



## Singapore High Court finds that shareholder has legal standing to oppose a putative creditor's winding up application; dismisses application

1. In the recent decision of *Atlas Equifin Pte Ltd v Electronic Cash and Payment Solutions (S) Pte Ltd*, the General Division of the High Court of Singapore had the opportunity to consider the hitherto undecided point of whether shareholders of companies have the legal standing to oppose a putative creditor's winding up application. This seemingly straightforward question does not appear to have been addressed in any published Singapore Court decision.
2. The Honourable Judicial Commissioner Goh Yihan held that shareholders of companies subject to a putative creditor's winding up application have the legal standing to oppose the winding up application. In reaching his conclusion, Goh JC considered the wording of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") Corporate Insolvency and Restructuring Rules 2020 ("**CIR**") and English authorities on this issue.
3. Our director, Lim Mingguan and counsel, Lyndon Choo successfully acted for the single largest shareholder of Electronic Cash and Payment Solutions (S) Pte Ltd ("**ECAPS**"), a Fintech start-up, in resisting the winding up application by a putative creditor. This matter is significant in that it appears to be one of a handful of cases where a shareholder of a company, and not the company itself, has successfully resisted a creditor's winding up application against the company.

### Background Facts

4. ECAPS is a Fintech start-up which through its Indian subsidiary offers an integrated financial services technology platform to businesses and consumers in India with an emphasis on the needs of the unbanked and underbanked consumer segment.
5. On or around 4 January 2021, ECAPS's Indian subsidiary had obtained a loan from the applicant, Atlas Equifin Pte Ltd ("**Atlas**"). On the same day, ECAPS had also allegedly given a guarantee to Atlas in relation to its subsidiary's loan.
6. This guarantee had been executed by a director of Atlas, who had convened a board meeting with another director to authorise his execution of the guarantee. The director who executed the guarantee in favour of Atlas also happened to have a controlling interest in Atlas.
7. Under ECAPS's Shareholder's Agreement (the "**SHA**"), decisions of ECAPS had to be taken by majority of directors at a meeting comprising of at least 2 directors. ECAPS's constitution also provided that a director shall not vote in respect of any contract with ECAPS in which he is interested, or any matter arising thereof, and if he does so his vote shall not be counted.

## **Holding by the Court**

### Standing of shareholder to oppose putative creditors' winding up application

8. On the issue of standing, the Court held that a shareholder of a company would have the standing to object to a putative creditor's winding up application.
9. First, the Court considered that the wording of the IRDA CIR made it clear that a shareholder of a company would have the legal standing to oppose a putative creditor's winding up application against that company.
10. In particular, Rule 69 of the CIR states that contributories like shareholders are entitled to be provided with copies of the papers for the winding up application. Shareholders must therefore be entitled to oppose the application, otherwise there would be no reason for them to be provided with such papers in the first place. The Court also recognised that Rule 72 of the CIR similarly does not restrict opposition to winding up applications to simply those from the respondent company. As such, shareholders can oppose winding up applications, although whether they succeed or the weight that the Court attributes to the objection is a separate consideration.
11. Second, the Court also noted that English authorities supported the proposition that shareholders have the standing to oppose a creditor's winding up. For instance, in *Re Camburn Petroleum Products Ltd* [1979] 3 All ER 297, the English High Court similarly recognised that the views of contributories can be regarded when a court hears a creditor's winding up action, although such views are usually attached little weight compared to those of the unpaid creditor.

### The shareholder raised grounds to successfully challenge the winding up application

12. Having decided that the shareholder had standing to challenge the winding up application, the Court went on further to decide whether the shareholder was able to raise triable issues to challenge the winding up application in this particular case. In this regard, the Court reiterated the position that a winding up application was not the appropriate avenue for a putative creditor to enforce a disputed debt.
13. The Court found that the shareholder had raised triable issues as to whether ECAPS owed a debt to Atlas. The Court agreed with the shareholder that a triable issue has been raised as regards the issue of whether the guarantee was binding on ECAPS.
14. In particular, the board meeting convened to authorise the provision of the guarantee had been irregularly convened for not having at least two non-interested directors. The quorum requirement for the meeting had not been met. In this regard, the Court recognised the principle set out in *Tan Hup Thye v Refco (Singapore) Pte Ltd (in members' voluntary liquidation)* [2010] 3 SLR 1069 that directors interested in a contract were not entitled to vote on matters pertaining to that contract and hence would not count towards quorum requirements.

## **Concluding Observations**

15. The Court's clarification on the standing of shareholders of a company to oppose a putative creditor's winding up application against the company puts to rest any doubt as to the extent that shareholders of a company can get involved in a winding up application.

16. Even though shareholders can typically depend on the management of the company to take the necessary steps to resist a winding up application, it is important that the Court has now clearly recognised that shareholders are not barred from having their views heard by the Court. The Court's willingness to consider the views of shareholders is important, as they may have much to lose in a winding up of the company.
17. While the shareholder was successful in resisting the winding up application in this case, the Court also observed that the weight given to the views of shareholders in a creditor's winding up application may defer in each case. This suggests that shareholders keen to resist creditor's winding up applications in the future should be cautious of the extent that they are in a position to raise valid challenges, whether in evidentiary terms or otherwise.



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