IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 195

Companies Winding Up No 89 of 2019

In the matter of Section 254(1)(e) of the Companies Act (Cap 50)

And

In the matter of Zhejiang Construction Investment (S) Pte. Ltd.

Between

China Zhejiang Construction Group (HK) Ltd

… *Plaintiff*

And

Zhejiang Construction Investment (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Companies] — [Winding up]

TABLE OF CONTENTS

WINDING-UP APPLICATION 2

NON-PARTY'S APPLICATION 2

MY DECISION 5

CONCLUSION.....8

Version No 1: 27 Oct 2020 (22:41 hrs)

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China Zhejiang Construction Group (HK) Ltd
v
Zhejiang Construction Investment (S) Pte Ltd

[2019] SGHC 195

High Court — Companies Winding Up No 89 of 2019
Chan Seng Onn J
5 July 2019

27 August 2019

Chan Seng Onn J:

1 On 5 July 2019, I made an order for the defendant, Zhejiang Construction Investment (S) Pte Ltd ("Zhejiang SG"), to be wound up and for Mr Tee Wey Lih of Acres Advisory Pte Ltd to be appointed as the liquidator of Zhejiang SG ("the liquidator"). The plaintiff is China Zhejiang Construction Group (HK) Ltd ("Zhejiang HK"), a creditor of Zhejiang SG. The debt owed by Zhejiang SG to Zhejiang HK in the sum of S$7,760,717.66 was undisputed.[1] No one appeared on behalf of Zhejiang SG to contest the winding-up application brought by Zhejiang HK. However, a non-party, Chiu Teng Construction Co. Pte Ltd ("Non-Party"), applied for the dismissal of the winding up application, on the basis that the winding-up application had been brought for a collateral purpose.

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[1] 1st Affidavit of Lok Yu Cheong at para 12

2 The Non-Party has now appealed against my order. I thus set out the reasons for my order below.

Winding-up Application

3 As at 28 March 2019, Zhejiang SG owed a total sum of S$7,760,717.66 to Zhejiang HK through four loan agreements ("the Loan Agreements"), including the loan interest and the accrued interest for late payment.[2] On 2 April 2019, Zhejiang HK, through its solicitors, served a statutory demand issued pursuant to s 254(2)(*a*) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") by hand on Zhejiang SG at its registered office.[3] The sums owed to Zhejiang HK remained unsatisfied after the lapse of three weeks from 2 April 2019.[4] On 30 April 2019, Zhejiang HK filed the winding-up application.

Non-Party's Application

4 The Non-Party and Zhejiang SG entered into a joint venture agreement dated 5 August 2010, with a third party, Etong Construction (S) Pte Ltd ("Etong Construction").[5] Under the joint venture agreement, all three parties agreed to work together on building works for the erection of 495 Housing and Development Board ("HDB") dwelling units at Sengkang ("the Project"), which was awarded by HDB. The Non-Party, Zhejiang SG and Etong Construction agreed to carry out the Project on a "profit/loss sharing basis".[6] The Project was

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2 1st Affidavit of Lok Yu Cheong at paras 7, 11–12

3 1st Affidavit of Lok Yu Cheong at paras 12, LYC-4 at pp 46–48

4 1st Affidavit of Lok Yu Cheong at para 13

5 1st Affidavit of Poon Boon Wai at paras 8–11, PBW-1 at pp 12–26

6 1st Affidavit of Poon Boon Wai at para 10

Version No 1: 27 Oct 2020 (22:41 hrs)

completed in March 2013.[7]

5 The Non-Party claimed that Zhejiang SG failed to manage its sub-contractors during the course of the Project, leading to delays and losses suffered by the Non-Party. The Non-Party also claimed that as a result of Zhejiang SG's failure to properly complete its scope of the works, extensive rectifications were required and the Non-Party had to bear the costs of the said rectifications.[8] On 14 November 2018, the Non-Party, through its solicitors, served a letter of demand on Zhejiang SG for the sum of $978.717.94.[9] On 20 November 2018, Zhejiang SG responded to deny the said claim. Zhejiang SG disputed the basis of the claim, the calculations and breakdown of the sum claimed, the apportionment of the alleged loss and proof of the alleged loss.[10] The Non-Party and Zhejiang SG were in negotiations over the payment claims and amounts owed up until January 2019, when the Non-Party was alerted about the winding-up application by Zhejiang HK.[11]

6 The Non-Party alleged that Zhejiang HK had a collateral purpose for its winding-up application against Zhejiang SG and submitted that the Court should exercise its residual discretion to dismiss the winding-up application: *Lai Shit Har and another v Lau Yu Man* [2008] 4 SLR(R) 348 ("*Lai Shit Har*").

7 The Non-Party based its allegation on the fact that Zhejiang SG and

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7 1st Affidavit of Poon Boon Wai at para 12

8 1st Affidavit of Poon Boon Wai at para 14 and p 37, Non-Party Written Submissions ("NWS") at paras 9–12

9 1st Affidavit of Poon Boon Wai at para 19–20, PBW-4 at pp 79–80

10 1st Affidavit of Poon Boon Wai at p 81

11 1st Affidavit of Poon Boon Wai at paras 19–22, PBW-3 at pp 37–77

Version No 1: 27 Oct 2020 (22:41 hrs)

Zhejiang HK shared the same directors and had the same controlling shareholder. As of 17 January 2019, an Accounting and Corporate Regulatory Authority ("ACRA") search showed that Mr Guan Manyu and Mr Chu Ping had been directors of Zhejiang SG since 1 July 2014.[12] However, an ACRA search dated 2 April 2019 subsequently revealed that Mr Guan Manyu and Mr Chu Ping were no longer reflected as directors of Zhejiang SG.[13] A Companies Registry Annual Return Form dated 1 September 2018 and an ICRIS Cyber Search dated 17 May 2019 reflected that Mr Guan Manyu and Mr Chu Ping were also directors of Zhejiang HK.[14] Further, I noted that as of 17 January 2019, Mr Guan Manyu and Mr Chu Ping were not the only two directors of Zhejiang SG. Two other directors had been appointed since 2012.[15] Finally, Zhejiang Construction Investment Group Co. Ltd ("Zhejiang China") owned 70% of the ordinary shares of Zhejiang SG and 100% of the ordinary shares of Zhejiang HK.[16]

8 As for the Loan Agreements, the Non-Party averred that they were all signed by Mr Chu Ping in his capacity as Zhejiang HK's representative, while he was a director of Zhejiang SG.[17] However, I found that this assertion was not sufficiently evidenced by the Mandarin signatures on the Loan Agreements, which were illegible and did not clearly represent Mr Chu Ping's name.[18]

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12 1st Affidavit of Lok Yu Cheong at p 13

13 2nd Affidavit of Lok Yu Cheong at p 66

14 1st Affidavit of Poon Boon Wai at para 26, pp 87, 92, 95–96

15 1st Affidavit of Lok Yu Cheong at p 13

16 1st Affidavit of Poon Boon Wai at paras 30–32, PBW-5 at pp 91, 99

17 1st Affidavit of Poon Boon Wai at para 34

18 1st Affidavit of Lok Yu Cheong at pp 17–40.

Version No 1: 27 Oct 2020 (22:41 hrs)

9 I further noted that one of the loans extended by Zhejiang HK to Zhejiang SG for the sum of RMB 12,774,704.08 (S$2,554,940.82) from the period of 18 December 2017 to 17 December 2018, was used towards the repayment of Zhejiang SG's loan amount and interest owed to Zhejiang China.[19]

10 The Non-Party also submitted that these related party transactions were not reflected in the Financial Statements of Zhejiang SG of 2016 and 2017, and the Financial Statements had extensive qualifications by the auditors which shed no further light on the "Related Party Transactions".[20] For instance, in the Financial Statement of 2016, an amount of $628,786 was incurred due to "Settlement of liabilities on behalf for a related party."[21] In the Financial Statement of 2017, an entry of $321,405 was recorded as "Loan interest paid to a related company" and $1,229,573 was recorded as "Settlement as liabilities on behalf of a related company".[22] The Non-Party coined these records as suspicious and made the allegation that "it is doubtful whether the losses purportedly suffered by Zhejiang SG were genuine or simply a means to avoid paying off creditors."[23]

My decision

11 The court has the inherent jurisdiction to prevent an abuse of its processes. Even though the statutory grounds for winding-up the company may have been technically established, the court retains the residual discretion to

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19 1st Affidavit of Lok Yu Cheong at pp 20–22 para VII; 2nd Affidavit of Lok Yu Cheong at p 70

20 NWS at para 32–33

21 1st Affidavit of Poon Boon Wai at p 145

22 1st Affidavit of Poon Boon Wai at p 196

23 1st Affidavit of Poon Boon Wai at para 48

Version No 1: 27 Oct 2020 (22:41 hrs)

consider all the relevant factors, including utility, propriety and effect of a winding-up order as well as the overall fairness and justice of the case: *Lai Shit Har* at [22] and [33].

12 Having evaluated the evidence before me and after considering all the relevant factors, I did not find any abuse of process such that I should exercise my residual discretion to dismiss the winding-up application. While the loan transactions between Zhejiang SG and Zhejiang HK were between two related parties since they shared the same holding company and two common directors, the Non-Party's case was based more on **suspicion** and **speculation**. As the Non-Party rightly admitted, companies are not prohibited from extending *bona fide* loans to its related companies.[24] Ultimately, Zhejiang SG and Zhejiang HK were still separate legal entities that operated in different jurisdictions.

13 The Non-Party argued that Zhejiang HK was seeking to wind up Zhejiang SG to enable the latter to avoid paying its creditors. However, even if I were to assume that to be the case, it was all the more so that such a company should be wound up without delay in order for its creditors to be paid and the allegedly suspicious transactions to be examined by the liquidator to determine if any clawback would be required. Moreover, a company such as Zhejiang SG should not be allowed to continue operating and potentially enter into any further transactions that would operate unfairly and to the disadvantage of the company and consequently, to the detriment of the company's creditors. Instead, Zhejiang SG should be wound up and the property of Zhejiang SG be applied *pari passu* in satisfaction of its liabilities to its creditors and the remainder be distributed among the members according to their rights and

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[24] NWS at para 28

Version No 1: 27 Oct 2020 (22:41 hrs)

interests in the company by the liquidator: s 300 of the Companies Act.

14 After the receipt of the statement of affairs, the liquidator would have to submit a preliminary report to the Official Receiver and also, if he thinks fit, make further reports stating whether in his opinion any fraud has been committed: s 271 of the Companies Act. At that point, the Non-Party could provide evidence of any wrongdoing against Zhejiang SG or its directors in order to assist the liquidator, who would then decide whether to take further action if necessary.

15 At the hearing on 5 July 2019, the Non-Party submitted that should the court dismiss the winding-up application, it would continue negotiations with Zhejiang SG or proceed with further investigations on Zhejiang SG.[25] Allowing the Non-Party to pursue such a course of action could not in my judgment justify dismissing the winding-up application as the interests of the petitioning creditor, Zhejiang HK, as well as other creditors of Zhejiang SG would be prejudiced.

16 Moreover, the amount owed to the Non-Party by Zhejiang SG was still in dispute (see above at [5]). It is trite law that the liquidator has a duty to examine and investigate every proof of debt and the grounds of the debt and may call further evidence in support of it, see *Fustar Chemicals Ltd v Ong Soo Hwa (liquidator of Fustar Chemicals Pte Ltd)* [2009] 1 SLR(R) 844 at [33] and Rule 92 of the Companies (Winding-Up) Rules (Cap 50, R 1, 2006 Rev Ed). After the winding-up, the liquidator would have the opportunity to investigate the validity of the Non-Party's claim and its proof of debt.

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[25] Audio Transcript of Court 4C 5 July 2019 at 10:12:10am

Version No 1: 27 Oct 2020 (22:41 hrs)

17 Finally, at the hearing on 5 July 2019, the Non-Party confirmed that it was not disputing the independence or impartiality of the liquidator proposed by Zhejiang HK to be appointed. As such, after winding-up Zhejiang SG, the liquidator would be expected to carry out all its duties and obligations faithfully, and to realise and distribute Zhejiang SG's assets in accordance with the law.

Conclusion

18 For the above reasons, I was not satisfied that that sufficient grounds had been furnished by the Non-Party to dismiss the winding-up application. As such, I ordered Zhejiang SG to be wound-up after Ms Kavitha Kandesan for the Official Receiver confirmed that the papers for the winding-up application were in order.

Chan Seng Onn J
Judge

Tan Tho Eng (TSMP Law Corporation) for the plaintiff;
The defendant absent and unrepresented;
Sharon Wong (Millennium Law LLC) for the non-party
Kavitha Kandesan for the Official Receiver

Version No 1: 27 Oct 2020 (22:41 hrs)