DREW & NAPIER

Court of Appeal Clarifies the Abuse of Process Exception to Situations Where Winding-Up Proceedings Would Ordinarily be Dismissed in Favour of Arbitration

***Singapore Commodities Group Co., Pte. Ltd. v Founder Group (Hong Kong) Limited (in liquidation)* [2026] SGCA 24**

7 July 2026

LEGAL

UPDATE

In this Update

In *Singapore Commodities Group Co., Pte. Ltd. v Founder Group (Hong Kong) Limited (in liquidation)* [2026] SGCA 24, the Court of Appeal reaffirmed that a winding-up application should ordinarily be dismissed (or stayed) where the debt is *prima facie* disputed and subject to an arbitration agreement, absent clear abuse of process by the debtor.

This update discusses the practical implications of this Court of Appeal decision.

INTRODUCTION

Where a debt is disputed in winding-up proceedings, and the dispute falls within the scope of an arbitration agreement, when should the Singapore Courts dismiss (or stay) the winding-up proceedings in favour of arbitration? The interplay between arbitration and insolvency proceedings in this context raises fundamental questions, such as the extent to which insolvency proceedings can be used to recover debts without undermining the parties' contractual bargain to resolve their disputes through arbitration. It is therefore unsurprising that this interplay has been the subject of past Court of Appeal decisions, such as *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 ("***AnAn***") and *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 ("***Founder Group***").

In *Singapore Commodities Group Co., Pte. Ltd. v Founder Group (Hong Kong) Limited (in liquidation)* [2026] SGCA 24 ("***Singapore Commodities***"), the Court of Appeal reaffirmed its approach in *AnAn* and *Founder Group*. The Court of Appeal held that the Singapore Courts should ordinarily dismiss (or in exceptional cases, stay) a winding-up application if the debtor had raised a dispute in relation to the debt which *prima facie* falls within the scope of an arbitration agreement, unless the debtor had raised the dispute over the debt in circumstances constituting an abuse of the Court's process.

BACKGROUND

The liquidators controlling the respondent, Founder Group (Hong Kong) Ltd ("**Founder Group**"), discovered an alleged outstanding debt of about US$14 million ("**Alleged Debt**") owing from the appellant, Singapore Commodities Group Co, Pte Ltd ("**SC Group**"). The Alleged Debt arose from a contract for the sale of copper cathodes from Founder Group to SC Group ("**Purchase Contract**").

Founder Group issued a statutory demand to SC Group for the Alleged Debt. However, SC Group commenced arbitration proceedings against Founder Group to seek a negative declaration that it did not owe the Alleged Debt to Founder Group. Founder Group then filed a winding-up application against SC Group in the General Division of the High Court of Singapore ("**SGHC**"). SC Group later paid a sum equivalent to the Alleged Debt ("**Security**") into court, pending the determination of the winding-up application and the arbitration. The winding-up application was consequently stayed until further order.

In the arbitral award ("**Award**"), the Tribunal declined to grant the negative declaration sought by SC Group. However, the Tribunal also refrained from making any finding as to whether the Alleged Debt existed, as it was unclear whether Founder Group had fulfilled its delivery obligations under the Purchase Contract.

Following the issuance of the Award, the SGHC granted Founder Group's application for the Sum to be paid out to it ("**Payment Order**") and granted it leave to discontinue the winding-up application. However, the Court of Appeal set aside the Payment Order, on the basis that Founder Group had not established in the arbitration that it was owed the Alleged Debt. The winding-up application was also reinstated and remitted to the SGHC.

At first instance, the SGHC ordered that SC Group be wound up. The SGHC found that Founder Group had standing as a creditor. Further, while the dispute over the Alleged Debt fell within the scope of the parties' arbitration agreement, the SGHC held that SC Group had acted in abuse of process by resiling from its prior admissions of the Alleged Debt in prior audit confirmation letters.

Dissatisfied, SC Group appealed to the Court of Appeal, arguing that Founder Group had no standing as a creditor because SC Group's dispute as to the Alleged Debt, which fell within the scope of the parties' arbitration agreement, was not an abuse of process.

THE COURT OF APPEAL'S DECISION

The Court of Appeal allowed SC Group's appeal.

KEYPOINT

The Singapore Courts should ordinarily dismiss (or stay) a winding-up application where the debt is prima facie disputed and subject to an arbitration agreement, unless the dispute was raised in abuse of the Court's process.

The Court of Appeal affirmed that its prior decisions in *AnAn* and *Founder Group* remained as the leading authorities in Singapore on the effect of an arbitration agreement on the treatment of disputed debts in winding-up applications. These decisions establish that the Singapore Courts will ordinarily dismiss, or in exceptional cases, stay, a winding-up application if (a) there is *prima facie* a valid arbitration agreement between the creditor and the debtor; (b) the debtor has raised a dispute in relation to the debt claimed by the creditor which *prima facie* falls within the scope of the arbitration agreement; and (c) the debtor has not raised the dispute in relation to the debt in circumstances constituting an abuse of the process of the Court.

The Court of Appeal noted that the abuse of process exception acts as a control mechanism to guard against the risk that a debtor will conjure up a dispute over what is in truth an undisputed debt, for the sole purpose of staving off a winding-up application. However, the threshold for finding an abuse of process is a high one. The Court of Appeal also cautioned that the abuse of process exception cannot be used as a gateway for parties to introduce arguments on the merits. In particular, the Court of Appeal held that the fact that the debtor's defence may be plainly unmeritorious would not be grounds for a finding of abuse of process.

Where a creditor alleges an abuse of process arising from a debtor resiling from an earlier admission of the debt, the Court of Appeal held that two elements must be present. First, there must have been a clear and unequivocal admission by the defendant as to liability and quantum for the claimed debt. Second, the defendant must have resiled from the admission without a clear and convincing reason for its change in position. The Court must also have regard to the totality of the circumstances, before deciding whether the debtor had acted in abuse of process.

In the present case, the Court of Appeal overturned the SGHC's finding of abuse of process on SC Group's part. The Court of Appeal found that SC Group had not made a clear and unequivocal admission of the Alleged Debt in prior audit confirmation letters or other financial documents. Even if there was such admission of the Alleged Debt, SC Group had given a clear and convincing explanation for disputing the Alleged Debt – Founder Group had not established its performance of the Purchase Contract (and that the Alleged Debt was therefore due and payable). Finally, SC Group's initiative in commencing the arbitration before the winding-up application, and applying to pay the Sum into court, suggested that it was acting in good faith in disputing the Alleged Debt.

The Court of Appeal also made an exceptional order that Founder Group pay costs to SC Group on an indemnity basis. The Court of Appeal criticised Founder Group's unreasonable conduct in pursuing the winding-up application, even though it would have been obvious (from the Award and the Court of Appeal's decision to set aside the Payment Order) that Founder Group did not have standing to maintain the winding-up application. The Court of Appeal concluded that this was done to vex and oppress SC Group to pressure it to pay the Alleged Debt, even though the dispute over it had not yet been resolved.

Interestingly, the Court of Appeal noted in *obiter* that its decisions in *AnAn* and *Founder Group* were not wholly reconcilable with the decision of the Judicial Committee of the Privy Council in the UK ("**Privy Council**") in *Sian Participation Corp (in Liquidation) v Halimeda International Ltd* [2024] UKPC 16 ("***Sian Participation***"), as well as the decision of the Federal Court of Malaysia in *V Medical Services M Sdn Bhd v Swissray Asia Healthcare Co Ltd* [2025] 2 MLJ 744 ("***Swissray***"), which follows the approach in *Sian Participation*. First, the Privy Council took the view in

Sian Participation that the obligation imposed by an arbitration agreement is of a more limited scope – it prevents the parties from obtaining a *final* adjudication on the merits of their dispute in a forum other than arbitration. This is however inconsistent with the approach in *AnAn*, where the Court of Appeal considered that the Court should not engage in *any* form of merits review which the parties have reserved to the arbitral tribunal. Second, the decisions in *Sian Participation* and *Swissray* do not appear to have considered that a *prima facie* dispute over the debt falling within the scope of an arbitration will deprive a creditor of its standing to invoke the Court's winding-up jurisdiction.

COMMENTARY

The Court of Appeal's decision in *Singapore Commodities* is the latest addition to case law in Singapore on the appropriate balance to be struck between arbitration and insolvency proceedings (see also our previous commentary on *Sapura Fabrication Sdn Bhd and others v GAS and another appeal* [2025] SGCA 13). It is also a cautionary tale to all debtors who wish to recover their debts through insolvency proceedings, especially in situations where any disputes over the debt are subject to an arbitration agreement. First, creditors should ensure that they first establish their standing to present a winding-up application by showing that a debt was in fact owed by the debtor. It is interesting to note that in *Singapore Commodities*, the parties agreed that Founder Group was/is not estopped or precluded from commencing a second arbitration to establish that it had performed the Purchase Contract (and thereby establish the Alleged Debt). However, in reality, it is not unusual (and indeed common) for a debtor to object strenuously to the commencement of a second arbitration by invoking the doctrine of *res judicata*. This is especially so when the creditor could have, but did not, establish its debt in the first arbitration. Creditors should therefore ensure that they take the earliest opportunity in arbitration proceedings to establish their debt, when a dispute to the debt has arisen. Second, creditors should also refrain from invoking the narrow abuse of process exception in a manner that would constitute an improper back-door review of the merits of the debtor's defence (i.e. the dispute over the debt).

In the present case, the Court of Appeal was not asked to revisit the correctness of its approach in *AnAn* and *Founder Group* in light of the Privy Council's decision in *Sian Participation* (which we had previously commented on). Nevertheless, the Court of Appeal's *obiter* comments on the considerations (or lack thereof) that led to these different approaches arguably sends a signal that the Court of Appeal is unlikely to prefer the approach taken in *Sian Participation* over that in *AnAn* and *Founder Group*. In particular, the Court of Appeal's comment on the creditor's lack of standing once a *prima facie* dispute over a debt is subject to arbitration suggests that the approach taken by the Privy Council in *Sian*

Participation did not fully take into account the limitations as to the scope of the court's winding-up jurisdiction.

The Court of Appeal has nevertheless made one thing clear: until a party mounts a successful challenge against *AnAn* and *Founder Group*, the position under Singapore law continues to be as set out in those cases. Where no such challenge is mounted in the Singapore Courts, parties should exercise caution in relying on the findings of the Privy Council in *Sian Participation* (or the Federal Court of Malaysia in *Swissray*), especially insofar as such findings are inconsistent with *AnAn* and *Founder Group*.

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