

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

**[2023] SGHC 152**

Companies Winding up No 198 of 2021

In the matter of Section 125(1)(e) of  
the Insolvency, Restructuring and  
Dissolution Act 2018

And

In the matter of Gokul Vegetarian  
Restaurant and Cafe Pte Ltd

Between

Adcrop Pte Ltd.

*... Plaintiff*

And

Gokul Vegetarian Restaurant  
and Cafe Pte Ltd

*... Defendant*

And

- (1) Rajeswary d/o Sinan
- (2) Chandra Maha Lakshmi

*... Non-parties*

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## JUDGMENT

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[Companies — Winding up — Abuse of process — Collateral purpose]  
[Insolvency Law — Winding up — Standing of shareholder/contributory to  
oppose winding up application]

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**Adcrop Pte Ltd**  
**v**  
**Gokul Vegetarian Restaurant and Cafe Pte Ltd**  
**(Rajeswary d/o Sinan and another, non-parties)**

**[2023] SGHC 152**

General Division of the High Court — Companies Winding Up No 198 of 2021

Andrew Ang SJ

14–16 September, 18 November 2022

23 May 2023

Judgment reserved

**Andrew Ang SJ:**

1 This winding up application concerns a company involved in the restaurant business owned by two sisters-in-law, and is based on the plaintiff's unsatisfied statutory demand for the return of \$20,000 paid to the company, allegedly as consideration for the issuance of shares. While one of the sisters-in-law supports the plaintiff's application, the other opposes it on the basis that it is part of an elaborate ploy by that sister-in-law to wrest control of the restaurant business from the company and thus from her. It thus falls to the court to consider the circumstances surrounding this application, and whether they are sufficient to justify its dismissal.

## **Factual background**

### ***The parties***

2 The defendant in the present winding up application (“HC/CWU 198/2021”) is Gokul Vegetarian Restaurant and Cafe Pte Ltd (“Gokul Vegetarian”), an Indian vegetarian restaurant which had its premises at 19 Upper Dickson Road. For reasons which will become clear, Gokul Vegetarian is not represented and does not take a position in the present proceedings.

3 Mdm Chandra Maha Lakshmi (“Mdm Lakshmi”) and Mdm Rajeswary d/o Sinan (“Mdm Rajeswary”) are equal shareholders in Gokul Vegetarian. They are also sisters-in-law – Mdm Lakshmi is married to Mr Rauinderan s/o Sinan (“Mr Rauinderan”), who is Mdm Rajeswary’s brother. Mdm Lakshmi and Mdm Rajeswary are both non-parties to HC/CWU 198/2021.

4 The plaintiff is Adcrop Pte Ltd (“the plaintiff”), a creditor of Gokul Vegetarian. The circumstances in which it became a creditor will be explained below. Mr Arvind Sharma (“Mr Sharma”) is a director and representative of the plaintiff.

### ***Gokul Vegetarian and the parties’ relationship***

5 Gokul Vegetarian was incorporated in 2003 by Mdm Rajeswary and Mr Rauinderan. While initially Mdm Rajeswary and Mr Rauinderan were both directors and equal shareholders in Gokul Vegetarian, Mr Rauinderan later transferred his shares to Mdm Lakshmi.<sup>1</sup> The latter was also appointed a director in place of her husband, who became the company secretary.<sup>2</sup>

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<sup>1</sup> Affidavit of Rajeswary d/o Sinan in HC/OS 842/2021 (19 August 2021) at para 4.

<sup>2</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at para 5.4

6 According to Mdm Rajeswary, the three were initially on good terms and ran Gokul Vegetarian as a “close-knit family business”. It was only from around 2017 that Mdm Lakshmi allegedly “progressively acquired more control” over Gokul Vegetarian, and Mdm Rajeswary was “gradually frozen out”. Things reached a breaking point when, in or around 2018, Mdm Rajeswary began to suspect that Mdm Lakshmi was channelling money from Gokul Vegetarian to a competing business. However, when she began questioning Mdm Lakshmi and Mr Rauinderan, and requested to inspect Gokul Vegetarian’s accounting and financial records, Mdm Lakshmi made a number of counter-accusations and sought to thwart her enquiries.<sup>3</sup>

7 On the other hand, Mdm Lakshmi alleges that Mdm Rajeswary was “never involved with and was completely uninterested in the running” of Gokul Vegetarian, would be “absent from Gokul for days and even months at a time”, and even “set up a rival business with an almost identical business in close proximity” to Gokul Vegetarian.<sup>4</sup> Mdm Lakshmi also denies that there was ever “any discussion about access to Gokul’s accounts and documents”, and claims that Mdm Rajeswary’s allegations of being denied access thereto were simply a means of retaliation against a proposal to reduce the latter’s salary.<sup>5</sup>

### ***The removal of Mdm Rajeswary from directorship***

8 It is not disputed that on 21 April 2021, Mdm Lakshmi and Mr Rauinderan submitted a notice of change of directors to ACRA notifying Mdm

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<sup>3</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at paras 5.1–5.3.

<sup>4</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (6 October 2021) at paras 8–9.

<sup>5</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (6 October 2021) at paras 80–81.

Rajeswary's cessation as a director of Gokul Vegetarian. Mdm Lakshmi conveyed to Mdm Rajeswary her intention to do so in a lengthy email dated 21 April 2021,<sup>6</sup> but Mdm Rajeswary claims that it was only on 16 June 2021 that she discovered that her removal had been effected.<sup>7</sup> In any event, on 19 August 2021, Mdm Rajeswary challenged her removal as director in HC/OS 842/2021, and served the papers on Mdm Lakshmi on the same day.<sup>8</sup> HC/OS 842/2021 was eventually heard on 1 Dec 2021 and resolved in Mdm Rajeswary's favour, leading to her reinstatement as a director of Gokul Vegetarian.

***The \$20,000 Adcrop debt***

9 On 20 August 2021, the day after the papers for HC/OS 842/2021 had been served on Mdm Lakshmi, Mdm Rajeswary received a notice for an Extraordinary General Meeting ("the EGM"), at which resolutions were to be passed for the issuance of new shares in Gokul Vegetarian ("the shares").<sup>9</sup>

10 On 1 September, solicitors for 78 Capital Pte Ltd, the landlord of Gokul Vegetarian's premises at 19 Upper Dickson Road, served a letter of demand for payment of arrears of rental for July and August 2021, as well as for the rental for September 2021 which had fallen due.<sup>10</sup> At the time, the amount owing to

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<sup>6</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (6 October 2021) at para 90, Tab 11.

<sup>7</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at para 5.4.

<sup>8</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at para 5.6; NP1 Skeletals (21 October 2022) at para 9.2.

<sup>9</sup> Affidavit of Rajeswary d/o Sinan (10 Dec 2021) at para 5.7; Hearing Transcript (14 September 2022) at p 109 lines 6–13.

<sup>10</sup> NP1 Skeletals (21 October 2022) at para 17.5.



78 Capital Pte Ltd totalled \$43,795.12. This letter was sent to both Mdm Lakshmi and Mdm Rajeswary.<sup>11</sup>

11 The EGM was held on 4 September, at which the resolution for the issuance of the shares to the plaintiff was proposed by Mdm Lakshmi, ostensibly to raise funds which Gokul Vegetarian badly needed.<sup>12</sup> However, this was opposed by Mdm Rajeswary's proxy on her instructions, and therefore was not carried.<sup>13</sup> Mr Sharma, the plaintiff's representative, witnessed the proxy's repeated objections,<sup>14</sup> and understood that the legal effect thereof was that there had been no validly passed resolution.<sup>15</sup> He also heard Mr Rauinderan complaining to Mdm Rajeswary's proxy that Mdm Rajeswary was irrational and unreasonable, that she would object to the issuance of the shares for any reason, and that no reason would convince her to change her mind.<sup>16</sup>

12 Despite witnessing this, Mr Sharma proceeded to pay \$20,000 as consideration for the issuance of shares to Mdm Lakshmi, who accepted it on behalf of Gokul Vegetarian.<sup>17</sup> The \$20,000 was then promptly used by Mdm Lakshmi to pay off a portion of the rental arrears owing to Gokul Vegetarian's landlords, 78 Capital Pte Ltd and one Ms Tan Peck Choi.<sup>18</sup> The shares were never issued to the plaintiff, and the plaintiff later issued a statutory demand for

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<sup>11</sup> Affidavit of Chandra Maha Lakshmi (3 February 2022) at p 50–51.

<sup>12</sup> Hearing Transcript (15 September 2022) at p 109 lines 6–20.

<sup>13</sup> Hearing Transcript (15 September 2022) at p 15 line 9–17.

<sup>14</sup> Affidavit of Arvind Sharma (11 April 2022) at para 11(b).

<sup>15</sup> Hearing Transcript (15 September 2022) at p 42 lines 5–11.

<sup>16</sup> Hearing Transcript (15 September 2022) at p 47 lines 23–27.

<sup>17</sup> Hearing Transcript (15 September 2022) at p 41 lines 1–27.

<sup>18</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at para 19.

the \$20,000 it had paid. This statutory demand would eventually become the basis for the application in HC/CWU 198/2021.

13 On 6 September 2021, Mdm Lakshmi paid 78 Capital Pte Ltd \$588.50 for its legal fees. This was despite the fact that the landlord's 1 September 2021 letter contained no demand for payment of legal fees.<sup>19</sup>

### ***The dismantling of Gokul Vegetarian***

14 On 15 September 2021, 78 Capital Pte Ltd issued another letter to Gokul Vegetarian, giving notice that it intended to terminate the latter's tenancy as the outstanding rent for August and September remained unpaid, and that Gokul Vegetarian had until 6 October 2021 to vacate their premises. However, unlike their letter dated 1 September 2021, this letter was not copied to either Mdm Lakshmi or Mdm Rajeswary.<sup>20</sup> According to Mdm Rajeswary, it was therefore only much later on 2 December 2021, the day after she was reinstated as a director, that she discovered that Gokul Vegetarian's tenancy at 19 Upper Dickson Road had been terminated. This occurred when she returned to 19 Upper Dickson Road with the intention of inspecting Gokul Vegetarian's records, as she had sought to do just before her wrongful removal as director.<sup>21</sup> Upon her arrival at the premises, Mdm Rajeswary was informed that she was trespassing and instructed to leave the premises. When she refused, Mdm Lakshmi called the police, and upon their arrival, Mdm Lakshmi showed them a document identifying a company named Gokul-Raas, in which Mdm Lakshmi but not Mdm Rajeswary was a director, as the tenant of 19 Upper Dickson Road.

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<sup>19</sup> NP1 Skeletons (21 October 2022) at para 17.7.

<sup>20</sup> Affidavit of Chandra Maha Lakshmi (3 February 2022) at p 48–49.

<sup>21</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at para 28.

Based on this document, the police then informed Mdm Rajeswary that Gokul Vegetarian was no longer the tenant, and that she was required to leave.<sup>22</sup>

15 It emerged that on 17 September 2021, (ie, two days after 78 Capital Pte Ltd’s second letter), Mdm Lakshmi had executed on behalf of Gokul-Raas a fresh tenancy agreement with 78 Capital Pte Ltd for the same premises at 19 Upper Dickson Road.<sup>23</sup> Mdm Rajeswary was unaware of this.<sup>24</sup>

16 On 20 September 2021, Mdm Lakshmi applied to the Singapore Food Agency (“SFA”) to change the Business Name on Gokul Vegetarian’s SFA license from Gokul Vegetarian Restaurant and Cafe to Gokul-Raas Pte Ltd.<sup>25</sup> Mdm Rajeswary was also not informed of this.<sup>26</sup> I would mention that it is doubtful that the prescribed form which Mdm Lakshmi used to reflect this change was in fact intended to facilitate the transfer of an SFA license from one entity to another. I also note that Mdm Lakshmi purported to effect this change unilaterally. That said, there is little doubt as to what Mdm Lakshmi was ultimately trying to do.

17 On 23 September 2021, Mdm Lakshmi applied to the Ministry of Manpower (“MOM”) to change the employer of Gokul Vegetarian’s foreign workers from Gokul Vegetarian to Gokul-Raas.<sup>27</sup> Mdm Rajeswary was again not notified of this.<sup>28</sup>

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<sup>22</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at para 29.

<sup>23</sup> Hearing Transcript (14 September 2022) at p 121 line 20 to p 122 line 5.

<sup>24</sup> NP1 Skeletals (21 October 2022) at para 17.9.

<sup>25</sup> Affidavit of Wan Yew Fai (1 March 2022) at p 27.

<sup>26</sup> Hearing Transcript (14 September 2022) at p 125 lines 2–16.

<sup>27</sup> NP1 Skeletals (21 October 2022) at para 17.11.

<sup>28</sup> Hearing Transcript (15 September 2022) at p 2 lines 8–10.

18 On 28 September 2021, the plaintiff's solicitors served on Gokul Vegetarian a statutory demand for repayment of the \$20,000 paid in consideration for shares which were never issued. This was sent to Mdm Lakshmi by email,<sup>29</sup> but Mdm Rajeswary was similarly not notified of this.<sup>30</sup>

***Mdm Lakshmi's affidavits in HC/OS 842/2021 and the commencement of winding up proceedings***

19 On 6 October 2021, in opposition to Mdm Rajeswary's challenge against her removal from directorship of Gokul Vegetarian in HC/OS 842/2021, Mdm Lakshmi filed an affidavit in which she argued that Mdm Rajeswary should not be reinstated or allowed access to Gokul Vegetarian's financial records and documents. To this end, she deposed as follows:<sup>31</sup>

[102] It is clear that Rajeswary has no real or genuine interest in obtaining Gokul's financial records as a director. I believe that she is now asking for such financial records for the twin purposes of (a) pressuring Gokul to pay her a high salary and to cease any demand to her to pay back the sums owed, and (b) utilizing Gokul's records for her own business ventures. I believe that if Rajeswary is given access to the records as she has sought, she would have no intention of inspecting the documents in good faith and it is almost certain that Gokul's confidential financial information would be shared with the rival businesses that Rajeswary is involved in.

[103] I should highlight that, since the start of the COVID-19 pandemic, *Gokul's financial situation has become extremely precarious and it is currently facing multiple demands for payment by third parties such as its landlord. It simply cannot capitulate to Rajeswary's excessive and baseless demands for money.* As I have mentioned above at [89(c)], an attempt was made to raise funds for Gokul by way of a share allotment but this was rejected by Rajeswary.

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<sup>29</sup> Hearing Transcript (15 September 2022) at p 9 lines 9–10.

<sup>30</sup> NP1 Skeletals (21 October 2022) at para 17.12.

<sup>31</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (6 October 2021) at paras 102–104.

[104] I will leave my solicitors to make the relevant submissions at the appropriate juncture. However, I would also add that the very existence of the 2<sup>nd</sup> Defendant *is seriously in question* as a result of the prolonged Covid-19 situation and the Plaintiff's actions in these proceedings and refusal to help or assist the 2<sup>nd</sup> Defendant *will surely condemn the 2<sup>nd</sup> Defendant to its ultimate closure*.

[emphasis added]

20 On 27 October 2021, HC/CWU 198/2021 was filed and served on Gokul Vegetarian, on the basis that the statutory demand served on 28 September 2021 had not been met. Mdm Lakshmi did not inform Mdm Rajeswary of this.<sup>32</sup>

21 On 24 November 2021, Mdm Lakshmi filed a further affidavit, in which she, *inter alia*, attempted to refute Mdm Rajeswary's allegations that HC/CWU 198/2021 was an attempt to derail proceedings in HC/OS 842 2021 in the following manner:<sup>33</sup>

[50] I deny any allegation that CWU 198 is "*an attempt to render [Rajeswary's] application in OS 842 nugatory*". I consider such an accusation an affront when I was the one who was trying so hard to keep Gokul afloat. If Gokul had not received the \$20,000 from Mr Sharma, Gokul ***could have already lost its premises which would have completely destroyed Gokul in September 2021*** given that Gokul is a food and beverage business. Despite my requests to Rajeswary to come up with solutions to save Gokul, Rajeswary refused to do so and have [sic] only impeded my attempts to save Gokul.

[emphasis in original in italics; emphasis added in bold italics]

### ***Correspondence between the parties***

22 On 9 November 2021, Mdm Rajeswary's solicitors wrote to the plaintiff's solicitors alleging that the \$20,000 paid by the plaintiff to Gokul

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<sup>32</sup> Hearing Transcript (15 September 2022) at p 10 lines 19–21.

<sup>33</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (24 November 2021) at para 50.

Vegetarian was either a sham loan to Gokul Vegetarian, or a personal loan to Mdm Lakshmi, and so could not properly ground the statutory demand upon which HC/CWU 198/2021 is based. In this connection, they expressly alleged that it was “unbelievable that Mr Sharma would be of the view that [Mdm Rajeswary’s] consent for the issuance of new shares would be obtained.”<sup>34</sup>

23 On 12 November 2021, the plaintiff’s solicitors replied to Mdm Rajeswary’s solicitors. They maintained that the \$20,000 was not a sham loan, and that it had been advanced to Gokul Vegetarian “for the issuance of shares”.<sup>35</sup> However, although Mr Sharma had witnessed the objection of Mdm Rajeswary via her proxy at the EGM, the letter made no mention of any belief on his part that she might subsequently change her mind and that her consent might be obtained at some point in the future, nor made any other attempt to refute the allegation in the 9 November 2021 letter.

24 On 15 November 2021, Mdm Lakshmi’s solicitors wrote to Mdm Rajeswary’s solicitors resisting her demand that the \$20,000 be returned to the plaintiff, and arguing that the money had been applied to the legitimate purpose of paying off the rental arrears which had been the subject of the 1 September 2022 letter of demand issued by 78 Capital Pte Ltd.<sup>36</sup> However, this letter neglected to make any mention of the 15 September 2022 notice to vacate which 78 Capital Pte Ltd had given. It also stressed that the issuance of the shares was *unrelated* to the \$20,000 which Mr Sharma caused the plaintiff to pay to Gokul Vegetarian, and denied that the \$20,000 was “share application money”.<sup>37</sup>

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<sup>34</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 165.

<sup>35</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 174.

<sup>36</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 99–100.

<sup>37</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 99.

***The assignment of Gokul Vegetarian's trade debts***

25 In addition to the \$20,000 Adcrop debt owing to the plaintiff, Gokul Vegetarian had in the ordinary course of their business incurred debts (“trade debts”) owing to various regular suppliers (“trade creditors”), although I am mindful of Mdm Rajeswary’s allegation that some of these trade debts were in fact incurred by Gokul-Raas after it took over the rental premises,<sup>38</sup> the trade creditors having been unaware of its seamless takeover of Gokul Vegetarian’s business. Between 9 to 12 November 2021, many of these trade creditors signed deeds assigning their trade debts to the plaintiff, and served notices of assignment on Gokul Vegetarian.<sup>39</sup>

26 Two aspects of the assignment agreements are particularly noteworthy. First, the price which the plaintiff agreed to pay for the assignment of each debt was typically a sum approximately 90% of the debt in question. For example, the plaintiff would pay \$5,659.97 as consideration for the assignment of a \$6,288.85 debt, \$9,765.19 for the assignment of a \$10,850.21 debt, and \$2,475.32 for the assignment of a \$2,750.36 debt.<sup>40</sup> On paper, it would appear that the plaintiff stood to make a profit of around 10% of the value of the original assigned debts. However, as shall be discussed later at [60], the plaintiff was in all likelihood fully aware that it would recover very little to nothing from Gokul Vegetarian. As such, if the plaintiff had in fact paid the agreed consideration for the assigned debts up front, then rather than making a profit, it would very likely have made a loss instead. This would have been attractive to a trade creditor who was concerned about recovering their debt.

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<sup>38</sup> Affidavit of Rajeswary d/o Sinan (1 March 2022) at para 26.

<sup>39</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 138–163.

<sup>40</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 138–163.

27 However, the second notable feature of the assignment agreements was that the plaintiff would *not* in fact pay the agreed consideration upon execution of the deeds of assignment. Instead, such consideration was only to be paid “upon receipt from Gokul Vegetarian Restaurant & Cafe Pte Ltd and/or liquidator”.<sup>41</sup> This meant that it was only if the plaintiff did recover any of the trade debts from Gokul Vegetarian or its liquidator, that it would pay the assignors the sum recovered, capped at the agreed consideration for the assignment. In effect, the plaintiff was able to claim the standing to rely on the trade debts in its winding up application *without* any risk of loss in the bargain. Such an arrangement was highly advantageous to the plaintiff, and was without doubt the product of a commercially sophisticated mind. Conversely, the assignors derived no financial benefit from this arrangement at all. If they had instead waited to file proof of their debts in liquidation, they would have obtained no less.

### **Parties’ arguments and issues**

28 The plaintiff took the position that Mdm Rajeswary, as a non-party, did not have standing to oppose HC/CWU 198/2021, and that even if she had, the fact of Gokul Vegetarian’s insolvency was dispositive, and the winding up petition should therefore be granted as a matter of course.

29 Gokul Vegetarian did not take a position in the proceedings. It had initially been represented by Mr Satwant Singh from Satwant & Associates, and had appeared in support of HC/CWU 198/2021. However, at a hearing before me on 25 April 2022, it emerged that Mr Singh’s appointment to act for Gokul

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<sup>41</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 138–163.



Vegetarian was by the company secretary who had no such power.<sup>42</sup> When confronted with this fact, Mr Singh discharged himself from representing Gokul Vegetarian.

30 Mdm Rajeswary's position was that she did have standing as a shareholder/contributor to oppose HC/CWU 198/2021, and that it should be dismissed on the merits. She argued that there was no basis for the statutory demand, as the \$20,000 Adcrop debt was disputed, and in addition, that the plaintiff had no standing to bring proceedings for the trade debts without joining the trade creditors as parties. She further contended that, given that the winding up application was motivated by the collateral purpose of wresting control of Gokul Vegetarian's underlying business from Gokul Vegetarian and herself, it should be dismissed as an abuse of process.

31 Accordingly, the principal issues which arise for my consideration are as follows:

- (a) Does Mdm Rajeswary have standing to oppose HC/CWU 198/2021?
- (b) Should HC/CWU 198/2021 be dismissed as an abuse of process?

**Issue 1: Whether Mdm Rajeswary has standing to oppose the winding up application**

***Does a shareholder/contributory have standing to oppose a winding up order?***

32 It is generally accepted that a contributory has standing to oppose a winding up application (*Phang Choo Ong v Gilcom Investment Pte Ltd* (LRG

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<sup>42</sup> Hearing Minutes (25 April 2022) at p 3 lines 14–25.

*Adcrop Pte Ltd v Gokul Vegetarian Restaurant and Cafe Pte Ltd* [2023] SGHC 152

*Investments Pte Ltd and another, non-parties*) [2016] 3 SLR 1156 at [13]; *Ang Chek Chin v ANS Import & Export Pte Ltd (formerly known as Ang Ngee Seng Import & Export Pte Ltd)* [2020] 5 SLR 1002 at [15]–[19]), and pursuant to s 4(1) of the Companies Act 1967 (2020 Rev Ed), this also includes the holder of fully paid shares in the company. In fairness to the plaintiff, its position on this issue is not that a shareholder/contributory can *never* have the standing to oppose a winding up application in that capacity. Its argument is rather that in *this* case, Mdm Rajeswary should not be granted leave to challenge the winding up, because she cannot demonstrate that Gokul Vegetarian is solvent.<sup>43</sup> However, as both parties’ arguments rely on the test for granting leave propounded in *Atlas Equifin Pte Ltd v Electronic Cash and Payment Solutions (S) Pte Ltd (Andy Lim and others, non-parties)* [2022] SGHC 258 (“*Atlas Equifin*”), I find it useful to begin by examining the reasons which led the court in *Atlas Equifin* to find that a shareholder/contributory has standing to oppose a winding up application at all.

33 First, r 69 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (“CIR Rules 2020”) provides as follows:

**Copy of winding up application and supporting affidavit to be provided to creditor or contributory**

69. Every creditor or contributory of a company is entitled to be provided, by the applicant of a winding up application in respect of the company, with a copy each of the application and the affidavit supporting the application within 48 hours after requiring the same, upon payment of \$1 per page of such copy.

34 The fact that the shareholder/contributory is entitled to receive the same information as a creditor, information necessary to oppose a winding up

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<sup>43</sup> Plaintiff’s Skeletons (4 November 2022) at paras 16–17.

application if they so wish, signifies an intention that the former should also have the standing to do so (*Atlas Equifin* at [19]–[22]).

35 Second, Form CIR-15 of the CIR Rules 2020, which is to be used as a notice of intention to appear at the hearing of a winding up application, clearly contemplates and provides for a situation where a contributory might wish to do so (*Atlas Equifin* at [32]). I also observe that the same may likewise be said of Form CIR-16, in accordance with which the winding up applicant must prepare a list of the names and addresses of persons who have given such notice of their intention to appear at the hearing.

36 Third, s 201 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“IRDA”) provides that the court may have regard to the wishes of creditors or contributories as to all matters relating to the winding up of a company. That the court is entitled to consider their wishes and interests in a winding up, must imply that they have standing to present those views to the court in a winding up hearing (*Atlas Equifin* at [30]).

37 In addition to the above reasons canvassed in *Atlas Equifin*, I find further support for this position in s 186 of the IRDA, which provides as follows:

**Power to stay or terminate winding up**

186.—(1) At any time during the winding up of a company, the Court may, on the application of the liquidator or of any creditor or *contributory*, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed or terminated, make an order —

- (a) staying the proceedings either altogether or for a limited time, on such terms and conditions as the Court thinks fit; or
- (b) terminating the winding up on a day specified in the order.

[emphasis added]

38 Given that the IRDA clearly contemplates a shareholder/contributory bringing an application to stay or terminate a winding up, the necessary conclusion is that such an individual does have standing to bring an application in opposition to the winding up of a company.

***Does a shareholder/contributory require leave to oppose a winding up application?***

39 Having found that a shareholder/contributory has standing to oppose a winding up application, *Atlas Equifin* then went on to suggest that a leave requirement was necessary to guard against the possibility of “frivolous opposition by shareholders” (at [34]). In this connection, it listed several factors which ought to be considered when deciding whether leave should be granted, which I shall collectively refer to as the “*Atlas Equifin* leave factors” (at [33]):

- (a) Whether the shareholder/contributory has a substantial interest in the winding up application, as determined with reference to the size of their shareholding;
- (b) Whether the company is solvent;
- (c) The *bona fides* of the shareholder/contributory opposing the winding up application; and
- (d) The countervailing interests of the company’s creditors, with more weight being given thereto where the creditors are unpaid and the company is unable to pay its debts.

40 However, *Atlas Equifin* also observed that if such a leave requirement was “unsuitable in the light of the legislative framework”, the court could

nonetheless guard against frivolous opposition by attributing it no weight, which would in essence amount to not granting the opposing shareholder/contributory leave to be heard at all (at [34]).

41 Respectfully, I am of the view that the second approach is indeed more consistent with the legislative framework. While s 186 of the IRDA clearly contemplates a shareholder/contributory making an application in opposition to winding up proceedings, neither the IRDA nor the Rules of Court imposes any requirement to seek leave or permission of court before doing so. The *Atlas Equifin* leave factors may instead be considered alongside the other facts relevant to the court's exercise of its discretion to refuse a winding up order, which will be discussed below at [48]. With parties in agreement that Mdm Rajeswary is a shareholder and contributory,<sup>44</sup> she would therefore have standing to oppose the winding up application as of right, and it is for the court to decide how much weight her objection ought to carry.

***If a shareholder/contributory requires leave to oppose a winding up application, should it be granted in the present case?***

42 Even if I were to follow *Atlas Equifin* in holding that a shareholder/contributory requires leave in order to oppose a winding up application, I am of the view it should not be invariably required in all cases to demonstrate that the company in question is solvent before leave to oppose is granted. While a reasonable inquiry where opposition is premised on a dispute as to the debt underlying a statutory demand, the purpose of this factor is ultimately to ensure that the opposing contributory/shareholder has a genuine interest in the outcome of the winding up application (*Atlas Equifin* at [33(b)]).

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<sup>44</sup> Notice of Intention to Appear of Rajeswary d/o Sinan (12 November 2021); Hearing Transcript (16 September 2022) at p 9 lines 13–15.

Yet, as the present case demonstrates, where a company has allegedly been deliberately rendered insolvent to facilitate the takeover of its business, a contributory/shareholder may have such an interest notwithstanding its insolvency. Likewise, little if any weight ought be given to the countervailing fact that a creditor is unpaid and the company is unable to pay its debts, where this has been allegedly engineered. Demonstrating solvency therefore ought not be the only way by which a shareholder/contributory might establish a genuine interest in the winding up application. This position is consistent with *Atlas Equifin*'s characterisation of its leave factors as “non-exhaustive” and “useful” (at [33]) rather than mandatory.

43 This being the case, Mdm Rajeswary should be granted leave to oppose HC/CWU 198/2021. She is a 50% shareholder and a director in the Gokul Vegetarian, and it is undisputed that she has a significant interest in its business. There is also nothing in the evidence that casts doubt on her *bona fides*. No weight should be given to the fact that Gokul Vegetarian is insolvent and the debt underlying the statutory demand remains unpaid given that there appears to be at least a *prima facie* case that this situation has been deliberately engineered, lest such acts be allowed to go unchallenged for want of any party that has both the motive and standing to oppose them.

## **Issue 2: Whether the winding up application should be disallowed**

44 Having found that Mdm Rajeswary has the standing to oppose HC/CWU 198/2021, I then turn to consider the substantive merits of the application, and her opposition to it.

***Does the court have discretion to disallow a winding up application even if the company is indisputably insolvent?***

45 S 125(1)(e) of the IRDA provides that the court may order the winding up of a company if it is unable to pay its debts, and pursuant to section 125(2)(a) of the IRDA, this fact may be deemed or presumed if the statutory requirements therein are fulfilled. This presumption does not appear to be rebuttable (*Pac-Asian Services Pte Ltd v European Asian Bank AG* [1987] SLR(R) 6 at [14]), and the default position is that a winding up order should be made *ex debito justitiae*, or as a matter of right, where a company is proven or deemed unable to pay its debts (*Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478 (“*Sun Electric*”) at [84]).

46 However, even if a company is proven or deemed insolvent, or if the other statutory bases for winding up are made out, the court nonetheless retains a discretion to decline to grant a winding up order (*Sun Electric* at [85]; *BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949 (“*BNP*”) at [15]–[20]), and there are two broad categories of situations in which the court may do so.

47 First, the court may disallow a winding up application which amounts to an abuse of process, pursuant to its inherent jurisdiction to prevent an abuse of its processes (*Lai Shit Har and another v Lau Yu Man* [2008] 4 SLR(R) 348 (“*Lai Shit Har*”) at [22]). These include applications or proceedings where the processes of the court are employed for an ulterior, collateral, or improper purpose (*Lai Shit Har* at [22]–[23]), such as to delay or derail proceedings which were brought against the winding up applicant (*Lai Shit Har* at [29] and [32]), or to allow the winding up applicant to circumvent established buyout mechanisms and exit the company at will (*Ting Shwu Ping v Scanone Pte Ltd and another appeal* [2017] 1 SLR 95 at [75]–[76]; *Perennial (Capitol) Pte Ltd*

*Adcrop Pte Ltd v Gokul Vegetarian Restaurant and Cafe Pte Ltd* [2023] SGHC 152

*and another v Capitol Investment Holdings Pte Ltd and other matters* [2017] SGHC 84 at [37]). Claims found to amount to a collateral attack on a prior decision have also been regarded as an abuse of process and dismissed accordingly (*iTronic Holdings Pte Ltd v Tan Swee Leon* [2018] 4 SLR 359; *Kwa Ban Cheong v Kuah Boon Sek and others* [2003] 3 SLR(R) 644). That said, the categories of conduct which might render an application an abuse of process are not closed, and will depend on all the relevant circumstances of the case (*Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 (“*Gabriel Peter*”) at [22]). One would expect this observation to apply with equal force in respect of the sorts of purposes which might be found to be ulterior, collateral, or improper. Indeed, the touchstone of abuse of process is the need for the court to prevent the improper use of its machinery, and this would invariably require considerations of public policy and the interests of justice (*Gabriel Peter* at [22]).

48 Second, the court also retains a general residual discretion to consider all other relevant factors when deciding whether a company should be wound up, even if the statutory grounds for doing so have been technically established (*Perennial (Capitol) Pte Ltd and another v Capitol Investment Holdings Pte Ltd and other appeals* [2018] 1 SLR 763 (“*Perennial Capitol*”) at [82]). Such factors have been understood to include the utility and effect of a winding up order, the overall fairness and justice of the case (*Perennial Capitol* at [82]), the responsibility of the winding up applicant for the state of affairs forming the factual basis upon which the winding up order is sought (*In the Matter of the Companies Ordinance, Cap 32 and in the Matter of Power Point Engineering Limited* [2000] HKCFI 800; [2000] HKCU 501, endorsed in *Lai Shit Har* at [31]–[33]), the viability of the company, the economic and social interests of the company’s employees, suppliers, shareholders, non-petitioning creditors,



customers, and other companies in the group enterprise (*Sun Electric* at [85]), and the possibility that granting a winding up order may cause irreparable harm to the debtor company (*BNP* at [20]; *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 (“*Metalform*”) at [59]).

***Should HC/CWU 198/2021 be dismissed notwithstanding Gokul Vegetarian’s insolvency?***

49 I thus proceed to consider whether HC/CWU 198/2021 was indeed motivated by such a collateral purpose, and whether the overall fairness and justice of the case weighs in favour of or against my granting it.

***There was a scheme to wrest control of Gokul Vegetarian’s underlying business from Gokul Vegetarian and Mdm Rajeswary***

50 Having considered the chain of events laid out above, I find that on balance of probabilities, there was a scheme orchestrated chiefly by Mdm Lakshmi whose purpose was to wrest control of Gokul Vegetarian’s business from Gokul Vegetarian and thus from Mdm Rajeswary as well. Indeed, there are numerous facts which together make it extremely unlikely that the 4 September 2021 EGM was merely an innocent attempt to raise money to save Gokul Vegetarian, or that HC/CWU 198/2021 was simply the unfortunate result of a genuine but unsuccessful effort to keep Gokul Vegetarian afloat.

51 First, it is clear that Mdm Lakshmi had a desire to see Mdm Rajeswary removed from Gokul Vegetarian. This is evident not only from her submission of the notice of change of directors on 21 April 2021, but also from her testimony at trial, during which Mdm Lakshmi explained that she did so “because we felt that [Mdm Rajeswary] did not do her fiduciary duties” and “we

were just suffering with [Mdm Rajeswary].”<sup>45</sup> In this regard, I stress that I make no finding as to whether Mdm Lakshmi’s motives were justifiable or reasonable, nor as to the truth of her allegations that Mdm Rajeswary had been derelict in the discharge of her duties as director of Gokul Vegetarian. Whether it was for what she perceived to be the good of Gokul Vegetarian or more self-serving ends, it is beyond doubt that she wanted Mdm Rajeswary out of the picture.

52 Second, I find that the chain of events leading up to the filing of HC/CWU 198/2021 was set in motion in order to bring about the demise of Gokul Vegetarian, in furtherance of this goal. While Mdm Lakshmi claims that the purpose of the EGM was simply to raise funds to address Gokul Vegetarian’s cash flow problems,<sup>46</sup> it is difficult to believe that it was purely coincidental that it was called the day after she was served the papers for HC/OS 842/2021. It should be recalled that HC/CWU 198/2021 is based on a statutory demand for the \$20,000 debt Gokul Vegetarian owed to the plaintiff, which had been incurred as a result of a payment by the plaintiff to Gokul Vegetarian at the EGM. In other words, the chain of events which led up to the present application was set in motion the *very day after* Mdm Lakshmi became aware that her original attempt to remove Mdm Rajeswary from the management of Gokul Vegetarian’s underlying business might fail. Furthermore, the \$20,000 received by Gokul Vegetarian could never have been enough to fully pay off the \$43,795.12 owed to 78 Capital Pte Ltd, and indeed would have left a debt large enough to ground a statutory demand of its own. Coupled with the remarkable timing of the calling of the EGM, this provides support for the inference that the holding of the EGM and receipt of \$20,000 from the plaintiff

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<sup>45</sup> Hearing Transcript (14 September 2022) at p 104 lines 23–29.

<sup>46</sup> Hearing Transcript (14 September 2022) at p 109 lines 13–21.

were not part of a genuine attempt to save Gokul Vegetarian, but rather an “insurance policy” of sorts in case the first attempt to oust Mdm Rajeswary failed, as eventually came to pass.

53 Third, it is also difficult to believe that Mdm Lakshmi was genuinely motivated by a desire to save Gokul Vegetarian, when she had begun taking steps to transfer its assets to Gokul-Raas well before the statutory demand underlying HC/CWU 198/2021 was served on 28 September 2021. Particularly inexplicable is the fact that she had by 17 September 2021 executed a fresh tenancy agreement for 19 Upper Dickson Road on behalf of Gokul-Raas, two days after Gokul Vegetarian had been served with the notice of termination for the very same premises on 15 September 2021. This was followed by her changing of the name on Gokul Vegetarian’s SFA license from Gokul Vegetarian to Gokul-Raas on 20 September 2021, and then changing the employer of Gokul Vegetarian’s foreign employees to Gokul-Raas on 23 September 2021. Leaving aside the question of whether she was entitled to make these changes in the first place, these are hardly the actions of someone who, at least as of 6 October 2021, genuinely hoped that “funds would still come in, and we could save the company somehow”, and believed that “even though the termination had been there, I think if we could get the funds on time, we could have saved the place”.<sup>47</sup>

54 More puzzling still is Mdm Lakshmi’s failure to make any effort to inform Mdm Rajeswary of the termination of Gokul Vegetarian’s tenancy, the statutory demand, the filing of HC/CWU 198/2021, and the transfer of Gokul Vegetarian’s assets to Gokul-Raas. If Mdm Lakshmi had still believed and hoped that Gokul Vegetarian could be saved as at 6 October 2021, then

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<sup>47</sup> Hearing Transcript (15 September 2022) at p 5 lines 27–29.

informing Mdm Rajeswary of what had transpired since 1 September 2021 would have only further emphasised the direness of the straits that Gokul Vegetarian was in, and the need to approve the issuance of shares to the plaintiff before it irretrievably sank beneath the waters. Mdm Lakshmi attempted to attribute this failure to their “acrimonious relationship”,<sup>48</sup> but at the EGM on 4 September 2021, she and Mr Rauinderan had been more than willing to impress upon Mdm Rajeswary’s proxy the seriousness of Gokul Vegetarian’s predicament by informing him of the 1 September 2022 letter of demand,<sup>49</sup> and the landlord’s warning that he would be “coming at about 9.00 or 10.00am to lock up this place” if it was not met.<sup>50</sup> Having claimed at the EGM that it was “going to be impossible to find anybody who’s going to invest in the company”,<sup>51</sup> it is difficult to see what Mdm Lakshmi might have had to lose by giving Mdm Rajeswary further updates as Gokul Vegetarian’s situation deteriorated in the hope that she might change her mind, given that there was no other lifeline on the horizon.

55 But even if I were to accept that Mdm Lakshmi had after the EGM come to believe that reaching out to Mdm Rajeswary was a lost cause, there is no conceivable reason why she might have needed to *conceal* the extent of Gokul Vegetarian’s predicament during the exchanges which they *did* have. Yet in deposing on 6 October 2021 that Gokul Vegetarian was “facing multiple demands for payment by third parties” and “cannot capitulate to [Mdm] Rajeswary’s excessive and baseless demands for money”, and that Mdm Rajeswary’s actions “will surely condemn [Gokul Vegetarian] to its ultimate

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<sup>48</sup> Hearing Transcript (15 September 2022) at p 7 lines 14–15.

<sup>49</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at p 37.

<sup>50</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at p 38.

<sup>51</sup> Affidavit of Rajeswary d/o Sinan (10 December 2021) at p 51.

closure”,<sup>52</sup> Mdm Lakshmi actively conveyed an impression that Gokul Vegetarian was still a going concern and that its fate was *not* a foregone conclusion, if only Mdm Rajeswary could be prevented from further interfering in its operations. Even after Gokul-Raas had secured the tenancy agreement for 19 Upper Dickson Road on 17 September 2021, and after HC/CWU 198/2021 was filed and served on 27 October 2021, Mdm Lakshmi misleadingly deposed in her 24 November 2021 affidavit that “[Gokul Vegetarian] *could have* already lost its premises which would have completely destroyed [Gokul Vegetarian] in September 2021”.<sup>53</sup> [emphasis added] To any reasonable reader, this could only be taken to mean that Gokul Vegetarian’s premises *had not yet been lost*. Regardless of how poor the relationship between the two had become, I struggle to imagine what innocent explanation there might be for this blatant attempt to mislead not only Mdm Rajeswary, the person who according to Mdm Lakshmi was in the best position to save Gokul Vegetarian from liquidation, but also the judge hearing HC/OS 842/2021. It does, however, make sense in the context of a deliberate attempt to ensure that Mdm Rajeswary did not discover any part of Mdm Lakshmi’s comprehensive plan to strip Gokul Vegetarian of its underlying business and finally wind it up, until it was too late.

56 Two more incidents further strengthen the inference that Mdm Lakshmi had deliberately orchestrated the events which led to the filing of HC/CWU 198/2021. On 6 September 2021, Mdm Lakshmi arranged for Gokul Vegetarian to make payment of \$588.50 to 78 Capital Pte Ltd for its legal fees, despite the absence of any request to do so in the landlord’s 1 September 2021 letter of

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<sup>52</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (6 October 2021) at para 102–104.

<sup>53</sup> Affidavit of Chandra Maha Lakshmi in HC/OS 842/2021 (24 November 2021) at para 50.

demand, or any documentary evidence that such a request had ever been made.<sup>54</sup> Mdm Lakshmi claimed that this request had been made over the phone, and that she had acceded to it in an attempt to garner some goodwill and stave off the termination of Gokul Vegetarian’s tenancy.<sup>55</sup> However, it is difficult to believe that, in the face of over \$40,000 of outstanding rent, a landlord would be so concerned about less than \$600 in legal fees that it would bother making a separate unrecorded request for payment thereof. And if it was, then it is equally puzzling as to why this request had not been made in the original letter of demand. Possibly more believable is that, as Mdm Rajeswary’s counsel suggests, Mdm Lakshmi had arranged for 78 Capital Pte Ltd to terminate Gokul Vegetarian’s tenancy in favour of Gokul-Raas, and was simply compensating them for their trouble.

57 Finally, Mdm Lakshmi’s credibility is further undermined by her inconsistent accounts of the purpose of the plaintiff’s \$20,000 payment to Gokul Vegetarian. On 15 November 2021, in response to allegations that Mr Sharma could not genuinely have believed that Mdm Rajeswary would consent to the issuance of the shares and that the \$20,000 was therefore a “sham loan”, Mdm Lakshmi’s solicitors took the position that the payment was entirely unrelated to the issuance of shares.<sup>56</sup> However, this was inconsistent not only with a letter which Mr Sharma’s solicitors had sent just three days prior,<sup>57</sup> but also with Mdm Lakshmi’s case at trial, and the best she could do to account for this inconsistency was to suggest that her previous lawyers had made a mistake.<sup>58</sup>

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<sup>54</sup> Hearing Transcript (14 September 2022) at p 117 lines 6–21.

<sup>55</sup> Hearing Transcript (14 September 2022) at p 119 line 10.

<sup>56</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 165.

<sup>57</sup> Affidavit of Chandra Maha Lakshmi (26 November 2021) at p 174.

<sup>58</sup> Hearing Transcript (15 September 2022) at p 14 lines 14–16.

To put it mildly, such inconsistency is difficult to reconcile with any honest and good faith attempt to save Gokul Vegetarian from insolvency.

*The plaintiff's complicity in this scheme is ground for dismissing HC/CWU 198/2021*

58 Having found that there was more likely than not a scheme to wrest control of Gokul Vegetarian's business from Gokul Vegetarian and Mdm Rajeswary, I then turn to consider whether the plaintiff was party to this scheme such that HC/CWU 198/2021 was infected with a collateral purpose, or whether the plaintiff was simply a hapless pawn whose payment of the \$20,000 to Gokul Vegetarian was motivated by legitimate but misguided commercial considerations. The plaintiff's case theory is that Mr Sharma had been offered a majority shareholding in Gokul Vegetarian, which would have entailed subscribing for 300,000 shares for around \$200,000.<sup>59</sup> On his account, this was a good opportunity to be part of a reputable company which was a big name in the industry.<sup>60</sup> However, while Gokul Vegetarian was in urgent need of funds in order to meet the demand by 78 Capital Pte Ltd, it would take the plaintiff some time to arrange payment of the full \$200,000.<sup>61</sup> Mr Sharma therefore caused the payment of \$20,000 to be made to Gokul Vegetarian in exchange for the issuance of a small fraction of the intended 300,000 shares. The problem is that Mr Sharma had been present when the resolution for the issuance of this tranche of shares to the plaintiff had been proposed, and had witnessed that it had been unequivocally rejected. He nevertheless claims to have believed that Mdm Rajeswary could still have been persuaded to change her mind, failing which he

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<sup>59</sup> Hearing Transcript (15 September 2022) at p 73 lines 11–30.

<sup>60</sup> Hearing Transcript (15 September 2022) at p 41 lines 18–20.

<sup>61</sup> Hearing Transcript (15 September 2022) at p 74 lines 5–14.

would have expected the \$20,000 to be returned.<sup>62</sup> The plaintiff's case thus turns on the plausibility of this explanation.

59 I find it unlikely that Mr Sharma could reasonably have believed that either of these outcomes would have materialised, and I begin with his claim that he believed on 4 September 2021 that Mdm Rajeswary might yet be persuaded. At the EGM, Mr Sharma had heard Mr Rauinderan complain to Mdm Rajeswary's proxy that she was "irrational, unreasonable, she will not listen to any reason so she will object for any reason".<sup>63</sup> This makes it difficult to understand how Mr Sharma might have believed that Mdm Rajeswary was likely to act like "any reasonable businessman",<sup>64</sup> which in his mind would have entailed assenting to the issuance of the shares. Furthermore, if Mr Sharma had really believed as he claimed, then there is no reason why the plaintiff would have failed to mention this belief in its response to Mdm Rajeswary's 9 November 2021 letter, in which she had alleged that it was "unbelievable that Mr Sharma would be of the view that [Mdm Rajeswary's] consent for the issuance of new shares would be obtained".<sup>65</sup> Such failure to challenge Mdm Rajeswary's assertion strongly suggests that this claim is no more than a belated attempt to concoct a commercial explanation for the plaintiff's payment of the \$20,000 to Gokul Vegetarian at the EGM, despite having no assurance whatsoever that it would be issued the shares in return.

60 It is equally difficult to believe that Mr Sharma expected that the \$20,000 would be returned to the plaintiff if the shares were not eventually

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<sup>62</sup> NP1 Skeletals (21 October 2022) at para 41.3; Affidavit of Arvind Sharma (11 April 2022) at para 20; Hearing Transcript (15 September 2022) at p 75 lines 7–9.

<sup>63</sup> Hearing Transcript (15 September 2022) at p 47 lines 28–30.

<sup>64</sup> Hearing Transcript (15 September 2022) at p 42 lines 18–19.

<sup>65</sup> Hearing Transcript (15 September 2022) at p 45 lines 1–20.



issued. Mr Sharma claimed to be aware that Gokul Vegetarian was in financial difficulty,<sup>66</sup> and that, on 4 September 2021, it had a mere \$781 left in its bank balance.<sup>67</sup> He also stated that the very reason why he did not wait for Mdm Rajeswary to give her consent was that “at that moment, they wanted the money to be given to the landlord”.<sup>68</sup> That being the case, it is quite inexplicable how he might have genuinely thought that Gokul Vegetarian would have been capable of returning the \$20,000 in the event that Mdm Rajeswary did not agree to issue the shares to the plaintiff.

61 The circumstances surrounding the plaintiff’s obtaining the assignments of the trade debts also point towards their being part of a deliberate plan to wind up Gokul Vegetarian. In particular, the timing of the assignments strongly suggests that they were primarily intended to strengthen the plaintiff’s position in HC/CWU 198/2021. The assignments took place between 9 to 12 November 2021, a period beginning on the very day when Mdm Rajeswary’s lawyers first alleged that the \$20,000 Adcrop debt was either a “sham loan” or due from Mdm Lakshmi personally. In other words, they began the very day Mdm Lakshmi and the plaintiff first realised that the Adcrop debt might be disputed and hence incapable of supporting a winding up order on its own. Much like the convenient timing of Mdm Lakshmi’s calling of the EGM, this remarkable coincidence likewise seems consistent with the putting in place of an insurance policy in case the initial plan of action succumbed to legal challenge.

62 Next, at least one trade creditor admitted that it was Mdm Lakshmi who had informed him of Mr Sharma’s role in commencing HC/CWU 198/2021 and

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<sup>66</sup> Hearing Transcript (15 September 2022) at p 74 lines 1–9.

<sup>67</sup> Hearing Transcript (15 September 2022) at p 68 lines 1–3.

<sup>68</sup> Hearing Transcript (15 September 2022) at p 72 lines 17–18.

put them in touch.<sup>69</sup> Indeed, it is difficult to see how else Mr Sharma, then an outsider to Gokul Vegetarian’s business, might have established contact with the trade creditors. While not in itself conclusive, the fact that Mdm Lakshmi had a role in procuring the assignments does lend further support to the inference that they were intended to further her plan to have Gokul Vegetarian wound up.

63 Finally, there simply is no other plausible commercial rationale for the assignments, nor for the entire winding up application itself. Mr Sharma claimed that the arrangement would have resulted in a “small profit” accruing to the plaintiff, ostensibly to help cover the legal fees incurred in the present action.<sup>70</sup> However, for that “profit” to materialise, the distribution to creditors in the winding up would have had to exceed ninety cents in the dollar. Yet not only did he accept that he had no idea whether sufficient funds could be recovered from Gokul Vegetarian for that profit to materialise,<sup>71</sup> it is also very likely that he never truly believed that anything would be recovered, given his knowledge of Gokul Vegetarian’s dire financial straits as discussed above at [60]. Indeed, having demonstrated the sophistication and astuteness necessary to structure the assignments in the way he did, he could not have failed to realise that the legal expenses incurred in prosecuting HC/CWU 198/2021 would far outstrip anything which might realistically be recovered from Gokul Vegetarian. His persistent attempts to wind it up cannot be explained as simply a misguided exercise in throwing good money after bad, but rather suggest a motive beyond the clearly unlikely recovery of the debts owing to the plaintiff.

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<sup>69</sup> Hearing Transcript (14 September 2022) at p 35 lines 2–10.

<sup>70</sup> Hearing Transcript (15 September 2022) at p 65 lines 8–21.

<sup>71</sup> Hearing Transcript (15 September 2022) at p 66 lines 18–20.

64 It is therefore clear that HC/CWU 198/2021 is not a genuine attempt to recover a genuine investment made for legitimate commercial reasons, but was rather motivated by the collateral and improper purpose of advancing Mdm Lakshmi's scheme to wrest control of Gokul Vegetarian's business from Gokul Vegetarian and Mdm Rajeswary. Indeed, it is extremely telling that the plaintiff provides in its closing submissions no real answer to Mdm Rajeswary's allegations of a deliberate ploy to render Gokul Vegetarian insolvent, nor makes any attempt to explain the commercial basis for either its own actions or those of Mdm Lakshmi. Its best case in this regard is simply to repeat its assertions that Gokul Vegetarian no longer has any premises, business, assets, or any hope of repaying its debts, and essentially entreat the court to ignore the reasons why this might be so,<sup>72</sup> and allow it to use the machinery of the court to bring its scheme to fruition. This, the court cannot do. I can therefore only conclude that HC/CWU 198/2021 is an abuse of the processes of this court, and that the overall fairness and justice of the case militates against making the winding up order which it seeks.

**Issue 3: Whether there is an undisputed debt in respect of which Adcrop has the standing to bring an application**

65 Having found that HC/CWU 198/2021 was motivated by a collateral purpose and thus ought to be dismissed as an abuse of process, there is technically no need to consider whether either the Adcrop debt or the assigned trade debts are undisputed and thus capable of sustaining the application. However, if I had to decide the issue, then while the foregoing analysis has proceeded on the basis that the debts were incurred by Gokul Vegetarian, I would have allowed that there is a substantial and *bona fide* dispute as to

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<sup>72</sup> Plaintiff's Skeletons (4 November 2022) at para 57.

whether this was in fact so. This finding would be sufficient to serve as an alternative basis upon which to dismiss the winding up application (*Atlas Equifin* at [41]; *Metalform* at [62]; *BNP* at [9]; *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [17]).

66 First, there is some room for doubt as to whether the plaintiff's payment of the \$20,000 to Gokul Vegetarian was in fact meant as consideration for the issuance of shares, such that the plaintiff is entitled to repayment since those shares were not issued. As noted above at [22], Mdm Rajeswary's solicitors had earlier alleged that the Adcrop debt was in fact a sham loan or a personal loan to Mdm Lakshmi, although I note that this point was not covered in closing submissions. Additionally, as observed at [57], Mdm Lakshmi was inconsistent in her account of what the purpose of the payment was, first claiming that it was entirely unrelated to the issuance of shares, but later claiming at trial that it was for the issuance of shares. Coupled with my finding that both Mdm Lakshmi and Mr Sharma were acting in concert to bring about the winding up of Gokul Vegetarian, this shifting account raises a real possibility that the true basis of the payment as subjectively understood by both Mdm Lakshmi and Mr Sharma might not be as they claimed at trial. This in turn calls into question the viability of any attempt on their part to mount a claim in unjust enrichment on the grounds of failure of basis or consideration.

67 It is also not a foregone conclusion that the plaintiff would succeed in a claim for breach of contract, because it is not clear that there was in fact any genuine agreement between the plaintiff and Gokul Vegetarian. If there had truly been an agreement for an advance payment in anticipation of Mdm Rajeswary giving her consent to the issuance of shares, and if there had truly been an understanding that the money would be returned if her consent was not obtained, then one would have expected the parties to have agreed on a date by

which either of these events had to be procured. However, absent any evidence in respect of a key aspect of this alleged agreement, there is at least a triable issue as to whether any such agreement actually existed, and whether the transaction was truly genuine.

68 In any event, even if the plaintiff had genuinely intended that the \$20,000 would be consideration for shares, Mr Sharma knew that the resolution had failed to pass and that Mdm Lakshmi therefore had no authority to receive the money. He also had overheard the conversation between Mr Rauinderan, Mdm Lakshmi, and Mdm Rajeswary’s proxy during which it was made clear that Mdm Rajeswary would never agree to the share issuance. Moreover, Mr Sharma was fully aware that Gokul Vegetarian would be unable to return the money as it would be paid to the landlord. It is arguable that this knowledge may likewise affect the plaintiff’s ability to establish that there was a total failure of consideration or failure of basis. A finding against the plaintiff on any one of these points would mean that it would not be entitled to recover the \$20,000 paid to Gokul Vegetarian, and thus cannot rely on it as the basis for winding up proceedings. It might even lead to the conclusion that, as Mdm Rajeswary argues, the payment was simply meant to “unconditionally allow Lakshmi to cause Gokul Vegetarian to pay an amount of \$20,000” to its landlord.<sup>73</sup> However, these are issues which cannot be dealt with summarily in the context of a winding up application, but should rather be resolved at trial.

69 There is also a triable issue in respect of the assigned trade debts, and the plaintiff’s ability to bring a winding up application in connection therewith. First, as observed earlier at [25], there is some doubt as to whether the trade debts were actually incurred by Gokul Vegetarian, or whether some of them

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<sup>73</sup> 1NP Skeletals (21 October 2022) at para 43–46.

were in fact incurred by Gokul-Raas. Second, even if they were incurred by Gokul Vegetarian, there is a possibility that the formal notice requirement for the assignment of debts under s 4(8) of the Civil Law Act 1909 (1999 Rev Ed) was not satisfied, and that the plaintiff remains an equitable assignee in respect of the trade debts. Whether the court believes this is so turns on the credibility of Mdm Lakshmi's testimony. However, it is difficult to believe her bare assertions that the notices were received by Gokul Vegetarian, when she has been consistently unable to recall whether she received them personally or through her staff.<sup>74</sup> This is even more so given that, as the foregoing analysis has shown, she likely has a vested interest in the success of the winding up application, which would be strengthened if this court were to believe her assertions that the notices were served.

70 In this light, there is a real possibility that the plaintiff may merely be an equitable assignee. If this is found to be the case, then a further question would arise as to whether it has standing to bring the claim. As the plaintiff acknowledges in their closing submissions, there are no reported decisions in Singapore which address the question of whether an equitable assignee has standing as a creditor to serve a statutory demand and make a winding up application on the basis of the debt in question.<sup>75</sup> On the other hand, in view of the High Court's endorsement of the "established legal principle that, in order to transfer the legal right to a debt by an assignment, an absolute assignment must be executed and notice of this assignment must be given to the debtor" in *Parkway Hospitals Singapore Pte Ltd (trading as Mount Elizabeth Hospital) and another v Sandar Aung* [2007] 1 SLR(R) 227 at [12], and the Court of Appeal's affirmation thereof on appeal in *Sandar Aung v Parkway Hospitals*

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<sup>74</sup> Hearing Transcript (15 November 2022) at p 19–21.

<sup>75</sup> Plaintiff's Skeletons (4 November 2022) at para 53(2).

*Singapore Pte Ltd (trading as Mount Elizabeth Hospital) and another* [2007] 2 SLR(R) 891 at [40], there is at least a triable issue as to whether the plaintiff would have standing to bring winding up proceedings based on the assigned trade debts, if it is found to be only an equitable assignee.

### **Conclusion**

71 I conclude by stressing that, apart from the inferences which I have drawn in relation to the question of whether HC/CWU 198/2021 should be dismissed as an abuse of process, it is not my role to decide the merits of the underlying dispute between the non-parties. Even if there was some element of truth to Mdm Lakshmi's allegations that Mdm Rajeswary had acted in dereliction of her duties as a director, the law affords her the means by which to test those allegations, and remedies of which she may avail herself if they are found to be true. She is not entitled unilaterally to adjudicate their truth, fashion her own remedy against Mdm Rajeswary, and expect this court to rubber stamp the execution thereof. The plaintiff's attempt to assist her in doing so cannot merit the sanction of this court. Accordingly, I dismiss HC/CWU 198/2021.

72 I will hear parties on costs.

Andrew Ang  
Senior Judge

Senthil Dayalan (Sim Chong LLC) for the plaintiff;

The defendant unrepresented;

Suang Wijaya, Sophia Ng and Shirin Chew (Eugene Thuraisingam  
LLP) for the 1<sup>st</sup> non-party;

The 2<sup>nd</sup> non-party in person.

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