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

[2024] SGHC 328

Bankruptcy No 3811 of 2024

In the matter of s 328 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Lim Oon Kuin

Between

Lim Oon Kuin

… *Claimant*

And

Official Assignee

… *Official Assignee*

And

(1) Goh Thien Phong
(2) Chan Kheng Tek
(3) Hin Leong Trading (Pte.) Ltd (in compulsory liquidation)

… *Non-parties*

Bankruptcy No 3812 of 2024

In the matter of s 328 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Lim Chee Meng

Between

Lim Chee Meng

… *Claimant*

And

Official Assignee

… *Official Assignee*

And

(1) Goh Thien Phong
(2) Chan Kheng Tek
(3) Hin Leong Trading (Pte.) Ltd
(in compulsory liquidation)

… *Non-parties*

Bankruptcy No 3859 of 2024

In the matter of s 328 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Lim Huey Ching

Between

Lim Huey Ching

… *Claimant*

And

Official Assignee

… *Official Assignee*

And

(1) Goh Thien Phong
(2) Chan Kheng Tek
(3) Hin Leong Trading (Pte.) Ltd
(in compulsory liquidation)

… *Non-parties*

GROUNDS OF DECISION

[Insolvency Law — Bankruptcy — Trustee in bankruptcy]

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30 December 2024

Philip Jeyaretnam J:

1 Mr Lim Oon Kuin and Mr Lim Chee Meng filed for bankruptcy on 10 October 2024. Ms Lim Huey Ching did the same on 14 October 2024. It was undisputed that all three claimants were insolvent and that bankruptcy orders should be made against them. There was, however, some controversy concerning who should be appointed as the claimants' private trustees in bankruptcy ("PTIBs"). In this regard, the claimants sought the appointment of Mr Tam Chee Chong ("Mr Tam") of Kairos Corporate Advisory Pte Ltd and Ms Oon Su Sun ("Ms Oon") of Finova Advisory Pte Ltd (the "Claimants' Nominees").[1]

2 The non-parties – *ie*, Mr Goh Thien Phong ("Mr Goh"), Mr Chan Kheng Tek ("Mr Chan"), and Hin Leong Trading (Pte.) Ltd ("HLT") – objected to this. HLT had taken an interest in the matter because it was by far the largest of the

[1] Lim Oon Kuin's affidavit in HC/B 3811/2024 dated 10 October 2024 at para 8.

claimants' creditors. Mr Goh and Mr Chan were, in turn, HLT's joint and several liquidators (the "Liquidators"). The nominees initially put forward by the non-parties were Mr Sam Kok Weng ("Mr Sam") of PricewaterhouseCoopers Advisory Services Pte Ltd ("PwC") and Mr Tham Chee Soon ("Mr Tham") of iCFO Advisors Pte. Ltd (the "Non-Parties' Primary Nominees"). The claimants said that Mr Sam and Mr Tham were unsuitable for reasons that I will come to later.

3 I first heard parties on 26 November 2024 (the "First Hearing"). At the end of the hearing, I indicated to them that a decision would be given by 13 December 2024 unless an agreement could be reached on the matter before then. On 3 December 2024, however, the non-parties informed the court by letter that they had proposed alternative candidates for the claimants' consideration (the "Non-Parties' Alternative Nominees"), namely:

(a) Mr Chee Yoh Chuang ("Mr Chee") and Ms Yap Hui Li ("Ms Yap"), both of RSM Corporate Advisory Pte Ltd ("RSM"), on the Liquidators' nomination (the "RSM Nominees"); and

(b) Mr Leow Quek Shiong ("Mr Leow") and Ms Seah Roh Lin ("Ms Seah"), both of BDO Advisory Pte Ltd ("BDO"), on the nomination of the Hongkong and Shanghai Banking Corporation Limited (who is another of the claimants' creditors) (the "BDO Nominees").

4 Against this, the claimants took the position that the non-parties were not entitled to put forward alternative nominees at such a late stage of the proceedings. That aside, the claimants said that the RSM Nominees are also unsuitable for reasons that will be addressed below. No such allegations were

made in respect of the BDO Nominees, although the claimants maintained that Mr Leow should be appointed alongside Mr Tam.

5 At a subsequent hearing on 19 December 2024 (the "Second Hearing"), the parties addressed me on the Non-Parties' Alternative Nominees. Having considered the parties' submissions, I granted the bankruptcy orders sought and appointed the BDO Nominees as the claimants' PTIBs. I now provide my reasons for appointing the BDO Nominees.

The legal principles

6 I begin with an overview of the relevant law. Section 36(1) of the Insolvency, Restructuring and Dissolution Act 2018 (the "IRDA") is the source of the court's power to appoint a person other than the Official Assignee as trustee of a bankrupt's estate. Section 36(1), as originally enacted, only conferred upon the court a discretion to appoint PTIBs on the application of the bankrupt's creditors at the time a bankruptcy order is made:

> **Appointment of person other than Official Assignee as trustee in bankruptcy**
>
> **36**.—(1) The Court *may*, in the following circumstances, appoint a person other than the Official Assignee to be the trustee of a bankrupt's estate:
>
> (*a*) when making a bankruptcy order, and *on the application of the creditor who applied for the bankruptcy order*;
>
> (*b*) at any time after the making of a bankruptcy order that has not been discharged or annulled, and *on the application of any creditor, the Official Assignee or any existing trustee of the bankrupt's estate*.
>
> …
>
> [emphasis added]

7 Section 36 of the IRDA has since been amended by s 2 of the Insolvency, Restructuring and Dissolution (Amendment) Act 2023, so that the material parts of s 36 IRDA now read as follows:

> **Appointment of person other than Official Assignee as trustee in bankruptcy**
>
> **36**.—(1) The Court may, in the following circumstances, appoint a person other than the Official Assignee to be the trustee of a bankrupt's estate:
>
> (*a*) when making a bankruptcy order, and on the application [under subsection 2 of the person] who applied for the bankruptcy order;
>
> (*b*) at any time after the making of a bankruptcy order that has not been discharged or annulled, and on the application of any creditor, [the bankrupt,] the Official Assignee or any existing trustee of the bankrupt's estate.
>
> (2) [A person applying for a bankruptcy order *must* apply to the Court for the appointment of a person other than the Official Assignee to be the trustee of the bankrupt's estate, unless the Official Assignee has consented to be the trustee of the bankrupt's estate.]
>
> …
>
> [emphasis added]

8 The word "may" in s 36(1) of the IRDA makes it clear that all PTIB appointments are ultimately subject to the court's discretion. Section 37 of the IRDA provides a person must not be appointed unless he or she is a "licensed insolvency practitioner" who has consented in writing to the appointment.

9 Apart from these prerequisites, however, the IRDA says nothing on how the court ought to decide between competing nominees. It also seems that the point has not been squarely considered in the local case law, and so I was referred to foreign authorities on the appointment of private trustees as well as

local authorities on the appointment of liquidators and judicial managers in the corporate insolvency context.

10 The non-parties said that in the corporate insolvency context, the appointment of insolvency officeholders will generally be guided by the preferences of the company's majority creditors because they have the greatest financial interest in the assets of the insolvent company.[2] The non-parties then submitted that the same should hold true in the context of bankruptcies because "the functions of a private trustee in bankruptcy and those of a liquidator in a company's liquidation are essentially the same" (citing *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd and another* [2023] 3 SLR 1604 at [29]).[3] The point, therefore, was that "majority creditor support is determinative of the choice of private trustee".[4]

11 The claimants accepted that weight should be accorded to their creditors' preferences but otherwise rejected the notion that those preferences should be determinative of the matter. They submitted that those preferences must be weighed in the scales alongside other relevant considerations, chief among them being the nominees' (a) independence or perceived independence; and (b) their skill and expertise.[5] In this connection, the claimants relied on the following observations by Goh Yihan JC (as he then was) in *Re X Diamond Capital Pte Ltd (Metech International Ltd, non-party)* [2024] 3 SLR 1228 ("*Re*

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2 Non-Parties' Written Submissions in HC/B 3811/2024, HC/B 3812/2024, and HC/B 3859/2024 dated 19 November 2024 ("NPWS") at paras 23–28.

3 NPWS at para 22.

4 NPWS at para 33.

5 Notes of Evidence for the hearing of HC/B 3811/2024, HC/B 3812/2024, and HC/B 3859/2024 on 26 November 2024 at p 4, lns 20–21.

X Diamond"), which was a case concerned with the appointment of a judicial manager:

> 40 As for the choice of a judicial manager, it is clear that a court will consider three factors when making the appointment, namely: (a) the choice of the largest creditor; (b) the independence or perceived independence of the nominees; and (c) the skill and expertise of the judicial managers (see the High Court decision of *Re Hodlnaut Pte Ltd* [2022] SGHC 209 ("*Re Hodlnaut Pte Ltd*") at [11]–[12]).
>
> …
>
> 45 … Indeed, as the High Court in *Re Hodlnaut Pte Ltd* observed (at [13]), the appointment of a judicial manager is "a fact sensitive exercise, with the court having to consider different factors from case to case".

12 It was therefore uncontested that weight should be accorded to the majority creditors' preferences. The question was whether those preferences should always be *determinative* of the appointment of the PTIB. On this issue, I accepted the claimants' submission that the creditors' preferences had to be weighed against other factors. As a starting point, I had doubts about the non-parties' assertion that a majority creditor's preferences should prevail even in the context of insolvent liquidations. The claimants referred me to *Fielding v Seery & Anor* [2004] BCC 315 as authority for this proposition but it does not ultimately support it. The learned judge observed in that case that "although the majority vote of the creditors will in the normal course prevail, creditors holding the majority vote do not have an absolute right as to the choice of liquidator" (at [33(3)]). The judge then went on to add (at [33(4)]–[33(5)]) that:

> (4) A liquidator should not be a person nor be the choice of a person who has a duty or purpose which conflicts with the duties of the liquidator. …
>
> (5) More specifically the liquidator should not be the nominee of a person: (a) against whom the company has hostile or conflicting claims … or (b) whose conduct in relation to the affairs of the company is under investigation …

I note that this is consistent with the position expressed in *Re X Diamond* on the appointment of judicial managers (see [11] above) (see also *Re Hodlnaut Pte Ltd* [2022] SGHC 209 at [11]–[12]).

13 In any event, it appeared to me that the non-parties' argument glossed over a vital distinction between corporate insolvencies and bankruptcies. In the case of insolvent liquidations, the principal object of the process is to secure maximal returns for the company's creditors and there will – in most cases at least – be no continuing interest on the part of the company or its shareholders that will have to be preserved. To that extent, a majority creditor may fairly be given the biggest say in the appointment of liquidators. The same is largely true of companies in judicial management: judicial managers are under a statutory duty to act in the interests of the company's creditors as a whole (see s 89(2) of the IRDA), and so a majority creditor's preferences may likewise be accorded significant weight.

14 Bankruptcies, however, stand on a different footing. The bankruptcy regime is directed not only at securing the repayment of a bankrupt's debts, but also at giving bankrupts themselves a chance at a fresh start: *Re Medora Xerxes Jamshid (in his capacity as the private trustee in bankruptcy of Tan Han Meng) (Planar One & Associates Pte Ltd (in liquidation), non-party)* [2024] 5 SLR 1006 at [47]; *Mirmohammadali Hadian v Ambika d/o Ramachandran (Official Assignee, non-party)* [2023] 5 SLR 1153 at [38]. For PTIBs to marshal this process, they are entrusted with considerable powers in relation to the bankrupt's affairs – these include determining the bankrupt's monthly contribution and target contribution; commencing or defending legal proceedings relating to the bankrupt's property; and giving the bankrupt permission to travel outside of Singapore. These are significant fetters on a bankrupt's personal liberties, and it goes without saying that PTIBs must

exercise their powers with a view to striking an appropriate balance between the interests of the bankrupt and his creditors. In *Zhang Hong En Jonathan v Private Trustee in Bankruptcy of Zhang Hong'En Jonathan* [2021] 4 SLR 139, Aidan Xu J explained (at [41] and [44]) that:

> *The primary concern of the court in the context of reviewing a private trustee's decisions is to balance: (a) the need to ensure fairness in the process and result from the perspective of the bankrupt, (b) the interests of the creditors, and (c) the need to allow the private trustees to get on with their jobs, and to discourage frivolous applications which undermine their work.* Thus, great deference will be given to private trustees in the discharge of their functions and their decision as a matter of business and commercial judgment, particularly where in their view a particular course of action will harm the creditors' interests in the estate.
>
> …
>
> The one difficulty I have with the perversity standard is that it may be prone to the perception that it postulates the consideration of the issue by a notional "reasonable" private trustee. *It is perhaps better to describe the process as one of assessing the general commercial and business judgment of the private trustee in furthering the protection of the estate for the benefit of the creditors, and without causing unnecessary prejudice to the bankrupt.* Where the decision reached as a result of such general commercial and business judgment is not indefensible, bearing in mind the varying considerations to balance outlined at [41] above, the court is unlikely to intervene. *Further, where an action or decision may be taken without causing harm to the estate or the creditors, and correspondingly, harm might result to the bankrupt if that decision is not approved, then the general inclination of the court would be to approve such a decision.*
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> [emphasis added]

15 Seen through this prism, I could not accept the non-parties' submission that a majority creditor's choice of PTIB should always prevail over the debtor's choices. I was not even persuaded that a majority creditor's choice should attract the same weight as it otherwise would in the corporate insolvency context. Keeping in view the PTIB's duty to account for the bankrupt's private interests,

other factors – including those identified in *Re X Diamond*, *ie*, the nominee's skill and independence – may well feature more prominently in the court's assessment, as compared to a corporate insolvency. A bankrupt (and his creditors) will hardly benefit from the appointment of a PTIB who is not at all proficient in managing estates in bankruptcy. This is, however, unlikely to be a concern in most cases given that s 37 of the IRDA requires the appointment of licensed insolvency practitioners. It is also obvious that a nominee who has demonstrated himself to be biased against the bankrupt ought not to be appointed as his PTIB.

16 Beyond that, a nominee's *perceived* lack of independence may – depending on the circumstances – also preclude his or her appointment as PTIB. I was referred to *Boral Montoro Pty Ltd v McLachlan* [2007] FMCA 533, which was a case where the Federal Court of Australia refused to appoint a proposed trustee on grounds that he was also partner of a firm that was a creditor of the bankrupt. The court explained (at [11]) that a trustee in bankruptcy:

> … must be scrupulously careful to ensure that he never allows himself to be placed in a position of conflict between various duties or between duty and interests; nor must he ever allow the situation to arise where he may be seen to be in that position of conflict or potential conflict. A registered trustee must not only be impartial; he must be seen to impartial.

17 The same point was made *In Re Lamb; Ex Parte Registrar In Bankruptcy* [1984] 55 ALR 578, albeit in a slightly different context. This was a case involving one Mr Lamb, who was registered as a person qualified to act as a trustee pursuant to Part VIII of the Australian Bankruptcy Act 1966 (Cth). Mr Lamb previously maintained his registration as a partner in a firm of accountants, but he left the firm at some point and became an employee of another firm. The Registrar in Bankruptcy for the Bankruptcy District of the State of Victoria applied to cancel Mr Lamb's registration on grounds that as an

employee (and not a partner), he was no longer sufficiently independent of others to perform his functions as a trustee. In allowing the application, Sweeney J observed (at 583) that:

> … a trustee plays a central role in the administration of estates under the Act and is under a general duty to exercise the powers committed to him in such a fashion that the objects of the Act, including those of equality between creditors and fairness to bankrupts and debtors, are served. The objects of the Act are of public importance and it is of great importance to the community that the role given by the legislature to a trustee is fulfilled only by persons who are, and who are seen to be, completely independent.

18 Ultimately, whether a complaint discloses valid and sufficient concerns regarding the independence of a nominee will necessarily depend on the facts of each case. It also goes without saying that findings concerning a nominee's independence (or its lack) are not to be made lightly, and that challenges brought on that front must be supported by cogent evidence: *Re X Diamond* at [50].

Parties' submissions

19 With these principles in mind, I turn now to consider parties' objections in respect of the various nominees.

The Claimants' Nominees

20 The non-parties' case hinged primarily on the fact that none of the claimants' creditors support the appointment of the Claimants' Nominees: in fact, 92.9% of the claimants' creditors (by debt value) and the whole of HLT's Committee of Inspection ("COI") object to their appointment, with the remaining 7.1% of the claimants' creditors having taken no position on the issue.[6]

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6 Providence Law Asia's letter to court dated 3 December 2024 at para 4.

21 Apart from the lack of creditor support, the non-parties also appeared to suggest that Mr Tam was conflicted by reason of his current appointment as liquidator of Xihe Capital (Pte.) Ltd, which is a company wholly owned by the claimants.[7]

22 More generally, the non-parties indicated their objection to *any* nominee put forward by the claimants, highlighting that this bankruptcy arose due to fraud committed by the claimants.[8] The non-parties cited the Oral Judgment dated 21 May 2021 of Kannan Ramesh J (as he then was) granting worldwide Mareva injunctions against the claimants, in which the court found that "the allegations of dishonesty against the [claimants] are well-substantiated by the evidence" and "the egregious conduct of the [claimants] is of a nature that has a material bearing on the real risk of dissipation", and that there was evidence of "textbook dissipation of assets".[9] They also noted that Mr Lim Oon Kuin had been convicted and sentenced for cheating charges (which conviction and sentence are on appeal), while Ms Lim Huey Ching had been charged with obstructing the course of justice.[10] Because the PTIBs would have to conduct investigations into the claimants' assets to unravel the claimants' fraud, it would be incredible for the claimants to choose the trustees who would investigate their own fraud.[11]

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7 NPWS at para 50.

8 NPWS at paras 6, 52–54.

9 NPWS at para 15.

10 NPWS at para 16.

11 Providence Law Asia's letter to court dated 3 December 2024 at para 30–31.

The Non-Parties' Primary Nominees

23 The claimants, for their part, objected to the appointment of the Non-Parties' Primary Nominees on two grounds. The first was the allegation that Mr Sam and Mr Tham did not possess the requisite expertise to manage bankruptcies as large and complex as the ones at hand.[12] The claimants said that neither gentlemen were specialists in restructuring and insolvency, with Mr Tham being an auditor by profession and Mr Sam having experience "not in [restructuring and insolvency] but rather in transactional and advisory services".[13] The claimants also said that neither Mr Sam nor Mr Tham appeared to have been appointed as PTIBs in the past.[14]

24 The second ground of objection concerned Mr Sam's independence. Mr Sam was a partner at PwC. The claimants submitted that this was a problem because Mr Chan (who is one of HLT's liquidators) was also a partner at PwC; as for the other liquidator, Mr Goh, he had also previously been a partner at PwC and although he now operated out of his own practice, it appeared that he shared a business address with PwC and had access to PwC's resources in performing his functions as one of HLT's liquidators.[15] Against this backdrop, the claimants said that there would be a clear conflict of interest if their PTIBs and the insolvency practitioners representing their largest creditor were to be from the same firm.[16]

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12 Claimants' Written Submissions in HC/B 3811/2024, HC/B 3812/2024, and HC/B 3859/2024 dated 19 November 2024 ("CWS") at para 42.

13 CWS at paras 36–37 and 40.

14 CWS at para 42.

15 CWS at paras 49–53.

16 CWS at para 56.

25 To make good their assertion that there was a clear conflict of interest on Mr Sam's part, the claimants referred me to two sets of ongoing proceedings. The first was HC/OS 878/2021, which was the claimants' appeal against the Liquidators' decision to reject certain proofs of debt filed by the claimants against HLT. The claimants contend that once appointed, the PTIBs "will have to decide whether to proceed with this appeal" and "[a]ny appeal would result in the PTIBs having to take an adversarial position against the Liquidators".[17]

26 The second related to HC/OC 664/2024, HC/OS 666/2020, and HC/OS 704/2020 (collectively, the "R&T Actions"), which were the claimants' actions against Rajah & Tann Singapore LLP ("R&T"). According to the claimants, R&T was engaged to advise HLT and other related companies owned by the claimants after the companies ran into financial distress. PwC was appointed as HLT's "financial adviser" on R&T's recommendation. HLT then applied to be placed under judicial management on R&T's advice, with Mr Goh and Mr Chan having initially been appointed as HLT's judicial managers; they later became HLT's liquidators after the company entered into liquidation. The claimants' case in the R&T Actions was that R&T has breached its obligation of confidence to them in the course of *inter alia* advising and acting for HLT, Mr Goh, and Mr Chan.[18]

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17 CWS at para 58.

18 CWS at para 59.

27 So far as the dispute before me was concerned, the claimants argued that Mr Sam's appointment would be problematic because:[19]

> … [t]he PTIB would likely need to make a decision whether to sanction the continuation of [the R&T Actions] which may impact the Liquidators, and/or their solicitors, R&T, and potentially throw into question the dealings between R&T, and PwC, and/or the Liquidators at the material time. It is also obvious that PwC and R&T had a very close working relationship when R&T acted for the judicial managers and Liquidators.

The Non-Parties' Alternative Nominees

28 The claimants objected to any consideration of the Non-Parties' Alternative Nominees in the absence of a separate agreement between the parties. They took the view that the only decision for the court to make was between the Claimant's Nominees and the Non-Parties' Primary Nominees.[20] The non-parties should not be allowed a "second bite at the cherry" since they had chosen not to propose alternative nominees before the First Hearing, but had doubled down on their primary nominees.[21]

29 The claimants also opposed the appointment of the RSM Nominees. They alleged that sometime in 2020, they had interacted with "certain partners" from RSM or entities with a view to formally engaging them as advisors. The engagement ultimately did not materialise, and "the relationship ended on terms which were somewhat acrimonious".[22]

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19 CWS at para 61.

20 PRP Law's letter to court dated 24 December 2024 at para 8.

21 PRP Law's letter to court dated 24 December 2024 at para 9.

22 PRP Law's letter to Providence Law Asia dated 5 December 2024 at para 5.

30 As for the BDO Nominees, the claimants indicated that they had no objections, provided that Mr Leow was appointed as PTIB jointly and severally with Mr Tam, to "be fair to all parties concerned".[23]

My decision

31 Having heard the submissions of all parties, I appointed the BDO Nominees as the PTIBs.

32 To begin with, I did not find the Non-Parties' Primary Nominees to be suitable in this matter. This is not because of any deficiency of expertise or experience. The difficulty for them concerned perceptions of independence. The claimants rightly identified potential conflicts of interest in relation to Mr Sam, who came from the same firm that the Liquidators were practicing at or in close conjunction with. While this in itself may not have been disqualifying, the PTIBs would also be involved in conducting multiple court proceedings involving the Liquidators. Both the claimants and non-parties agreed that, on the available information, the R&T Actions would have to be conducted or sanctioned by the PTIBs.[24] Thus, the PTIBs would likely have to decide whether to continue taking legal action where that legal action might potentially be adverse to the interests of the Liquidators. Furthermore, it remained an open question whether Mr Goh would be a witness in the R&T Actions, which could further impinge Mr Sam's ability to conduct the proceedings unencumbered by any conflicting interests as a partner of the same firm. Finally, the claimants correctly pointed out that the non-parties had not explained how the

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23 PRP Law's letter to Providence Law Asia dated 5 December 2024 at para 6.

24 Claimant's Supplementary Written Submissions in HC/B 3811/2024, HC/B 3812/2024, and HC/B 3859/2024 dated 19 November 2024 at para 20; Providence Law Asia's letter to court dated 3 December 2024 at para 8.

appointment of Mr Tham alongside Mr Sam would "further ensure the independence of the trustees".[25] The non-parties also did not press this point in their submissions. Therefore, I agreed with the claimants that, at a minimum, there would be a *perceived* lack of independence on the part of the Non-Parties' Primary Nominees.

33 By contrast, the claimants did not raise any concerns regarding the Non-Parties' Alternative Nominees that rose to a similar level. With respect to the RSM Nominees, they were unable to point to any substantial conflict of interest beyond general allegations of a "somewhat acrimonious" parting of ways with certain unidentified partners of RSM (or its related entities) in relation to a prior potential engagement. Such vague and unsubstantiated assertions were clearly insufficient to establish a conflict of interest. Indeed, the claimants did not claim that their concerns rose to that level. At the Second Hearing, they merely indicated some "apprehension" and a certain level of "discomfort" with the appointment of the RSM nominees. With respect to the BDO Nominees, the claimants explicitly stated that they had no substantive objections (apart from seeking a joint appointment). The claimants were afforded a full opportunity to raise any objections they had, both prior to and during the Second Hearing, and they did in fact avail themselves of that opportunity. I considered that until I made the appointment of PTIBs I had the power to consider alternatives put forward, subject to case management and fairness considerations. Thus, I did not agree that the court should be restricted to choosing between the Claimant's Nominees and the Non-Parties' Primary Nominees if the Non-Parties' Alternative Nominees were found to be more suitable.

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[25] CWS at para 63–64.

34 In the absence of disqualifying considerations relating to the skill or independence of the Non-Parties' Alternative Nominees, the preferences of the majority creditors assumed primary importance. In this regard, the *extent* of support for the non-parties' position and the *reasons* for that support were relevant.

35 The creditors were overwhelmingly in favour of the Non-Parties' Alternative Nominees. 92.9% of the creditors and all of HLT's COI supported the Non-Parties' Alternative Nominees.[26] The same supermajority objected to the Claimant's Nominees, whether appointed on their own or jointly with one of the creditors' nominees.[27] Crucially, this supermajority crossed the 75% threshold that would effectively allow the majority creditors to remove the Claimant's Nominees, should they be appointed as PTIBs.

36 Under the legislative scheme of the IRDA, the creditors of a bankrupt may remove a PTIB by way of a special resolution at a creditors' meeting summoned for that purpose: s 44(1) of the IRDA, read with Regulation 14(3) of the Insolvency, Restructuring and Dissolution (Bankruptcy) Regulations 2020. The non-parties submitted that the legislative intention underpinning s 44(1) of the IRDA fortified the proposition that "majority creditor support is *determinative* of the choice of private trustee" [emphasis added].[28] I was not prepared to endorse such a sweeping statement, which seemed like it could also apply to situations where majority creditor support was not as extensive or unified as was the case here. On the facts of the present case, however, I

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26 Providence Law Asia's letter to court dated 3 December 2024 at para 4.

27 Providence Law Asia's letter to court dated 9 December 2024 at para 2.

28 NPWS at para 33.

accepted that the preferences of the supermajority should be accorded significant weight.

37 At the Second Hearing, counsel for the non-parties confirmed that they had indeed been instructed to seek the removal of the Claimant's Nominees were those nominees to be appointed as PTIB. In the face of such firm and unified opposition, it appeared likely that the appointment of the Claimant's Nominees (even as part of a joint appointment) would be short-lived, absent a dramatic change of heart on the part of the creditors. The majority creditors would still eventually have prevailed in their opposition, but possibly at some additional cost and delays. Before me, counsel for the claimants accepted that the court should not lightly embark on such an exercise in futility in making the initial appointment of the PTIBs, but made the somewhat valiant submission that Mr Tam might yet earn the confidence of the majority creditors.

38 Additionally, the creditors had valid reasons for their steadfast opposition to the claimants' nominees. Ordinarily, a blanket opposition to *any* potential nominee proposed by the debtor, without even considering the identity or the qualifications of that nominee, might raise questions of whether such opposition was in good faith. Here, the creditors did not take issue with the skill or independence of the Claimants' Nominees. They were not objecting to Mr Tam or Ms Oon as individual nominees, but to the propriety of the debtors nominating the PTIB to begin with, considering the underlying fraud the debtors had perpetrated against their creditors. The claimants had consented to judgment against them, albeit without admission of liability, in respect of claims that implicated them in dishonest conduct. I agreed with the non-parties that the PTIBs would have to investigate the assets of the claimants, and that in all the circumstances, the creditor's interests would not be seen to be fulfilled by PTIBs

nominated by the claimants themselves if there was (as here) an objection made to them together with the proffered availability of other suitable nominees.

39 The claimants cited *Re X Diamond* as having rejected this argument, submitting that the reasoning in that case "would equally apply to a situation where the debtor has been convicted of criminal offences which … were linked to the fraud which led to the financial downfall of the company".[29] The relevant portion of the court's judgment was as follows:

> 50 More broadly, I do not think that Metech has cast any valid aspersions on Mr Tam's actual or perceived independence. Indeed, Metech's only point in this regard is that Mr Deng *may* have wrongfully caused the Company's downfall. As such, the judicial manager appointed should be "free from any association with [the Company] in order to eliminate any notions of perceived bias as the judicial manager may need to conduct investigations into [Mr] Deng himself to uncover any potential wrongdoing on his part". I do not agree with this because 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. 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]). In any event, ***the allegation that Mr Deng may have engaged in any wrongful conduct is, at this point, entirely speculative***. In contrast, it is undeniable that Mr Wu is *actually* involved in various legal disputes with the Company.
>
> [emphasis in original in italics; emphasis added in bold italics]

40 Leaving aside any differences in the role of a PTIB and that of a judicial manager, I was nevertheless unable to accept the claimant's submission. The present case was clearly on a different footing from *Re X Diamond*. Unlike that

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[29] CWS at [76].

case, it could not be said that the allegations against the claimants were "entirely speculative" or that there was a lack of "serious evidence". Moreover, the strength of the creditor's argument lay in the fact that the PTIB would have to seek recovery in relation to the fraud perpetrated by the claimants, which had given rise to the debts in the present case. Moreover, the possibility of concealment of assets could not be ruled out. This made this matter different from cases of mere "internal management", with which the court in *Re X Diamond* appeared to have been concerned.

41 For completeness, I found that all of the nominees put forward by both the claimants and the non-parties were sufficiently skilled and experienced. All of them were licensed insolvency practitioners in accordance with s 37(a) of the IRDA, and had significant experience as appointed insolvency practitioners or experience relevant to the administration of insolvent estates. It was not necessary to engage in a granular comparison of the relative qualifications of the different nominees, as this was not a significant factor that swung the balance in favour of either the claimants' or the non-parties' nominees.

Conclusion

42 For the foregoing reasons, I found the Non-Parties' Alternative Nominees more suitable than the Claimants' Nominees, whether appointed by themselves or as part of a joint appointment with one of the Non-Parties' Alternative Nominees. Since the claimants themselves did not have any substantive objections to the BDO Nominees and preferred them to the RSM Nominees, whereas the creditors indicated no preference between the RSM Nominees and BDO Nominees, I appointed the BDO Nominees as the claimants' PTIBs.

43 I made no order as to costs, given that the objections raised by the claimants mainly related to the initial nominees put forward by the non-parties, and the appointment of the alternative nominees resulted from the expression of those concerns.

Philip Jeyaretnam
Judge of the High Court

Pillai Pradeep G, Lin Shuling Joycelyn and Lee Lidie Lydia (PRP Law LLC) for the claimants;
Jeffrey Yip for the Official Assignee;
Vergis S Abraham SC, Alston Yeong and Huang Xinli Daniel (Providence Law Asia LLC) for the non-parties (Hin Leong Trading (Pte.) Ltd (In Compulsory Liquidation), Goh Thien Phong and Chan Kheng Tek);
Jamal Siddique Peer and Chu Shao Wei Jeremy (Shook Lin & Bok LLP) for the non-party (The Hongkong and Shanghai Banking Corporation Limited);
Lim Jie Hao Sampson (Allen & Gledhill LLP) for the non-party (Crédit Agricole Corporate & Investment Bank);
Teo Yu Ping Sarah (JWS Asia Law Corporation) for the non-party (Societe Generale).