

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

[2023] SGHC 98

Originating Application No 192 of 2023 (Summonses Nos 681 and 899 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Babel Holding Limited

... Applicant

Originating Application No 193 of 2023 (Summonses Nos 682 and 900 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Babel Asia Asset Management Private Limited

... Applicant

Originating Application No 194 of 2023 (Summonses Nos 684 and 902 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Babel Block Limited

... Applicant

Originating Application No 195 of 2023 (Summonses Nos 683 and 903 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Moonalpha Financial Service Limited

... Applicant

Originating Application No 196 of 2023 (Summonses Nos 685 and 904 of 2023)

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Shinar Trading Services Private Limited

... Applicant

BRIEF REMARKS

[Insolvency Law — Schemes of arrangement — Extension of Moratoria]

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Re Babel Holding Ltd and other matters

[2023] SGHC 98

General Division of the High Court — Originating Application No 192 of 2023 (Summons Nos 681 and 899 of 2023), Originating Application No 193 of 2023 (Summons Nos 682 and 900 of 2023), Originating Application No 194 of 2023 (Summons Nos 684 and 902 of 2023), Originating Application No 195 of 2023 (Summons Nos 683 and 903 of 2023) and Originating Application No 196 of 2023 (Summons Nos 685 and 904 of 2023)

Aedit Abdullah J

31 March 2023

17 April 2023

Judgment reserved.

Aedit Abdullah J:

1 These are my brief remarks, conveying my decision, which I will add to if needed. Not all points will be addressed here. Having considered the submissions and the evidence, I am satisfied that the applications for moratoria extension (“the Moratoria Extension Applications”) under s 64 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“IRDA”) and the sealing orders (“the Sealing Applications”) should be granted.

Background

2 The applications were made by companies affiliated with the “Babel Finance” brand (“the Babel Finance Group”); namely, Babel Holding Limited (the group holding company incorporated in the Cayman Islands) (“BHL”), Babel Asia Asset Management Private Limited (a Singapore subsidiary)

(“BAAMPL”), Babel Block Limited (a BVI subsidiary) (“BBL”), Shinar Trading Services Private Limited (a Singapore subsidiary), and Moonalpha Financial Service Limited (a separate company incorporated in Hong Kong) (“Moonalpha”).¹ Moonalpha preceded the “Babel Finance” brand and is not owned by BHL, although it now apparently operates its business under the “Babel Finance” brand.² The Babel Finance Group engages in a range of cryptocurrency-related business activities, including cryptocurrency lending and cryptocurrency asset management.³

3 The applicants are seeking the Moratoria Extension Applications in order to secure a period of respite to formulate a restructuring plan for the Babel Finance Group which will be implemented via a scheme of arrangement (“the Scheme”).⁴ The Sealing Applications are sought with respect to documents which contain the unredacted versions of lists of the applicants’ creditors as well as letters of support in respect of the Moratoria Extension Applications (collectively, “the Documents”).⁵

4 The Scheme contemplates substantive consolidation, or pooling, of the assets and liabilities of the entire Babel Finance Group.⁶ The applicants also propose a deed poll structure (“the Deed Poll Structure”) under which one of the Singapore subsidiaries will become a primary co-obligor in respect of the

¹ 1st Affidavit of Yang Zhou filed in HC/OA 192/2023 dated 6 March 2023 (“Yang-1”) at paras 7, 9 and 14.

² Yang-1 at paras 7 and 20.

³ Yang-1 at para 16.

⁴ Applicants’ Joint Written Submissions dated 29 March 2023 relating to the moratoria extension applications (“AJWS-1”) at para 2.

⁵ Applicants’ Joint Written Submissions dated 29 March 2023 relating to the sealing orders (“AJWS-2”) at para 2.

⁶ Yang-1 at para 73.

Scheme claims of the entire Babel Finance Group, in order that a single scheme of arrangement may be proposed in respect of the Group.⁷ Other key features of the proposed Scheme include the conversion of customers’ deficits into “Babel Recovery Coins” (“BRCs”) – tokens issued by Babel Finance which are pegged to certain cryptocurrencies – and the contemplation of new investments into the Babel Finance Group.⁸

The applicants’ arguments

5 With respect to the Moratoria Extension Applications, the applicants argue that they meet the statutory requirement under s 63(3) of the IRDA for Scheme companies to be corporations “liable to be wound up under [the IRDA]”. Specifically, the applicants argue that under s 246(1)(d) read with s 246(3) of the IRDA, BHL, BBL, and Moonalpha (collectively, “the Foreign Applicants”) have established a “substantial connection” to Singapore. This “substantial connection” is evinced by several factors; most importantly, the presence of substantial assets in Singapore and the existence of a Babel Finance team working out of BAAMPL’s registered office in Singapore that conducts business for the whole Babel Finance Group, including the Foreign Applicants.⁹

6 The applicants submit that the requirements for extension of moratoria as set out in *Re IM Skaugen SE and other matters* [2018] SGHC 259 (“*Skaugen*”) are satisfied; namely, that the applications are made *bona fide* and there is a reasonable prospect of the intended Scheme working and being

⁷ Yang-1 at para 93; AJWS-1 at para 72.

⁸ Yang-1 at paras 94–97.

⁹ AJWS-1 at para 34.

acceptable to the general run of creditors.¹⁰ Thus, the applicants seek a six-month extension of the moratoria.¹¹

7 With respect to the Sealing Applications, the applicants argue that sealing is necessary to safeguard the commercially sensitive information contained in the Documents.¹² Pertinently, confidentiality is important to prevent a “contagion effect” on customers whose names appear in the Documents, whereby these customers suffer adverse financial consequences by reason of being negatively associated with the applicants.¹³ Furthermore, the applicants submit that no apparent prejudice would be suffered by creditors as a result of the sealing of the Documents.¹⁴

The Objecting Creditor’s arguments

8 The first non-party (“the Objecting Creditor”), DRB Panama Inc (“Deribit”), submits that the Moratoria Extension Applications and Sealing Applications should not be allowed for the following reasons:

- (a) First, the Moratoria Extension Applications are not brought *bona fide* as the applicants have omitted the identities of the creditors in the Documents and have failed to disclose their breach of certain statutory licensing requirements under the Payment Services Act 2019 (Act 2 of

¹⁰ AJWS-1 at paras 49 and 53.

¹¹ HC/OA 192/2023 at prayer 1.

¹² AJWS-2 at para 4.

¹³ AJWS-2 at para 16.

¹⁴ AJWS-2 at para 4.

2019) (“PSA”) and the Securities and Futures Act 2001 (2020 Rev Ed) (“SFA”);¹⁵

(b) Second, the Foreign Applicants have no substantial connection to Singapore as the factors cited by the applicants show only a tenuous nexus with Singapore;¹⁶

(c) Third, the proposed substantive consolidation has no commercial merit and does not serve any legitimate interest since it was necessitated solely by the applicants’ poor corporate and financial management;¹⁷ and

(d) Fourth, the Scheme is unworkable and has no reasonable prospect of being acceptable to the general run of creditors.¹⁸

The Decision

9 The following issues arise for determination:

- (a) Whether the Sealing Applications should be granted;
- (b) Whether the requirements for the extension of moratoria have been met, which raises the following sub-issues:
 - (i) Whether the statutory requirements under ss 63 and 64 of the IRDA have been fulfilled;
 - (ii) Whether the *Skaugen* requirements have been met;

¹⁵ 1st Non-Party’s Written Submissions dated 29 March 2023 (“NPWS”) at paras 3(a) and 3(b).

¹⁶ NPWS at para 3(c).

¹⁷ NPWS at para 4(a).

¹⁸ NPWS at paras 60–62.

- (iii) Whether substantive consolidation and the Deed Poll Structure are appropriate mechanisms to be utilised in a scheme of arrangement; and
- (c) What the scope of the moratoria extension should be.

The Sealing Applications

10 I accept the arguments of the applicants in favour of sealing the Documents at this stage. The test is one of balancing the competing interests in play. The applicants argue that the sealing of the Documents is required to safeguard the commercially sensitive information relating to the identity of the applicants’ creditors, in order to prevent these creditors from suffering a potentially negative market reaction to news of their exposure to the Babel Finance Group.¹⁹ On the other hand, the Objecting Creditor argues that the Sealing Applications should not be granted as there is a need for the Scheme creditors to be able to consult with each other on the appropriate steps regarding the Moratoria Extension Applications and how their interests might best be protected.²⁰

11 At this stage, where the Court is concerned only with the extension of the moratoria, rather than the approval of a scheme meeting or the sanctioning of a scheme under s 210 of the Companies Act 1967 (2020 Rev Ed) (“CA”), the need for transparency and the ability of the Scheme creditors to consult with one another is less pressing. Thus, I am satisfied that at the present stage of the proceedings, the importance of safeguarding the commercially sensitive information in the Documents outweighs the interests that would be served by

¹⁹ AJWS-2 at para 4.

²⁰ NPWS at para 26.

releasing this information to the public. Hence, the Sealing Applications are allowed.

Whether the requirements for extension of the moratoria have been fulfilled

12 I am satisfied that the moratoria should indeed be extended. The statutory requirements under ss 63(3) and 64 of the IRDA as well as the *Skaugen* requirements have been met. Furthermore, the use of substantive consolidation and the Deed Poll Structure in the proposed Scheme is not inappropriate in principle.

The statutory requirements under ss 63(3) and 64 of the IRDA have been met

13 Section 63(3) of the IRDA defines a “company”, for the purposes of schemes of arrangement under Part 5 of the IRDA, as “any corporation liable to be wound up under [the IRDA]”. Under s 246(1)(d) of the IRDA, a foreign company can be wound up “only if it has a substantial connection with Singapore”. Section 246(3) lists several factors which would support a determination that a foreign company has such a “substantial connection”, including that Singapore is the centre of main interests (the “COMI”) of the company. Aside from the COMI analysis, a broad approach to the question of “substantial connection” may be taken: generally, a company would have to conduct activities of some permanence in Singapore, as opposed to merely transient activities: *Re Zipmex Co Ltd and other matters* [2022] SGHC 196 at [22] and [23].

14 I am satisfied that Moonalpha and the other Foreign Applicants have a substantial connection with Singapore as they carried on business in Singapore. Each of the Foreign Applicants has clients and creditors in Singapore, and at least some of their work appears to be conducted by a single team working out

of Singapore.²¹ I am satisfied that therefore the Foreign Applicants have a substantial connection with Singapore and are therefore corporations liable to be wound up under the IRDA as required under s 63(3).

15 Arguments were made on the applicable *lex situs* for cryptocurrency. However, the present application is not the appropriate juncture for the Court to address this question.

The Skaugen requirements are met

16 I am satisfied that the Moratoria Extension Applications are made *bona fide* and that there is a reasonable prospect of the Scheme working and being acceptable to the general run of creditors.

17 Although clear expression of support for the Scheme from most creditors is absent,²² that is not necessary at this stage. The court does not require a poll of the Scheme creditors at this stage; rather, the court considers whether the Scheme could be acceptable to the general run of creditors. The court also does not delve into a detailed assessment of the reasonable prospect of the scheme working; rather, it takes the assessment on a broad basis only. What has been proposed, namely a combination of pooling, conversion of assets, and fresh injection, cannot be said to be so unworkable that it should be rejected out of hand and not left to the creditors to vote on. Thus, given what has been adduced at this time, I am satisfied that there is a reasonable prospect of the Scheme working and being acceptable to the general run of creditors.

²¹ Yang-1 at para 140(3) and Tab 30 (p 713 and 714); AJWS-1 at para 34(2).

²² AJWS-1 at para 52; 3rd Affidavit of Yang Zhou filed in HC/OA 192/2023 dated 27 March 2023 (“Yang-3”) at para 26.

18 As for the issue of *bona fides*, what has been raised goes to legality and sufficiency of disclosure. The Objecting Creditor argues that a lack of *bona fides* is evidenced by the applicants’ failure to disclose their breach of certain statutory licensing requirements under the PSA and SFA.²³ The Objecting Creditor contends that the business activities conducted by the Babel Finance team in Singapore fall within the definition of “digital payment token services” under Part 3 of the First Schedule of the PSA²⁴, meaning that these activities need to be licensed by the Monetary Authority of Singapore (“MAS”), but were not.²⁵ The Objecting Creditor further submits that the applicants failed to obtain the requisite Capital Markets Services (“CMS”) licence under the SFA in order to carry out fund management activities.²⁶ However, the applicants argue that the relevant licensing requirements under the PSA and SFA are not applicable to them as their services are offered to accredited and institutional investors only.²⁷

19 Where there is clear contravention of statutory requirements, the court, even in the absence of any regulatory or enforcement action, should not allow its processes to be invoked. Here, however, the allegations of breach made by the Objecting Creditor are not clearly established. It suffices for present purposes to note that it is not entirely clear on what is before the court that the applicants’ activities have run afoul of the regulations as alleged. Coupled then

²³ NPWS at para 33.

²⁴ NPWS at para 34.

²⁵ NPWS at para 35.

²⁶ NPWS at paras 20, 38–40.

²⁷ This point was reiterated, following the hearing on 31 March 2023, in the 4th Affidavit of Yang Zhou in HC/OA 192/2023 dated 5 April 2023 (“Yang-4”) at para 10.

with the absence of evidence of any action taken by MAS,²⁸ the conclusion is that illegality or contravention of the regulations is not made out.

Substantive consolidation and the Deed Poll Structure are appropriate

20 At this time, as the Court is not dealing yet with an application for a scheme meeting or sanction for a scheme under s 210 CA, only a preliminary view can be expressed on the propriety of the various mechanisms to be utilised in the applicants’ proposed Scheme. It suffices to note that the Court does not find either substantive consolidation or the Deed Poll Structure to be inappropriate in principle.

21 The Court does have power in considering a scheme proposal to allow substantive consolidation and the Deed Poll Structure. The language of s 210 CA would seem to be broad enough to encompass such actions. In particular, the terms “compromise” and “arrangement” in s 210 are not limited in their meaning. There is no reason to find that these terms cannot encompass mechanisms such as substantive consolidation and the Deed Poll Structure.

22 The Australian cases cited by the applicants on substantive consolidation do assist in showing that substantive consolidation, or pooling, may be conducted pursuant to a scheme of arrangement: *Dean-Willcocks v Soluble Solutions Hydroponics Pty Ltd* (1997) 24 ACSR 79 at pp 82–85; *Whittingham*; *Re Hunter Valley Gravel Supplies Pty Ltd* (2006) 59 ACSR 559 at [21]. And as for a deed poll, such use of was accepted in *Re DSG Asia Holdings Pte Ltd* [2021] SGHC 209 (“*DSG*”) at [68].

²⁸ Yang-4 at para 9.

23 The commingling of funds may be a possible justification for either substantive consolidation or the use of a deed poll in some situations, such as where it would be impractical to individually identify each company's assets and liabilities.

The scope of the moratoria extension

24 For the reasons above, the extension of the moratoria is granted. However, a six-month extension as prayed for leaves the matter out of the monitoring and supervision of the Court for too long. A three-month extension is granted at this time. If the progress and shaping of the likely Scheme continues well, the Court will be open to further extensions of the moratoria.

Conclusion

25 The Sealing Applications are allowed, and the Moratoria Extension Applications are granted for a period of about three months.

Aedit Abdullah
Judge of the High Court

Yeo Alexander Lawrence Han Tiong, Ang Ann Liang, Yeoh Tze Ning and Edwin Teong Ying Keat (Allen & Gledhill LLP) for the applicants;
Abraham S Vergis SC, Mohamed Nawaz Kamil, Alston Yeong and Daniel Huang Xinli (Providence Law Asia LLC) for the first non-party.