Sysma Construction Pte Ltd v EK Developments Pte Ltd
[2007] SGHC 36

Case Number : CWU 87/2006

Decision Date : 21 March 2007

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Pang Xiang Zhong (Peter Pang & Co) for the plaintiff; Hri Kumar and Benedict Teo (Drew & Napier LLC) for the defendant

Parties : Sysma Construction Pte Ltd — EK Developments Pte Ltd

Insolvency Law – Winding up – Liquidator – Creditors meeting called for appointment of liquidators of company being wound up and for appointment of committee of inspection – Whether nomination for appointment of liquidator wrongly rejected for being late – Whether liquidators and committee of inspection not appointed on wishes of majority creditors

Insolvency Law – Winding up – Winding up order – When court may stop voluntary winding up of company and grant leave to proceed with compulsory winding up of company – Principles considered by court

21 March 2007

Kan Ting Chiu J:

1 The defendant, EK Developments Pte Ltd ("the company"), was a company engaged in the development of real property. It was insolvent and was unable to carry on business, and the directors decided that it was to be wound up. The directors took steps for the company to be wound up voluntarily.

2 The plaintiff, Sysma Construction Pte Ltd, also wanted to wind up the company. But instead of allowing the voluntary winding up to proceed, it wanted that to be stopped, and for the company to be put under compulsory winding up. The plaintiff's conduct in these proceedings was not always consistent or easy to understand as a narration of the events that took place will show.

The voluntary winding up

3 On 24 May 2004, the company's directors lodged a statutory declaration under s 291(4) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act") with the Official Receiver that the company could not carry on business because it was insolvent, and appointed Mr Ewe Pang Kooi ("Mr Ewe") and Mr Loke Poh Keun ("Mr Loke") as the company's provisional liquidators.

4 On 23 June 2006, a creditors' meeting was convened in compliance with s 291 of the Act. The plaintiff was represented at the meeting by its director Mr Sin Soon Teng ("Mr Sin"), as well as a solicitor, Mr Pang Xiang Zhong ("Mr Pang"), who took an active and often argumentative part at the meeting. He also made a tape recording of the meeting, which was subsequently transcribed. That transcript was referred to and relied upon by both parties in the present proceedings.

5 The creditors' meeting was chaired by Mr Ewe. At that meeting, no one objected to the proposal to place the company under voluntary winding up. As liquidators had to be appointed to take charge

of the liquidation, the agenda for the meeting included an item for:

> [C]onfirming the appointment of Mr. Ewe Pang Kooi and Mr. Loke Poh Keun of Ewe, Loke & Partners of 8 Robinson Road, #08-00 ASO Building, Singapore 048544 as liquidators of the Company to act jointly and severally for the purpose of winding up the Company pursuant to Section 297 of the Companies Act, Cap. 50.

6 The plaintiff did not want Mr Ewe and Mr Loke to be the liquidators. Mr Pang sought to nominate Mr Don Ho Mun-Tuke ("Mr Ho") for appointment as the liquidator instead. The nomination was rejected by Mr Ewe on the ground that it should have been made at least 48 hours before the meeting. In the course of these proceedings, the company alleged that no consent to act had been obtained from Mr Ho. This was disputed, and in any event, it was irrelevant because Mr Ewe rejected Mr Ho's nomination solely on the ground that it was submitted late, and did not ask for the production of the consent.[note: 1] Mr Ewe offered to adjourn the meeting so that Mr Ho's nomination could be made in time, but Mr Pang would not take a stand on the offer and left that with Mr Ewe. (During these hearings, Mr Ewe admitted that he was mistaken in rejecting Mr Ho's nomination).

7 Mr Ewe decided to put that question to the meeting. He purported to put it to a vote by asking those who wanted an adjournment to raise their hands. Three persons did. Mr Ewe did not seek direct confirmation from the other persons at the meeting whether they wanted the meeting to go on. Instead he told the meeting:

> There are 31 of you here who submitted the Form 77 giving a total value of SGD13.5 million. The 3 parties who objected to the continuation of this meeting is SGD4.5 million which came to 33.3%, so based on the rest of you who do not object, I will continue the meeting because 67% say we should continue the meeting.

8 He then went on to the appointment of the liquidator and the transcript shows that he said:

> The first agenda is to confirm my appointment. I also use the same basis. Any objections?

There was no objection raised to the continuation of the meeting or the appointment of Mr Ewe and Mr Loke as liquidators. The sense of the meeting reflected in the transcript was that the meeting was to proceed, and with Mr Ewe and Mr Loke as the liquidators.

9 Mr Ewe erred when he had conducted the voting in the manner he did. He should have recorded the votes for and in opposition on the adjournment of the meeting and on the appointment of the liquidator. He should not have assumed that the rest of the persons present wanted the meeting to proceed, and wanted to appoint him and Mr Loke as the liquidators of the company.

10 Those were not the only errors. Another error had been made even before the meeting started. This was in the item of the agenda for the appointment of the liquidators, set out in [5] above. The meeting was to *appoint* liquidator(s) for the company, and not to *confirm* the appointment of Mr Ewe and Mr Loke as the liquidators of the company. The meeting was not left with the options of confirming or rejecting Mr Ewe and Mr Loke; other persons could also be nominated and appointed as liquidators.

11 In the event, the meeting appointed Mr Ewe and Mr Loke as the liquidators on the basis that Mr Ho's nomination was out of time and invalid, and there were no other nominees.

12 Mr Ewe then led the meeting to the appointment of the committee of inspection. He asked for

volunteers amongst those present, and five persons responded, including Mr Sin. When someone at the meeting mentioned that there was a claim against Mr Sin (that actually referred to a claim against the plaintiff in Suit 325 of 2006), Mr Sin withdrew, and Mr Ewe declared the remaining four persons to be the committee of inspection. The transcript of the meeting showed that no one called for a vote to be taken, and no one objected to the appointment of the four persons to the committee of inspection.[note: 2]

The plaintiff's application

13 The plaintiff did not take any action to set aside the appointment of Mr Ewe and Mr Loke as liquidators.

14 However, on 7 July 2006, it applied for "Leave for a compulsory winding up order be made against the [company]", for Mr Ho to be appointed the liquidator, and for other orders. The plaintiff relied on the fact that the company was insolvent, as the basis for a winding up. The plaintiff relied on the fact that the company was indebted to creditors for a total of $16,146,772.47 of which $4,093,112.47 was owed to it, making it the largest single creditor.[note: 3] The application was filed apparently without regard to s 299(2) of the Act which provides:

> After the commencement of the winding up no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

15 When the plaintiff's application came on for hearing, Mr Pang represented the plaintiff. When s 299(2) was pointed out to him, the application was amended to seek the necessary leave.

16 The company opposed the plaintiff's application for leave. Consequently the arguments were focused on whether the plaintiff should be given leave to apply for the company to be wound up compulsorily, and not whether the company should be wound up.

17 It should be noted that the plaintiff had never explained why it wanted the company to be wound up compulsorily. At the creditors' meeting of 23 June 2006, the plaintiff did not object to the company being wound up voluntarily. Its primary position was that it had wanted Mr Ho to be the liquidator in the voluntary winding up rather than Mr Ewe and Mr Loke.

18 In deciding whether voluntary winding up should be replaced by compulsory winding up, regard must be had to the inevitable duplicity and wastage in time, effort and costs.

19 In its submissions, the plaintiff set out the factors which the court should consider in a leave application:

> For the Court to exercise the discretion under Section 299(2) to grant leave.
>
> In exercise the Court's discretion in the *Korea Assets Case* held
>
> .. fair play and commercial morality were the paramount importance.
>
> In consideration the Court takes into consideration the following factors

(i) The majority creditors wishes,

(ii) How the affairs of the company have been taken into consideration,

(iii) The need for the inquiry into insolvency position (the need for investigations into the affairs leading to the winding up),

(iv) The lack of independence of the liquidator appointed (choice of liquidator).[note: 4]

20 The plaintiff complained that the liquidators and committee of inspection were not appointed on the wishes of the majority creditors.

21 With regard to the appointment of the liquidator, the complaint was that Mr Ho's nomination was wrongly rejected. However, Mr Ewe had offered to adjourn the meeting, so that Mr Ho's "late" nomination could be cured. However, this offer was not taken up by the plaintiff, and only three of the 31 persons present were in favour of an adjournment.

22 The complaint over the appointment of the members of the committee of inspection was strictly technical. The plaintiff did not raise any objection against the four persons appointed, nor did it want anyone else to be appointed. The omissions to put the appointment of the members of the committee of inspection to a vote were, in the circumstances, procedural irregularities, and under s 392(2) of the Act:

> A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

No substantial injustice was caused by these procedural irregularities.

23 The plaintiff's complaints under heads (ii), (iii) and (iv) were not clearly set out in the submissions. Heads (ii) and (iii) appear to be dealt with together thus:

> The core issue was how the Defendants' company went into insolvency? If the debts as estimated are true, the Defendants had enough money to complete the project and therefore was not insolvent.
>
> By Section 296(4)(a) it was mandatory
>
> > "to cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at together with a list of creditors and the estimated amount of the claims to be laid before the meeting of creditors, and
>
> (b) "appoint one of their members to attend the meeting"
>
> Section 296(5) provides the person so appointed shall attend the meeting
>
> > "… and disclosed [*sic*] to the meeting the company's affairs and the circumstance leading up to the proposed winding up."
>
> Not Procedural breaches
>
> As such the creditors are given the circumstance of how the company went into liquidation. The version given by Mr Ewe was in direct contradiction to the amount of $11 m debts owed by the company leading to its winding up. There was no valuation of the assets as well as how it was

derived at by the company. He was appointed 1 month before as was the Provisional Liquidator who took the chair to preside over the Creditors' meeting and omitted to disclose all these that were specifically provided under the Companies Act to hold the Creditors' Meeting. He now claimed them to be procedural breaches when these are statutory breaches.

Creditors' deprived by statutory breach

As a result the Creditors including the Plaintiffs were all deprived of the information they were entitled to have before voting to continue the voluntary winding up with the appointment of liquidator. It was not a formality but serious business to find out why the Defendants were able to claim to be insolvent if they had all the loans they said they had borrowed. In particular how the company could be insolvent when it claimed to have borrowed $11 million more beside the loans from Malayan Banking Bhd. (Maybank) and unable to compete the project financially.

Inconsistent with the estimate debts of the Defendants

Maybank terminated the banking facilities of 60% finance for the development because the Defendants could not service the monthly interest of about $50,000-00. It could not be a case of the Defendants having secured so much of cash and unable to complete the development when only a requirement of 40% ($2 m) out of the construction cost of $5 million would suffice according to the letter of offer from Maybank. It was the very core subject that must be disclosed to the creditors. When Mr Ewe confessed at the meeting that he was unable to answer but he failed in his duty to mitigate the situation by directing the questions to the directors who were present. In any event none of the directors spoke on this subject at the Creditors' Meeting.

No information on circumstances leading to insolvency

Why the company went into insolvency was not disclosed at the meeting with the omission of a Full Statement of Affairs of the Defendants as well as a representative to provide the disclosure as provided under the law. In fact Ewe's attention was brought to this issue by the Plaintiffs' solicitors on the day before the meeting by letter.

24 Section 296(4) sets out the directors' duties at the creditors' meeting. These are not the liquidators' duties, although a liquidator should advise the directors to perform these duties. There was no suggestion that Mr Ewe and Mr Loke had not done that. These matters were brought up at the meeting. Mr Ewe informed the creditors at the meeting that the directors had submitted a draft statement of affairs, and that the company's books were updated to December 2002 and the last audited accounts were for December 2002. Mr Lim Eng Kuan, a former director of the company who had a dominant role of the company, and two directors of the company were at the meeting, but no questions were put to them about the affairs of the company during the meeting. Mr Ewe, on his part, invited any one who knew of any invalid debt filed against the company or of any wrong perpetrated by the directors to inform him, and he would investigate them.[note: 5]

25 As the extended portion of the plaintiff's submissions set out in [23] above shows, the plaintiff was unhappy that the questions it raised at the creditors' meeting were not answered to its satisfaction. While it was true that Mr Ewe did not have all the answers and the information, was it reasonable to expect that he should have them at that time? He had been a provisional liquidator together with Mr Loke for a month, since 24 May 2006, and had only received a draft statement of affairs. Mr Ewe had explained to Mr Pang at the meeting that he would not release the draft at the meeting, but would carry out investigations and report to the committee of inspection.[note: 6]

26 At that time, Mr Pang accepted Mr Ewe's explanation, and said:

> I think it is quite clear that you need time to understand the full affairs of the Company and you are not really clear as to everything right now and we can understand that as a professional.[note: 7]

27 Instead of following up with Mr Ewe and Mr Loke and the committee of inspection on the affairs of the company, the plaintiff relied on the events of 23 June 2006 to declare that "the manner [Mr Ewe] conducted the Creditors' Meeting on 23 June 2006, it leaves no confidence with the Plaintiffs … that the interests and all genuine Creditors' interest are in safe hands".[note: 8]

28 The allegation that Mr Ewe was lacking in independence was phrased in the following terms:

> Mr Ewe has definitely joined into the fray to secure his personal interest to be appointed as liquidator when in the Korea Asset's case there were authorities cited the insisted on the independence of the liquidator and even described the appointment of liquidator to be akin to one of semi judicial position. It is clear by the efforts he took to obtained all 21 letters on the 14 August 2006. Conversely, it would have been the desire of the directors and shareholders of the Defendants who must have Ewe as liquidators to prevent certain disclosures to the creditors and public. In such circumstance, to demonstrate his independence, he should have not produced them to support his appointment which he knew or ought to have know that there was co [*sic*] call for votes cast or the counting of votes at the said Creditors' meeting.

29 What happened was that after Mr Ewe realised that he was wrong in rejecting Mr Ho's nomination for appointment as liquidator, he sought to show that the majority of the creditors had wanted him and Mr Loke to be the liquidators. He explained in his affidavit of 16 August 2006:

> 9. In any event, to address the Plaintiff's concern that the creditors were not given the opportunity to vote on the Plaintiff's nomination of Mr Don Ho as liquidator, my office has since contacted the creditors who attended and were entitled to vote at the Creditors' Meeting to ascertain who they would *have chosen* as liquidator if given a choice between Mr Don Ho, and Mr Loke and I. For the purpose of this exercise, we did not approach the three creditors who objected to my appointment as liquidator at the Creditors' Meeting. [Emphasis added]
>
> 10. At the date of this affidavit, I have received written confirmation from 21 creditors that they would prefer me to act as liquidator. Further, these creditors would also prefer that I continue to act as liquidator even if the Court should order that the Defendant be compulsorily be wound up.

and exhibited the 21 identical letters of confirmation received, each of which read:

> 1. We/I are/am a creditor of the Company and our/my claim is $300,000.00 as stated in the Form 77.
>
> 2. We/I confirm that at the Creditors' Meeting held on 23 June 2006 ("the Creditors' Meeting") we/I have voted against the adjournment of the Creditors' Meeting, such adjournment being mooted by the Chairman of the Creditors' Meeting to allow Mr. Don Ho of Messrs Don Ho & Associates to be validly nominated by the creditors.
>
> 3. We/I confirm that at the Creditors' Meeting we/I *have voted* for the confirmation of Mr. Ewe Pang Kooi and Mr. Loke Poh Keun both of Messrs Ewe, Loke & Partners as the Liquidators

of the Company. [Emphasis added]

4. We/I confirm that if we/I had been required at the Creditors' Meeting to choose between either Mr. Ewe Pang Kooi jointly with Mr Loke Poh Keun or Mr. Don Ho as the Liquidator(s) of the Company, we/I would have chosen Mr. Ewe Pang Kooi and Mr. Loke Poh Keun.

5. If the Court should order that the Company be compulsorily wound up, and if there is a choice between Mr. Ewe Pang Kooi jointly with Mr. Loke Poh Keun to continue to act as the Liquidators of the Company.

30 Unfortunately, while Mr Ewe stated in his affidavit that his office wanted to ascertain who the creditors *would have chosen* to be the liquidator, the standard confirmatory letters which must have been drafted by Mr Ewe's office referred to the confirming parties *having voted for* Mr Ewe and Mr Loke as liquidators, which was factually incorrect as no voting had been conducted. Mr Ewe should also have exhibited the letter that his office had sent to the creditors as that would show how well-informed they were when they responded.

31 In any event, the matter could have been taken further. I raised the possibility of a fresh appointment exercise with counsel. I asked them to take their clients' instructions whether they were prepared to have another creditors' meeting, where it would be made clear at the meeting that liquidators would be appointed, rather than confirmed, and that Mr Ho or any other persons could be nominated for appointment. If such meeting was convened and conducted properly, there should be no dissatisfaction over the liquidators appointed, whether it be Mr Ewe and Mr Loke or Mr Ho, or anyone else.

32 Counsel took their instructions and reverted to me. While the company was receptive to the proposal, the plaintiff was not. It explained its position thus:

> The main objective is to determine whether under suspicious and unexplainable circumstances, why the company was unable to complete the development undertaken and went into default in paying the bank's monthly interests when they had by way of private loans millions available. … From these loans, there were adequate funds to complete the project even without further bank finance. To this date, the purported liquidators failed or refused to disclose to the court this after 5 months. … There must be investigations into these huge loans. *This is the core issue*. [Emphasis in original]

The statement that the liquidators have "failed or refused to disclose to the court" revealed confusion or misunderstanding on the plaintiff's part. The liquidators did not have to, and should not, report on their investigations to the court. They should be reporting to the committee of inspection, and a creditor such as the plaintiff should look to the liquidators or the committee for information. The plaintiff's submissions did not indicate whether it had sought any information from them. In view of the plaintiff's negative response, the proposed meeting did not take place.

33 Coming back to the plaintiff's other complaint, was the soliciting of the letters of confirmation an indication of lack of independence? One can say that Mr Ewe could have been more careful in preparing or approving his affidavit and the confirmatory letters. But this was not evidence as to the lack of independence in the sense that Mr Ewe or Mr Loke failed to exercise their independent powers in the discharge of their office, or that they allowed themselves to be beholden to some party interested in the winding up of the company, or had in some manner compromised their authority.

The case law

34 Should an insolvent company be allowed to be wound up voluntarily or should it be placed under compulsory winding up? This is a question that had been brought before the courts for determination. The decided cases offer sound guidance on the approach to be taken.

35 I will start with *In re J. D. Swain Ltd* [1965] 1 WLR 909 ("*Swain*") a decision of the English Court of Appeal. In this case, a judgment creditor with a judgment debt of £168 petitioned for the company to be wound up compulsorily, and a resolution was passed for the company to be wound up voluntarily. The petition was supported by three creditors whose proofs of debt amounted to £2,200 and was opposed by 211 creditors whose proofs amounted to £82,000. The trial judge dismissed the petition. On appeal to the Court of Appeal, the appeal was also dismissed. Diplock LJ laid down the guideline at 915:

> In the case of a petition for compulsory winding up, if the only circumstances which are available are that the petitioner seeks a compulsory winding up and the majority of the creditors seek that there should be no winding up at all, then prima facie the petitioning creditor is entitled to a winding up unless there are some additional reasons for deciding to the contrary. If, on the other hand, the petitioner seeks a compulsory winding up and the majority of the creditors seek a voluntary winding up, then for the wishes of the petitioner to overrule those of the majority of the creditors there must be some special reason why the wishes of the majority should be overridden. The difference or the distinction seems to me to be an obvious one, namely, in the former case, what is being resisted is any winding up at all, so that the petitioning creditor, if he fails, will be denied the class remedy which he would otherwise have if the winding up took place; whereas, in the latter case, he will obtain the class remedy anyway under the voluntary winding up, and the matter then turns upon his being able to show some reason why the remedy under the voluntary winding up is not an adequate remedy for him.

This guideline has been referred to in subsequent decisions, and acknowledged as a statement of the current law (see *Re Mediscо Equipment Ltd* [1983] 1 BCLC 305 at 309).

36 The principle in *Swain* was referred to and extended by the English High Court in *In re Palmer Marine Ltd* [1986] 1 WLR 573 ("*Palmer*"). Hoffmann J cited *Swain* at 578 as authority for the proposition that:

> [W]here a voluntary winding up has commenced before presentation of the petition and a majority of creditors by value wish it to continue, the courts will ordinarily require some good reason to override their wishes and make a compulsory order.

and he added an important consideration, also at 578, that:

> Besides counting debts, I think I am also entitled to have regard to the general principles of fairness and commercial morality which underlie the details of the insolvency law as applied to companies. A judicial exercise of discretion should not leave substantial independent creditors with a strong and legitimate sense of grievance.

37 I should also refer to a decision of the English High Court that parted with Diplock LJ's view that there must be special reasons before the wishes of the majority are overridden. In *Re MCH Services* [1987] BCLC 535, Vinelott J reflected on the two statements of Hoffmann J set out in the foregoing paragraph, and concluded at 537 and 538 that:

> [T]here is no settled rule or principle that where there is a choice between the continuance of a voluntary winding up and the making of a compulsory order the voluntary winding up should be

> continued unless there are special reasons for making a compulsory order.

and

> I respectfully agree with Hoffmann J that it would be wrong to refuse a compulsory order if the refusal would leave a majority of trade creditors with a justified feeling of grievance, a feeling that is that they have been unfairly deprived of the opportunity of ensuring that an independent liquidator, that is a liquidator not chosen by the directors, is given the charge of the winding up.

38 These two statements have to be read carefully and reconciled. While the first stated clearly that no *special reasons* are required, the second referred to a *justified feeling of grievance*, which was probably intended to be synonymous to the *strong and legitimate sense of grievance* Hoffmann J referred to.

39 It is a reasonable inference that for there to be a *justified* feeling of grievance, there would be *some* reason which brought on that feeling. If that is correct, then there must be a reason, whether it be a *special reason* as Diplock LJ put it, or a *good reason* in the words of Hoffmann J. I do not think that Vinelott J can be taken to mean that there was no requirement for there to be any reason before the wishes of a petitioner is allowed to overrule the wishes of the majority of the creditors. When there are no reasons at all, then the wishes of the majority creditors should prevail.

40 In the context of Singapore, V K Rajah JC (as he then was) examined the issue in *Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR 471 ("*Korea Asset Management*"), and identified some factors which should be taken into account in determining whether compulsory winding up should displace voluntary winding up, *ie*, timing, the nature of the petitioner's claim, the existing remedies available, the views of the majority creditors, the need for independent inquiry, and the choice of liquidator.

Evaluation of the plaintiff's case

41 Is there any reason in this case to overrule the creditors' wishes? There is no evidence of any exceptional mismanagement of the company that called for an examination by a court-appointed liquidator. The plaintiff accepted at the creditors' meeting that the necessary investigations could be done by a liquidator appointed by the creditors, and had nominated Mr Ho for the job.

42 The plaintiff's complaints about Mr Ewe were essentially that it did not get satisfactory answers during the creditors' meeting to its questions on the reasons for the company falling into insolvency, that there was no statement of affairs or there were no representatives of the company who could provide the answers.

43 Mr Ewe and Mr Loke were appointed as the company's provisional liquidators a month previously. They had obtained a draft statement of affairs and were studying it. It was not within their responsibilities or powers to produce a statement of affairs. Mr Pang had, to his credit, accepted that the liquidators could not have completed their investigations by the time of the creditors' meeting.

44 The situation in this case is different from that in *Swain*, *Palmer* or *Korea Asset Management* where the majority of the creditors wanted the company to be wound up by the court. Here, the plaintiff is a minority creditor, and it did not obtain the support of the other creditors to form a majority block in favour of compulsory winding up.

45 Did the plaintiff show that it would have a strong and legitimate sense of grievance if the

company was not wound up compulsorily, which would offend the general principles of fairness and commercial morality?

46 The bedrock of the plaintiff's case was that Mr Ho should be the liquidator to manage the company's liquidation. The plaintiff was quite happy for Mr Ho to be appointed by the creditors, and that the company be wound up voluntarily. It only petitioned for compulsory winding up when Mr Ewe and Mr Loke were appointed the liquidators instead. The plaintiff could apply to court for Mr Ewe and Mr Loke to be removed under s 302 of the Act and replaced by Mr Ho, if there were sufficient grounds for that. It chose not to take that direct route, perhaps out of the realisation that it may not succeed. Instead, the plaintiff sought leave to petition for compulsory winding up, and derail the voluntary winding up that was underway, so that Mr Ho could be appointed the liquidator by the court.

47 The plaintiff's strongest complaint was that the appointment of Mr Ewe and Mr Loke was flawed because Mr Ho's nomination was wrongly rejected for being late. However the plaintiff did not take up Mr Ewe's offer to adjourn the creditors' meeting to enable Mr Ho to be nominated again. When matters came to court, it did not support the proposal for a further creditors' meeting to be convened to appoint liquidators again.

48 In these circumstances, did any general principle of fairness and commercial morality weigh in favour of the plaintiff's insistence that the company be wound up compulsorily to prevail over the majority decision in support for voluntary winding up? In my assessment, the answer is no, and therefore I dismissed the plaintiff's application for leave to petition for the company to be wound up.

[note: 1] Transcript pages 2 and 5

[note: 2] Transcript pages 20-21

[note: 3] 1st affidavit of Sin Soon Teng, 7 July 2006, paras 16 and 19

[note: 4] Plaintiff's Skeletal Points of Reply para 2

[note: 5] Transcript pages 6 and 9

[note: 6] Transcript page 8

[note: 7] Transcript page 12

[note: 8] Affidavit of Sin Soon Teng, 12 August 2006, para 12