Starluck Construction Pte Ltd *v* HSS Engineering Pte Ltd [2013] SGHC 72

Case Number	: Companies Winding Up No 170 of 2012
Decision Date	: 01 April 2013
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Beh Eng Siew (Lee Bon Leong & Co) for the plaintiff; Thirumurthy Ayernaar Pambayan (Murthy & Co) for the defendant.
Parties	: Starluck Construction Pte Ltd — HSS Engineering Pte Ltd

Companies – Winding Up

1 April 2013

Chan Seng Onn J:

1 This was a petition by Starluck Construction Pte Ltd ("the Plaintiff") for a winding up order to be made against HSS Engineering Pte Ltd ("the Defendant") on the ground that the Defendant had been unable to pay its debts under s 254(1)(e) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"). After hearing the parties, I allowed the petition.

2 The Defendant has appealed against my decision. I now set out my reasons.

3 It was undisputed that the Defendant owed the Plaintiff a sum of $2,827,504.40 as of 26 September 2012 ("the Sum"). The Sum arose out of a Judgment dated 16 August 2012 awarded in favour of the Plaintiff for money owed by the Defendant to the Plaintiff pursuant to construction work done on the Defendant's building.

4 It was also undisputed that the Plaintiff served a statutory demand on 26 September 2012 at the Defendant's registered office and that the Defendant subsequently failed to pay the Sum or any part thereof within three weeks.

5 Therefore, the Plaintiff successfully raised the presumption of insolvency under s 254(2)(a) of the Companies Act which provides as follows:

> **Definition of inability to pay debts**
>
> (2) A company shall be deemed to be unable to pay its debts if —
>
> (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $10,000 then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor.

6 In response, the Defendant argued that it was not insolvent because:

(a) It could earn a monthly profit of between $150,000 and $250,000 from renting out its factory building and land for the next 12 to 13 years;

(b) The factory building and land could be sold for between $10m to $12m on the open market; and

(c) Maybank was still willing to loan the Defendant a sum of $4m (although it bears noting that the letter of offer from Maybank was dated 2 September 2010).

7 In my opinion, the Defendant's arguments failed to rebut the statutory presumption of insolvency. The Defendant did not provide any evidence to substantiate its claims that the factory and land can be rented out or sold for the amounts asserted. As for the purported $4m loan offer from Maybank, the letter of offer had already lapsed by 17 September 2010 (two weeks after 2 September 2010).

8 Even though the Defendant repaid $500,000 of the Sum on 6 February 2013, this was only a small repayment of the Sum which had been due since July 2010. More than $2m of the outstanding Sum remained repaid after approximately two and a half years and repeated adjournments of the present matter (*viz.* 23 November 2012, 3 January 2013, 1 February 2013 and 8 February 2013). More than ample time had been granted to the Defendant to repay the Sum and I did not see any purpose in granting any further adjournment.

9 Clearly, the Defendant had failed to rebut the presumption of insolvency under s 254(2)(a) of the Companies Act and was therefore deemed to be unable to pay its debts under s 254(1)(e) of the same. Consequently, I allowed the winding up petition with costs to be taxed or agreed, and paid out of the assets of the Defendant to the Plaintiff.

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