidators convened the scheme meeting on 22 July 2024. The Scheme was approved by: (a) 95.7% of the Scheme creditors from the Potential Secured Creditors' class (representing 98.7% in value of the class); and (b) 100% of the Scheme creditors from the Unsecured Creditors' class, present and voting. UTSS was the only Scheme creditor which voted against the Scheme.

22 On 25 July 2024, the Liquidators applied in HC/OA 726/2024 ("OA 726") for the Scheme to be sanctioned (the "Sanction Application"). UTSS opposed the Sanction Application. On 30 August 2024, the Judge granted the Sanction Application and dismissed the remaining prayers in SUM 1957.

23 On 17 September 2024, UTSS filed its notices of appeal in CA 55 and CA 54 against the whole of the Judge's decision in respect of SUM 1957 and OA 726 respectively.

24 When SUM 1957 and OA 726 were heard, UTSS was represented by Mr Nandakumar Ponniya ("Mr Nandakumar") and his team from Wong & Leow LLC. UTSS continued to be represented by Mr Nandakumar and his team in the Appeals. On 14 October 2024, the Applicant brought the present application for the purpose of representing UTSS in the Appeals.

The parties' cases

The Applicant's case

25 The Applicant's position was that the mandatory statutory requirements under s 15(1) of the LPA were satisfied, and that the court should exercise its discretion to admit the Applicant for the purpose of the Appeals. As regards the court's exercise of discretion, the Applicant submitted that:

(a) The issues arising in the Appeals were novel, complex, difficult, carried significant precedential value and engaged considerable public interest. These weighed in favour of allowing the admission application. Moreover, the Applicant's specialist input on the English scheme of arrangement regime would provide significant assistance to the Court of Appeal's determination of the Appeals.

(b) It was necessary to engage the Applicant's services as other local Senior Counsel and/or advocates were conflicted from representing UTSS in the Appeals. This was because a number of local Senior Counsel and/or advocates with the requisite experience either were involved in the multiplicity of other legal proceedings related to HLT or

had acted for the other Potential Secured Creditors which comprised major international financial institutions.

(c) For the above reasons, it was reasonable to admit the Applicant for the purpose of the Appeals. Further, the fact that the Appeals Respondents were represented by Mr Abraham Vergis SC weighed in favour of granting the Applicant's admission.

The Law Society of Singapore's and the Attorney-General's cases

26 The Law Society of Singapore (the "Law Society") and the Attorney-General (the "AG") both opposed the admission application. The Law Society's and the AG's positions were generally similar. They did not dispute the Applicant's fulfilment of the mandatory requirements under s 15(1) of the LPA but submitted that the court should exercise its discretion not to admit the Applicant. This was because:

(a) There was nothing novel or difficult about the issues that arose in the Appeals and the Appeals did not have any significant precedential value. Instead, the Appeals could be resolved by an application of local insolvency principles.

(b) UTSS had failed to demonstrate that there were no available Senior Counsel or advocate with the appropriate experience to conduct the Appeals. It was not necessary for the Applicant to represent UTSS in the Appeals. UTSS was already represented by Mr Nandakumar, who was more than competent to represent UTSS in the Appeals. There was also nothing to prevent the Applicant from assisting with the preparation of UTSS's written submissions even if the Applicant's admission application were rejected.

(c) For the above reasons, it was also not reasonable to admit the Applicant.

The Appeals Respondents' case

27 The Appeals Respondents also objected to the admission application. They submitted that the mandatory requirement under s 15(1)(*c*) of the LPA, namely, that the Applicant had to have special qualifications or experience for the purpose of the case, was not fulfilled. Further, the court should not exercise its discretion to admit the Applicant because:

(a) The issues that arose in the Appeals were not of such novelty, difficulty or significant precedential value that UTSS could not be adequately represented by local counsel.

(b) UTSS failed to demonstrate a reasonably conscientious, or any, effort to secure the services of competent local counsel. Mr Nandakumar was sufficiently competent to represent UTSS in the Appeals, and the Applicant could provide substantial input in crafting UTSS's written submissions in the absence of the court granting the *ad hoc* admission.

(c) Additionally, UTSS appeared to have filed the admission application as part of its litigation strategy to delay the Appeals and/or resist the Liquidators' application for the Appeals to proceed on an expedited basis. There was ultimately no good and sufficient reason for the *ad hoc* admission of the Applicant.

Issues to be determined

28 There were two issues for this court's determination:

(a) First, whether the mandatory requirements stipulated in s 15(1) of the LPA were satisfied.

(b) Second, if the first issue was answered in the affirmative, whether the court should exercise its discretion to admit the Applicant.

The law

29 The main governing provision of the *ad hoc* admission regime is s 15 of the LPA, which provides that:

> **Ad hoc admissions**
>
> **15.**—(1) Despite anything to the contrary in this Act, the court may, for the purpose of any one case, admit to practise as an advocate and solicitor any person who —
>
> (*a*) holds —
>
> (i) His Majesty's Patent as King's Counsel; or
>
> (ii) any appointment of equivalent distinction of any jurisdiction;
>
> (*b*) does not ordinarily reside in Singapore or Malaysia, but has come or intends to come to Singapore for the purpose of appearing in the case; and
>
> (*c*) has special qualifications or experience for the purpose of the case.
>
> (2) The court must not admit a person under this section in any case involving any area of legal practice prescribed under section 10 for the purposes of this subsection, unless the court is satisfied that there is a special reason to do so.
>
> …
>
> (6A) The Chief Justice may, after consulting the Supreme Court Judges, by notification in the *Gazette*, specify the matters that

> the court may consider when deciding whether to admit a person under this section.

30 The analytical framework for determining whether an *ad hoc* admission application should be granted has previously been set out by the Court of Appeal in *Re Beloff* (at [54]) and *Kassimatis* (at [15]–[17]):

(a) First, the court considers whether the mandatory requirements stipulated under s 15(1) of the LPA are satisfied.

(b) Second, the court considers whether the case that the foreign senior counsel is seeking admission for involves any area of legal practice prescribed under r 47(1) of the Legal Profession (Admission) Rules 2024 (the "LPA Rules"). If so, the court must be satisfied that there is a special reason to admit the foreign senior counsel.

(c) Third, provided that the requirements in the first two stages are fulfilled, the court will exercise its discretion to determine whether the foreign senior counsel should be admitted under s 15 of the LPA.

31 As regards the court's exercise of discretion, the court is to have regard to the matters specified in para 3 of the Legal Profession (Ad Hoc) Admissions Notification 2012 (S 132/2012) (the "Notification") (*Re Beloff* at [18]). The four matters specified in para 3 of the Notification, which are to guide the court's exercise of discretion, are: (a) the nature of the factual and legal issues involved in the case; (b) the necessity for the services of a foreign senior counsel; (c) the availability of any Senior Counsel or other advocate and solicitor with appropriate experience; and (d) whether, having regard to the circumstances, it

is reasonable to admit the foreign senior counsel for the purpose of the case (collectively, the "Notification Matters").

Issue 1: Whether the requirements under s 15(1) of the LPA were satisfied

32 It was common ground that the Applicant satisfied the mandatory requirements in ss 15(1)(*a*) and 15(1)(*b*) of the LPA. The Applicant satisfied the court that he held His Majesty's Patent as King's Counsel, and that he did not ordinarily reside in Singapore or Malaysia but intended to come to Singapore for the purpose of representing UTSS in the Appeals.

33 However, the Appeals Respondents took issue with the Applicant's fulfilment of s 15(1)(*c*) of the LPA which required the applicant to have "special qualifications or experience for the purpose of the case". This has been interpreted to mean that the applicant in question must possess special qualifications or experience relevant to the specific issues which arise in the case at hand, and not just experience in a general practice area (*Re Wordsworth, Samuel Sherratt QC* [2016] 5 SLR 179 ("*Re Wordsworth*") at [41], referring to *Re Rogers, Heather QC* [2015] 4 SLR 1064 ("*Re Rogers*") at [17]). Thus, in assessing whether s 15(1)(*c*) is satisfied, the court must first identify the issues in the case at hand in a clear and fair manner (*Rogers* at [22]), before assessing the qualifications and experience of the applicant with reference to those identified issues.

34 According to UTSS, five main issues arose in the Appeals. The framing of these issues was not challenged by the Law Society, the AG or the Appeals Respondents. These issues were (collectively, the "Appeals Issues"):

(a) Whether it was possible to place a group of creditors into a single class for the purposes of voting on and participating in a proposed scheme of arrangement, on the basis that they all asserted to be secured creditors of the company, without either establishing the validity of such alleged security in advance of, or under the terms of, the Scheme ("Issue 1").

(b) Whether the Potential Secured Creditors could be said to have the same existing rights against HLT, in the likely alternative scenario to the Scheme, or whether the rights were sufficiently similar that the Potential Secured Creditors could properly consult together with a view to their common interest ("Issue 2").

(c) Whether UTSS was appropriately classified as a Potential Secured Creditor ("Issue 3").

(d) Whether a creditor was permitted to raise issues pertaining to the classification of creditors after the hearing of the application for leave to convene a scheme meeting (the "Convening Stage") ("Issue 4").

(e) Whether, in the circumstances of the case, UTSS was permitted to raise issues pertaining to classification after the Convening Stage, including at the hearing of OA 726 ("Issue 5").

35 In my view, the Appeals Issues were framed clearly and fairly, and were representative of the actual issues arising in the Appeals. These issues could be further classified into two broad categories, namely, (a) issues relating to the appropriate classification of creditors under a scheme of arrangement (*ie*, Issues 1 to 3); and (b) issues relating to the court's jurisdiction to hear

classification objections at the application for sanction of the scheme (the "Sanction Stage") (*ie*, Issues 4 and 5).

36 The Applicant possessed extensive qualifications regarding the English debt restructuring regime and substantial experience in both categories of issues of creditor classification and the sanctioning court's jurisdiction. Section 210 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"), which governs schemes of arrangements in Singapore, has been acknowledged as a "hybrid of both the UK and Australian provisions" [emphasis in original omitted] (*The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121 ("*Oriental Insurance*") at [34]). In *Oriental Insurance*, the Court of Appeal observed that there were substantial similarities between s 210 of the Companies Act and s 425 of the Companies Act 1985 (c 6) (UK) and s 411 of the Australian Corporations Act 2001 (Cth). For this reason, the English and the Australian cases on the respective provisions were said to be instructive (*Oriental Insurance* at [33]). It is true that Singapore has continued to independently develop and modify parts of its debt restructuring regime, drawing upon authorities in other jurisdictions such as Chapter 11 of the Bankruptcy Code 11 USC (US) (1978). However, that only meant that the English authorities may not necessarily be decisive of scheme of arrangement related issues in Singapore; it did not mean that the English authorities were no longer relevant. The Applicant's qualifications and experience in relation to the English scheme of arrangement regime were, therefore, relevant to Singapore's scheme of arrangement regime. In my view, the requirement under s 15(1)(*c*) was fulfilled.

Issue 2: Whether the court should exercise its discretion to admit the Applicant

37 As the Appeals raised issues in the field of restructuring and insolvency law, the Appeals Issues did not fall under any of the prescribed areas of legal practice under r 47(1) of the LPA Rules which would require the court to be satisfied of a special reason to admit the foreign senior counsel. Having found that the mandatory requirements under s 15 were satisfied, the decision turned primarily on the court's exercise of discretion, having regard to the Notification Matters.

The nature of the factual and legal issues in the Appeals

38 The first Notification Matter was the nature of the factual and legal issues in the Appeals. The court considered the character of the issues in the case so as to determine whether the admission of foreign counsel was called for. Where the issues were complex, difficult, novel or of significant precedential value, there may be a smaller pool of local counsel available to handle the case and a corresponding need to admit foreign counsel (*Re Beloff* at [61]). In other words, the focus of the inquiry was not on the novelty or complexity of the issues *per se*, but whether the issues were so novel or complex *beyond the competence of local counsel* such that there was a corresponding need to admit foreign counsel (see, *eg*, *Re Landau, Toby Thomas QC* [2016] SGHC 258 ("*Re Landau*") at [59]; *Re Beloff* at [61]).

39 In my judgment, the Appeals Issues were not so novel or complex that they were beyond the competence of local counsel.

40 First, only Issues 1 and 4 involved potentially novel issues of law. The remaining issues (*ie*, Issues 2, 3 and 5) were fact-sensitive and simply required

an application of the existing law, or the law as decided in relation to Issues 1 and 4, to the facts of the case. Additionally, to the extent that Issues 1 and 4 were novel in nature, they arose because UTSS omitted (to use a neutral term) to challenge the classification at the usual time when the convening order was sought (see, *eg*, *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213 ("*TT International*") at [62]).

41 Second, even though Issues 1 and 4 may be novel, they were not complex. While issues 1 and 4 were discrete issues of law, their answers were necessarily binary in nature. Their determination depended on a review and the application of basic restructuring and insolvency principles and was likely to ultimately turn on policy considerations.

42 As observed in *Re Landau* (at [68]), while an argument or issue may be "novel" in the sense that it had never been addressed before, "it [did] not follow that it [was] complex beyond the competence of local counsel". The circumstances in fact appeared to indicate that both UTSS and UTSS's current counsel considered that the Appeals Issues were well within the competence of UTSS's current counsel. All the Appeals Issues were argued at first instance before the Judge in SUM 1957 and OA 726. UTSS had appointed Mr Nandakumar and his team to represent them, and clearly considered them to be sufficiently competent to represent their interests in the proceedings. Mr Nandakumar and his team had also accepted the brief from UTSS and, therefore, also assessed that the Appeals Issues were well within their competence and/or expertise. In preparing for the applications before the Judge, Mr Nandakumar and his team also saw no need to instruct any foreign senior counsel. Thus, in so far as the Appeals Issues were identical to the issues raised before the Judge, no good reason was proffered as to why the same issues on

appeal came to be beyond the competence of Mr Nandakumar or other suitable and available local counsel.

43 The position might well be different in at least two very limited situations. First, where the court should determine that the issues were *in fact* beyond the competence of a party's local counsel notwithstanding their counsel's representation to the contrary. In other words, the local counsel had oversold their competence to handle the case. In that situation, the party would still, nonetheless, have to satisfy the court that there was *no* suitable alternative local counsel. Second, where the issues on appeal were quite different (unlike the present case) from the issues as understood by counsel when the brief was initially accepted due to additional complex issues arising from the parties' arguments or points raised by the judge in the course of the hearing. In that regard, the applicant would similarly have to satisfy the court that those additional issues were beyond the competence of local counsel.

44 In the present case, however, I found that the Appeals Issues were not only substantially similar to the issues raised before the Judge at first instance, but that they were in fact within the competence of Mr Nandakumar, which I elaborate further upon (at [47]–[48]) below.

Necessity for foreign counsel and availability of local counsel

45 The second Notification Matter pertained to the necessity for the services of a foreign senior counsel. The court was to consider such matters that might go towards demonstrating that a litigant stood to suffer substantial prejudice in the conduct of his case if the retention of the foreign counsel in question was not permitted (*Re Beloff* at [62]). The third Notification Matter involved a consideration of whether the admission of foreign counsel was called for from the perspective of whether a litigant had a real difficulty with accessing

suitable legal services within Singapore (*Re Beloff* at [63]). Due to the overlap between the inquiries under the second and third Notification Matters, the court has generally considered these two matters in tandem (*Re Wordsworth* at [53]).

UTSS's current counsel was sufficiently competent to represent UTSS in the Appeals

46 As would have been made clear from the foregoing analysis, this was not a situation where there was no local counsel available to represent UTSS in the Appeals. Mr Nandakumar and his team, from Wong & Leow LLC, continued to represent UTSS in the Appeals. Where a litigant already had access to appropriately competent local counsel, the court would be hard pressed to conclude that the litigant had a real difficulty with accessing suitable legal services within Singapore such that the admission of foreign counsel was necessary (see, *eg*, *Re Beloff* at [63]). Therefore, the question was whether Mr Nandakumar was a sufficiently competent advocate and solicitor to represent UTSS in the Appeals.

47 For whilst Mr Nandakumar was not a Senior Counsel, the court has previously acknowledged that one need not be a Senior Counsel to be a very able litigator (*Re Beloff* at [63]). It has been said that the assessment of the availability of local counsel under the third Notification Matter should not be limited only to Senior Counsel, but must include, more generally, the availability of local counsel with appropriate experience (*Re Beloff* at [63]). In demonstrating the non-availability of local counsel, litigants have been cautioned against having a sole gravitation to Senior Counsel (*Re Fordham, Michael QC* [2015] 1 SLR 272 at [88]).

48 On Wong & Leow LLC's website, Mr Nandakumar was described to have extensive experience in various areas of law, including "managing

multijurisdictional restructuring and insolvency". His profile further detailed his experience in large and complex restructuring deals in Singapore and the region, and his proficiency in corporate restructuring matters. He was described by clients as having "excellent advocacy skills" and has had experience appearing before the Court of Appeal. Mr Nandakumar's experience therefore suggested that he was a sufficiently competent counsel, and well-versed in the field of restructuring and insolvency law. There was no reason to doubt the veracity of these statements on Wong & Leow LLC's website. It was clear that UTSS had considered Mr Nandakumar to be sufficiently capable and competent to represent them before the Judge, in relation to the exact same issues that arose in the Appeals.

49 In fact, had UTSS prevailed below, there would have been absolutely no question that any application to admit the Applicant for the purpose of acting in a hypothetical appeal by the Appeals Respondents would not have been allowed, simply because there would have been no need to do so. Consequently, it appeared that the *only* basis that UTSS could mount to justify the Applicant's *ad hoc* admission was that Mr Nandakumar did not prevail in the application and summons before the Judge.

50 It was here that the Applicant faced an insurmountable hurdle. An advocate was not rendered any less competent merely because he did not prevail in the court below. That could be due to a variety of reasons such as the facts of the case, the lack of evidence, the law as understood by the Judge below, or that the party's case lacked merit. It remained my firm view that the Appeals Issues were well within the competence of Mr Nandakumar.

51 It may well have been that UTSS preferred the Applicant to represent them in the Appeals. However, the suitability of *ad hoc* admissions was to be

viewed through the prism of "need" as opposed to preference or desirability (*Re Wordsworth* at [1]; *Re Beloff* at [42]).

52 Moreover, as the *ad hoc* admission of the Applicant was sought for the purpose of representing UTSS at the appeal stage, the necessity of admitting foreign senior counsel was less apparent. This was because the non-admission of foreign senior counsel did not prevent the foreign counsel from assisting with the preparation of written submissions in an appeal (*Re Beloff* at [84], referring to *Re Lord Goldsmith Peter Henry PC QC* [2013] 4 SLR 921 at [37]). In this regard, it was entirely open to and perhaps more appropriate for the Applicant to assist UTSS's current counsel, if they were minded to do so, in the preparation of the written submissions for the Appeals. Mr Nandakumar as an experienced advocate should be able to use the Applicant's written assistance and research materials to best advance UTSS's case in the Appeals.

UTSS had not demonstrated a reasonably conscientious search for local counsel

53 Additionally, UTSS had not taken sufficient steps to instruct any other senior local advocate with the appropriate experience. In *Re Caplan Jonathan Michael QC* [2013] 3 SLR 66 ("*Caplan*") (at [23]), the court stated that the full details of the party's efforts in securing local counsel should be presented to the court:

> … The details to be provided should include the nature of the contact between the party and the local counsel who was approached (whether personally or through a third party), the mode of contact (whether in writing, orally over the telephone or in person), the date(s) and the duration(s) of the call(s) and/or meeting(s), the venue(s) of the meeting(s) as well as a summary of the discussion(s) held. In addition, the date of the local counsel's refusal to take on the party's case and the reasons given should also be set out in detail.

The *Caplan* requirement enables the court to consider the broader question of whether there has been a "reasonably conscientious" search for local counsel (*Re Wordsworth* at [64]).

54 UTSS had, in fact, only reached out to one counsel to inquire if he was able to represent UTSS in the Appeals, *ie*, Mr Toby Landau KC. UTSS claimed that it had "considered" instructing Senior Counsel or other senior local advocates with the appropriate expertise or experience. UTSS's main rationale for its limited approach was that the liquidation of HLT had "involved no less than 26 law firms" and that any counsel in these firms were conflicted from representing UTSS in the Appeals. Further, it was asserted that as the other Potential Secured Creditors, who had opposing interests to UTSS, comprised major international financial institutions, it was "fanciful to expect that any of the 21 remaining Senior Counsel (or any other advocate with the appropriate experience) would be willing and able to act for UTSS, even putting aside the need for expertise in insolvency law".

55 UTSS's assertions did not stand up to scrutiny. Although the extensive reach of the HLT liquidation was well-known and there may have been numerous counsel that were conflicted from representing UTSS in the Appeals, there were other suitable local senior advocates with the requisite experience and qualifications to represent UTSS, should UTSS have decided to instruct another counsel other than Mr Nandakumar. This was confirmed during the hearing, when various counsel who had the requisite experience in restructuring and insolvency matters and did not appear to be conflicted were identified.

56 Therefore, the present situation was not the one contemplated by Parliament, where litigants who were up against a bank or large corporate institution found it difficult to secure the services of local Senior Counsel or

other advocate on account of the fact that many firms were unable to act because of a real or potential conflict of interest or unwilling to take positions that may be adverse to the commercial interests of clients for which the firm did a substantial amount of fee-paying work (*Re Beloff* at [40]; Singapore Parl Debates; Vol 88, Sitting No 13 [14 February 2012] (K Shanmugam, Minister for Law)).

57 The present case was therefore not one where there was no competent local advocate with the appropriate qualifications or experience to represent UTSS in the Appeals. There was Mr Nandakumar and his team, or alternatively, any other competent advocate in Wong & Leow LLC, or any of the other advocates who were mentioned during the hearing.

Whether it was reasonable to admit the Applicant

58 The fourth Notification Matter sets out the ultimate question for the court, namely, whether in the light of all the circumstances of the case, it was reasonable to admit the foreign senior counsel for the purpose of the case in question (*Re Beloff* at [64]).

59 Given my findings on the first three Notification Matters, it followed that it was indeed not reasonable to admit the Applicant.

60 There was also an additional policy consideration in so concluding. It appeared that UTSS's main rationale for seeking to instruct the Applicant was that it was unsuccessful in the proceedings before the Judge. As rightly submitted by the AG, the foreign bar should not be the first port of call whenever a local lawyer failed in his case at first instance. It cannot be that the mere fact that local counsel was unsuccessful in the first instance proceedings alone justified a "need" for the admission of a foreign senior counsel. This could give

rise to a wholly undesirable perception that local counsel may not be sufficiently competent to represent their clients in an appeal.

61 On a final note, it was important to correct any misapprehension of the policy imperative behind the *ad hoc* admission regime. The Applicant's counsel had made submissions to the effect that the "policy imperative behind the present *ad hoc* admission regime [was] to provide an avenue for litigants to engage foreign senior counsel *in lieu of local Senior Counsel* in appropriate cases". Further, the Applicant's counsel contended that although he was not making an "equality of arms" argument, the fact that the Appeals Respondents were represented by Senior Counsel, *ie*, Mr Abraham Vergis SC, should weigh in favour of the Applicant's admission. These, coupled with UTSS's lack of any reasonably conscientious search for other competent local advocate, displayed a noticeable partiality for representation by Senior Counsel. As highlighted above (at [47]), the necessity of admitting a foreign senior counsel was not to be assessed only in relation to the non-availability of local Senior Counsel, but also that of local competent advocates. This was made clear by the third Notification Matter, which mandates consideration of the availability of any Senior Counsel *or other advocate and solicitor with appropriate experience*. In so far as there was any contemplation of an "equality of arms" argument, it was well-established that the touchstone of admission was "need" and not "equality" (*Re Rogers* at [60]). As observed in *Re Rogers* (at [61]):

> … Unless the disparity in representation would lead to inadequate or under-representation, the quality of the legal representation on the opposing side is not, without more, a reason for this court to admit foreign senior counsel, particularly where the underlying issues are not particularly complex. It cannot be the case that a litigant is entitled to be represented by a foreign senior counsel simply because the opposing party is represented by a senior counsel. Such a situation would lead, in the words of Tay Yong Kwang J in *Re Millar Gavin James QC* [2008] 1 SLR(R) 297 at [41], to 'absurd consequences'.

Indeed, as I have found above, UTSS's current counsel was competent to represent UTSS in the Appeals. It could not be said that there was such a disparity in representation that would lead to inadequate or underrepresentation in the circumstances of this case.

Conclusion

62 For all the foregoing reasons, the admission application was dismissed with costs of $8,000 all-in. Following the previous cases where costs were ordered for *ad hoc* admission applications, I ordered the "true party" of the application to bear the costs, *ie*, UTSS and not the Applicant, pursuant to O 21 r 2(1) of the Rules of Court 2021.

Steven Chong
Justice of the Court of Appeal

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Lee Ming En and Saw Seang Kuan (Lee & Lee) for the Law Society of Singapore;
Vincent Leow, Jeyendran s/o Jeyapal, Sarah Siaw Ming Hui and Dan Pan Xue Wen (Attorney-General's Chambers) for the Attorney-General.