

Conet Inc v MFI Net (S) Pte Ltd
[2010] SGHC 272

Case Number : Companies Winding Up No 108 of 2010
Decision Date : 15 September 2010
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Tricia Tay (Rajah & Tann LLP) for the plaintiff; Malcolm H Tan for the Official Receiver.
Parties : Conet Inc — MFI Net (S) Pte Ltd

Companies – Insolvency

15 September 2010

Judith Prakash J:

1 On 6 August 2010, I made a winding up order against M.F.I. Net (S) Pte Ltd (“the Company”), the defendant in this originating summons (“the OS”). The Company was not represented at the hearing of the OS either by counsel or by any other representative. The persons who were present at the hearing of the OS were Ms Tricia Tay, counsel for the plaintiff, Conet Inc, and Mr Malcolm B H Tan who appeared on behalf of the Official Receiver.

2 When the OS was called for hearing, Ms Tay asked me to make an order in terms and Mr Tan confirmed that, from the point of view of the Official Receiver, the papers appeared to be in order.

3 The OS was filed by the plaintiff on 8 July 2010. According to the affidavit of service sworn by Mr Steven Christopher Nah, an employee of the firm of Rajah & Tann LLP, the plaintiff’s solicitors, service of the papers was properly effected on the Company. Mr Nah deposed that on Thursday, 15 July 2010, he served a sealed copy of the OS together with a copy of the supporting affidavit of Masayoshi Kawame on the Company by delivering to, and leaving a copy of each of the same at, the Company’s registered office at 3 Sin Ming Walk, #11-27, The Garden at Bishan, Singapore 575575, after he failed to find any member, officer or employee of the Company on whom service could be effected.

4 The affidavit in support of the OS was affirmed by Masayoshi Kawame, a director of the plaintiff, on 1 July 2010. It appeared from this affidavit that the Company was incorporated on 3 June 2008 and had its registered office at 3 Sin Ming Walk, #11-27, The Garden at Bishan. It had an issued and paid up capital of \$1,000 divided into 1,000 shares of \$1 each.

5 The affidavit further stated that the plaintiff is a company incorporated in Japan which is engaged in the business of patent management. On 10 July 2008, the plaintiff and the Company entered into an exclusive licensing agreement (“the Licence Agreement”) in respect of certain patents owned by the plaintiff. Under cl 5.2 of the Licence Agreement, the Company had agreed to pay the plaintiff an exclusive licensing fee based on 20% of all and any licence or sub-licence fees paid to the Company. Subsequently, on 9 February 2009, the plaintiff, the Company and another company called NTT-DoCoMo (“NTT”) entered into a sub-licence agreement. Pursuant to the sub-licence agreement, NTT paid the Company a licence fee of ¥10m in or around March 2009. As a result, Mr Kawame

asserted, the Company became liable to pay the plaintiff ¥2m (which is approximately \$30,320) pursuant to cl 5.2 of the Licence Agreement. It did not do so.

6 By way of a letter dated 26 May 2010, Messrs Rajah & Tann LLP made, on behalf of the plaintiff, a winding up statutory demand on the Company for the sum of ¥2m. The demand was served and delivered on the Company by a copy of the same being left at its registered office. The Company did not pay the sum demanded or any part thereof during the 21-day period following the service of the demand. Up to the date of the affidavit no payment had in fact been made. Mr Kawame deposed that by reason of the aforesaid matters, the Company was, pursuant s 254(2)(a) of the Companies Act (Cap 50, 2002 Rev Ed) read with s 254(1)(e), deemed to be unable to pay its debts.

7 As I stated above, the Company did not enter an appearance either before or at the hearing of the OS. No affidavit was filed to refute the facts asserted by Mr Kawame. The winding up papers were in order and there was no reason not to make the orders sought. It appeared to me that in the absence of any ground of opposition or dispute put forward by the Company, the facts fell within s 254 of the Companies Act and the Company had to be deemed to be insolvent. Accordingly, I made the orders sought.

8 On 6 September 2010, the Company, acting through Messrs Kelvin Chia Partnership, filed an appeal against my decision. I have therefore set out herein the reasons for my order. It appears to me, however, that if the Company is dissatisfied the proper course, bearing in mind its failure to appear at the hearing, would be to apply for the order to be set aside.

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