Re John While Springs (S) Pte Ltd
[2001] SGHC 53

Case Number : CWU 363 AND 364/2000

Decision Date : 22 March 2001

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Tan Cheow Hin and Sheerin Ameen (Cheow Hin & Partners) for the petitioners; Lee Eng Beng and Low Poh Ling (Rajah & Tann) for the respondents

Parties : —

Companies – Winding up – Just and equitable ground – Whether company was quasi-partnership in which partners could no longer work together – Nature of relationship between shareholders – s 254 Companies Act (Cap 50, 1994 Ed)

Companies – Winding up – Petition – Whether petitioner could rely on ground of oppression which was not pleaded – s 216 & s 254 Companies Act (Cap 50, 1994 Ed)

: These were separate petitions to wind up two companies under the just and equitable ground in s 254 of the Companies Act (Cap 50, 1994 Ed) (`the Act`). The companies were John While Springs (S) Pte Ltd (`JWS`) and Segno Precision Pte Ltd (`Segno`). The petitions were brought by minority shareholders in each case.

The petitioner in respect of JWS was Justin Goh Sai Chuah (`JG`) who owns 20% of the shares. The remaining 80% is owned by Minstar Pte Ltd of which the late John Willson (`JW`) was the controlling shareholder. The petitioners in respect of Segno were Cheong Shze Fun (`Cheong`), Goh Sok Huay (`Goh`), and Ng Wan Wha (`Ng`), each of whom owns 8% of the shares. The remaining 76% is owned by JWS.

JWS is in the business of manufacturing springs. The main director at the material times was John Willson. He worked closely with JG for many years. John Willson became seriously ill in late 1998 and eventually died in June 1999. His widow Rhonda Willson (`RW`) became more involved in JWS and eventually Segno as well, in late 1998.

Problems arose when RW discovered that a company called Aligent Precision Pte Ltd (`Aligent`) was incorporated in June 2000 in competition with JWS and Segno. JG and Cheong were diverting business from JWS and Segno to Aligent. JWS and Segno subsequently commenced proceedings in Suit 848/2000 against JG and Cheong for breaches of fiduciary duties and sought injunctive relief against Aligent. Five other parties including Ng were named as defendants in the suit.

The first defendant filed a counterclaim in respect of certain shares in a Malaysian company called John While Springs (M) Sdn Bhd (`JWSM`). The two winding-up petitions were ordered to be heard together with Suit 848/2000.

At the trial, the plaintiffs entered judgment, by consent, against JG, Cheong, Aligent and Ng; and also by consent, JG entered judgment against JWS in respect of the 250,000 shares in JWSM. Parties then proceeded to make their submissions in respect of the winding-up petitions.

The thrust of the petitions was the inability of the petitioners to get along or work with RW. However, that alone is an inadequate basis to wind up a company on the just and equitable ground. Consequently, the petitioners argued that the companies ought to be wound up because they were in

essence quasi-partnerships in which the partners could no longer work together.

Mr Tan, counsel for the petitioners, referred to a number of authorities, notably **Chong Choon Chai v Tan Gee Cheng** [1993] 3 SLR 1 . Mr Tan submitted that the essence of the authorities is that there was no fixed categories of cases which fall under the `just and equitable` ground. As a general principle, that cannot be disputed. The universality of justice and equity requires them to pervade every aspect of life and human activity. However, when these concepts have to be applied in a legal setting, such as that created under a statutory provision like s 254 of the Act, one has to begin by examining the facts at hand and to inquire what is the precise nature of the petitioners` complaint. To understand this aspect of the case it will be necessary to consider the historical background briefly.

According to JG`s affidavit, he started work with JWS about 1984 when the company was not financially viable. The majority shareholder then was one Philip Cave (`PC`) whom JG respected. PC would give JG a 20% beneficial shareholding in the company and made him the managing director. JG was given the liberty to work without interference. This continued even when PC sold his shares to Minstar Singapore Pte Ltd. JW who was the owner of Minstar continued to let JG operate JWS as he had done. When PC sold out to Minstar, JG`s 20% beneficial shareholding in JWS was also perfected in the course of the transaction. Things changed after JW`s death when RW took over his shareholding and consequently, the voting power that went with it. JG was not able to carry on managing JWS the way he wanted. RW deposed in her affidavit that there was also unhappiness over the proposal to merge the two companies (JWS and Segno) with the view of listing the new company in the stock exchange. The minority shareholders in Segno could not agree to the shares they were offered in the new company and therefore opposed the merger. These events occurred around February 2000. On 24 July 2000 RW received an anonymous message that a plot was being hatched. RW subsequently learned that the sender was the production manager of JWS and that JG had set up a new company with the view of competing with JWS. RW commissioned a corporate detective company to conduct further investigation. Consequently, JWS and Segno filed Suit 848/2000 against JG, the new company (Aligent), Cheong, and others for various breaches of fiduciary duty. At the trial the defendants consented to judgment. The breaches of fiduciary duty were admitted by JG and Cheong in the agreed statement of facts.

Further, on the evidence set out in JG`s affidavit, I do not think that the relationship between JG and JW can be described as a quasi-partnership. A good and close working relationship may be an indication, but not an overwhelming one of such relationship. The history of the company and the context of the case provide useful indications as to the nature of the relationship between the shareholders. In this case, it is fairly evident from JG`s affidavit that his shareholding was given to him more as a form of reward for his loyalty and hard work. I will hasten to add that an employee can never become a partner, but we are not finding whether a partnership exists, but whether the relationship of the shareholders was akin to a quasi-partnership. I do not think it was such in this case. It was unfortunate that JG was unable to carry on with the same vigour and loyalty to JWS after JW`s death, and he may have resented the manner in which RW carried out the investigation into his activities in connection with Aligent and the Malaysian company JWSM, but that is not evidence of a pre-existing quasi-partnership. Thus, the main plank of the petitioners - that there was a quasi-partnership - fails.

There is another reason why the petitioners cannot succeed. JG was one of the main benefactors of the competing company Aligent. Cheong, a minority shareholder of Segno, was also such a party. Having consented to judgment in respect of their breaches of fiduciary duty to JWS and Segno respectively, I cannot allow them to wind up these companies on the just and equitable ground. Their acknowledged breaches of fiduciary duty, if unchecked, may lead to the destruction of the two

companies financially, and therefore, effectively. Thus, they cannot hope to achieve that result through the court after their secret activities were exposed.

It may be true that the JG and the relevant defendants may no longer be able to work with the companies in view of the way events have unfolded. They are, nonetheless, still shareholders and are entitled to the rights as shareholders. There are other options for the parties to explore but they would be outside the purview of s 254 of the Act. Counsel for the petitioners submitted that the petitioners were oppressed, but oppression comes under a separate ground which was not the petitioners` pleaded case. At any rate, on the evidence before me, I cannot conclude that there was oppression of the minority. I think that it is not right that a shareholder should be allowed to exit at will. The relationship of shareholders as between themselves and also as between them and the company are contractual. The contract must be given every reasonable opportunity to be performed. Thus, the legislature has given oppressed minority shareholders the options of a share buy-out or a winding up of the company, but only when either the requirements of s 216 or s 254 (as the case may be) are met. Exiting at will is a term used by the English Law Commission, as well as Lord Hoffman in **O`Neill v Phillips** [1999] 2 All ER 961(Unreported) 1. In that case, Lord Hoffman was of the same view but he went even further by saying that he disapproves of letting a shareholder exit at will even in a company that is in effect a quasi-partnership.

The petitions were therefore be dismissed with costs.

Outcome:

Petitions dismissed.