IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 194

Companies Winding Up No 131 of 2018
(Summons No 3253 of 2019)

In the matter of Section 254(1)(*a*), (*c*), (*e*) and (*i*)
of the Companies Act (Cap 50)

And

In the matter of MSB Beauty Pte Ltd

Between

Slim Beauty House Co Ltd

… *Plaintiff*

And

MSB Beauty Pte Ltd

… *Defendant*

JUDGMENT

[Companies] — [Winding up] — [Costs]

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Slim Beauty House Co Ltd
v
MSB Beauty Pte Ltd

[2019] SGHC 194

High Court — Companies Winding Up No 131 of 2018 (Summons No 3253 of 2019)
Choo Han Teck J
23 August 2019

28 August 2019 Judgment reserved.

Choo Han Teck J:

1 Slim Beauty House Co Ltd ("SBH") is the plaintiff in Companies Winding Up No 131 of 2018 ("CWU 131 of 2018"). It successfully obtained an order from this court to wind up MSB Beauty Pte Ltd ("MSB") on 20 August 2018. MSB was a company jointly owned by SBH and Mary Chia Beauty & Slimming Specialist Pte Ltd ("MCB").

2 SBH and MCB, the shareholders of MSB, were in a dispute that went to arbitration, and by an award dated 7 July 2017, the arbitrator Mr Chan Leng San, SC ordered MCB, who was the respondent in the arbitration, to pay damages to SBH, who was the claimant. More importantly, the arbitrator ordered the parties to liquidate MSB and that MCB was to "bear all liquidation expenses incurred in respect of the liquidation".

3 Eventually, SBH commenced winding-up proceedings against MSB, culminating in the winding up order of 20 August 2018. At that hearing, Mr Tay, counsel for the plaintiff, asked for an order that the costs of the winding up and liquidation be paid by MCB on the strength of the arbitrator's orders.

4 I declined to make that order because MCB was not a party in CWU 131 of 2018, and so I ordered that the costs of the winding up and liquidation be paid from the assets of the company, but without prejudice to the liquidators' rights to recover costs from MCB under the arbitration award.

5 In this summons, the liquidator applies for an order that MCB pay the costs of the liquidation, including a sum of $72,500 to cover the liquidation expenses incurred thus far. Mr Chia, counsel for the liquidators, relied on exactly the same ground as Mr Tay did before me at the winding-up hearing.

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The liquidation is not complete and the expenses and costs have not been determined, so this application is exactly the same as that made by Mr Tay, and on which I had already made my orders. There is nothing more I can or should add.

6 MCB is still not a party in CWU 131 of 2018 and it is too late now to join it as one. The Courts should not make an order against anyone who is not a party before it. Under Order 88 rule 2(5)(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the Court may order any persons to be added as parties to the proceedings. The plaintiff could have named MCB as a co-defendant but it did not. MCB merely filed an intention to appear as a contributory in the winding up of MSB and even so, the plaintiff did not seek to add it as a party.

7 The arbitration between the plaintiff and MCB was a totally separate proceeding from this winding up. I made my orders on the costs of the winding up in the usual way, but I preserved the rights under the arbitration regarding the obligation of paying for the costs of the winding up. Although I referred to the rights of the liquidator in the order, it would be obvious that the order covered the rights of the plaintiff. To enforce that right against MCB, the plaintiff has to do so in the usual way of enforcing an arbitral award. The orders sought by the liquidator here relating to costs have already been made. What remains is to levy execution, but to do that, the costs and expenses must have been accrued and accounted for. If MCB disputes the quantum or liability to pay, the plaintiff may then commence an action against MCB, and join the liquidator as a party (co-defendant) so that the issue can be fully and finally settled.

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8 For the reasons above, this application is dismissed. I will hear the question of costs at a later date if parties are unable to agree on costs.

- Sgd -
Choo Han Teck
Judge

Chia Voon Jiet and Sim Bing Wen (Drew & Napier LLC) for the liquidators;
Tay Yong Seng, Alexander Yeo and Ang Ann Liang (Allen & Gledhill LLP) for the plaintiff;
Pradeep Pillai, Joycelyn Lin and Jonas Wong (PRP Law LLC) for the contributory.

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