

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 50

Companies Winding Up No 270 of 2018

Between

Industrial Floor & Systems Pte Ltd

... Plaintiff

And

Civil Tech Pte. Ltd.

... Defendant

GROUND OF DECISION

[Companies] — [winding up]
[Civil Procedure] — [stay of proceedings]

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Industrial Floor & Systems Pte Ltd

v

Civil Tech Pte Ltd

[2019] SGHC 50

High Court — Companies Winding Up No 270 of 2018

Ang Cheng Hock JC

8 February 2019

6 March 2019

Ang Cheng Hock JC:

Introduction

1 On 8 February 2019, I made an order for the defendant to be wound up and for Mr Lau Chin Huat of Lau Chin Huat & Co to be appointed as the liquidator of the defendant. The debt owed by the defendant to the plaintiff in the sum of S\$292,568.91 was undisputed. The defendant has now appealed against my order. I thus set out the reasons for my order below.

Background

2 The plaintiff is Industrial Floor & Systems Pte Ltd which carries on the business of supplying construction materials. The defendant is Civil Tech Pte Ltd which carries on a building and construction business. In May 2018, the defendant awarded a contract to the plaintiff, for the supply by the plaintiff of materials and labour in respect of epoxy coatings to a four-storey Production

Building and a Single Storey Central Utility Building at 70 Pasir Ris Industrial Drive 1.¹ The defendant was the main contractor for the project.

3 The plaintiff carried out the works pursuant to the contract. A total of four invoices were issued by the plaintiff to the defendant, for the total amount of S\$399,568.91.² The defendant only paid the first invoice which was in the amount of S\$107,000.00.³ The remaining three invoices were unpaid.

4 On 28 September 2018, the plaintiff wrote to demand payment of the amount due under the second and third invoices. The plaintiff also stated that it was stopping work with immediate effect.⁴ A letter of demand from the plaintiff's solicitors soon followed on 3 October 2018.⁵

5 On 9 October 2018, through the plaintiff's solicitors, a statutory demand issued pursuant to s 254(2)(a) of the Companies Act (Cap 50, 2006 Rev Ed) was served by hand on the defendant at its registered office.⁶ There was an acknowledgment of receipt in the form of the defendant's company stamp on the file copy of the statutory demand.⁷ Several other statutory demands were served on the defendant that month.

6 On 17 October 2018, the defendant held a meeting with its creditors, including the plaintiff, and proposed to pay 50% of the debt due to all of them.⁸

¹ Tee Su Sim ("TSM") 1st affidavit, para 7.

² TSM 1st affidavit, para 8-9.

³ TSM 1st affidavit, para 10.

⁴ TSM 1st affidavit, p 22.

⁵ TSM 1st affidavit, p 23-24.

⁶ TSM 1st affidavit, para 15; CCH 2nd affidavit, para 2.

⁷ Chew Chin Heng ("CCH") 2nd affidavit, p 7.

It was explained in a subsequent letter dated 22 October 2018 from the defendant to its creditors that it was facing “very tight cash flow for the next 18 months” and that it was looking for a “third party investor”.⁹ This was followed up by another letter from the defendant dated 1 November 2018 to its creditors offering to pay 50% of their debt within “the next two to three months” from funds that were expected to be received from a company with which it was in a joint venture for a construction project.¹⁰ This is elaborated upon later at [19].

7 The plaintiff filed this winding-up application on 8 November 2018.

The other winding-up applications and supporting creditors

8 When the plaintiff’s winding-up application came to be heard by me on 8 February 2019, there were five other winding-up applications pending against the defendant that were also fixed before me. All these applications were filed by creditors on the basis of statutory demands served on the defendant in the month of October 2018, which remained unsatisfied as at the date of the hearing.

9 In CWU 242/2018, Allinton Engineering & Trading Pte Ltd, which had obtained an order substituting itself as the applying creditor, was owed the amount of S\$80,669.48 plus interest and costs under a judgment of the District Court.

10 In CWU 269/2018, the applying creditor, LY Structure Engineering Pte Ltd, was owed the amount of S\$172,319.35 plus interest and costs under an adjudication determination which was only partially paid by the defendant.

⁸ TSM 1st affidavit, para 17.

⁹ TSM 1st affidavit, p 26.

¹⁰ TSM 1st affidavit, p 27.

11 In CWU 273/2018, the applying creditor, Singapore Island Cruise & Ferry Services Pte Ltd, was owed the amount of S\$245,135.93 under invoices issued to the defendant for services that had been rendered.

12 In CWU 275/2018, the applying creditor, Tat Hong Plant Leasing Pte Ltd, was owed the amount of S\$437,788.57 plus interest and costs under a judgment of the High Court.

13 In CWU 276/2018, the applying creditor, Eliktrical Engineering Pte Ltd, was owed the amount of S\$360,601.64 plus interest and costs under an adjudication determination which was completely unpaid.

14 The creditors who had filed these other winding-up applications had come to an agreement with the plaintiff in the present proceedings (CWU 270/2018) that only the plaintiff would proceed with its application to seek a winding-up order. This was to save cost and expense for the other creditors, eg, the expense of advertising.

15 I should also mention that there were also a number of supporting creditors for CWU 270/2018 who appeared before me at the hearing on 8 February 2019. These were: (i) Fine Build (E&C) Pte Ltd, (ii) Buildo Engineering Pte Ltd, (iii) NSL Fuel Management Services Pte Ltd, (iv) Eng Lee Equipment Pte Ltd, and (v) P-Four (2007) Pte Ltd.

The hearing on 8 February 2019

16 At the commencement of the hearing, Mr John Ng (“Mr Ng”), who appeared for the plaintiff, informed me of the agreement referred to at [14] and that his instructions were to proceed to obtain a winding-up order against the

defendant.

17 Mr Ashok Kumar Rai (“Mr Rai”) appeared for the defendant at the hearing. He did not dispute the debts owed to the plaintiff or to any of the other creditors. But, he informed me that the defendant had, in the afternoon of the day before, filed applications in all six pending CWU applications that all further proceedings in the CWU applications be stayed. He then sought an adjournment of CWU 270/2018 until the stay applications could be determined.

18 Mr Ng opposed the request for an adjournment. Most of the other creditors who had filed CWU applications referred to above similarly objected to any adjournment or expressed their disquiet at the latest turn of events.

19 When I asked Mr Rai to explain the basis of the stay applications, he informed me as follows:

- (a) In 2015, the defendant had entered into a joint venture with Penta-Ocean Construction Company Limited (“Penta-Ocean”) for the purposes of carrying out the design, construction, completion and maintenance of the ground improvement works for a project, which involved the construction of Terminal 5 for Changi Airport. The joint venture, POC-CT JV, was awarded the sub-contract to carry out such works by the main contractor, which was said to be Penta-Ocean itself.¹¹
- (b) Penta-Ocean has not been making payments to POC-CT JV for the works done under the sub-contract. On 5 February 2019, which was three days before the hearing, on behalf of the POC-

¹¹ Tan Hang Meng (“THM”) 1st affidavit, para 10.

CT JV, the defendant served a payment claim of S\$355,728,942.85 on Penta-Ocean.¹² The defendant believed that it was entitled to take such action on behalf of the POC-CT JV.

- (c) The defendant expected that the payment claim would be disputed by Penta-Ocean, which would then necessitate the commencement of adjudication proceedings under the provisions of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) (“SOPA”). It was estimated that this would take a few months to be resolved.
- (d) Hence, the applications filed on 7 February 2019 seek to stay all further proceedings in the CWU applications until “after POC-CT JV’s claim made by way of Payment Claim No. 44 dated 5 February 2019 has been resolved either by agreement between the [d]efendant and [Penta-Ocean] or by an adjudication determination under the [SOPA]”.

20 On this basis, Mr Rai asked me to adjourn the CWU 270/2018 until the end of April 2019, when the court could then take stock of the situation and decide whether a further adjournment was necessary and, if so, for how long. This is because, it was argued, the court would probably be in a better position at that time to decide when it was likely that payment would be made by Penta-Ocean to the POC-CT JV and then to the defendant.

21 I was unpersuaded that this was a sufficient reason to grant an adjournment of CWU 270/2018. First of all, it was not disputed that the

¹² THM, 1st affidavit, para 4.

defendant was in dire financial straits. It was facing multiple claims and five other winding-up applications. Mr Ng informed me that there were more than 20 lawsuits pending against the defendant. Any delay in the winding-up of the defendant would permit it to continue incurring debts in the course of its business when it was already clearly insolvent. I also noted the point made by Mr Ng, on behalf of the plaintiff, that the defendant had not made any proposals for payment of its debts to its creditors, which were found to be acceptable. Nor had the defendant offered to provide any security to its creditors.

22 As for the dispute between the defendant and Penta-Ocean, no reason was furnished on affidavit as to why adjudication proceedings were only now being contemplated when the defendant was already in serious financial trouble since October 2018, if not earlier. I only have Mr Rai's explanation from the bar that the defendant had been trying to resolve its issues with Penta-Ocean amicably. He also could not provide any clarity as to when the dispute was likely to be resolved and payment received by the POC-CT JV. Even if payment is received by the POC-CT JV, there is the additional issue of when the defendant would receive its share of the payment.

23 I could not agree to adjourn CWU 270/2018 on an indefinite basis. That was effectively what the defendant wanted me to do since the request for an adjournment to the end of April 2019 was not expected to be the final one. Instead, as Mr Rai accepted, a further adjournment would in all likelihood be needed if Penta-Ocean protracted its payment dispute with the POC-CT JV through the court process after the adjudication determination is obtained.

24 Further, I had doubts as to the correctness of the approach taken by the defendant in unilaterally purporting to serve a payment claim on behalf of the

POC-CT JV. Mr Rai informed me that the JV was not an incorporated entity but an arrangement between the defendant and Penta-Ocean that was governed by a Joint Venture Agreement dated 25 April 2015 (“JVA”).¹³ When I queried Mr Rai whether the terms of the JVA permitted the defendant to serve payment claims on behalf of both parties to the joint venture, he was not able to provide me with any satisfactory answer, other than to assert that the defendant would be taking the position that it could do so if its authority to act on behalf of the other joint venture party was challenged in the adjudication proceedings. Given this, I was concerned that it would not be a straightforward process at all for the defendant to be able to recover what was due to it from the joint venture with Penta-Ocean. From what I was being told, it was obvious that the relationship between the defendant and Penta-Ocean had soured and, in this regard, I noted that disputes under the JVA are to be referred to arbitration at the Singapore International Arbitration Centre.¹⁴

25 I asked Mr Rai whether the defendant had considered other statutory remedies available to insolvent companies in the situation that the defendant has found itself in. I had in mind the judicial management regime. That could be appropriate for a company that might be successfully rehabilitated whether through the infusion of new capital or otherwise, even though it is presently unable to pay its debts as they fell due. Surprisingly, Mr Rai informed me that the defendant had already considered and dismissed the possibility of applying for judicial management.

26 Finally, Mr Rai also argued that the defendant should be given an opportunity to fend off a winding-up order because it has an established track

¹³ THM 1st affidavit, p 38-49.

¹⁴ THM 1st affidavit, p 46.

record as a contractor in Singapore, having worked on several large projects in the past. He submitted that this was a public policy consideration that the court should take into account. I was unable to accept this submission. Quite to the contrary, it would not be in the public interest for the court to permit a heavily insolvent company to carry on its business operations and keep its debtors waiting indefinitely for any prospect of recovery.

Conclusion

27 In the circumstances, I was not satisfied that sufficient grounds had been furnished by the defendant for the court to exercise its discretion to adjourn CWU 270/2018 until the end of April 2019. As there was no dispute at all that the defendant was indebted to the plaintiff for the amount claimed, I ordered that the defendant be wound-up.

28 The other winding-up applications referred to at [9] to [13] were subsequently adjourned on 13 February 2019, at the request of the applying creditors, until the determination of the appeal against my orders made in CWU 270/2018.

Ang Cheng Hock
Judicial Commissioner

John Ng (AsiaLegal LLC) for the plaintiff;
Ashok Kumar Rai (Eversheds Harry Elias LLP) for the defendant;
Beverly Wee (Insolvency & Public Trustee's Office) for the official
receiver;
Assomull Madan (Assomull & Partners) for the plaintiff in HC/CWU
242/2018;
Alvin Sia (LIMN Law Corporation) for the plaintiff in HC/CWU
269/2018;
Adly Rizal (Tito Isaac & Co LLP) for the plaintiff in HC/CWU
273/2018;
Chua Cheng Yew (Wong Tan & Molly Lim LLC) for the plaintiff in
HC/CWU 275/2018;
Rachel Tan (Clasis LLC) for the plaintiff in HC/CWU 276/2018;
Tan Yew Teck (TYT Law Practice) for the supporting creditor, Fine
Build (E&C) Pte Ltd, in HC/CWU 269/2018 and HC/CWU
270/2018;
Lim Bee Li (Optimus Chambers LLC) for the supporting creditor,
Buildo Engineering Pte Ltd in HC/CWU 242/2018, HC/CWU
269/2018, HC/CWU 270/2018, HC/CWU 273/2018, HC/CWU
275/2018 and HC/CWU 276/2018;
Grismond Tien (Infinitus Law Corporation) for the supporting
creditor, NSL Fuel Management Services Pte Ltd, in HC/CWU
242/2018, HC/CWU 269/2018 and HC/CWU 270/2018;
Charlene Cheam (K&L Gates Straits Law LLC) for the supporting
creditors, Eng Lee Equipment Pte Ltd and P-Four (2007) Pte Ltd in
HC/CWU 269/2018 and HC/CWU 270/2018.
