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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 15

ARMADA (SINGAPORE) PTE. LTD.,

Case No. 09-_____

Debtor in a Foreign
Proceeding.

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**EX PARTE APPLICATION FOR PROVISIONAL RELIEF
PENDING RECOGNITION OF A FOREIGN MAIN PROCEEDING
PURSUANT TO 11 U.S.C. §§ 105(a), 1504, 1515, 1517 AND 1519**

Upon the Application of the Board of Directors of Armada (Singapore) Pte. Ltd. ("Armada Singapore" or the "Foreign Debtor"), the duly appointed representative (the "Foreign Representative" or "Petitioner"), which is the subject of a pending proceeding under Section 210 of The Companies Act of the Republic of Singapore a private company incorporated in Singapore and subject to a pending bankruptcy proceeding (the "Singapore Proceeding") before the High Court of Singapore (the "Singapore Court"), by its undersigned counsel, Holland & Knight LLP, respectfully makes this application (the "Application"), pursuant to sections 105(a) and 1519 of title 11 of the United States Code, 11 U.S.C §§ 101 *et seq.* (the "Bankruptcy Code"), for entry of an order to show cause with *ex parte* relief substantially in the form attached hereto as Exhibit A, and scheduling a hearing on the Petitioner's request for provisional relief, and in support thereof, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in this judicial district pursuant to 28 U.S.C. § 1410 because the principal U.S. Assets (as defined below) of the Foreign Debtor are located within this judicial district and there are actions pending against the Foreign Debtor within this judicial district. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P). The statutory predicates for the relief requested herein are sections 105(a) and 1519 of the Bankruptcy Code and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 65 of the Federal Rules of Civil Procedure.

FACTUAL BACKGROUND

A. Armada Singapore's Business

1. Armada Singapore is a private company organized under Cap. 50 of The Companies Act of the Republic of Singapore. Its registered office is 1 Harbour Front Avenue #07-07/08 Keppel Bay Tower, Singapore 098632. Armada Singapore employs 16 people in Singapore and has an agency agreement with various representatives in Australia, China, Denmark, Switzerland, United States and Brazil involving approximately another 110 employees.

2. Armada Singapore is an international contractor of tonnage and provider of transport solutions in the dry bulk sector. Armada Singapore's core businesses are the provision of integrated logistic solutions and ocean transportation of bulk cargoes, goods and materials. In relation to the bulk cargo market, Armada Singapore maintains a strong presence in the Panamax (ships of 60-80,000 dead weight tons ("DWT")) and Cape (ships of 140-210,000 DWT)

segments. It also has a presence in the Handy (ships of 15-35,000 DWT) and Handymax (ships of 36-55,000 DWT) segments of the shipment of bulk cargo.

3. Armada Singapore operates close to 50 vessels at any given time and transports more than 50 million metric tons of bulk cargoes on an annual basis.

4. Armada Singapore's client portfolio includes some of the world's leading industry players in cargo supply operations such as Rio Tinto, BHPB, Fortescue Metals, ED & F, Arcelor Mittal, and the Adani Group, and international market leaders in the tonnage supply industry such as COSCO, Pacific Carriers Ltd., Zodiac, and Oak.

5. As a hedge against fluctuations in the cost of oil and freight rates for its physical shipping business, Armada Singapore also enters into fuel oil swaps and Forward Freight Agreements ("FFAs"). FFAs are over the counter derivative agreements, the underlying basis for which are actual worldwide freight rates.

6. In 2007 and 2008, Armada Singapore had revenues of more than US \$ 2 billion per annum. Armada Singapore generated from vessel operations a gross profit of US \$ 16,137,000 in 2006, which increased by more than five-fold to US \$ 91,334,000 in 2007. The consolidated net profit of Armada Singapore and its subsidiaries for the year 2007 was US \$ 130.9 million. For 2008, however, Armada Singapore expects to incur a catastrophic loss of approximately US \$395 million.

B. Events Leading to the Singapore Proceeding

7. Before the summer of 2008, Armada Singapore was operating at a very healthy profit level, and substantial profits were projected for the year. Unfortunately, the recent worldwide financial crisis coupled with the resulting severe drying up of credit sources and supplies have led to a total collapse of the Dry bulk markets in which Armada Singapore operates, and as a result it is now projecting substantial losses over the same period in question.

8. Since summer 2008, the charter industry has faced a historic drop in freight rates, particularly with respect to the very large Cape size and Panamax vessels that Armada Singapore charters. In June, a typical charter for a Cape size vessel was \$233,988 per day. In early December of 2008, the market rate hit a bottom of \$2,316 per day, representing a 99% drop in the market value of Armada Singapore's contracts. Although the market rate has since rebounded somewhat, so that rates for this size vessel are now running at \$8,952 per day, such rates remain substantially below pre-summer 2008 rates.

9. So too, many of the companies that had contracted with Armada Singapore to deliver raw materials have shut down or severely curtailed production and cancelled their shipping contracts. Other customers, facing a liquidity or financing crunch, simply have not paid Armada Singapore for amounts due. Indeed, in recent months, many significant players in the shipping industry have been forced to seek the protection of their home countries' insolvency laws. For example, on November 20, 2008, Britannia Bulk A/S, another operator of Cape size vessels, was adjudicated a bankrupt under the laws of its home country, Denmark. Similarly, on December 18, 2008, Atlas Shipping A/S and its affiliates filed a petition for bankruptcy with the Bankruptcy Division of the Maritime and Commercial Court in Copenhagen, Denmark.

10. The sudden and severe drop in freight rates has caused a similar dislocation in the FFA market. As a result, Armada Singapore's losses on the long term FFA contracts it entered into before August 2008, payments with respect to which are settled monthly, have risen significantly.

11. Armada Singapore also has faced significant margin calls related to its fuel oil swaps. As noted above, Armada Singapore typically enters into fuel oil swaps as a hedge against volatility in the market. During the summer, as oil prices climbed in excess of \$150 per barrel

and were predicted to go far higher, Armada Singapore entered into hedges for its cargo book to protect itself against rising oil prices, a trend which was widely believed at that time to be inevitable.

12. However, contrary to market projections and expectations, oil prices have recently plummeted. As a result, Armada Singapore has had to make significant cash payments to satisfy margin calls related to its higher priced fuel oil swaps.

C. The Singapore Proceeding

13. In order to resolve its liquidity issues and restructure its business operations, Petitioner commenced the Singapore Proceeding on behalf of Armada Singapore by filing a voluntary proceeding for a proposed scheme of arrangement under section 210 of the Singapore Companies Act.

14. In many respects similar to a US chapter 11 plan of reorganization, a scheme of arrangement under the Singapore Companies Act is an arrangement between a company and its creditors or any class of creditors (“Scheme Creditors”) to restructure their contractual rights to permit an orderly resolution and payout of claims while the company continues to operate. In a section 210 scheme of arrangement a company’s board of directors remains in control of its assets and operations and, together with the company’s financial advisors, develops, proposes and implements the scheme. Once approved, a scheme of arrangement supersedes any prior contracts or agreements between a company and its Scheme Creditors. Petitioner has retained M/s KPMG Advisory Pte. Ltd. (“KPMG”) to serve as its financial advisor and to help it develop and implement the proposed Scheme of Arrangement (the “Scheme”).

15. To be approved, a scheme of arrangement must receive, for each class of Scheme Creditors, favorable votes from a majority in number and at least three-fourths in value of those present and voting. The scheme of arrangement must then be approved by the Singapore Court.

After a scheme is approved by the creditors and the Singapore Court and a copy of the approval order is delivered for registration, the scheme of arrangement becomes legally binding on all Scheme Creditors that are parties to the scheme, wherever located and regardless of how they voted (or did not vote) on the Scheme.

16. At the outset of a proceeding under section 210, a company is required to make an application to the Singapore court for an order granting the company leave to convene one or more meetings of the creditors and members of the company. Upon obtaining such an order and in advance of the relevant meetings, the company, together with its financial advisors, will submit a proposed scheme of compromise or arrangement to the Scheme Creditors. To allow creditors to exercise their votes in an informed manner, section 211(1) of the Singapore Companies Act states that every notice summoning the meeting must contain a statement explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons. If this is not done and the creditors and members do not have sufficient information on which to make an informed decision, or for any other reason pursuant to the court's discretion, the court may later decline to approve the scheme even though it may have been approved by the requisite majorities at the creditors' meeting.

17. In this case, the Singapore Court made an order dated January 6, 2009 (the "Order") granting Petitioner leave to convene a meeting of Scheme Creditors pursuant to section 210 of the Companies Act to consider approval of the scheme. A copy of the Singapore Court's Order is attached to the Petition as Exhibit B.

18. The Singapore Court also directed Petitioner to file a copy of its proposed scheme within eight weeks of the date of the Order. Petitioner will file a copy of the proposed scheme with this Court at that time.

D. Armada Singapore's U.S. Assets and Pending Proceedings

19. Since 2006, Armada Singapore has maintained an account at the New York, New York branch of Nordea Bank (the "Nordea Bank Account"). Historically, Armada Singapore has used the Nordea Bank Account to pay its obligations and collect revenues during hours when its banks in Asia and Europe are closed for business. As such, the balance in this account fluctuates daily.

20. More importantly, all or substantially all of the charters and FFA contracts to which Armada Singapore is a party are dollar denominated, and thus all amounts due to Armada Singapore under those agreements pass through the U.S. financial system. As such, on any given day Armada Singapore has, *inter alia*, certain cash, funds, escrow funds, credits, debts (together with the Nordea Bank account, the "U.S. Assets") located within the United States at various banking institutions. These U.S. Assets are used by Armada Singapore in the ordinary course of its business.

21. In addition, several of Armada Singapore's creditors are U.S. companies or have places of business in the United States.

22. On or about November 17, 2008, claimant China Shipping Development (HK) Wylex Co., Ltd. ("China Shipping") commenced an action in the United States District Court for the Southern District of New York (the "Court") against Armada Singapore by filing a complaint seeking attachment and garnishment over Armada Singapore's assets in the United States under Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims (a "Rule B Attachment"), based on an alleged breach of a charter party between China Shipping and

Armada Singapore (08 CIV 9944). On or about November 20, 2008, the Court issued an *ex parte* order directing the Clerk of the Court to issue a Rule B Attachment against the assets of Armada Singapore.

23. In response to Armada Singapore's letter motion seeking to vacate the attachment, on December 2, 2008, U.S. District Judge Denise Cote issued an Order to Show Cause as to why the Writ of Attachment should not be vacated. Thereafter, on December 15, 2008, the Court vacated the Rule B Attachment on the grounds that Armada Singapore, which had registered to do business in New York as a foreign corporation, was present in the jurisdiction and therefore immune from Rule B attachment. *See* Order of U.S. District Judge Denise L. Cote dated December 15, 2008. Claimant China Shipping has since filed a Notice of Appeal to the Second Circuit and has sought an emergency stay preventing the release of Armada Singapore's funds. The Second Circuit has granted China Shipping's request for an emergency stay pending a decision by the Motions Panel of the Circuit Court. As such, approximately \$900,000.00 of Armada Singapore's funds have been attached since about November 20, 2008 and remain unavailable for use by Armada Singapore in support of its business operations. Copies of the District Court and Second Circuit's Orders are attached to the Rathleff Declaration as Exhibit B.

24. Petitioner believes that absent recognition of the Singapore Proceeding under chapter 15 and imposition of the automatic stay, other creditors of Armada Singapore may file complaints seeking Rule B Attachments or seek other similar relief with respect to Armada Singapore's U.S. Assets. Even if each of these attachments eventually is dissolved, the delay inherent in resolving these matters on an individual basis, as well as the risk that some such attachments may not be dissolved at all, will irreparably harm Armada Singapore's ability to operate and cause it to incur substantial litigation costs.

25. Indeed, if Armada Singapore's creditors are permitted to seek their own remedies in the United States, significant assets likely will be depleted, preventing a fair distribution to all creditors and prejudicing Petitioner's ability to restructure Armada Singapore's business and carry out the proposed Scheme, to the detriment of Armada Singapore's estate and creditors.

E. Armada Singapore's Chapter 15 Filing

26. In an effort to preclude the entry of further orders of attachment and thereby improve the ability of the Petitioner to administer the Foreign Debtor in the Singapore Proceeding, contemporaneously herewith, the Petitioner filed a chapter 15 petition (the "Petition") for Armada pursuant to sections 1504 and 1515 of the Bankruptcy Code, commencing the chapter 15 case ancillary to the Singapore Proceeding and seeking recognition of the Singapore Proceeding as a "foreign main proceeding," as defined in section 1502(4) of the Bankruptcy Code. With the Petition, the Petitioner filed the Declarations of Tommy J. Rathleff and Lionel Tay in support of the Petition (the "Declarations").

RELIEF REQUESTED

27. In furtherance of its duties as the duly appointed Petitioner for Armada Singapore, the Petitioner seeks (i) immediate entry of *ex parte* provisional relief staying execution against the U.S. Assets, prohibiting all persons from commencing or continuing any litigation or any other proceeding, including, without limitation, appeals, mediation or any judicial, quasi judicial, administrative or regulatory action, proceeding or process whatsoever, or taking any other actions against or involving the Petitioner (with respect to the Foreign Debtor), the Foreign Debtor, or any of the U.S. Assets; and (ii) the scheduling of a hearing on the Petitioner's request for continuing provisional relief, including entrusting the administration of the U.S. Assets to the Petitioner and providing for the examination of witnesses or other discovery concerning the

Foreign Debtor's assets and affairs. Such relief will ensure, among other things, that the U.S. Assets of the Foreign Debtor will not be improperly attached, disposed of or withheld by creditors or third parties. Notwithstanding the foregoing, the relief requested herein shall in no way affect any rights pursuant to sections 555, 556, 557, 559, 560, 561, 562 and 1519(d) and (f) of the Bankruptcy Code.

BASIS FOR RELIEF

A. The Relief Requested is Authorized Under the Bankruptcy Code

28. Section 1519(a) of the Bankruptcy Code expressly permits the Court to grant "relief of a provisional nature" from the time a petition for recognition is filed until the court rules on that petition, where such relief is "urgently needed to protect the assets of the debtor or the interest of the creditors." 11 U.S.C. § 1519(a). Specifically, section 1519(a) allows the Court to enter relief of the kind requested above, including, *inter alia*, staying execution against the debtor's assets; suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor; entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; providing for the examination of witnesses; or granting any other relief, with certain exceptions, that may be available to a trustee. *Id.*; see also 11 U.S.C. § 1521(a) (3), (4) and (7) (setting forth additional forms of relief allowed under provisional order as incorporated by reference in 11 U.S.C. § 1519(a)(3)).

29. The relief requested by the Petitioner is exactly that contemplated by the above provisions. Indeed, the relief requested herein has been granted frequently in other chapter 15 cases to foreign representatives. See e.g., *In re Britannia Bulk Plc*, Chapter 15, Case No. 0814543 (REG) (Bankr. S.D.N.Y. November 20, 2008) *In re Alitalia Linee Aeree Italiane*

S.p.A., Chapter 15, Case No. 08-14321 (BRL) (Bankr. S.D.N.Y. Nov. 3, 2008); *In re Afinsa Bienes Tangibles SA*, Chapter 15, Case No. 07-10675 (JMP) (Bankr. S.D.N.Y. March 15, 2007); *In re Daewoo Corp.*, Chapter 15, Case No. 06-12242 (REG) (Bankr. S.D.N.Y. Sept. 25, 2006); *In re Hatteras Reinsurance Ltd.*, Chapter 15, Case No. 06-11304 (JMP) (Bankr. S.D.N.Y. June 8, 2006); *In re Yukos Oil Company*, Chapter 15, Case No. 06-10775 (RDD) (Bankr. S.D.N.Y. April 13, 2006).

30. Moreover, the relief requested is urgently needed to protect the assets of the Foreign Debtor and will best assure an economical, expeditious and equitable administration of the Foreign Debtor's estate. Without such relief, the Foreign Debtor is exposed to an imminent risk of litigation and other actions against its assets, which would result in a "race to the courthouse" by all parties. Indeed, as noted above, several parties have already sought and obtained orders of attachment against the U.S. Assets of Armada Singapore under Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims, and further actions seeking Rule B attachment are expected in the near future.

31. Any litigation of this kind will distract the Petitioner from its duties, drain the Foreign Debtor of important resources, and disrupt the Singapore Proceeding and the Foreign Debtor's chapter 15 proceedings in the United States. Moreover, any such actions could ultimately result in the inequitable distribution of the Foreign Debtor's remaining assets among its creditors.

32. Rather than exposing the Foreign Debtor to actions that could lead to the piecemeal distribution of its assets, the relief requested herein will afford the Foreign Debtor (and the Petitioner) the "breathing room" necessary to conduct an orderly review and

reorganization of the Foreign Debtor's affairs so that its creditors receive equitable treatment. Accordingly, the requested provisional relief should be granted.

B. *The Petitioner Satisfies the Standards Applicable to an Injunction*

33. Section 1519(e) provides that "[t]he standards, procedures, and limitations applicable to an injunction shall apply to [a request for provisional] relief under this section." 11 U.S.C. § 1519(e). Generally, a plaintiff seeking a preliminary injunction or temporary restraining order must show (a) that it is likely to suffer irreparable and imminent harm if temporary injunctive relief is not granted and (b) either (i) likelihood of success on the merits or (ii) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in its favor. *American Cash Card Corp. v. AT&T Corp.*, 1995 U.S. Dist. LEXIS 18880, at *4 (S.D.N.Y. 1995). Those standards are all satisfied in this case.

(i) *Irreparable Harm*

34. As described above, the requested provisional relief is required to preserve the U.S. Assets and ensure that the Foreign Debtor's creditors receive equitable treatment. The threat to those assets is very real as at least one action seeking attachment on the U.S. Assets has already been filed and, in that particular case, attachment relief has been granted. Without having engaged in discovery, it is unclear at this stage the extent to which the attachment and/or garnishment orders have actually been executed. Nevertheless, there is no doubt that the threat of attachment or garnishment is imminent.

(ii) *Likelihood of Success on the Merits*

35. The Foreign Debtor will be entitled to relief identical to the provisional relief requested in this motion upon recognition of the Singapore Proceeding as a foreign main

proceeding. *See* 11 U.S.C. §§ 1520 and 1521. Thus, in order to show a likelihood of success on the merits, the Petitioner must show that the Court is likely to grant recognition as such.

36. To qualify as a foreign main proceeding, the Petitioner must demonstrate: (i) that the Singapore Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code; and (ii) that the Singapore Proceeding is pending in the country where Armada Singapore has its center of main interests. *See* 11 U.S.C. § 1517.

37. Section 101 (23) of the Bankruptcy Code states that:

The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). As demonstrated by Exhibit A to the Petition, the Singapore Proceeding qualifies as a foreign proceeding.

38. As stated above, a foreign proceeding is classified as a foreign main proceeding if it is pending in the country where the debtor has its center of main interests ("COMI"). *See* 11 U.S.C. § 1517(b)(1). Section 1516 establishes a presumption that the debtor's registered office is the debtor's COMI. *See* 11 U.S.C. § 1516 ("In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests."). Additionally, COMI is analogous to the "United States' concept of 'principal place of business.'" *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 336 (S.D.N.Y. 2008). As such, courts will look to factors such as the location of the debtor's headquarters, the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company), and the

location of the debtor's primary assets, among other things, to determine the foreign debtor's COMI. *Id.*

39. The above factors conclusively favor a finding that Armada Singapore's COMI is Singapore. Armada Singapore's head office is located in Singapore, Armada Singapore's managing director is located in Singapore, Armada Singapore is incorporated under the laws of Singapore, and Armada Singapore has numerous employees that work out of the Singapore office. As such, the Singapore Proceeding constitutes a foreign main proceeding and the Petitioner will be entitled to the relief requested upon entry of the order for relief. Accordingly, the Petitioner enjoys a likelihood of success on the merits.

(iii) **Balance of Hardships**

40. The balancing of the hardships tips decidedly in favor of the Petitioner in this Application. Enjoining the attachment, seizure, transfer and lien and/or judgment enforcement of any parties with respect to the U.S. Assets will prevent their permanent loss to the estate. By contrast, such parties will be able to participate, as creditors in the liquidation of the Foreign Debtor, on an equitable basis with other creditors similarly situated. Accordingly, the Petitioner is entitled to the requested provisional relief.

HEARING DATE AND NOTICE

41. The Petitioner requests that the Court set the date for a hearing on her request for continuing provisional relief by order to show cause (the "Hearing Date") with *ex parte* relief. If no objections to this Application are filed by the date ordered for such objections, the Petitioner requests that the Court enter the proposed order granting continuing provisional relief without a hearing, pursuant to Local Rule 2002-1.

42. The Petitioner proposes that once a Hearing Date has been set by the Court, notice will be given as reasonable and appropriate under the circumstances in the Singapore Proceeding

and in this District. Specifically, the Petitioner proposes serving copies of the Application and related documents by first-class U.S. mail, overnight courier or hand delivery, if practical, on (a) the Office of the United States Trustee, (b) counsel for the parties known to the Petitioner as having filed actions against Armada Singapore in the United States, (c) any known party in interest in accordance with each such party's last known contact information, and (d) any party in interest that becomes known to the Petitioner within two (2) business days following the time any such party is identified by the Petitioner.

43. The Petitioner and Foreign Debtor believe that such notice and service is reasonable and proper under the circumstances, and that no other or further notice is necessary or appropriate.

44. No previous application for the relief requested in this Application has been made in this or any other court in the United States.

REQUEST FOR WAIVER OF LOCAL BANKRUPTCY RULE 9013-1(b)

45. It is respectfully requested that this Court waive and dispense with the requirement set forth in Rule 9013e-1(b) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York that any motion filed shall be accompanied by a memorandum of law on the grounds that the relevant authorities in support of the Application are contained herein.

WHEREFORE, the Petitioner respectfully requests that this Court (i) enter an Order to Show Cause, substantially in the form of Exhibit A hereto, granting *ex parte* provisional relief, (ii) schedule a Hearing Date to consider the request for continuing provisional relief, (iii) ultimately enter an order, substantially in the form of Exhibit B hereto, granting the provisional relief requested herein, and (iv) grant such other and further relief as may be just and proper.

Dated: New York, New York
January 7, 2009

Respectfully submitted,

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