Recent Singapore Case Highlights Considerations Relating to Worldwide Moratorium

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A worldwide moratorium is one of the most important protections and tools available to a debtor in the Singapore cross-border restructuring regime. A recent Singapore High Court case, *Re: Zetta Jet Pte Ltd and Others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] SGHC 53 (*"Re Zetta Jet (2)"*), highlighted some important considerations relating to such a worldwide moratorium, in particular dealing with potential conflicts between different jurisdictions.

Singapore's Cross-border Restructuring Regime

In 2017, Singapore implemented significant changes to its laws in order to position Singapore as an international centre for cross-border restructuring. The most notable of the changes include features adapted from the United States ("**US**") Chapter 11 debtor-in-possession regime, which offers distressed companies a wide range of rescue and restructuring options, together with a more expansive approach towards assuming jurisdiction over foreign debtors. One of the most important protections and potentially powerful tools adapted from the US regime is the automatic moratorium (or "automatic stay" in US parlance), which provides "breathing space" to a company undergoing an insolvency or restructuring process by imposing a stay on proceedings being taken out by individual creditors. Under the current Singapore regime, an automatic 30-day moratorium arises by court order upon the filing of an application for a moratorium in a scheme of arrangement[1]. The moratorium restrains parties from the commencement or continuation of any proceedings against the debtor, and parties acting in breach may be held in contempt of the Singapore courts.

In contrast to the US worldwide moratorium which is automatically extraterritorial and worldwide in scope, in Singapore, the court can order the moratorium to have extraterritorial effect and apply to acts taking place in Singapore or elsewhere only if the creditor is in Singapore or within the jurisdiction of the Singapore courts.[2] As a result of this requirement for *in personam* jurisdiction, the Singapore courts have previously reasoned that "the court's jurisdiction to grant a moratorium restraining acts outside Singapore is really in substance akin to granting injunctive relief."[3]

1 Practitioners in Singapore have generally customised the scheme of arrangement to operate as a debtor-in-possession regime. See *Re IM Skaugen SE and Other Matters* [2018] SGHC 259 at para 31.

2 It is noted that moratorium relief issued by a Singapore court under its cross-border restructuring regime was recognised for the first time last month by a foreign court, the High Court of England and Wales. On 25 March 2019, the High Court of Justice Business and Property Courts of England and Wales recognised moratorium relief granted by a Singapore court to H&C S Holdings Pte Ltd under Section 211B(1) of the Companies Act (Cap. 50) as foreign main proceedings under the UNICITRAL Model Law.

3 *Re IM Skaugen* SE at para 39.

The Case of Zetta Jet

In September 2017, luxury private jet operator Zetta Jet Pte Ltd ("**Zetta Singapore**") and Zetta Jet USA, Inc (together, the "**Zetta Entities**") filed voluntary Chapter 11 bankruptcy proceedings in the US Bankruptcy Court in the Central District of California – Los Angeles Division ("**US Proceedings**") and a worldwide moratorium came into effect. However, three days later, two of the four shareholders of the Zetta Entities obtained an injunction order from the Singapore High Court, which enjoined Zetta Singapore and the other two shareholders from carrying out any further steps in the US Proceedings (the "**Singapore Injunction**").

At a subsequent hearing in the US Proceedings, the US court decided that the Singapore Injunction did not impact the US court's ability to continue adjudicating and rule in the US Proceedings.[4] The Zetta Entities subsequently continued the US Proceedings, which later converted into Chapter 7 proceedings, and the trustee appointed thereunder commenced recognition proceedings in Singapore. On 24 January 2018, the Singapore High Court declined to grant full recognition of the US Proceedings on grounds that "flouting of the Singapore injunction undermined the administration of justice in Singapore."[5] Instead the court granted limited recognition only to allow the trustee to apply to set aside the Singapore Injunction. The parties subsequently discharged the Singapore Injunction by consent, and the court in *Re Zetta Jet (2)* granted full recognition of the US Proceedings and the trustee on 4 March 2019.

Conflicting Court Orders

Re Zetta Jet (2) involved two conflicting court orders, each intended to have an extraterritorial effect: a worldwide moratorium arising by operation of law in the US, and the Singapore Injunction. The treatment of the worldwide moratorium issued by the US court is likely to have precedential value in the Singapore courts.[6] Similarly, the treatment of the Singapore Injunction by the US court in the US Proceedings alludes to the position a Singapore court would take should parties violate a worldwide moratorium issued by a Singapore court.

US Court

The US courts typically treat actions in violation of the worldwide moratorium as *void ab inititio*, as if the actions had never happened. In considering the relevance of the Singapore Injunction in the US Proceedings, the US court noted that although the injunction does not have any language that appears to impact or address its ability to continue adjudicating the matters, even if it did, the Singapore Injunction "was obtained in violation of the stay, and it was void."[7]

The US court cited another case involving Israeli receivers appointed by an Israeli court in proceedings that began prior to the worldwide moratorium. In that case, the US court elaborated: "it is for this Court, with jurisdiction over the Chapter 11 Cases, to decide whether and when to grant relief from the stay, but respectfully, not for the Israeli Court to decide to not recognize and apply the stay."[8] The US courts view the worldwide moratorium as prohibiting courts (foreign or otherwise) from acting where a US bankruptcy court has established jurisdiction.

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4 Hearing Transcript, 29 September 2017, at 43:21-25.

5 *Re Zetta Jet (2)* at para 10; see generally Re Zetta Jet Pte Ltd and Others [2018] SGHC 16 ("*Re Zetta Jet (1)*").

6 See generally Re Attilan Group Ltd [2017] SGHC 283; *Re Zetta Jet (2)*.

7 Hearing Transcript, 29 September 2017, at 44:4-8.

8 In re Gold & Honey, Ltd., 410 B.R. 357 at 369.

Singapore Court

Although the Singapore courts have yet to decide on a case relating to the worldwide moratorium issued by a Singapore court, the *Re Zetta Jet (2)* court's decision focuses on an injunction, which past courts have noted is akin to Singapore's version of the worldwide moratorium.[9] The following commentary by the *Re Zetta Jet (2)* court suggests the position Singapore courts would take should parties violate its worldwide moratorium:

> "Flouting a Singapore order will carry consequences. Those advising in restructuring and insolvency matters abroad would do well to take note of that. Those breaching orders issued by Singaporean courts may not need to come to Singapore and may feel that they can thumb their noses with safety from foreign shores. But should they ever need to look to assets or information in Singapore, they will have to answer for their conduct. In the present case, the consensual discharge resolved the issue for the Trustee. The same result may not arise in other cases."[10]

The court's strong reaction is representative of how seriously it views such actions. It is also notable that while *Re Zetta Jet (2)* is in line with the US position, it stops short of implying any impact on foreign courts, in contrast to the position of the US courts.

Conclusion

From a practical aspect, conflicting orders from separate courts will likely cause unnecessary delays and costs to parties involved. This was seen with the delay in the *Re Zetta Jet (1)* and *Re Zetta Jet (2)* recognition proceedings in Singapore. From a US bankruptcy court's perspective, a proceeding such as the Singapore Injunction is not fundamentally different from the normal commencement or continuation of actions or proceedings against the debtor in violation of the US worldwide moratorium. The US bankruptcy courts have generally interpreted the automatic stay broadly to apply to proceedings which threaten the debtor's restructuring efforts. In the contrary position, US courts have respected worldwide moratoriums from other countries, reasoning that "[t]he United States cannot expect that foreign courts will recognize the extraterritorial reach of its own automatic stay... if its courts do not equally recognize the impact in the United States of a foreign automatic stay."[11]

For restructuring cases in Singapore, creditors should note that the Singapore rules already provide a key safeguard to balance the moratorium by requiring debtors to provide evidence of creditor support in favour of the moratorium.[12] However, where a Singapore court grants a moratorium notwithstanding the objections of a particular creditor, such creditor should consider seeking remedies directly from the Singapore courts. The court in *Re Zetta Jet (1)* advised parties that if there were any error in ordering the Singapore Injunction, "the proper course would be to apply to set it aside or appeal."[13] In similar circumstances, the US courts have advised that parties could request the US court itself to determine that the Chapter 11 proceedings were not legitimate and seek various remedies under its bankruptcy laws, including stay relief, abstention, and/or dismissal or conversion.[14]

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9 *Re IM Skaugen* SE at para 39.

10 Re Zetta Jet (2) at para 125.

11 *In re Artimm*, 278 B.R. 832 at 841 (Bankr. C.D. Cal. 2002).

12 Section 211B(4)(a) of the Singapore Companies Act, Chapter 50, requires the following to be filed with an application for a moratorium: "evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement." The court will consider the quality of support such as whether significant or crucial creditors are supportive. *Re IM Skaugen* SE at para 58.

13 *Re Zetta Jet (1)* at para 29.

14 *Gold & Honey* at 369.

When dealing with a Singapore moratorium with extraterritorial effect, the Singapore courts will likely look to the approach of the *Re Zetta Jet (2)* court, as well as the approach of the US courts as it has done in past restructuring cases. Notwithstanding principles of international comity, there are circumstances where foreign courts may choose not to recognise or enforce a worldwide moratorium whether arising by operation of law in the US or by court order in Singapore. That being said, Singapore's success as a cross-border restructuring hub relies on parties abroad respecting its court orders, including any moratorium. In *Re Zetta Jet (2)*, the court's strong and adverse reaction to parties "flouting a Singapore order" is a sign of the importance of this issue under Singapore's new restructuring regime.

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