Tan Poh Chung *v* Polylectric Engineering Pte Ltd
[2015] SGHC 71

Case Number : Companies Winding Up No 7 of 2015

Decision Date : 16 March 2015

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Loh Kia Meng (Rodyk & Davidson LLP) for the applicant; Valerie Ang and Vithyashree (Straits Law Practice LLC) for the non-parties, Toong Chuen Piew and Litemax Pte Ltd.

Parties : Tan Poh Chung — Polylectric Engineering Pte Ltd

Companies – Winding Up

16 March 2015

Woo Bih Li J:

Introduction

1 On 12 January 2015, the plaintiff, Tan Poh Chung ("Tan"), filed an application to wind up the defendant, Polylectric Engineering Pte Ltd ("the Company"), on the just and equitable ground and to appoint Mr Leow Quek Shiong ("Mr Leow") of BDO LLP as the liquidator of the Company. Tan holds 50% of the shares in the Company. He is also one of four directors of the Company.

2 The application was resisted by Toong Chuen Piew ("Toong") and Litemax Pte Ltd ("Litemax"). Toong holds the other 50% of the shares in the Company and is also one of the four directors of the Company. Litemax is Toong's company. It is a judgment creditor of the Company.

3 The other two directors of the Company are the wives of Tan and Toong.

4 On 6 February 2015, I made an order to wind up the Company and to appoint Mr Leow as liquidator of the Company. Toong has filed an appeal against my decision to the Court of Appeal. I set out below the reasons for my decision.

Issue

5 The main issue was whether the court should have ordered the Company to be wound up.

Background

6 According to Tan, the relationship between Toong and him had deteriorated in recent years. Accordingly, both Toong and he agreed to wind up the business of the Company as a practical measure and to distribute its assets. They did so by entering into an agreement called the "Agreement for closing of Polylectric Engineering Pte Ltd" dated 11 February 2014 ("the Closing Agreement").

7 Under the Closing Agreement, it was agreed that the Company would cease operations and

transfer existing and new jobs to other companies, *ie*, Pohlect Pte Ltd ("Pohlect") owned by Tan and Litemax owned by Toong. I need not elaborate on the other terms of the Closing Agreement for the time being.

8 On or around 23 July 2014, Litemax commenced legal proceedings in Suit No 781 of 2014 ("Suit 781/2014") to claim a debt of $1,001,983.16 arising from two unpaid invoices issued by Litemax to the Company for work done by Litemax for the Company.

9 On 31 July 2014, Tan filed Originating Summons No 743 of 2014 ("OS 743/2014") for various reliefs, including the resolution of the issue of appointment of solicitors to act on behalf of the Company in Suit 781/2014, for Tan to be joined as a defendant in that suit, and for a stay of that suit pending the resolution of OS 743/2014. According to Toong, OS 743/2014 was dismissed by Vinodh Coomaraswamy J on 2 October 2014 on the basis that it was procedurally flawed and that the appropriate procedure was for Tan to file an application under the Companies Act in Suit 781/2014 itself.

10 On 3 October 2014, Litemax obtained judgment in default of appearance against the Company in Suit 781/2014 ("the Litemax Judgment").

11 On 9 October 2014, Tan applied by way of Summons No 5047 of 2014 ("Summons 5047/2014") for various reliefs including an order for Tan to be added as a defendant in Suit 781/2014. However, his application was dismissed on 8 January 2015 by an Assistant Registrar ("AR"). According to Toong, the decision was based on procedural missteps by Tan.

12 In the meantime, Litemax filed Summons No 5139 of 2014 on 14 October 2014 to garnish money held by a bank for the Company. The garnishee proceedings have not been completed yet.

13 After Summons 5047/2014 was dismissed on 8 January 2015, Tan filed the present application to wind up the Company on 12 January 2015.

The arguments and the court's decision

14 Tan's submission was that while Litemax did perform services for the Company, he did not accept that the sum owing to Litemax was as much as that claimed by Litemax. He was of the view that the garnishee proceedings were an attempt by Litemax to gain an unfair advantage and that the Company should defend the claim.

15 Tan alleged that the Company had been dormant for a year and had lost the substratum of its business. He also alleged that in view of the impasse between Toong and him, there was no assurance that the affairs of the Company were being managed in an honest and diligent manner.

16 I come now to the submissions for Toong and Litemax. I will refer to them as one since Toong owns Litemax.

17 Toong did not dispute that the Company had been dormant for a year. Neither did he dispute that Tan and he had wanted to wind up the business of the Company as a practical measure and to distribute its assets. It was not disputed that in such circumstances, a court could, and should, order a winding up of a company under the just and equitable ground. However, Toong's position was that the present winding up proceedings were used for collateral purposes.

18 Toong submitted that the real reason for Tan bringing the winding up application was to deny

Litemax the fruits of its garnishee proceedings. He mentioned how previous attempts by Tan to contest the Litemax Judgment had failed. I have mentioned these attempts above. Toong also submitted that instead of appealing against the AR's decision of 8 January 2015 (see [11] above), which counsel for Tan had said he would do, Tan had instead filed the winding up application. I should mention that Tan's counsel alleged that what he said on 8 January 2015 was that he would take instructions about an appeal. The new solicitors of Tan had only come into the picture recently.

19 In my view, it is not uncommon or illegitimate for a shareholder or another creditor or the debtor itself to try and deny a creditor the fruits of execution proceedings by filing winding up proceedings. Just as a creditor is entitled to take such steps as it thinks fit to obtain full payment, someone else is equally entitled to take such steps as it thinks fit to thwart such a purpose (see *Re Projector SA* [2009] 2 SLR(R) 151 at [23]–[25]). Therefore, the filing of winding up proceedings to thwart a creditor from gaining an advantage is not in itself an abuse of the process of the court.

20 Furthermore, since Tan was disputing the amount owing by the Company to Litemax, it made sense for an independent and neutral party like the liquidator to be appointed to look into Litemax's claim. If the liquidator was of the view that the amount claimed was valid, that would put an end to Tan's dispute on the amount. If the liquidator took the opposite view, he would be entitled to take such steps as he thought fit to challenge the Litemax Judgment. Since Toong's position was that Tan's dispute was unreasonable, Toong should welcome the appointment of the liquidator but for the fact that the order to wind up the Company would thwart the garnishee proceedings. As stated above, each side is entitled to advance his own interest.

21 Toong also had another reason to claim that the winding up application was for a collateral purpose. He submitted that Tan was trying to relieve himself from his obligations under the Closing Agreement by presenting the winding up application. This was to the detriment of the Company, its shareholders and its creditors (see para 35 of Toong's opposing affidavit of 29 January 2015).

22 However, Toong did not elaborate in his opposing affidavit as to which aspect of Tan's obligations under the Closing Agreement that he thought Tan was trying to renege on. Toong's counsel said that under clause 5 of that agreement, it was agreed that one of the Company's properties at Woodlands Link would be sold to Tan at a certain value and another at Woodlands Industrial Park E5 ("WIP E5") to Litemax at another value. However, even if the stated values meant the intended sale prices, Toong's counsel was unable to say that the price for the intended sale of the property at WIP E5 to Litemax was lower than the market value or that the intended sale of the property at Woodlands Link to Tan was at a price higher than the market price, such that the Closing Agreement should still be performed. Indeed, no such assertion was made in Toong's affidavit. Neither did Toong assert in his affidavit that Litemax had a special need or interest for the WIP E5 property such that Litemax should in any event have a right of first refusal for that property. Therefore, the liquidator could still sell either property in the open market and Litemax or any other interested person could attempt to purchase it.

23 Toong also submitted that the Company needs to exist to complete existing orders of its customers. He also alleged that the orders have not been completed and the Company needs to exist to collect payment from the customers (see para 25 of Toong's submissions).

24 There were two separate points to this submission. First, I asked whether any of the Company's customers would take issue with the liquidation of the Company since orders received by the Company were already being performed by third parties like Pohlect and Litemax. Toong had not identified any customer who would object.

25 Secondly, the allegation that the Company needs to exist to collect payment did not paint an accurate picture. The Company was not being dissolved. It was being liquidated. The liquidator would take over the collection of payment.

26 It seemed to me that Toong himself had no good reason to oppose the winding up beyond the fact that Litemax's garnishee proceedings would be thwarted.

27 In the circumstances, I ordered the Company to be wound up with consequential orders.