Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd)

[2016] SGHC 195

High Court — Originating Summons No 914 of 2016
Aedit Abdullah JC
9, 14 September 2016

Insolvency Law *— Cross-border insolvency — Recognition of foreign insolvency proceedings — Foreign representative of Korean-incorporated shipping company seeking recognition by Singapore courts of rehabilitation proceedings in Korea — Whether court should recognise rehabilitation proceedings in Korea and grant restraint and stay orders in assistance of those proceedings pursuant to O 92 r 4 Rules of Court (Cap 332, R 5, 2014 Rev Ed) — Order 92 r 4 Rules of Court (Cap 332, R 5, 2014 Rev Ed)*

Facts

Hanjin Shipping Co Ltd ("Hanjin") was a container-shipping company incorporated in the Republic of Korea ("Korea"). It had two wholly-owned subsidiaries in Singapore ("the Subsidiaries"). On 31 August 2016, Hanjin filed an application for rehabilitation proceedings to the Korean Bankruptcy Court under the Korean Debtor Rehabilitation and Bankruptcy Act. An order was granted on 1 September 2016 by the Seoul Central District Court commencing the rehabilitation procedure ("the Commencement Order").

Mr Taisoo Suk ("the Applicant"), who was appointed custodian of Hanjin, brought the present application as the company's foreign representative. The application was brought pursuant to O 92 r 4 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed). The Applicant sought interim orders for, *inter alia*, recognition of Hanjin's rehabilitation proceedings in Korea, restraint of all pending, contingent or fresh proceedings against Hanjin and its Singapore subsidiaries or any enforcement or execution against any of their assets (including vessels beneficially owned or chartered by Hanjin and the Subsidiaries), and stay of all present proceedings against Hanjin and the Subsidiaries, until 25 January 2017.

Held, allowing the application:

(1) The observations of the Court of Appeal in *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 815, that it was within the inherent powers of the court to recognise foreign winding up proceedings and render assistance to them by regulating its own proceedings, also applied to other forms of foreign insolvency proceedings such as restructuring and rehabilitation. Disparate proceedings within and across jurisdictions, as creditors scramble to seize or exercise their liens on assets of a company which was in the midst of foreign rehabilitation proceedings, would result in a free-for-all, catch-as-catch-can situation that would not be to the ultimate overall benefit of creditors: at [16].

(2) In determining whether or not to recognise foreign rehabilitation proceedings, the court would need to consider: (a) the connection of the company to the forum in which the rehabilitation proceedings were taking place and to the place of rehabilitation; (b) what the rehabilitation process entailed, including its impact on domestic creditors and whether it was fair and equitable in the circumstances; and (c) whether there were any strong countervailing reasons against recognition of the foreign rehabilitation proceedings: at [18].

(3) Recognition and assistance would not be given in respect of foreign rehabilitation proceedings if those proceedings would lead to a result that would be unfair to the creditors as a whole, or which would not facilitate the orderly rehabilitation of the company. The primary factor was in the fairness of the process, particularly as regard the treatment of creditors. Foreign or international creditors should be treated fairly and equitably. Fairness would also encompass proper due process, which would mean proper communication of plans and proposals, as well as the real possibility of participation in meetings by creditors, including foreign or international creditors. The court would not, however, be so fastidious in the requirement of equality of creditors that it would not be practical at all to carry out the rehabilitation. Much would depend on the circumstances: at [20].

(4) The rehabilitation orders for Hanjin were made by the court in Korea. Hanjin was incorporated in Korea, had its head office in Korea, and was listed in Korea. All of its representative directors were Korean citizens and residents. Hanjin's common law centre of main interest was therefore in Korea. There was a very strong connecting factor between Hanjin and the Korean Court, justifying recognition of the company's rehabilitation proceedings there. The proposed steps in the rehabilitation proceedings would in its general process also be fair to foreign, including Singaporean, creditors. The Applicant had provided assurance that all creditors in the same class would be treated equally regardless of nationality. Written notices of the Korean rehabilitation proceedings would be sent out to all creditors, including Singapore creditors who would receive the notices in English. The rehabilitation plan would be circulated to all creditors, who would be allowed to participate in the meetings and to vote on the rehabilitation plan: at [19] and [21].

(5) The rehabilitation regime in Korea was more liberal than the scheme of arrangement or judicial management regimes under the Companies Act (Cap 50, 2006 Rev Ed). However, differences between the two regimes did not constitute a bar to recognition and assistance of proceedings under the foreign regime: at [27].

(6) With the recognition of foreign rehabilitation proceedings, one way that the court could render assistance to such proceedings was by granting restraint or stay orders in relation to domestic proceedings. The power to restrain and stay proceedings was an aspect of the court's inherent powers in managing processes and proceedings occurring within the court system: at [32].

(7) There was nothing apparent on the face of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed), the Rules of Court, or case law that excluded admiralty matters from the exercise of the court's inherent powers to recognise foreign insolvency proceedings and to render assistance to them. In

the absence of any arguments by parties examining the nature and character of the admiralty jurisdiction as against the said inherent powers of the court, with the recognition of the Korean rehabilitation proceedings, assistance should be granted even to the extent of preventing arrest of ships of the Hanjin fleet: at [23], [25] and [26].

Case(s) referred to

Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd [2014] 2 SLR 815 (folld)

CCIC Finance Ltd v Guangdong International Trust & Investment Corp [2005] 2 HKC 589 (folld)

Conchubar Aromatics Ltd, Re [2015] SGHC 322 (refd)

Cunard Steamship Co Ltd v Salen Reefer Services AB 773 F 2d 452 (1985) (refd)

Hong Kong Institute of Education v Aoki Corp [2004] 2 HKLRD 760 (folld)

Opti-Medix Ltd, Re [2016] 4 SLR 312 (refd)

TPC Korea Co Ltd, Re [2010] 2 SLR 617 (not folld)

Legislation referred to

Companies Act (Cap 50, 2006 Rev Ed) ss 210, 210(10)

High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed)

Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 92 r 4

Sim Chong, Yap Hao Jin and Tee Li Min Joan (Sim Chong LLC) for the applicant.

14 September 2016

Aedit Abdullah JC:

Introduction

1 On Friday 9 September 2016, an urgent *ex parte* application was made by Mr Taisoo Suk ("the Applicant"), the foreign representative of Hanjin Shipping Co Ltd ("Hanjin"), a company incorporated in the Republic of Korea ("Korea"). The applicant sought interim orders for, *inter alia*, recognition of Hanjin's rehabilitation proceedings in Korea, restraint of all pending, contingent or fresh proceedings against Hanjin and its Singapore subsidiaries or any enforcement or execution against any of their assets, and stay of all present proceedings against Hanjin and its Singapore subsidiaries, until 25 January 2017. The application was made pursuant to O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), which states as follows:

> For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

2 On the direction of the court and in fulfilment of his duties, counsel for the Applicant informed various interested parties of the hearing which took place in the afternoon of 9 September 2016. Those present at the hearing were counsel for the plaintiffs in a prior arrest of a vessel of the Hanjin fleet, the *Hanjin Rome* (Admiralty in Rem No 178 of 2016 ("ADM 178/2016")); counsel for parties in various pending admiralty matters involving other vessels of the Hanjin fleet; counsel for PSA Corporation Ltd; and counsel for the Maritime Port Authority. At the time of the hearing, they had not obtained instructions on the application.

3 After considering the submissions of counsel for Hanjin, as well as the facts and circumstances, I granted the orders sought. These brief grounds of my decision are issued for the assistance of interested parties ahead of the *inter partes* hearing.

Background

4 Hanjin is the largest container-shipping firm in Korea and the ninth largest in the world. The financial woes faced by the company have been covered extensively by the press to date. These difficulties have reportedly led to disruptions in the transport of goods throughout the Asia-Pacific. To find its way out of its present troubles, on 31 August 2016, Hanjin filed an application for rehabilitation proceedings to the Korean Bankruptcy Court under the Korean Debtor Rehabilitation and Bankruptcy Act. On the same day, the Korean Bankruptcy Court granted provisional orders to preserve Hanjin's assets. This was subsequently followed by an order granted on 1 September 2016 by the Seoul Central District Court commencing the rehabilitation procedure for Hanjin ("the Commencement Order"). Hanjin's president and chief executive officer, Mr Taisoo Suk, was appointed custodian of the company, and he is the foreign representative and applicant in the present matter.

5 In his affidavit filed in support of the application, Korean attorney Lee Wan Shik likened the Korean rehabilitation regime to Chapter 11 proceedings under the United States' Bankruptcy Code. The Korean rehabilitation process would apparently involve various phases, leading to the presentation of a rehabilitation plan to interested parties (including creditors) by 25 November 2016. Thereafter, the interested parties would meet to review the plan and a vote would be taken. If, by the requisite majority, the interested parties approve of the plan, the plan would then be submitted for review by the Korean Court. The process was estimated to take a couple of months, and that was why in the present application the Applicant sought the restraint and stay until 25 January 2017.

6 Since the Commencement Order was obtained, Hanjin made applications similar to the present in the United Kingdom, the United States, and in Japan. At the time of the hearing before me, the United

Kingdom courts had granted the relief sought, while the US courts had made an interim provisional order. The proceedings in Japan were pending.

The Applicant's case

7 The Applicant pointed to a number of measures taken by Hanjin following the granting of the Commencement Order. Hanjin had already engaged PwC Korea to be its insolvency consultants, to assist in the preparation of the plan for rehabilitation. Further, Hanjin was preparing to send a written notice to notify all of its creditors, including those outside Korea, of the rehabilitation proceedings in Korea; the notice to be sent to Singapore creditors would be in English. The rehabilitation plan was to be circulated to all creditors once ready. In his affidavit, the Applicant assured that creditors, including those from Singapore, would have the opportunity to review and vote on the rehabilitation plan. In the interim, the Applicant had applied for restraint and stay orders in various jurisdictions apart from Singapore, to allow Hanjin's assets to be marshalled and its rehabilitation to be coordinated. Hanjin aimed to continue its business and to earn revenue in the meantime.

8 In urging this court to allow his application, the Applicant argued that the application made before this court was an essential part of the series of applications that Hanjin had made across the word to prevent piecemeal and haphazard resolution of the company's difficulties. Any such disparate treatment would imperil Hanjin's rehabilitation. The Applicant asserted that unless this court grants the current application, it was highly likely that there would be a disorderly scramble amongst Hanjin's creditors to act quickly to seize and/or exercise their lien on vessels and containers which constituted Hanjin's principal business assets. In fact, such actions had already taken place in various ports of the world. In Singapore, *the Hanjin Rome* had already been arrested (ADM 178/2016). In his affidavit, the Applicant stressed that Singapore was a very important port for Hanjin and its global operations and business, and that Hanjin vessels regularly called into Singapore to pick up and deliver cargo to deliver to Korea and other parts of the world. At the time of the hearing, a number of Hanjin vessels were scheduled to call into Singapore very shortly and were already at the outer-port-limits of Singapore waters, but those vessels were not entering Singapore for fear of being arrested. The Applicant said that unless the vessels could enter Singapore without fear of being arrested, Hanjin's business would be crippled.

9 The Applicant further emphasised that given the global nature of Hanjin's business, the company's difficulties would cause severe disruptions to global trade, the global market, and the global supply chain logistics. The knock-on effects of Hanjin's insolvency and liquidation were also stressed. The Applicant pointed to the possible impact on the company's employees, creditors and customers. It was highlighted that

containers on board some of Hanjin's vessels might actually belong to other carriers which were partners of Hanjin in a shipping alliance. With disruptions in the operation of Hanjin's vessels, customers might also be left with their goods immobilised far from their destination. Furthermore, Hanjin and its subsidiaries in Singapore employed some 112 employees here, and these employees would likely lose their jobs if Hanjin was unable to carry out its rehabilitation.

10 Time and space was therefore needed for Hanjin to coordinate its rehabilitation plans, for the best interests of all stakeholders. It was emphasised that the Korean rehabilitation proceedings were fair and equitable. In his affidavit, the Applicant stated that Hanjin intended to treat all creditors in the same class equally, regardless of nationality, and that international creditors (including Singapore creditors) would be allowed to participate in the Korean rehabilitation proceedings.

11 In persuading this court that it has inherent powers, as set out in O 92 r 4, to grant the application, the Applicant first highlighted Hanjin's substantial connections to Singapore. Hanjin had two subsidiaries in Singapore – Hanjin Shipping (Singapore) Pte Ltd was incorporated in Singapore since 23 years ago in 1993, while Hanjin Overseas Tanker Pte Ltd was incorporated in Singapore in 2007. The two subsidiaries had significant trade volume in Singapore. Both Hanjin and its two subsidiaries also had assets here. The Applicant then referred to a number of foreign decisions to support his case. Reference was made to the observations of the US Court of Appeals' decision in *Cunard Steamship Co Ltd v Salen Reefer Services AB* 773 F 2d 452 (1985), that the recognition of foreign bankruptcy proceedings enables equitable, orderly and systematic distribution of the assets of a debtor. The Applicant also pointed to the Hong Kong decision in *CCIC Finance Ltd v Guangdong International Trust & Investment Corporation* [2005] 2 HKC 589 ("*CCIC Finance*") (at [56]–[58]) as authority that it is a rule of international law that a local court should not allow action to be taken within its jurisdiction that would interfere with a pending process of universal distribution in a foreign jurisdiction. Further, the Applicant cited the adoption by another Hong Kong decision, *Hong Kong Institute of Education v Aoki Corporation* [2004] 2 HKLRD 760 ("*Hong Kong Institute of Education*") (at [152]), of the factors proposed by Prof Ian Fletcher in *Insolvency in Private International Law* (Oxford, Clarendon Press, 1999) as being relevant in determining whether a foreign restructuring process should be recognised. The Applicant submitted that these factors, such as minimum standards of integrity and due process, adequacy of notice, extent to which genuine efforts have been made to afford distant creditors resident in foreign countries the opportunity for effective participation, and fairness of the proceedings in all the circumstances, were met by the Korean rehabilitation in the present case. Finally, citing the Singapore Court of Appeal's decision in *Beluga*

Chartering GmbH v Beluga Projects (Singapore) Pte Ltd [2014] 2 SLR 815 ("*Beluga*"), the Applicant argued that the Singapore Court has the capacity to assist the rehabilitation proceedings in Korea by exercising its inherent power to stay proceedings. Reference was additionally made by the Applicant to the recommendations of the Committee to Strengthen Singapore as an International Centre for Debt Restructuring, which have been accepted by the Ministry of Law, and the draft Insolvency Bill, as indicating a move towards a general direction where Singapore becomes more accepting of recognising foreign insolvency proceedings.

The decision

12 I granted the application, specifically granting the orders, quoting from prayer 1 of the summons itself, that, pending the determination of the *inter partes* application in Originating Summons No 914 of 2016:

> (a) there be a restraint of all pending, contingent or fresh suits, actions or proceedings against Hanjin Shipping Co Ltd ("Hanjin") and its wholly-owned Singapore subsidiaries (being Hanjin Shipping (Singapore) Pte Ltd and Hanjin Overseas Tanker Pte Ltd (together, the "Subsidiaries")) or any enforcement or execution against any asset of Hanjin and the Subsidiaries;
>
> (b) there be a stay of all present suits, actions or proceedings against Hanjin and the Subsidiaries; and
>
> (c) for the avoidance of doubt, orders 1(a) and 1(b) above include but are not limited to any enforcement or execution against the vessels beneficially owned or chartered by Hanjin and the Subsidiaries.

However, the above orders were not to operate in respect of the arrest, action and ancillaries in respect of and arising from such arrest of the *Hanjin Rome* in ADM 178/2016, which was arrested earlier. Liberty to apply was granted in respect of the matters concerning this carve-out of the *Hanjin Rome*.

13 Having heard the arguments, I was satisfied that the Korean rehabilitation orders should be recognised, and assistance rendered. I was mindful of the impact this may have on Singapore creditors; however, the need for the orderly resolution and satisfaction of claims, as well as the possible benefit to all interested parties of the rehabilitation of Hanjin, were significant factors pointing to the recognition and assisting of the Korean rehabilitation proceedings. Such recognition and assistance perhaps constituted a development of the common law in Singapore, but I was satisfied that this development was principled and justified. I was also mindful that my decision would restrain admiralty proceedings, including arrest; but in the end, I concluded that there was nothing in the nature of

the different doctrines of law, the relevant statutes, or case law, that would prevent the making of the present orders.

Analysis

The recognition and giving of assistance to the Korean proceedings

14 The courts in the United Kingdom and the United States had recognised the Korean rehabilitation proceedings. However, these had been on the basis of the UNCITRAL Model Law on Cross-Border Insolvency (20 May 1997) ("the Model Law"), which both jurisdictions had formally adopted. Although, as the Applicant noted, there had been public announcements indicating that Singapore would likely adopt the Model Law as well, this had not yet been done. The basis of the current application thus had to be in the common law.

15 The Applicant relied primarily on the Court of Appeal's decision in *Beluga* ([11] *supra*), where the court made observations (at [99]) that recognised the benefits of a universalist approach in winding up, and noted that Singapore courts could render assistance to foreign winding-up proceedings, depending on the circumstances:

> Most courts recognise the desirability and practicality of a universal collection and distribution of assets and that a creditor should not be able to gain an unfair priority by an attachment or execution on assets located within the jurisdiction of the court subsequent to a winding-up order made elsewhere. However, this can only operate as a very broad statement of principle. Whether and how the Singapore court will render assistance to foreign winding-up proceedings through the regulation of its own proceedings will depend on the particular circumstances before it. Assistance might, for example, take the form of a stay of a claim if Singapore is not the *forum conveniens*; or staying an execution or attachment; or exercising a discretion against granting a garnishee order absolute; or refusing leave to serve process out of the jurisdiction; or winding up the company in Singapore.

16 The observations were made in the context of winding-up proceedings. However, similar considerations should apply to other forms of insolvency proceedings, including restructuring and rehabilitation. In all such proceedings, the interests of creditors may be affected by the outcome, and some of them may indeed be worse off than if they had been able to assert and enforce individual claims against the assets of the insolvent company. However, just as an orderly collection and distribution of all available assets to creditors would be to the ultimate overall benefit of all creditors, so too would orderly marshalling and compromise or arrangement in respect of restructuring and rehabilitation. In both instances, one avoids a free-for all, catch-as-catch-can situation that would result from disparate proceedings within and across jurisdictions. I

therefore considered the observations in *Beluga* as extending to recognition of foreign restructuring and rehabilitation orders and/or proceedings.

17 I was also fortified in reaching this conclusion because of the approach adopted in the Hong Kong cases such as *Hong Kong Institute of Education* ([11] *supra*) and *CCIC Finance* ([11] *supra*), which recognised foreign rehabilitation and liquidation proceedings respectively at common law, although they were concerned with stays of specific awards or judgments rather than a general restraint and stay as asked for by the Applicant here.

18 In determining whether recognition of foreign rehabilitation proceedings should be granted, I am of the view that a court would need to consider:

(a) the connection of the company to the forum in which the rehabilitation proceedings are taking place and to the place of rehabilitation;

(b) what the rehabilitation process entails, including its impact on domestic creditors and whether it is fair and equitable in the circumstances; and

(c) whether there are any strong countervailing reasons against recognition of the foreign rehabilitation proceedings.

This approach represents this court's attempt at distillation of the various approaches, including, in particular, that of Prof Fletcher as cited in *Hong Kong Institute of Education* (see [11] above).

Connection of the company to the foreign court and place of rehabilitation

19 The rehabilitation orders were made by the court of the place of incorporation of Hanjin, where it had its head office, and where it was listed. All of Hanjin's representative directors were Korean citizens and residents. In the words of the Applicant, Korea was Hanjin's place of centralised command. In light of this, I was satisfied that Hanjin's common law centre of main interest was in Korea. That provided a very strong connecting factor between Hanjin and the Korean court, justifying recognition of the company's rehabilitation proceedings there and the Korean court's appointment of the Applicant as the custodian of Hanjin, which I took as being equivalent to its rehabilitation representative.

What the rehabilitation process entails – the requirements and consequences of the rehabilitation process

20 Recognition and assistance would not be given in respect of foreign rehabilitation proceedings if those proceedings would lead to a result that would be unfair to the creditors as a whole, or which would not facilitate the orderly rehabilitation of the company. The primary factor is in the fairness

of the process, particularly as regard the treatment of creditors. Foreign or international creditors should be treated fairly and equitably; any preference for domestic creditors or those of a particular group may be a strong reason for a court to decline recognition and assistance. Fairness would also encompass proper due process, which in this context would mean proper communication of plans and proposals, as well as the real possibility of participation in meetings by creditors: sufficient time and material must be given for due consideration by the creditors, including foreign or international creditors. The court will not, however, be so fastidious in the requirement of equality of creditors that it will not be practical at all to carry out the rehabilitation. Much will depend on the circumstances. Time will often be a considerable constraint, but as long as there are reasonable measures to ensure fair treatment, it is unlikely that the court will decline to recognise or assist.

21 In the present case, I was satisfied that the proposed steps in the rehabilitation proceedings would in its general process be fair to foreign, including Singaporean, creditors. The Applicant had provided assurance that all creditors in the same class would be treated equally regardless of nationality. Written notices of the Korean rehabilitation proceedings would be sent out to all creditors, including those outside Korea, and Singapore creditors would receive the notices in English. The rehabilitation plan would also be circulated to all creditors. All creditors would be allowed to participate in the meetings and to vote on the rehabilitation plan. As the meetings were to be held in Korea, I had some concern on whether participation would be practical for Singapore creditors. What would be needed in the coming months, apart from as full a communication in English of the proposals as possible, were measures to facilitate the practical participation of Singapore creditors in the Korean rehabilitation process. In that regard, I asked counsel for the Applicant to determine what measures would be allowed or practicable under Korean law for Singapore creditors to participate in the meeting by electronic means. But even if that were not feasible, that would not by itself indicate that the process was unfair.

Possible countervailing reasons against recognition of the Korean rehabilitation proceedings

22 A number of possible objections to the granting of the application had to be considered, namely its interplay or interface with the admiralty jurisdiction; the assisting of foreign proceedings that are more liberal than local regimes; and the possible adverse impact that recognition of the Korean proceedings may have on Singaporean creditors, particularly those seeking arrest of Hanjin's vessels.

Admiralty jurisdiction

23 I was of the view that with the recognition of the Korean rehabilitation proceedings, assistance should be granted even to the extent of preventing arrest of ships of the Hanjin fleet.

24 The Applicant had put forward an alternative prayer. Had I decided against affecting the admiralty proceedings by granting a restraint of any enforcement or execution against vessels beneficially owned or chartered by Hanjin and the Subsidiaries, the Applicant asked in that event that any application for the issue of a warrant for the arrest of those vessels be heard by a judge (instead of by an assistant registrar). This followed the approach taken in several Australian decisions.

25 As it was, I was of the view that the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed), the Rules of Court, and case law did not prohibit me from issuing orders the effect of which was to restrain arrest of ships and stay other admiralty proceedings. There was nothing apparent on the face of the statute or rules that excluded admiralty matters from the exercise of the court's inherent power as in this case. I should note that there was no argument in this case examining the nature and character of the admiralty jurisdiction as against the inherent powers of the court to render assistance to foreign rehabilitation proceedings through regulation of its own proceedings (including by ordering the restraint of any enforcement or execution against vessels) – whether or not there is anything in that regard that should have led to a different result may or may not be taken up on another day.

26 I did note that in *Re TPC Korea Co Ltd* [2010] 2 SLR 617 ("*TPC Korea*"), the court there was of the view that the High Court (Admiralty) Jurisdiction Act created a self-contained regime for the resolution of disputes where the relevant interests or assets involved were vessels. With the greatest respect, I did not think that that regime was to be insulated from the general powers of the court: there was nothing in the statute that expressly separated arrest of ships from being subject to general processes, and I was not aware at the point of my decision of any case law that would point that way.

The relative liberality of the foreign proceedings

27 The rehabilitation regime in Korea was more liberal than our scheme of arrangement or judicial management regimes under the Companies Act (Cap 50, 2006 Rev Ed). In particular, the power of the court to make a restraint order under s 210(10) of the Companies Act may not be available in circumstances equivalent to the present, as no plan with sufficient particularity had been produced yet: see *Re Conchubar Aromatics Ltd* [2015] SGHC 322. The differences between our regime and that in Korea may seem incongruous. However, such differences should not be a bar to

recognition and assistance of proceedings under the foreign regime. Different regimes will have differences in requirements and details: to insist on equivalence or even near-equivalence would not serve the needs of universality and orderly disposition. If anything, a more liberal foreign approach may be a spur to changes in the domestic regime.

28 The fact that the Korean court had appointed the Applicant, who was Hanjin's chief executive officer and president, as custodian of Hanjin and had entrusted the rehabilitation of the company to him rather than to an independent third party, such as a trustee in bankruptcy, did not by itself bar the Korean rehabilitation proceedings from recognition. Again, different systems may have different approaches to rehabilitation, and the appointment of a debtor or a current officer of the debtor to manage matters was not in itself inimical to a fair and orderly process.

29 In this regard, I should further note that I was aware that *TPC Korea* involved in some ways a parallel situation: there, an application was made under s 210 of the Companies Act to obtain orders to convene a meeting of creditors for the purpose of considering and approving a rehabilitation plan under the same Korean Act as in the present case. The applicant there also applied for a restraint of all actions against the company's assets including arrests of vessels owned by the company, pending court approval of the said rehabilitation plan or until the rehabilitation proceedings in Korea was terminated. The interplay between restraint of arrest of vessels and admiralty jurisdiction has been considered above, and I have with respect declined to follow *TPC Korea* in that aspect. The court in *TPC Korea* also rejected the application as it was of the view that it did not fit with the scheme of s 210. On this other aspect, I did not need to make any determination in the present application, as what was before me was an issue of recognition of foreign proceedings rather than application of s 210 to such proceedings.

Adverse impact on parties seeking arrest

30 I was also aware that the impact of my decision, even on this interim basis, would be that those seeking arrest of Hanjin's vessels in Singapore might have their aims frustrated: presumably, a practical result of my decision would be that the vessels would come in covered by the restraint and stay orders, unload their cargo quickly, refuel, re-provision, and possibly depart for Korea or other safe harbours, even before the case management conference for the current application proper is held on 15 September 2016.

31 The Applicant took the line that there was no real harm in this occurring since the vessels would not come into the Singapore port and risk being arrested if the order for restraint was not obtained. Aside from that, however, I was of the view that the inability of individual creditors to obtain security was a necessary consequence of universal collection and

marshalling of assets. It was no different from the position of individual creditors constrained in relation to domestic restructuring and rehabilitation.

Appropriate assistance to be rendered

32 The next question was the form that any assistance rendered to the Korean proceedings could take. Recognition alone would not be sufficient generally. Assistance of the domestic court would usually be required, even if it is just the conferral of powers otherwise normally applicable in a domestic setting, as was the case in the earlier decision of *Re Opti-Medix Ltd* [2016] 4 SLR 312. In the present case, what were sought were restraint and stay orders. I was satisfied that the court could and should so grant such orders. The power to restrain and stay proceedings is an aspect of the court's inherent powers in managing processes and proceedings occurring within the court system. It should not be invoked or granted lightly: O 92 r 4 is often the first resort in dubious claims. However, such residual powers can and ought to be exercised if valid reasons exist. Here, the imperative for orderly rehabilitation and restructuring of a company running a global business across jurisdictions, and the need to ensure that the company's assets could be marshalled or collected for such effort, both provided sufficiently strong grounds for the exercise of the inherent powers of the court to grant the restraint and stay orders.

33 What other inherent powers of the court, including the making of mandatory orders to assist foreign proceedings, may be invoked would best be left to another occasion to consider. But I suspect that mandatory orders, in comparison, will call for consideration of other factors, and the court may be less ready to lend its assistance in such a way.

34 I would also note that a right to a specific asset, including a specific instance of arrest, may warrant an exception if circumstances justify it, but the court would be wary of undermining the foreign rehabilitation by granting such exceptions too readily.

Carve-out

35 The orders granted were not to operate in respect of the arrest, action and ancillaries in respect of and arising from the arrest of the *Hanjin Rome* in ADM 178/2016. This arose out of a concession by the Applicant, and I did not examine the question further.

Conclusion

36 The orders made were interim orders pending the *inter partes* hearing of the application, by which time the interested parties should have given instructions to their counsel. These grounds would hopefully assist in their preparation of the necessary arguments. A case conference has been

scheduled for 15 September 2016, as noted above, during which further directions will be given for the hearing of the *inter partes* application.

Reported by Tan Kim Ping.