IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1978] SGHC 11

COMPANIES WINDING UP NO 137 OF 1978

Between

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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Re Pentasia (Pte) Ltd

[1978] SGHC 11

COMPANIES WINDING UP NO 137 OF 1978
T S Sinnathuray J
05 March 1978

1 This petition for the winding-up of Pentasia (Pte) Ltd (the company) was presented at the registry on 30 August 1978. Under r 23 of the Companies Winding-Up Rules 1969 (the Rules), the registrar appointed 29 September 1978 for the hearing of it.

2 Thereafter, the petition has not been advertised as required under r 24 of the Rules. The affidavit of service of the petition upon the company under r 25 of the Rules has not been filed. The consent in writing of the Official Receiver that he be appointed liquidator has also not been filed, a requirement under r 31(2) of the Rules. Finally, the solicitor for the petitioning creditor has not complied with r 32 of the Rules which requires his attendance before the registrar to satisfy him on material matters relating to the petition before the hearing date.

3 Notwithstanding the defects set out, the petition came on for hearing on the appointed date, 29 September 1978. It was adjourned for four weeks. On 27 October 1978 it was adjourned for one week. Then, on 3 November 1978 it was adjourned to the first Friday after the court vacation. On 12 January 1979 when

the petition was before me, there was yet another application for an adjournment.

4 At that hearing, counsel for the petitioning creditor, who applied for the adjournment, said that the proceedings had been withheld at the request of the company. He went on to say that the company had made payment of $7,000, and that another cheque for $3,000 was awaiting to be cleared. Counsel also said that he was mentioning the petition on behalf of counsel for the company who was absent.

5 It is to be seen from the petition that the company is indebted to the petitioning creditor for goods sold and delivered in the sum of $86,576.65. The ground for the winding-up of the company is that it is insolvent and unable to pay its debts. It is therefore not unreasonable to aver in the petition that it is just and equitable that the company be wound up. But, having moved the court, what has the petitioning creditor done?

6 On the facts outlined, it is clear that the petitioning creditor has taken no steps to proceed with the petition with due diligence. Further, an application for adjournment on the ground that $10,000 of the $86,576.65 has been paid by the company nearly five months after the presentation of the petition is to use the provisions of the Companies Act (Cap 185, 1970 Ed) (the Act) and the Rules for a purpose not intended by the legislature. To put into motion the machinery for winding-up, not to obtain an order for winding-up, but to exert pressure on the company to settle its debt, is an abuse of the procedure.

7 A petition for the winding-up of a company is a grave matter for the company and for those who have dealings with the company. Section 219(2) of the Act provides that commencement of winding-up by the court `shall be

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deemed to have commenced at the time of the presentation of the petition for the winding-up`. The sections that follow spell out important consequences that affect a variety of matters. Some of them are that creditors are deprived of their remedies against the company; all actions by and against the company come to a standstill; and, any disposition of property including any transfer of shares or alterations of the status of members of the Company is terminated. The cumulative effect is that a company, upon a petition for winding-up presented against it, cannot carry on business as outsiders will be reluctant to have dealings with it. It is because of these effects that s 221(1) of the Act and r 32(2) of the Rules provide that on the hearing of a winding-up petition the court may either dismiss it or adjourn it conditionally or unconditionally.

8 Now, as regards an adjournment it is at the discretion of the court. Having regard to the foregoing, I am of the view that except for a short adjournment to remedy technical matters relating to a petition, any other adjournment must be an exception rather than the rule as it will be prejudicial to the company. (See ***Re Chapel House Colliery Co*** (1883) 24 Ch D 259 per Cotton LJ at p 268.) It is therefore imperative that the winding-up of a company which cannot pay its debts must be seriously weighed, and once proceedings are commenced they must be prosecuted expeditiously.

9 For the reasons I have given I refused the application for an adjournment of the petition. It was dismissed.

10 ***Application dismissed.***

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T S Sinnathuray J

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