Lim Eng Teck v Life Glow Asia Pte Ltd
[2008] SGHC 196

Case Number : CWU 57/2008

Decision Date : 06 November 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Foo Maw Shen and Ng Hui Min (Rodyk & Davidson LLP) for the plaintiff; Chua Beng Chye (KhattarWong) for the defendant; Cheah Kok Lim (Sng & Company) for the supporting creditor

Parties : Lim Eng Teck — Life Glow Asia Pte Ltd

Companies

6 November 2008

Choo Han Teck J:

1 This was an application by the plaintiff to wind up the defendant company on account of its inability to pay its debts. The defendant was incorporated on 30 August 2001 and carried on the business of selling health care products. It is a wholly owned subsidiary of Life Glow Corporation Pte Ltd ("LGC"). LGC had a paid up capital of only $2 and was wholly owned by the plaintiff. LGC and the defendant were part of a larger group of companies under Goldtron Management Services Pte Ltd ("GMS"). The plaintiff became a director of the defendant through the nomination of GMS.

2 The plaintiff applied to wind up the defendant on 27 May 2008 and when GMS was notified of this move, it exercised its rights under a Convertible Loan Agreement dated 26 September 2002 and thus became the majority shareholder in LGC. A new director was appointed by GMS to replace the plaintiff who resigned as a director of the defendant on 12 June 2008. Thereafter, the defendant commenced Suit 637 of 2008 against the plaintiff for damages for breach of fiduciary duties and other wrongs.

3 When the application was heard, Mr Foo Maw Shen, counsel for the plaintiff, informed the court that the plaintiff would not be proceeding with the application given the change of circumstances, and in particular the commencement of Suit 637 of 2008. In that suit, Mr Cheah Kok Lim's client, a supporting creditor was also involved. Mr Cheah disputed the defendant's claims and he informed the court that the supporting creditor had also issued a statutory demand.

4 Mr Foo submitted that at the time of the winding up application, the defendant was insolvent and it had to have funds put in subsequently. Hence, Mr Foo argued, the plaintiff was at risk of being a director of a company that continued trading when insolvent. He argued that the winding up action was justified at the time. He asked for leave to withdraw with no order as to costs. Mr Chua Beng Chye, counsel for the defendant, was insistent on costs and an order that the winding up application be dismissed. Mr Chua had written to Mr Foo stating that he was prepared to argue the matter and proceeded to file his submission although Mr Foo had notified him that he (Mr Foo) would not be proceeding.

5 On the submissions before me, it seemed obvious that this application should either be withdrawn or dismissed. In either case, the remaining issue was the question of costs. That seemed

to be what Mr Chua was after and what Mr Foo sought to avoid. I was of the view that the matter would be more equitably dealt with after the real dispute is resolved, and that would be the trial in Suit 637 of 2008. Since costs is discretionary and the conduct of the parties might be a factor to be considered, I therefore ordered this winding up application to be heard immediately after Suit 637 of 2008 by the trial judge, but with liberty to restore should Suit 637 of 2008 not proceed for any reason. I was of the view that this would be more expedient and fair than to have the application dismissed forthwith as Mr Chua wanted, or dismissed with only the question of costs reserved to the trial judge, since it might be material whether the application should have been dismissed or be allowed to be withdrawn.

Copyright © Government of Singapore.