Published on 9 April 2026

TEN YEARS OF MORATORIA IN REVIEW

[2026] SAL Prac 10

This article distils ten years of case law on debtor-in-possession moratoria jurisprudence, tracing the cases decided under the Companies Act (Cap 50, 2006 Rev Ed) regime through to the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"). It argues that the core analytical framework articulated in cases under the Companies Act has migrated intact into practice under the IRDA. Yet, there appears to be a divergence in case law on how courts calibrate the threshold of particularisation. The article proposes standards to harmonise outcomes while preserving judicial discretion.

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I. Introduction

1 A decade has passed since the Singapore courts first considered the contours of debtor-in-possession moratoria under s 210(10) of the Companies Act[1] ("CA") in *Re Conchubar Aromatics Ltd*[2] ("*Conchubar*"). Since then, the statutory

1 Cap 50, 2006 Rev Ed.
2 [2015] SGHC 322.

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moratorium has matured into a central feature of Singapore's corporate rescue regime. Successive legislative reforms have strengthened this tool, supporting Singapore's ambition to be a leading international restructuring hub.

2 While the analytical framework first articulated in *Re IM Skaugen SE*[3] ("*Skaugen*") continues to serve as the primary guide for moratorium applications, recent case law reflects a divergence in judicial approach to the sufficiency of particularisation and the assessment of *bona fides*. For example, *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd*[4] ("*ArcelorMittal*") adopted a more demanding evidential standard on the proposed funding of a scheme, raising the question of whether similar evidential scrutiny will be extended to other particulars central to the feasibility of the contemplated compromise or arrangement ("Scheme"). By contrast, the courts adopted a more orthodox approach in *Re Dasin Retail Trust Management Pte Ltd*[5] ("*Dasin*") and *Re MM2 Asia Ltd*[6] ("*MM2*"), reflecting the "broad-brush assessment" which eschews a detailed assessment of the particulars of the Scheme.

3 This divergence has practical significance. Excessive scrutiny during a moratorium application would likely cause the premature demise of a distressed but viable company. This outcome runs counter to the purpose of the moratorium itself, which is to create "breathing space" for companies to formulate a Scheme that is mutually beneficial for the company and its creditors as an alternative to a value-destructive liquidation. This consideration must be balanced against the need to protect creditors, whose rights are restrained under the moratorium, and would be prejudiced by a moratorium sought in bad faith. Consistency is needed to ensure coherence in Singapore's corporate restructuring framework – a point underscored by the absence of any published appellate decisions on such moratoria applications.

3 [2019] 3 SLR 979.
4 [2025] SGHC 77.
5 [2025] 4 SLR 1346.
6 [2025] SGHC 251.

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4 Here, the authors undertake a review of the last ten years of jurisprudence on statutory moratoria in Singapore and analyse its evolution. It is submitted that enhanced scrutiny of the particulars of a Scheme is counterproductive where a company is in the nascent stages of its restructuring and is seeking a moratorium in aid of that process.

II. Evolution of the Legislative Framework: Companies Act to the Insolvency, Restructuring And Dissolution Act

5 The first judgment published on the grant of a moratorium, nearly ten years ago, was in *Conchubar*, whereby the court granted an interim stay of proceedings against the debtor pursuant to s 210(10) of the CA.

6 When *Conchubar* was decided, there was no statutory mechanism by which a company could obtain the refuge of a debtor-in-possession moratorium prior to proposing a Scheme.[7] Indeed, under s 210(10) of the CA, a moratorium was only available where a Scheme had already been proposed.[8]

7 Another key limitation with s 210(10) of the CA was its lack of extra-territorial reach which was recognised in *Re Pacific Andes Resources Development Ltd*[9] ("*PARD*"). That limitation prevented the court from restraining creditors from enforcing against the debtor company and its assets in other jurisdictions.

8 Following *PARD*, the Companies (Amendment) Act 2017[10] swiftly introduced s 211B to the CA, granting enhanced moratorium relief that empowered the court to restrain creditors from enforcing against debtors abroad.[11]

7 Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report* (2013) at p 136.
8 *Re IM Skaugen SE* [2019] 3 SLR 979 at [35].
9 [2018] 5 SLR 125 at [17].
10 Act 15 of 2017.
11 *Re IM Skaugen SE* [2019] 3 SLR 979 at [39].

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9 Crucially, s 211B of the CA also made relief available where a Scheme was *intended to be proposed*.[12] This gave effect to a recommendation of the Insolvency Law Committee that the courts should have the power to grant a statutory moratorium where there is an intention to propose a scheme of arrangement, *subject to such terms as the court sees fit to impose*.[13]

10 Furthermore, s 211B introduced an automatic moratorium which would be triggered upon the filing of an application pursuant to s 211B. The automatic moratorium was designed to prevent creditors from taking action against the company, such as commencing legal proceedings or enforcing security rights, and to give the company breathing room to put forward a restructuring proposal.[14]

11 The first reported decision interpreting s 211B of the CA was *Skaugen*. The court held that a moratorium under s 211B was an extraordinary relief, which suspended legitimate enforcement rights of creditors while the debtor sought to restructure.[15] In determining whether to grant such relief, the court undertakes a balancing exercise between allowing the debtor the requisite breathing space and ensuring that the interests of creditors are sufficiently safeguarded.[16] The applicable approach, which remains good law today for moratoria applications under the Insolvency, Restructuring and Dissolution Act 2018[17] ("IRDA") is twofold, requiring the applicant to fulfil both procedural and substantive requirements.

(a) First, the court determines whether the applicant has fulfilled the procedural requirements prescribed by ss 211B(2), 211B(3) and 211B(4) of the CA. Although prosaic on their face, these requirements are critical to ensure the

12 *Re IM Skaugen SE* [2019] 3 SLR 979 at [37].
13 Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report* (2013) at pp 143–144.
14 See the Second Reading of the Companies (Amendment) Bill in Singapore Parl Debates; Vol 94, Sitting No 43; [10 March 2017].
15 *Re IM Skaugen SE* [2019] 3 SLR 979 at [44].
16 *Re IM Skaugen SE* [2019] 3 SLR 979 at [57].
17 2020 Rev Ed.

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court has the means to assess whether the substantive criteria have been met.[18]

(b) Second, the substantive question is whether, on a broad assessment, there is a reasonable prospect of the Scheme working and being acceptable to the general run of creditors ("Broad Assessment Approach").[19] Pertinently, any application brought under s 211B of the CA must be brought *bona fide*.[20] The underlying question for the court is whether the application is motivated by a genuine desire to restructure the company's business.[21]

12 The next significant legislative change came from the IRDA which re-enacted s 211B of the CA as s 64 of the IRDA.[22] Since 30 July 2020, when the IRDA came into force, applications for debtor-in-possession moratoria relief are now typically commenced pursuant to s 64 of the IRDA.[23]

13 When passing the IRDA, the Legislature expressly stated that its intention was to enhance Singapore's corporate rescue and debt restructuring framework.[24] This shows that the goal of creating a rescue-friendly environment for distressed companies – an objective that underpinned the enactment of s 211B – remained intact with the passage of the IRDA.[25]

14 Given this common legislative intent, and the textual wording of s 64 of the IRDA, which has largely retained the wording of s 211B of the CA, it is unsurprising that the case law

18 See *Re All Measure Technology (S) Pte Ltd* [2023] 5 SLR 1421 at [9]; and *Re MM2 Asia Ltd* [2025] SGHC 251 at [12].
19 *Re IM Skaugen SE* [2019] 3 SLR 979 at [56].
20 *Re IM Skaugen SE* [2019] 3 SLR 979 at [69].
21 *Re IM Skaugen SE* [2019] 3 SLR 979 at [72].
22 See the Second Reading of the Insolvency, Restructuring and Dissolution Bill in Singapore Parl Debates; Vol 94, Sitting No 83; [1 October 2018].
23 The authors note that the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) also introduced moratorium protection under s 65 of the Act, and there is at least one reported decision concerning the same: see *Re Picotin Pte Ltd* [2024] SGHC 156. However, discussion of s 65 falls outside the scope of this article.
24 See the Second Reading of the Insolvency, Restructuring and Dissolution Bill in Singapore Parl Debates; Vol 94, Sitting No 83; [1 October 2018].
25 See the Second Reading of the Insolvency, Restructuring and Dissolution Bill in Singapore Parl Debates; Vol 94, Sitting No 83; [1 October 2018].

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on s 64 continued to apply the same analytical framework laid down in *Skaugen*.

15 The applicant must satisfy the procedural requirements set out in ss 64(2), 64(3) and 64(4) of the IRDA (which mirror ss 211B(2), 211B(3) and 211B(4) of the CA) and the Broad Assessment Approach.[26] In determining whether the Broad Assessment Approach is met, the court will consider whether the application is brought *bona fide*, which entails examining whether the Scheme is sufficiently particularised,[27] and whether there is sufficient evidence of creditor support for the proposed Scheme or the moratorium (where a Scheme is intended to be proposed).[28]

16 It is significant that obtaining a moratorium under s 210(10) of the CA required the applicant to satisfy both the Broad Assessment Approach and the accompanying requirement of *bona fides*. These requirements did not originate in *Skaugen*; rather, *Skaugen* inherited those requirements from the earlier body of case law developed under s 210(10) of the CA. There is a clear and continuous analytical lineage running from the authorities on s 210(10) through to the present jurisprudence on s 64 of the IRDA. Recognising this lineage is important as it explains why earlier decisions such as *Conchubar* and *PARD* continue to be relevant and applicable when the courts consider relief under s 64 of the IRDA today.

III. Divergence in the Broad Assessment Approach

17 Although case law on s 64 of the IRDA consistently affirms the continued applicability of the *Skaugen* framework, courts have diverged in their application of the Broad Assessment Approach. There have been two reported decisions, namely *Re Aaquaverse Ltd*[29] ("*Aaquaverse*") and *ArcelorMittal*, since the enactment of

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26 *Re Energe Asia Pte Ltd* [2025] SGHC 259 at [11].
27 *Re MM2 Asia Ltd* [2025] SGHC 251 at [18], citing *Re All Measure Technology (S) Pte Ltd* [2023] 5 SLR 1421 at [10(a)].
28 *Re Energe Asia Pte Ltd* [2025] SGHC 259 at [11].
29 [2024] 4 SLR 149.

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the IRDA, in which the courts have applied a higher standard of scrutiny to the particulars of the debtor's intended Scheme ("Enhanced Scrutiny Approach") which is a departure from the Broad Assessment Approach. The Enhanced Scrutiny Approach has not been universally applied, and so should be contrasted with subsequent decisions which have continued to apply the Broad Assessment Approach.

A. *Enhanced Scrutiny Approach*

18 *ArcelorMittal* concerned an application pursuant to s 64 of the IRDA by an intermediate holding company of a global steel manufacturing group, Liberty House Group Pte Ltd ("Company"). On 10 February 2025, when the application was first heard, the company initially proposed that funding for its intended Scheme would come from a cash injection from either one of two companies (One Steel Manufacturing Pty Ltd ("OSM") and Liberty Primary Metals Australia Pty Ltd ("LPMA")) within its corporate group.[30]

19 Subsequently, on 8 March 2025, the Company disclosed by way of affidavit that the funding would come from LPMA which would obtain funding from a wholly owned Australian subsidiary ("Tahmoor"), an owner and manager of a coal mining operation.[31] This disclosure was triggered by the fact that OSM had been placed under special administration in Australia shortly after the company filed for moratorium relief.[32] On 14 April 2025, by way of further affidavits the Company subsequently disclosed that Tamoor had signed a term sheet ("Tahmoor Term Sheet") for a loan, a part of the proceeds of which would be made available for the scheme consideration.

20 On 28 April 2025, the court dismissed the moratorium application, finding that that the Company had not put forward an adequate plan to secure the funding for the intended scheme and the Company's conduct had raised significant concerns

30 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [12].
31 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [14].
32 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [27].

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about the *bona fides* of the intended scheme.[33] The court found that the Company did not meet this higher level of scrutiny, and relied on, *inter alia*, the fact that the Company failed to produce the Tahmoor Term Sheet and that the underlying loan facility documents had not been executed. As an alternative, the company suggested that the scheme consideration could be derived from a sale of LPMA's shares in Tahmoor. The court was not satisfied and concluded that the scheme consideration was "not likely [to be] forthcoming".

21 In reaching its conclusion, the court laid down the Enhanced Scrutiny Approach in which "matters relating to the funding of the proposed scheme should be subject to a higher level of scrutiny where the viability of the scheme is entirely dependent on that funding being available".[34] In support of this proposition,[35]the court cited the earlier decision of *Aaquaverse* where it dismissed an application for extension of a moratorium. The source of funding for the Scheme in *Aaquaverse* was to be an award of damages from an ongoing case before the English courts. However, the company in *Aaquaverse* had not put forward sufficient evidence to establish the quantum of such an award of damages.

22 In laying down the Enhanced Scrutiny Approach, the court in *ArcelorMittal* reasoned that the Company should be expected to provide "with reasonable specificity, the source of funding and assurance that such funds would be available at the relevant time. It would be contrary to the legislative intention to require creditors to go through the scheme process only for it to collapse when the promised funding does not materialise".[36]

B. The orthodox approach

23 It is necessary to contrast the decision of *ArcelorMittal* with *MM2* to identify the divergence in case law where the Enhanced

33 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [14].
34 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [23].
35 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [23].
36 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [24].

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Scrutiny Approach has not been applied. In *MM2*, the court granted an application for a four-month moratorium pursuant to s 64 of the IRDA. The applicant in *MM2* was the parent company of a media group which intended to propose a Scheme whereby its creditors would receive consideration consisting of cash and newly issued shares in the company.

24 At the time of the *MM2* hearing, the company had yet to secure funding for the cash consideration component of the intended Scheme and was still negotiating with its intended funder.[37] In fact, the intended funder had yet to complete its due diligence on the company,[38] suggesting there was a significant lack of certainty over the prospect of the funding. In granting the application, the court held that the lack of particularisation was unsurprising given the preliminary stage of the company's restructuring, but that there was no reason for the court to take an especially wary view of the lack of particulars.[39] It was clear that the court in *MM2* did not think that matters relating to the funding of scheme consideration ought to be subject to a higher level of scrutiny. Nor was it necessary for the applicant to demonstrate that its efforts to secure funding had materialised.[40]

25 In reaching its conclusion, the court in *MM2* reasoned that a moratorium is "the quiet harbour in which a distressed enterprise can seek to steady itself" and "chart a course towards a fair and workable restructuring".[41] It is invariably the case that in many of these circumstances, any proposal that is expected to eventually be put before the creditors will be in the process of being worked through.[42] Thus, to require a fully-formed blueprint of the Scheme at that stage of the application would be to deny the very purpose for which the relief is sought.[43] The court also clarified that its role was "not to ensure [that] the plan is complete or near-complete or that it covers most contingencies".[44]

37 *Re MM2 Asia Ltd* [2025] SGHC 251 at [4].
38 *Re MM2 Asia Ltd* [2025] SGHC 251 at [21].
39 *Re MM2 Asia Ltd* [2025] SGHC 251 at [21].
40 *Re MM2 Asia Ltd* [2025] SGHC 251 at [20].
41 *Re MM2 Asia Ltd* [2025] SGHC 251 at [19].
42 *Re MM2 Asia Ltd* [2025] SGHC 251 at [19].
43 *Re MM2 Asia Ltd* [2025] SGHC 251 at [20].
44 *Re MM2 Asia Ltd* [2025] SGHC 251 at [22].

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26 It is respectfully suggested that the approach in *MM2* aligns with the traditional approach of the Broad Assessment Approach. This proposition is supported by reference to both legislative intent and principle.

27 First, the court's approach in *MM2* aligns with the legislative intention of providing companies with "breathing space in order to put in place an effective and mutually beneficial rescue plan".[45] Indeed, the creation of breathing space for debtors to formulate a Scheme was a key feature underpinning the introduction of the moratorium under s 211B of the CA.[46] This was not accompanied by any qualification that that funding for the Scheme be proven with certainty at the outset. In cases like *MM2*, the breathing space is afforded precisely so the company can work out such funding, amongst other things. Viewed from this perspective, requiring certainty of funding as a precondition for moratorium relief would "put the cart before the horse".

28 Second, before s 211B of the CA was enacted, a company must have already proposed a Scheme, as opposed to *intending* to propose one, to obtain moratorium relief under s 210(10) of the CA. Concomitantly, a debtor would have to be significantly advanced in its restructuring to have already proposed a Scheme, in order to obtain a moratorium. Yet even a company seeking relief under s 210(10) of the CA was not required to demonstrate the feasibility of the proposed Scheme.[47] *A fortiori*, under the IRDA, a company should not be expected to conclusively prove that its intended Scheme and the Scheme's particulars are feasible. To do so would be a clear departure from the legislative intention of giving breathing space for a company to develop a Scheme. This explains why the authorities pre-dating *ArcelorMittal* did not delve into a detailed assessment of the reasonable prospect of the Scheme working and only undertook an assessment on

45 See the Second Reading of the Companies (Amendment) Bill in Singapore Parl Debates; Vol 94, Sitting No 43; [10 March 2017].
46 See the Second Reading of the Companies (Amendment) Bill in Singapore Parl Debates; Vol 94, Sitting No 43; [10 March 2017].
47 *Re Conchubar Aromatics Ltd* [2015] SGHC 322 at [12].

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a broad-brush basis.[48] The court does not displace the commercial judgment of the applicant nor that of the creditors with its own.[49]

29 *MM2* is not the only recent decision where the courts have declined to apply the Enhanced Scrutiny Approach to funding. In *Dasin*, the court granted a moratorium pursuant to s 64 of the IRDA, notwithstanding that the trustee-manager did not articulate its intended Scheme beyond asserting that certain unsecured creditors would be paid in full.[50] The court found that the paucity in the debtor's particulars was because the terms would be dependent on the debtor's future negotiations with its bank lenders for the release of available cash to discharge its unsecured liabilities.[51] In other words, funding certainty for the debtor's intended Scheme was at such a nascent stage that the debtor was not even able to identify which unsecured creditors would be subject to the intended Scheme.[52] Such specifics would only be ascertainable after finalising negotiations with certain third parties.[53]

30 Third, the court in *MM2* applied a *prima facie* standard of assessment.[54] This accords with *Skaugen* which held that the court had to assess, at least on a *prima facie* level, whether the Scheme was feasible and merited creditor consideration.[55] More broadly, applications under s 64 of the IRDA are commenced by originating application,[56] and determined by affidavit evidence as a matter of course.[57] It is well established that where the court relies only on affidavit evidence, "there can be no finding of fact on the balance of probabilities, but only on a prima facie basis".[58]

48 *Re Babel Holding Ltd* [2023] 5 SLR 900 at [17].
49 *Re Picotin Pte Ltd* [2024] SGHC 156 at [14].
50 *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [23].
51 *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [53].
52 *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [54].
53 *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [54].
54 *Re MM2 Asia Ltd* [2025] SGHC 251 at [22].
55 *Re IM Skaugen SE* [2019] 3 SLR 979 at [53].
56 Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 r 8(1)(*e*).
57 See r 18(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020.
58 *Re Logistics Construction Pte Ltd* [2024] SGHC 58 at [49], citing *The "Bunga Melati 5"* [2012] 4 SLR 546 at [129].

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Indeed, none of the written decisions on the grant of moratoria, from *Conchubar* to the latest decision of *Re Energe Asia Pte Ltd*,[59] required the courts to examine witnesses.

C. *Difficulties with the Enhanced Scrutiny Approach*

31 It is hard to reconcile the Enhanced Scrutiny Approach introduced in *ArcelorMittal* with the court's approach in *MM2* which appears to be the orthodox application of the Broad Assessment Approach. There does not seem to be a principled reason for singling out matters of funding for higher scrutiny.

32 It appears that the Enhanced Scrutiny Approach is not consistent with the legislative intention behind s 64 of the IRDA. Moratorium relief is not intended for companies to "game the system" by seeking orders without putting forward a serious proposal.[60]

33 However, the Legislature's intention of facilitating breathing space for a debtor to formulate a Scheme does not require a debtor to be able to provide an "assurance" of the Scheme funding at the outset. The aim of the statutory moratorium is to facilitate the rescue of viable companies facing financial distress that have a genuine intention to restructure.[61] That purpose is not served by imposing a detailed viability assessment at the early stages of a restructuring.

34 To illustrate, the debtors in both *Dasin* and *MM2* had taken the position that funding for their intended Schemes was still being negotiated. The judgments in *Dasin* and *MM2* do not record either debtor having put forward a term sheet, finalised facility documents or an explanation which could confirm that funding would be forthcoming at the relevant time. Neither debtor would have been in a position to do so because funding was still in the course of being negotiated. The court was nonetheless satisfied in both cases that the debtors should be entitled to

59 [2025] SGHC 259.
60 See *Re All Measure Technology (S) Pte Ltd* [2023] 5 SLR 1421 at [10(a)].
61 *Re Energe Asia Pte Ltd* [2025] SGHC 259 at [40].

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moratorium protection. If the Enhanced Scrutiny Approach had been applied, it is doubtful that either debtor would have been granted moratorium relief, considering the preliminary stage of their funding negotiations. Put differently, two viable but distressed debtor companies, both of which were under the threat of winding-up proceedings, would have been denied the benefit of moratorium relief and likely placed into compulsory liquidation. This could not have been the outcome intended by the Legislature.

35 The legislative aim is also not supported by the evidential standard of the Enhanced Scrutiny Approach which appears to depart from the *prima facie* standard. It bears mention that the court expressly held that the scheme consideration was "not likely [to be] forthcoming".[62] In the authors' view, this phrasing appears closer to the balance of probabilities standard than the *prima facie* standard.[63] The court in *ArcelorMittal* was clearly not satisfied with the affidavit evidence advanced by the debtor which was subject to r 8(4) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020.[64] For instance, the debtor in *ArcelorMittal* had asserted that Tahmoor had signed a term sheet with a lender for a loan of US$110m. This did not satisfy the court in *ArcelorMittal* which observed that the debtor neither disclosed the term sheet nor executed the facility documents with the lender.[65] The court found that it was not sufficient for the debtor to only disclose the conditions for the release of the loan; the debtor was expected to also explain how such conditions would be satisfied.[66] While it is not suggested that the court should blindly give the debtor the benefit of the doubt,[67] in the authors' view, the court should not

62 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [26]–[27].
63 See *Re MM2 Asia Ltd* [2025] SGHC 251 at [19]–[20].
64 Rule 8(4) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 essentially prescribes that every affidavit filed in support of an application made under the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) is *prima facie* evidence of the statements in the affidavit.
65 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [30(a)]–[30(b)].
66 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [30(c)].
67 *Re Energe Asia Pte Ltd* [2025] SGHC 259 at [38].

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require more than is necessary to give it at least a modicum of confidence as to the credibility of the debtor's claims.[68]

36 The Enhanced Scrutiny Approach also does not appear to be supported by case law. In *ArcelorMittal*, the court placed reliance on *Aaquaverse*. It is suggested that such reliance does not appear to stand up to scrutiny. In *Aaquaverse*, the intended Scheme was dependent on the proceeds from an English court award ("English Judgment") in favour of the debtor, but the quantum of the award had yet to be assessed by the English court.

37 A court judgment or arbitral award that a company has against a third-party, though the quantum of which has yet to be fixed by the respective court or tribunal, is a contingent asset. The company is a contingent creditor of the debtor until the final determination on the quantum.

38 As with any asset owned by the debtor, the onus is on the debtor to put forward evidence to establish the asset's valuation. Where the realisation of the asset makes up the Scheme consideration, the debtor is likely obliged to provide evidence of the asset's valuation to comply with its duty of full and frank disclosure.[69] The court's decision in *Aaquaverse* can be rationalised, taking into account these well-established considerations. In *Aaquaverse*, the court found that the debtor had failed to provide sufficient evidence to establish the realisable value of the English Judgment. The court held that the debtor should have adduced firm evidence in support of the debtor's purported valuation of the English Judgment. Such evidence could have taken the form of a legal opinion in support of the debtor's assertions provided by a King's Counsel.

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68 *Re Energe Asia Pte Ltd* [2025] SGHC 259 at [38].

69 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [39]; Supreme Court of the Republic of Singapore, "Registrar's Circular No 1 of 2021: Issuance of the Guide for the Conduct of Applications for Moratoria Under Sections 64 and 65 of the Insolvency, Restructuring and Dissolution Act 2018" (10 February 2021) at para 11.

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39 *Aaquaverse* is not the only case where the courts have taken a stricter approach on matters of asset valuation in the context of moratoria applications. In *Re All Measure Technology (S) Pte Ltd*,[70] the court took a similarly dim view of the debtor's failure to explain how the amount attributed to the disposal of its inventory was derived.[71]

40 By contrast, raising funds from a third-party is inherently different. While a valuation can be complicated, it remains within the debtor's control to value its own assets (contingent or otherwise) and to engage objective experts to do so. The same cannot be said of obtaining third-party funding which is not merely a valuation exercise.

41 Furthermore, as noted in *MM2*, the procurement of funding is predicated on granting the debtor the necessary time to allow negotiations to progress. In *ArcelorMittal*, the debtor had disclosed in affidavit evidence that negotiations with Tamoor's funder were at an advanced stage and facility documents were capable of being finalised in short order.[72] Counsel for the debtor also claimed at the hearing that the documents were expected to be executed in the coming week.[73] *MM2* and *Dasin* were similarly cases where breathing space was needed to allow negotiations on funding to mature.

42 The foregoing analysis outlines why it is unsatisfactory to treat funding solely as evidence of whether the commercial terms have been agreed. This is what the Enhanced Scrutiny Approach seems to do. Instead, the authors respectfully suggest that the correct approach, as taken by the court in both *MM2* and *Dasin*, is to apply the well-established rule that the court ascertain the reasons for the lack of particularisation.[74] This is a more

70 [2023] 5 SLR 1421.
71 *Re All Measure Technology (S) Pte Ltd* [2023] 5 SLR 1421 at [55].
72 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [30(b)].
73 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [30(b)].
74 *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 at [68]; *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [53]; *Re MM2 Asia Ltd* [2025] SGHC 251 at [20].

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measured approach which permits the court to take into account, *inter alia*, how much time the debtor has had to obtain funding, and objectively assess whether the debtor has made sufficient progress, balanced against the interests of the creditors.

IV. Conclusion

43 The authors here recognise that the Enhanced Scrutiny Approach stems from the need articulated in *Skaugen* for the court to balance debtor breathing space with creditor protection.[75] Nevertheless, the courts should be cautious to adopt the Enhanced Scrutiny Approach given that it may not be consistent with the legislative intent and represents a departure from established principles.

44 As *ArcelorMittal* illustrates, the multifactorial assessment of whether an application is brought in good faith is not always easy to determine. The authors do not disagree that the court should be vigilant to safeguard against attempts to "game the system" and therefore should not grant moratoria protection where doing so would only cause the court to act in vain.[76]

45 However, sufficiency of particularisation of a Scheme only serves as an aid for whether the Scheme will work and be acceptable to the general run of creditors. It is not itself the defining test.[77] It is all too easy to "miss the forest for the trees" if the emphasis shifts towards a rigid insistence on particulars. As much as the court should not endorse a restructuring that is doomed to fail, it should not precipitate the premature demise of a nascent but viable restructuring.

46 With these principles in mind, the propositions, grounded in (a) legislative intent, (b) authority and (c) principle, are distilled below.

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75 *Re IM Skaugen SE* [2019] 3 SLR 979 at [57].

76 *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [21], citing *Re Ng Huat Foundations Pte Ltd* [2005] SGHC 112 at [9].

77 *Re MM2 Asia Ltd* [2025] SGHC 251 at [19], citing *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 at [65].

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47 First, the Enhanced Scrutiny Approach should not be treated as generally applicable. Instead, the courts should retain the discretion to assess the criticality of the particulars of a Scheme on a case-by-case basis. The Enhanced Scrutiny Approach should be regarded as being confined to the unique facts of *ArcelorMittal*.

48 Second, the Broad Assessment Approach should remain the default approach. At this juncture, the court should not delve into a detailed assessment of the likely success of the Scheme,[78] nor should it displace the commercial judgment of the debtor or its creditors at such an early stage.[79]

49 Third, where the court has concerns about the lack of particulars of a Scheme, the first step should be for the court to consider the reasons for such paucity.[80] If the lack of particularity is a feature of the restructuring (*eg*, because of its nascency), then the court should not require the debtor to provide a further explanation.

50 However, if the debtor can be reasonably expected to provide the further explanation or detail sought, then the debtor should be given such an opportunity. This opportunity should be reasonable, and it may be the case that particulars pertaining to funding require time to work out. This consideration is particularly important in cross-border restructurings where restructuring is undertaken on a composite, interconnected basis. As observed by the court in *PARD*, the formulation of underlying restructuring plans is often in reality an involved and complicated exercise which the courts must recognise and not turn a blind eye to.[81] The court can strike an appropriate balance in such situations with the grant of a shorter moratorium accompanied with certain conditions for the debtor to satisfy if they wish to seek future extensions.

78 *Re Babel Holding Ltd* [2023] 5 SLR 900 at [17].
79 *Re Picotin Pte Ltd* [2024] SGHC 156 at [14].
80 *Re MM2 Asia Ltd* [2025] SGHC 251 at [20], citing *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 at [68].
81 *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 at [72]; *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [56].

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51 The more salient the particularities are to the feasibility of the Scheme (such as on matters of valuation of the debtor's assets or creditor support), the more the debtor should be expected to provide such specific details. In such cases, it is possible for the court to rely on case management techniques such as adjourning the hearing of the moratorium application, with the grant of an interim moratorium until the next hearing.[82] This would provide a short opportunity (with little prejudice to any opposing stakeholders) for the debtor to provide the missing evidence. Such an approach should only be reserved for those particulars that may be regarded as "key planks" to the Scheme, and in the absence of which, the Scheme would not have a reasonable prospect of success.

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82 See *ArcelorMittal Holdings AG v Liberty House Group Pte Ltd* [2025] SGHC 77 at [50].

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