Re Sen Art Pte Ltd
[2001] SGHC 41

Case Number : Companies Winding Up No 343 of 2000

Decision Date : 02 March 2001

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Ng Kheng Chye [Ng Ong & Chee] for the Plaintiffs in Originating Summons No. 1923 of 2000; Lim Joo Toon [Joo Toon & Co] for the defendants in Originating Summons No. 1923 of 2000; Tan Jee Ming [Tan Jee Ming & Partners] for creditor Contrac-Image Trading Pte Ltd; Keoy Soo Khim [Ang & Partners] for creditor Decor Construction & Trading Pte Limited

Parties : —

JUDGMENT:

Grounds of Decision

1. This was a petition to wind up a company on the "just and equitable ground" under s 254(i) of the Companies Act, Cap 50. The company called Sen Art Pte Ltd was incorporated on 12 March 1988 and carried on the business of renovation contractors. There were four shareholders divided into two factions, one consisted of Tan Ban Gee and his wife Loh Kin Hoe and the other Teoh Keng Lee and his wife Lim Sew Kee. Each camp held 250,000 of the 500,000 paid up shares. The chairman of any board meeting was to be elected by the board from time to time and he has the casting vote.

2. The company appeared to be profitable and although there were creditors, both sides acknowledged that the claims would easily be met.

3. The problems between the two factions arose mainly from the relationship between Tan and a company called Dcor Construction Pte Ltd. Teoh made allegations of improper enrichment of Tan by Dcor and so, with Lim, he commenced an action by Originating Summons (No. 1923 of 2000) against Tan and Loh. In that originating summons, Teoh and Lim prayed for various orders in connection with the dealings between Tan and Dcor. These included a prayer that Tan and Loh account for all benefits received by them from Dcor, and a declaration that the transactions between Tan and Dcor were void. The main relief sought by Teoh and Lim was to wind up the company. They had included an alternative prayer that the court orders one faction to buy up the shares of the other. However, at the hearing of the petition and the originating summons (which was ordered to be heard together with the petition), counsel reported that the two factions refused to discuss the purchase of the others shareholding.

4. It is apparent that this company was a quasi-partnership between two husband-and-wife teams. The relationship had broken down, if I may adopt the language from matrimonial law, irretrievably. The companys affairs deteriorated to a standstill because the two factions would not meet or talk and consequently no board meeting could be conducted because they could not agree on the appointment of a chairman. It was not only a deadlock situation, but from the affidavits filed, the company was clearly brain-dead since 10 May 2000. The two factions would only communicate with each other through their solicitors.

5. In such circumstances, the courts had consistently taken the pragmatic solution of winding up the company. This approach was summed up in the judgment of Yong J (as he then was) in *Chua Kien How v Goodwealth Trading Pte Ltd* [1991] 2 MLJ 314, *320* as follows:

> "For a court to refuse to order a winding up and in effect for the warring parties to continue in partnership, when, as in the present case, it is clear that the parties can no longer work together would merely be to endorse an exercise in futility".

The appeal against that decision was dismissed. See *[1992] 2 SLR 296*.

6. Mr. Ng submitted that if the matters alleged by Teoh in his originating summons are investigated, and for which he asked for time to do so, it will be seen that Tan came to court with soiled hands and that, Mr. Ng argued, disentitles him to the equitable relief of winding up on a just and equitable ground. In my view, the allegations of misconduct or unjust enrichment by Tan, even if proved, do not detract from the question whether this company ought to remain in existence. Indeed, Teohs own purpose in taking out the originating summons was to wind up the company under s 216 of the Companies Act. Unfortunately, he did not have sufficient proof to proceed and needed time. In these circumstances, I see no reason why the company should be kept on life-support by the court so that Teoh can revert weeks or months later just to terminate it on his terms. I, therefore, ordered the company to be wound up under s 254 of the Companies Act.

7. The matters alleged in the originating summons by Teoh are matters which involved a dispute of fact and law and ought properly be pursued by a writ action. Since the claims were made against Tan and Loh personally, I take the view that the originating summons should be dismissed without prejudice to the rights of Teoh and Lim to proceed against Tan and Loh on the substantive matters alleged therein.

Choo Han Teck

Judicial Commissioner

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