Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd [2002] SGHC 297

Case Number : OS 73/2002, SIC 1265/2002

Decision Date : 10 December 2002

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Lionel Tay, Paul Ng and Audrey Ng (Khattar Wong & Partners) for the Company/applicants - Wah Yuen Electrical Engineering Pte Ltd; Sharmilee Shanmugam (CitiLegal LLC) for the opposing creditor -Singapore Cables Manufacutures Pte Ltd

Parties : Wah Yuen Electrical Engineering Pte Ltd — Singapore Cables Manufacturers Pte Ltd

Judgment

GROUNDS OF DECISION

1. On 24 October 2001, Singapore Cables Manufacturers Pte Ltd ("Singapore Cables") obtained judgment against Wah Yuen Electrical Engineering Pte Ltd ("the Company") in the sum of $1,159,457.64 with interest thereon at 6% per annum from date of writ. The Company was in financial difficulties and did not pay the judgment debt. In December 2001, a winding-up petition was served on the Company.

2. The Company, thereafter, applied to court under s 210 of the Companies Act for leave to convene a meeting of its creditors for the purpose of considering and, if thought fit, approving a Scheme of Arrangement with its creditors. Section 210(3) of the Companies Act provides:

> "If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement, the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company."

In that application the Company also applied for an order that all existing legal proceedings against the Company be stayed until further order. Both applications were granted on 25 January 2002.

3. At the meeting of creditors that was thereafter convened, the Company tendered a revised Scheme of Arrangement. This resulted in the meeting being adjourned to give creditors time to study the revised Scheme. At the adjourned meeting of the 92 creditors present and voting, 75 (constituting 81.52%) voted for and 17 voted against acceptance of the revised Scheme. The total value of the admitted claims of the 75 who voted for the revised Scheme was $8,556,893.43 (constituting 82.26%) and the total value of the admitted claims of the 17 who voted against the revised Scheme was $1,845,841.81.

4. As the 81.52% in number and 82.26% in value had supported the revised Scheme the percentage requirements of s 210(3) had been complied with and the Company, in this application, sought the approval of the court to implement the revised Scheme.

5. The application was opposed by Singapore Cables. After considering the evidence adduced by both sides and the submissions of counsel, I felt that this was a case where the court's approval for the revised Scheme should not be granted and accordingly dismissed the application. Against that dismissal the Company has appealed.

6. The revised Scheme envisaged an investor injecting funds into the Company for distribution to participating creditors in exchange for the assignment to that investor of their admitted claims. Participating creditors whose admitted claims were less than or equal to $2,000 were

to be paid in full. Participating creditors whose claims were in excess of $2,000 were to be paid the greater of (i) $2,000 or (ii) an amount equal to 15% of the value of their admitted claims. Claims by related parties and directors were to be fully subordinated to that of the rest of the participating creditors. It was provided that related parties and directors shall not participate in any payment envisaged under the revised Scheme.

7. In opposing the application, Ms Sharmilee Shanmugam, who appeared for Singapore Cables, pointed out that a considerable part of the creditor support for the revised Scheme came from related parties, namely:

(a)	Stanley Lee Kiang Leng, the Managing Director and 70% shareholder of the Company.	$4,296,254.10
(b)	Wong Beng Huat, a director and shareholder of the Company.	$ 20,000.00
(c)	R&N Electrical Engineering Pte Ltd ("R&N"), a company in which Stanley Lee Kiang Leng held 90% of the shares and of which he was Managing Director.	$ 964,833.61
	Total:-	$ 5,281.087.71

If one were to discount the values attributable to these related parties, the creditors in value supporting the revised Scheme ($8,556,893.43 less $5,281,087.71) would be $3,275,805.72 which worked out to 63.96% : a figure that fell short of the 75% requirement of s 210(3). Ms Shanmugam pointed out that if one excluded the claims of the directors and of R&N, the claim by Singapore Cables (which was in excess of $1.1 million) was by far the largest single claim.

8. The main thrust of Ms Shanmugam's opposition to the application was the fact that the Company had been less than forthcoming in making disclosure of its accounts and in particular in giving details of the claims by Stanley Lee and R&N. She pointed out that Singapore Cables had at the first creditors' meeting tried to obtain details but had merely been told that any creditor aggrieved by any lack of transparency by the Company could make further enquiries from the Company or vote against the proposed Scheme of Arrangement. To similar queries raised at the adjourned creditors' meeting, the Company's response was that if the requisite majority for the revised Scheme was obtained the creditor could make his representations to the court when the Company applied for court approval of the revised Scheme.

9. Ms Shanmugam told the court that Singapore Cables had written to the Company seeking relevant details but had not received a satisfactory response. For the purposes of this hearing, Singapore Cables had obtained the services of an outside expert who, in a report prepared after perusal of all the accounting documents relating to the Company that had been made available to Singapore Cables, pointed out various discrepancies and raised various queries on the amounts owed to directors and R&N. Ms Shanmugam pointed out that the Company in its affidavits filed in response, did not sufficiently address the queries raised by Singapore Cables or by the expert; nor had the Company provided the supporting documents. The reason given by Stanley Lee for this failure was that it would be costly for the Company to employ accountants to respond to the queries.

10. Counsel for the Company, Mr Lionel Tay, at the hearing before me, did not seriously challenge the complaint raised that the Company had not furnished sufficient particulars of the debts due to directors and related parties. The Company's position, as summarised by Mr Tay, was that the Company did not have the time to provide answers to the satisfaction of Singapore Cables. Mr Tay told the court that his clients were willing to co-operate with Singapore Cables and suggested that the court sanction the revised Scheme but grant Singapore Cables the right to appoint a firm of accountants to liaise with the Company on the information they sought. Mr Tay submitted that if, as a consequence, Singapore Cables came across any information that suggested any impropriety, Singapore Cables would be entitled to take whatever action it deemed fit.

11. Mr Tay did not dispute that the related party debts amounted to 61.72% of the total unsecured debts of the Company. He submitted, however, that this high percentage did not give the related parties any unfair advantage as their debts were subordinated to the debts of all other unsecured creditors. He further submitted that as s 210 of the Companies Act did not draw any distinction between related party debts and other debts, no such distinction ought to be drawn. The mere fact a creditor was related did not, he submitted, by itself and without evidence of wrongdoing, suggest that such creditor was acting mala fide.

12. The opposing creditors in this case were owed a sum of $1,195,943,06. Under the revised Scheme, they would be paid 15% of this sum, ie $179,391.46, in full settlement and thereafter the Company could continue to operate. This, Ms Shanmugam submitted, would be for the benefit of the related parties and to the detriment of the opposing creditors. Ms Shanmugam submitted that the fact that the debts of the directors and related parties were subordinated to the debts of the other creditors was of no solace to the opposing creditors. If the revised Scheme was approved, the Company would have got rid of the opposing creditors by paying them a nominal sum and without producing proper accounts to show why the payment was so little.

13. The fact that the claims of the related parties were subordinated to the claims of other creditors was, in my view, not an adequate answer to the complaint by Singapore Cables that the Company had not been sufficiently transparent about the circumstances under which the related party debts arose. This was particularly so in the light of the fact that audited accounts of the Company for the relevant periods were not available.

14. Stanley Lee was the managing director of the Company and a 70% shareholder of the Company. He was also the managing director and 90% shareholder of R&N. Although it is true that s 210 does not draw any distinction between third party creditors and related party creditors, it would, in my view, only be fair (especially in cases where the required creditor support was obtained through the exercise of the related party votes) that the Company made full disclosure of all relevant documents so that the bona fides of the transactions could be subjected to scrutiny. For the creditors to evaluate the revised Scheme and for the court to approve the revised Scheme there needs to be transparency in relation to the Company's accounts. Failure to provide relevant accounting details would place third party creditors at a disadvantage which they would not be under if the Company were wound up and a liquidator appointed.

15. Ms Shanmugam, in support of her submissions, relied on the case of *Re Halley's Departmental Store Pte* [1996] 1 SLR 70. The facts of that case were broadly similar to the facts here and I noted that G.P. Selvam J. had, in that case, declined to grant the approval of the court required under s 210(3).

16. In the circumstances of the present case, I was of the view that the court ought not to grant its approval to the revised Scheme. I therefore dismissed the application with costs.

Sgd:

S. RAJENDRAN

Judge

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