

Re Jiangshan Investment Consortium Ltd (in liquidation)
[2007] SGHC 91

Case Number : OS 101/2003, SUM 1979/2006
Decision Date : 05 June 2007
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Foo Maw Shen (Yeo Wee Kiong Law Corporation) for the liquidator; Tan Anamah Nee Nagalingam (Ann Tan & Associates) for Fong Kam Mui; Ng Yuen (Ng & Koh) for Grandville Hotel & Resort International Pte Ltd, Mr Lim Ee Ann and Ms Tham Lai Ping Winnie
Parties : —

Companies – Winding up – Directions relating to conduct of winding up – Directions of how dividend due to contributory of company was to be paid – Competing claims – Claim by ex-wife of contributory on basis of orders of court directing contributory to pay ex-wife various amounts – Claim by designated recipients by virtue of deed – Whether deed operating in priority to orders of court which ex-wife obtained against contributory – Whether garnishee order may be made against liquidator – Whether deed effective even though not in correct format – Companies (Winding Up) Rules (Cap 50, R 1, 2006 Rev Ed) – Companies Act (Cap 50, 1994 Rev Ed)

5 June 2007

Judgment reserved.

Judith Prakash J

1 In May 2006, the liquidator of Jiangshan Investment Consortium Ltd (“the company”) filed the summons which is presently before me in order to obtain various directions relating to the conduct of the winding up. By that date, the liquidator had completed the bulk of the work relating to the liquidation and he needed liberty to convene a meeting of creditors in order to obtain instructions on the declaration of the final dividend. The liquidator, however, also asked for directions to be given to him in respect of the payment of dividends to one Mr Lam Chang Er, a contributory of the company. Most of the directions the liquidator asked for were not controversial and they were duly granted. At the end of the day, only one matter was disputed and required further submission and that was the question of how the dividend due to Mr Lam had to be paid as there were competing claimants for the money. This is the issue that I now have to decide.

Background

2 The parties to the dispute are as follows. On the one hand, there is Mdm Fong Kam Mui, Mr Lam’s ex-wife who claims an entitlement to the dividend on the basis of the awards for maintenance and division of matrimonial property that were made in her favour by the court consequent upon the divorce proceedings between herself and Mr Lam. On the other hand, there is a group comprising three other contributories to the company, one Mdm Tham Lai Ping, Winnie (“Mdm Tham”) and a company called Grandville Hotel and Resort International Pte Ltd (“Grandville”) who claim that Mdm Tham is entitled to payment of the money in dispute by virtue of a document entitled “Deed of Waiver Release and Instruction” (“the Deed”) that was executed by Mr Lam and other contributories of the company. The liquidator and the company are neutral parties. The liquidator’s only concern is to make payment to the correct party and, as he has not been able to determine who that is, he has asked for the court’s determination on the issue.

3 Between December 2004 and June 2006, various court orders were made in relation to the matrimonial and other proceedings between Mr Lam and Mdm Fong. Among these were orders that Mr Lam was to pay his ex-wife the sum of \$250,000 as arrears of maintenance and mortgage payments, a further sum of \$30,000 as arrears of maintenance and costs and a sum of \$169,685 being the judgment amount due in DC Suit 1511 of 2005. Mr Lam did not pay these various amounts and interest therefore accrued on the same. In addition, Mdm Fong had a claim against him for \$76,358 in respect of bank loan/house mortgage instalment payments for the period from July 2005 to September 2006 which she had paid on his behalf and in respect of which he had to reimburse her. I should also note here that on 18 March 2005, Mr Lam executed an irrevocable letter of authority addressed to the liquidator whereby he authorised the liquidator to pay Mdm Fong the sum of \$250,000 from the amount due to him upon the liquidation of the company and that on 15 August 2006, he executed a second irrevocable letter of authority in Mdm Fong's favour, this time for \$25,000.

4 In order to protect her interests, Mdm Fong's solicitors took out garnishee applications against the liquidator in the Subordinate Courts. In Summons-In-Chambers No. 650385 of 2006, Mdm Fong applied for the sum of \$280,000 in the hands of the liquidator to be attached; in Summons-In-Chambers 9734 of 2006, she applied for the sum of \$186,879.28 to be attached and in Summons-In-Chambers 650428 of 2006 she applied for the sum of \$76,356 to be attached.

5 In the meantime, the company had been ordered to be wound up by an order of court made on 27 October 2000. On 25 March 2003, the present liquidator, Mr Chia Soo Hien, took over the role of liquidator of the company from the official receiver. He then took steps to, *inter alia*, realise the company's assets. These steps resulted in the sale of the company's entire shareholding in its subsidiary in China. The sale took place in 2005.

6 In June 2005, the liquidator issued a notice calling for proofs of debt to be lodged by the company's creditors. He then adjudicated these proofs and admitted or rejected them accordingly. Among the proofs rejected was that filed by Grandville. Grandville applied to court on 18 March 2006 for the rejection to be reversed but this application was withdrawn by consent when it came up for hearing on 4 April 2006. Grandville's claim against the company was for a sum of more than US\$4m which was claimed on the basis that the company was liable to account to Grandville for the said sum as a trustee or fiduciary. It should be noted that the company owned 60% of the issued share capital of Grandville whilst Mdm Tham owned the remaining 40% and it was Mdm Tham who was actively pursuing the claim against the company.

7 The application to reverse the rejection of the proof of debt was withdrawn because Mdm Tham had managed to come to a compromise agreement with the various contributories of the company. As a result of this compromise, Grandville executed a deed in favour of the company releasing the company from its claims. At the same time, seven of the contributories of the company who together held 74% of the issued and paid up capital of the company entered into the Deed. Mr Lam was one of these seven contributories. The recitals to the Deed read as follows:

WHEREAS:-

(1) The existing shareholding (*sic*) of the Company are as follows:-

...

(2) ...

(3) The amount of money available for distribution in the Company is in the region of S\$9,000,000 and the Liquidator has adjudicated and admitted an approximate amount of S\$300,000 ("Admitted Claims").

(4) This Deed is entered into on the understanding below. The Liquidator has not admitted the claim of **GRANDVILLE HOTEL AND RESORT INTERNATIONAL PTE LTD** (RC No. 199600588G) of 1 Maritime Square #09-10 Harbourfront Centre, Singapore 099253 ("GHRI") amounting to approximately US\$4,813,535.91 (the "**GHRI Claim**") and the claims of ST of \$150,000, EH of S\$150,000, TCMJ of S\$25,000 and LYS of S\$25,000 (collectively "the Participating Shareholders Unadmitted Claims"). Further the Liquidator has not admitted the claims of Ong Khim Keat in excess of S\$80,000.

(5) After deducting the Admitted Claims and the Liquidator's expenses, the Liquidator intends shortly to distribute to the shareholders of the Company according to their respective shareholding the balance amount available for distribution ("the Distribution Sum").

(The Distribution Sum available for distribution to the Participating Shareholders is called the "Participating Shareholders Entitlement")

(6) In the interest of an expeditious resolution of the matter and the (*sic*) in settlement of the GHRI Claim and the Participating Shareholders Unadmitted Claims, the Participating Shareholders undertake the covenants below and wishes (*sic*) to instruct the Liquidator on how to distribute the Participating Shareholders Entitlement to the Participating Shareholders.

8 The operative part of the Deed contained six clauses numbered A to F. By cll A and B, the seven participating contributories gave instructions to the liquidator as to the way in which he was to distribute their respective entitlements in the assets of the company. The liquidator was instructed to pay a certain percentage of each contributory's entitlement to five named persons ("the designated recipients") one of whom was Mdm Tham. By cl F, in consideration of the liquidator acting in accordance with the instructions set out in the Deed, each of the contributories agreed to indemnify him from any loss or damage arising from his so acting.

9 A copy of the Deed together with the release of claim executed by Grandville were forwarded to the liquidator sometime towards the end of March 2006. It should be noted that whilst Grandville's release was dated 16 March 2006, the Deed was undated. It was accepted by all parties, however, that it must have been executed in March 2006.

10 By the end of April 2006, the liquidator was ready to complete the liquidation process. He had in his hands the proceeds derived from the sale of the company's subsidiary in China and he also had the company's shareholding in Grandville which he intended to distribute *in specie*. The liquidator prepared a schedule setting out the estimated final accounts of the company as at 24 April 2006. This showed that after payment of all creditors, his professional fees and expenses, and provision being made for income tax, there would be a sum of \$8,377,325.85 to be distributed to the nine contributories of the company. Of this sum, the amount payable to Mr Lam was estimated as being about \$552,958.78. This sum was insufficient to allow the liquidator to pay both the amounts due to the designated recipients in accordance with Mr Lam's instructions as well as the full amount claimed by Mdm Fong.

11 On 5 May 2006, the liquidator applied to court for various directions relating to the last stages of the winding up. One of the directions he wanted was to the manner in which payment should be made of the dividends Mr Lam would be entitled to as a contributory of the company.

The proceedings

12 The first hearing of the liquidator's summons was attended, *inter alia*, by counsel representing Mdm Fong and counsel representing Grandville. Orders were made in respect of the non-controversial prayers of the summons and other prayers including that relating to Mr Lam's dividends were adjourned. The next hearing took place on 6 September 2006. That hearing was attended by, *inter alia*, counsel for Mdm Fong, counsel for Mdm Tham and her husband, Mr Lim Ee Ann (a contributory), counsel for Grandville and Mr Henry Lim Hen Lin, a contributory in person. I was informed that Mdm Tham had an interest in the summons because of her interest in Grandville which had a claim against the company. Although that claim had been compromised, it was alleged that the compromise would be avoided if the liquidator did not make payment to the designated recipients in accordance with the provisions of the Deed.

13 I did not consider that the distribution of the entire amount due to the contributories should be held up because of the dispute between the designated recipients and Mdm Fong. I therefore gave orders for payment to be made to the various contributories but also ordered that from the amount payable to Mr Lam (which by then had been ascertained to be \$559,883.10) the liquidator was to retain the sum of \$107,200 (being approximately the amount due to the designated recipients) and that the balance could be paid to Mdm Fong with such payment constituting a discharge to the liquidator in respect of his obligations to Mr Lam for the sum paid. The question of how the retained sum should be distributed was adjourned to a special date. Thereafter, the liquidator paid Mdm Fong the sum of \$275,000 pursuant to the irrevocable letters of authority in Mdm Fong's favour that Mr Lam had executed. On 3 October 2006, one of the garnishee orders was made absolute by consent and, as a result thereof, a further amount of \$177,683.10 became payable to Mdm Fong out of Mr Lam's entitlement.

14 The substantive arguments on whether Mdm Fong was entitled to claim the remaining \$107,200 or any part thereof or whether this amount should be distributed among the designated recipients took place on 17 October 2006 and 16 March 2007. At these hearings, Mr Foo Maw Shen appeared for the liquidator and informed the court that the liquidator was present to assist the court as he had no interest in the outcome of the dispute. Mdm Fong was represented by Mrs Ann Tan. Mr Ng Yuen appeared for Grandville and Mr Lim Ee Ann and also represented three of the designated recipients (including Mdm Tham).

The arguments

15 At the hearing on 17 October 2006, Mrs Tan informed the court that (as stated above) one of the provisional garnishee orders had been made absolute by consent and this order covered the sum of \$177,683.10. The other two provisional garnishee orders had been discharged. The ground of the discharge was that there had been no debt due and accruing at the time of service of the garnishee orders *nisi*, the last of which had been made on 21 June 2006.

16 Mrs Tan submitted that the designated recipients did not have a claim which had priority to that of Mdm Fong. This was because the former's claim was based on the Deed, an undated document that did not operate in priority to her client's claim. The Deed was, upon close scrutiny, an internal arrangement between the liquidator and the contributories to pay the designated recipients a certain amount representing their share in Grandville's claim against the company. The sum of \$107,200 represented Mr Lam's share of the amount which the contributories had agreed was due to Grandville and since the Deed was in effect a separate arrangement between the contributories and Grandville, it did not have precedence over the orders of court which Mdm Fong had obtained against Mr Lam and which put him under a legal liability to pay her the amounts adjudged in the orders.

Mrs Tan submitted that Mdm Fong should receive all moneys awarded to her under the various orders of court (and not simply the sum of \$452,683.10 which the court had so far instructed the liquidator to pay her from the dividends due to Mr Lam).

17 Mr Ng contended on behalf of the designated recipients that where a debt had been properly assigned by the debtor to a third person, then a garnishee order issued by a creditor could not attach. He submitted that a direction by a creditor to his debtor to pay the debt to a third party would be an absolute legal assignment of the debt provided that the third party was aware of the direction and proper notice was given to the debtor. In this case, the direction to the debtor (being the liquidator) was contained in the Deed and notice of that direction was given both to the liquidator when he was furnished with a copy of the Deed and to the third party (in this case Mdm Tham). In any case, according to the case of *Spence v Coleman (The Inspector-General in Companies Liquidation, Garnishee)* [1901] 2 KB 199 ("the *Spence* case"), money that was held by a liquidator was held by him as an officer of the court and was not a debt and therefore could not be garnished. As far as a contributory was concerned, however, the Companies (Winding Up) Rules (R1, 2006 Rev Ed) ("the Rules"), r 101(7) provided that where a contributory wished to direct the liquidator to pay dividends due to him to a third party he should lodge an authority in Form 52 of the First Schedule to the Rules ("Form 52") with the liquidator. Thus, the Rules obviously contemplated that the liquidator would be bound by a proper direction from a contributory to pay that contributory's dividends in accordance with the directions.

18 At the adjourned hearing, counsel for Mdm Fong submitted that the Deed was not effective as an assignment of Mr Lam's dividends because it was made some time in March 2006 at which time the debt from the liquidator to Mr Lam had not accrued. Mrs Tan did not agree with the stand taken by the liquidator that the entitlement had accrued on 6 September 2006 when the summary of estimate funds available for distribution to the contributories was made available to them by the liquidator. She reminded me that on 24 April 2006, the liquidator had issued his first estimated summary of funds available for distribution. But even taking the 24 April 2006 as the date on which Mr Lam's entitlement was ascertained, the Deed would still not be effective as it purported to assign a debt which was not in existence as at the date it was executed. She cited various authorities for the proposition that it is impossible even in equity to assign a debt which is not yet in existence. Therefore, the Deed was void as an assignment and the moneys due to Mr Lam should not be paid to Mdm Tham by virtue of the Deed.

19 She also argued that the sum of \$107,200 in the hands of the liquidator ought not to be paid to Mdm Tham as Mr Lam had not executed an instruction in the format of Form 52 directing the liquidator to pay that sum to Mdm Tham. The other contributories had executed the said form indicating their firm instructions to the liquidator as to the manner in which their dividends should be paid. Instead of being given to Mdm Tham, the sum of \$107,200 ought to be given to Mdm Fong as she had valid orders of court directing Mr Lam to make payment of various amounts to her. The moneys paid to Mdm Fong so far were not sufficient to discharge Mr Lam's debt. She had received \$460,262.66 so far and there was a balance due to her of \$109,737.34.

Discussion

20 In order to decide who the \$107,200 should be paid to, it is best to consider the claims of each of the claimants separately.

21 First, there is Mdm Fong's claim. She claimed by virtue of the garnishee orders *nisi* that she had obtained in the Family Court. There are two difficulties with her claim. The first difficulty is a legal one and that is the case law that indicates that no garnishee order may be made against a liquidator.

The second difficulty is a more practical one. At the time when the application first came before me, there were three garnishee orders *nisi* which Mdm Fong had procured but there were no garnishee orders absolute. By the time of the hearing on 17 October 2006, one garnishee order *nisi* had been made absolute by consent but that order did not cover the \$107,200 which I had directed to be set aside pending full argument, and the other two garnishee orders *nisi* had been discharged. Thus, as of the dates of the two hearings there was no garnishee order absolute against the liquidator in Mdm Fong's favour in respect of the \$107,200. As such even if it is theoretically possible to garnish moneys in the hands of the liquidator, that would not assist Mdm Fong as there is no existing court order compelling the liquidator to make payment to her. In these circumstances, therefore, it would seem that in any case, at the moment, Mdm Fong has no basis for her claim to be paid \$107,200 by the liquidator.

22 I would, however, still like to deal with the legal issue as that is one that has not yet been considered in our courts. In 1889, in the case of *Prout v Gregory* (1889) 24 QB 281 the defendant who was a judgment debtor of the plaintiff was a creditor in the administration of the estate of a deceased insolvent and the plaintiff sought to attach a sum payable to the defendant as a dividend in the administration of that estate. The garnishee was the official receiver of the Birmingham District, in whom the estate was vested as trustee under the provisions of the relevant bankruptcy legislation. It was held that the dividend could not be garnished. Lord Coleridge CJ took the view that to make the garnishee order asked for would be to interfere with the administration of an estate which had to be administered under the provisions of a statute expressly dealing with the subject matter and containing express directions as to the manner in which the subject matter had to be dealt with. Mathew J agreed. He said (at p 282):

It is quite impossible to treat this as a debt, or to say that the official receiver is a debtor; he is responsible to the Court for the due performance of his duties, but is not a debtor of the persons entitled to receive dividends from the estate. The point is not wholly destitute of authority, for a somewhat similar question arose in *Dolphin v Layton* ... where it was held that money in the hands of the registrar of a county court as an officer of the court was not subject to process of attachment.

23 A similar approach was taken in the *Spence* case. Spence and Coleman were judgment creditor and debtor respectively. Coleman had a share in a company that was wound up and after the company's debts had been settled, the liquidator found that there was surplus payable to the contributories. The liquidator attempted to pay Coleman his share of the surplus but since he could not locate Coleman, the latter's aliquot share was paid into the "Companies liquidation account" with the Bank of England controlled by the Inspector-General. Spence then obtained a garnishee order absolute against the Inspector-General to pay him the moneys due to Coleman. The court set aside this order on the basis that the Inspector-General was obliged to deal with the moneys in accordance with the governing statute. It was also held that an aliquot share payable to a contributory that had been paid into a company liquidation account was not a debt and could not be garnished by the judgment creditor of the contributory. Collins LJ stated (at p 208):

A number of cases have been cited, but I need not go through them in detail. The effect of them is, that when it is the duty of some officer of the Court to distribute money which is in his hands in a particular way the relation of debtor and creditor is not constituted between him and the person who is entitled to all or some part of the money which is in his hands. He is an officer of the Court and his duty is to the Court, and no debt is created which can be the subject-matter of attachment against him as garnishee. That is the principle of those cases, and it has been applied to liquidators, trustees in bankruptcy, and the registrar of a county court. ...

Now, for this purpose the person (I will assume it is the Inspector-General) who has the custody of this particular sum of money is simply an officer of the Board of Trade. He can do nothing with it except under their order made on an application in the manner pointed out in sub-s. 5. He is in the same category as an officer of the Court, as the registrar of a county court, or a trustee in bankruptcy. Every principle which has been laid down as regards those officials applies equally to him. As between him and the judgment debtor there is only an obligation on his part, if and when he is ordered by the Board of Trade so to do, to hand over the money to the person to whom the Board of Trade directs him to hand it. That being so, it is clear, I think, that there was no debt due to the judgment debtor.

24 The principles established in the *Spence* case and *Prout v Gregory* were established more than 100 years ago. They have not been reversed or departed from subsequently. It would therefore appear that the general principle to be applied is that when a person holds money pursuant to a statutory duty that person cannot be the subject of a garnishee order. This is because the holder of the money is not the debtor of the person to whom the money is ultimately to be paid. This was the specific principle laid down by the *Spence* case. As stated in the extract of the judgment of Collins LJ above, when it is the duty of an officer of the court to distribute money which is in his hands *in a particular way* (meaning in accordance with a statute) there is no relationship of debtor and creditor between such officer and the person who is entitled to receive those funds. A liquidator is an officer of the court and he has a duty to apply the moneys received in the liquidation in accordance with the provisions of the Companies Act (Cap 50, 1994 Rev Ed) ("the Act"). Thus, he would not be considered to be the debtor of any creditor or contributory of the company.

25 There is an Australian decision that discusses the legal nature of a surplus that is held by a liquidator after all the debts of a wound up company have been settled. This decision adopts the principle in the *Spence* case and provides further support for the proposition that the liquidator in such a situation would not be the debtor of the contributories who are entitled to payment of that surplus and that there is no debt relationship between the two. In *Webb v Federal Commissioner of Taxation* 30 CLR 450, a highly profitable no-liability company went into voluntary liquidation pursuant to a scheme of reconstruction, and a new limited liability company was incorporated. The court was invited, for the purposes of tax assessment to consider whether the shares allotted to the members of the old company were "profit or bonus credited or paid" by the old company to the members within the meaning of the relevant taxation statute. Although the ratio of the case is not relevant for our purposes, the court made observations on whether the nature of a surplus was such that it amounted to a debt between a company and its members. At pp 479-480 of its judgment, the court said:

But, at all events, "profits credited or paid" are, as it seems to me, pointed to "profits" which have in some way been made a debt by the company to the shareholder, &c. In the case of a shareholder, that would be by a "dividend or bonus"-or even by "interest" used in the sense of distribution of profits. But the declaration of a "dividend" creates a debt ... Where there is no debt, or "debit", the word "credit" or the word "pay" in relation to profits is meaningless, for there is nothing calling for payment and there is no balance to be struck. *And in its essence the distribution of surplus assets in winding up creates nothing in the nature of a debt by the company to anybody (see Spence v Coleman). Nor is it a payment. The debts owing by the company have been paid; the debts owing to the company are gathered in; the contributories' positions are equalized or are as agreed; and the property of the company falls to be divided, not by the corporation, but among the corporators, for the company has itself ceased to have any use for it since its undertaking is at an end ... and it is on the road to dissolution. (emphasis added)*

26 It therefore appears that quite part from the fact that a person who has a legal duty to deal

with moneys in accordance with a statutory scheme cannot be a garnishee, in the case of a liquidator, no garnishee order can be made against him when he is holding the company's surplus funds as, in that situation, there is no debt to be attached by the order. In this case, therefore, Mdm Fong was not entitled to apply for garnishee orders in respect of the funds that the liquidator held for distribution to the contributories. The fact that there were court orders ordering Mr Lam to pay her certain amounts was irrelevant.

27 The next issue is whether the liquidator is bound to make payment to Mdm Tham and the other designated recipients in accordance with the Deed. To this question, Mdm Fong's answer was in the negative because, she argued, directions on distribution of a contributory's share of surplus funds could only be given by way of a properly completed and executed Form 52. Mr Ng, counsel for the designated recipients, submitted that the Deed was effective even though it was not in Form 52. He pointed out that under s 273(1) of the Act the liquidator should, in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or contributories at any general meeting. Further, under s 325(1), the court was entitled to have regard to the wishes of the contributories in all matters relating to the winding up of a company. These provisions showed that the wishes of the contributories had force in certain situations and could be heeded. Further, in *Low Gim Har v Low Gim Siah* [1992] 2 SLR 593, the court held that a unanimous shareholders' agreement relating to the distribution of specific company assets in specie had the effect of a unanimous resolution on the part of the shareholders. This case dealt with the issue whether a specific company asset had vested in a deceased shareholder's estate for distribution according to the will of the deceased in the context of a company's voluntary winding up. Mr Ng submitted that what was pertinent was the court's treatment of the shareholders' agreement as equivalent to a shareholders' resolution. In this case, he said, the liquidator and the court may treat the Deed as a resolution of the majority shareholders under s 273 of the Act and, more significantly, the court may treat the Deed as sufficient evidence of the wishes of the majority of the contributories (pursuant to s 325(1) of the Act) and therefore order payment out to the contributories and designated recipients in accordance with the terms of the Deed.

28 Having considered these arguments, I think that although the Deed was not a document in the format of Form 52, that did not prevent it from being a valid instruction to the liquidator as to how he should deal with the surplus funds in his hands in relation to the contributories who had executed the Deed. Rule 101 (7) states:

If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the liquidator a document in Form 52 set out in the First Schedule which shall be a sufficient authority for payment of the dividend to the person therein named.

It can be seen that the rule does not purport to set out an exclusive way for instructions to be given to the liquidator. It states that the person who wants to give such instructions regarding the payment of the dividend "may" do so by lodging a document in Form 52. It is clear that the rule provides a procedure for directions and that if this procedure is followed, then the directions would be complied with by the liquidator. This does not mean that there is no other way of giving the liquidator instructions. What is important is that when the instructions are given, they must be clear and in such form as to make it clear to the liquidator from whom they come and that they are irrevocable. The Deed, a formal document, fulfils those requirements. In my judgment, therefore, the liquidator is entitled to, and in fact should, follow the provisions of the Deed in the same way as he would follow the directions given in any Form 52 executed by any contributory. I also agree that I may treat the Deed as sufficient evidence of the wishes of the contributories who signed it and may therefore direct the liquidator to make payment of the surplus in accordance with its terms.

29 Mr Ng also made an argument to the effect that the Deed could be recognised as an equitable assignment in favour of the designated recipients. I think that there are difficulties with this argument because the law, as stated above, is that the surplus in the hands of the liquidator is not a debt that he owes any of the contributories. If it is not a debt, it is not a chose in action and it seems to me would not be assignable. I do not have to decide this point, however, since I have already accepted that the Deed is an effective payment instruction in the same way as Form 52 would be.

30 I therefore hold that the liquidator should pay the sum of \$107,200 to Mdm Tham and the other designated recipients in accordance with the terms of the Deed.

31 I will hear the parties on costs.

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