

Re Ng Huat Foundations Pte Ltd
[2005] SGHC 112

Case Number : OS 1611/2004
Decision Date : 24 June 2005
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Justin Chan Yew Loong (Tito Isaac and Co) for the applicant; Ronald Choo Han Woon (Rajah and Tann) for the creditor, Samwoh Resources Pte Ltd; Ang Keng Ling (Khattar Wong and Partners) for the creditor, United Overseas Bank Ltd
Parties : —

Companies – Schemes of arrangement – Application to convene creditors' meeting to consider scheme of arrangement and stay of legal proceedings pending meeting – Opposing creditors representing more than one-fourth in value of creditors – Material non-disclosure by applicant – Whether application should be granted – Section 210 Companies Act (Cap 50, 1994 Rev Ed)

24 June 2005

Lai Kew Chai J:

1 In this originating summons, Ng Huat Foundations Pte Ltd (“the applicant”) applied under s 210 of the Companies Act (Cap 50, 1994 Rev Ed) (“the Act”) for an order that it be at liberty to convene a meeting for the purpose of considering a scheme of arrangement proposed by the applicant to its creditors. The applicant also asked for an order, which is usual in such applications, that no proceedings in any action be taken against it or continued from the date of the order to be made until the holding of the meeting of the creditors pursuant to s 210(1) of the Act. At the conclusion of the hearing, I dismissed the application with costs fixed at \$750 each for the two creditors which had appeared at the hearing to oppose the application. I understand that the applicant has been wound up on 25 February 2005. Brief grounds are nevertheless set out.

2 The applicant was incorporated in Singapore in 1995 with a paid-up capital of \$80,000. Its business was to undertake construction and engineering works, especially foundation works such as micropiling, bored and conventional piling. It was part of the Ng Huat group of companies (“the Ng Huat group”), comprising the applicant, Ng Huat Engineering Pte Ltd, Ng Huat Construction Pte Ltd, NHE Heavy Equipment Pte Ltd and Ng Huat Investment Pte Ltd. Ng Huat Engineering Pte Ltd was at the material time under judicial management. NHE Heavy Equipment Pte Ltd was in liquidation. The Ng Huat group was run principally by Tony Ng and his wife, Mdm Lee Ah Poh. Tony Ng was an undischarged bankrupt.

3 The total liabilities of the applicant amounted to approximately \$1.3m and its total assets amounted to approximately \$44,000.00.

4 Under the proposed scheme, the applicant would procure to be paid to each unrelated scheme creditor 35% of the outstanding owed, payable by staggered instalments over seven months and ten days.

5 It should be highlighted that the proposed scheme was entirely dependent on funds to be injected or procured by Mdm Lee Ah Poh.

6 Both counsel who appeared for the two creditors opposing the application informed the court that a bankruptcy petition in Bankruptcy Suit No 4855 of 2004 had been presented against Mdm Lee

Ah Poh. It was fixed for hearing on the day following the hearing before me. Counsel for the applicant told me that he was instructed that Mdm Lee would be able to fund the first three payments. However, it was indicative of the candour of the applicant and/or Mdm Lee Ah Poh that counsel for the opposing creditors were not informed of this.

7 I was also informed by both counsel of the two opposing creditors that they collectively represented 34% in value of the creditors and their clients would definitely vote against the scheme. Under s 210(3) of the Act, among other things, a majority in number representing three-fourths in value of the creditors, voting in person or by proxy, have to vote in favour of the scheme at the meeting ordered by the court before the scheme of compromise can bind all the creditors of the applicant. In the result, it was not seriously disputed before me that the applicant would not have been able to have the scheme approved, so that it would be legally binding on all its creditors.

8 In considering an application under s 210 of the Act, a court has to consider the overall fairness of the scheme and the prospects of its acceptance by 75% in value of the creditors: see *Re Halley's Departmental Store Pte Ltd* [1996] 2 SLR 70 at 74, [16]–[17].

9 I did not think that there was any prospect of the scheme receiving the approval of the requisite three-fourths in value of the creditors. I did not think that a court should act in vain.

10 Further, there was a material non-disclosure on the part of the applicant. It was not disclosed that Mdm Lee Ah Poh had bankruptcy proceedings filed against her. It was also not disclosed that one of the opposing creditors, Samwoh Resources Pte Ltd, had obtained an arbitration award against the applicant.

11 In these circumstances, I made the orders that I did.

Application dismissed.