Re Projector SA
[2008] SGHC 234

Case Number : CWU 103/2008

Decision Date : 12 December 2008

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Vinodh Coomaraswamy SC, Pradeep Pillai, Stephanie Wee and Victoria Ho (Shook Lin & Bok LLP) for the plaintiff; Prem Gurbani and Bernard Yee (Gurbani & Co) for supporting creditor; Lee Kiat Seng and Shum Wai Keong (Wong & Leow LLC) for supporting creditor; Andre Maniam, Jenny Tsin and Wendy Lin (WongPartnership LLP) for opposing creditor; Cavinder Bull SC and Lim Ming Yi (Drew & Napier LLC) for opposing creditor; Sarjit Singh SC, David Chan and Ivan Koh (Shook Lin & Bok LLP) for the provisional liquidators

Parties : —

Companies – Winding up – Powers of foreign liquidator compared with those of Singapore liquidator – Section 377(2)(b) Companies Act (Cap 50, 2006 Rev Ed)

Companies – Winding up – Whether creditor who presented winding-up application against foreign company in Singapore had to be Singapore creditor – Section 253(1) Companies Act (Cap 50, 2006 Rev Ed)

Companies – Winding up – Whether creditor's application was abuse of process – Factors determining whether court had jurisdiction to make winding-up order in respect of foreign company – Whether applicant had to prove that there would be surplus of funds after local creditors had been paid

Companies – Winding up – Whether only local creditors and liquidator appointed in foreign liquidation proceedings entitled to apply for foreign company to be wound up in Singapore – Section 377(3)(c) Companies Act (Cap 50, 2006 Rev Ed)

12 December 2008 Judgment reserved

Tan Lee Meng J:

1 This case involves an application by a foreign company, ING Belgium NV ("ING"), to wind up Projector SA, a company incorporated in Belize and presently being liquidated in that country. Until recently, Projector SA was registered as a foreign company in Singapore. ING, which had served a statutory demand on Projector SA, made this application to wind up Projector SA with the agreement of the provisional liquidators appointed in Belize. Two of Projector SA's other creditors, namely SK Energy Europe Ltd and Bayerische Hypo-und Vereinsbank AG, support the application to wind up Projector SA. However, the application was vehemently opposed by other creditors of Projector SA, namely two companies in the Mitsui group, Mitsui & Co Ltd and Mitsui Oil (Asia) Hong Kong Ltd (both referred to as "Mitsui") and Samsung Total Petrochemical Co Ltd ("Samsung").

Background

2 ING and Projector SA had a trade finance relationship, pursuant to which they entered into four transactions concerning the purchase of naphtha and gas oil loaded onto and shipped in three vessels, one of which was the *Morning Express* ("the vessel").

3 ING Belgique SA and ING Belgium, Brussels, Geneva Branch, who claimed to be the holders of three bills of ladings in relation to the goods on board the vessel, claimed that they had not been paid under the relevant Letter of Credit issued on behalf of Projector SA's subsidiary, Projector Asia Pte Ltd ("Projector Asia"). As they did not take adequate banking collaterals from Projector SA, they arrested the vessel in Singapore on 30 May 2008.

4 At the material time, Mitsui were the charterers of the vessel. Pursuant to a Letter of Indemnity ("LOI") dated 15 May 2008 furnished by Projector SA in favour of Mitsui with respect to the said vessel, Projector SA was obliged to provide on demand such bail or other security as may be required to prevent the arrest or detention or to secure the release of the ship. Mitsui insisted that Projector SA fulfil its obligations under the LOI and secure the release of the vessel. As Projector SA did not respond positively, Mitsui commenced Suit No 397 of 2008 and served the Writ of Summons on Projector SA on 10 June 2008. On the same day, Mitsui applied for an interim mandatory injunction against Projector SA with respect to the latter's breach of the LOI.

5 At the hearing of Mitsui's application by Choo Han Teck J, Projector SA informed the Court through a letter dated 10 June 2008 that it was "in serious financial difficulty" and that it was in no position to furnish the security requested by Mitsui. The hearing was adjourned to allow Projector SA to file an affidavit in response to Mitsui's application for the interim injunction.

6 In the meantime, damages mounted while the vessel was still under arrest. On 16 June 2008, Mitsui procured a bank guarantee from the Singapore branch of the Mizuho Corporate Bank Ltd for the sum of US$69 million to secure the release of the vessel.

7 On 13 August 2008, Projector SA informed the Court that it had on 6 August 2008 "resolved to voluntarily wind up itself" and to appoint a liquidator.

8 On 14 August 2008, ING filed two applications in the Supreme Court of Belize to wind up Projector SA and for Mr Andrew Lawrence Hosking ("Mr Hosking") and Mr Mark Richard Byers ("Mr Byers"), who are licensed insolvency practitioners of Grant Thornton UK LLP, to be appointed as provisional liquidators of Projector SA. The second application was to wind up FR8 Limited, a wholly-owned subsidiary of Projector SA.

9 Pursuant to ING's application to wind up Projector SA, on 18 August 2008, the Belize Court appointed Mr Hosking and Mr Byers as Projector SA 's provisional liquidators. On 10 October 2008, the Supreme Court of Belize ordered the winding up of Projector SA and appointed Mr Hosking and Mr Byers as the liquidators of Projector SA.

10 Prior to the making of the order in Belize for the winding up of Projector SA, Mitsui had obtained judgment in default of defence in the Singapore High Court on 8 September 2008 for, *inter alia*, the sum of US$69 million. On 10 September 2008, Mitsui applied for a Writ of Seizure and Sale against shares which it claimed were owned by Projector SA in a Singapore company, FR8 Holdings Pte Ltd ("FR8 Holdings"). That very afternoon, ING applied for a stay of proceedings in Mitsui's Suit No 397 of 2008 against Projector SA. On the previous evening, ING had filed its application to wind up Projector SA. Choo Han Teck J initially dismissed the application but after hearing further arguments, he ordered a stay of proceedings.

11 As for Samsung, it had made a claim in Suit No 383 of 2008 ("the Samsung suit") against Projector Asia as well as Projector SA. The claim relates to alleged breaches of agreements concerning the sale and purchase of naphtha and for diverting the proceeds of sale in breach of trust. Samsung complained that Projector SA induced Projector Asia to breach the said agreements,

unlawfully interfered with Samsung's business and knowingly assisted Projector Asia's breaches of trust. On 10 October 2008, Samsung obtained summary judgment against Projector SA for around US$9.4 million, together with interest from 4 June 2008 until the date of payment.

12 Samsung objected to Projector SA being wound up in Singapore on the ground that it has no assets in Singapore and that the Court has no jurisdiction to order the winding up of this company in Singapore.

13 As for Mitsui, it opposed the winding up application on the following more elaborate grounds:

(a) ING has no standing to make the application;

(b) ING's action is an abuse of process as it was brought up for collateral purposes, including preventing Mitsui from duly executing its judgment against Projector SA;

(c) The appointment of a Singapore liquidator is unnecessary and of no legitimate benefit to any relevant party; and

(d) ING has not shown a sufficient nexus between Projector SA and Singapore so as to justify a Singapore winding up order.

Whether Projector SA should be wound up

14 When considering ING's application for an order to wind up Projector SA, two issues must be considered. First, does the Court have jurisdiction? Secondly, if it does, should the Court exercise its discretion to order the winding up of Projector SA?

15 ING's application to wind up Projector SA is made under s 253(1)(b) of the Companies Act (Cap 50, 2006 Rev Ed), which provides that a company may be wound up under an order of the Court on the application of, *inter alia*, "any creditor, including a contingent or prospective creditor, of the company".

ING's rights as a foreign creditor

16 Mitsui asserted that the Court has no jurisdiction to deal with the application of ING, a foreign creditor, because the only creditors who may wind up a foreign company in Singapore are Singapore creditors. It referred to s 377(3) of the Companies Act, which provides that:

> A liquidator of a foreign company appointed for Singapore by the Court or a person exercising the powers and functions of such a liquidator –
>
> …
>
> (c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in Singapore and shall, subject to paragraph *(b)* and subsection (7), pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated *after paying any debts and satisfying any liabilities incurred in Singapore* by the foreign company.
>
> [emphasis added]

17 The effect of s 377(3)(c) of the Act was considered by the Court of Appeal in *Tohru*

Motobayashi v Official Receiver & Anor [2000] 4 SLR 529. LP Thean JA, who delivered the judgment of the Court, said at [44]:

> [O]n the true construction of s 377(3)(c) of the Companies Act, the liquidator of a foreign company appointed for Singapore by the court is required under that section to pay the net amount of all moneys recovered and realised in Singapore to the liquidator in the country where the foreign company was formed, only *after paying (i) all the preferential debts as defined in s 328 of the Companies Act, and thereafter (ii) all the debts and liabilities incurred in Singapore by the foreign company.*
>
> [emphasis added]

18 Mitsui argued that the only two parties who have an interest in a Singapore winding up of a foreign company are Singapore creditors and the foreign liquidator, and that ING, being a foreign creditor and not a Singapore creditor or a foreign liquidator, has no *locus standi* to bring the application to wind up Projector SA. No authorities were cited to support this proposition. Section 253(1) of the Companies Act provides that a company may be wound up under an order of the Court on the application of "*any* creditor" and no distinction is made therein between a Singapore creditor and a foreign creditor. There is no reason to read into s 253(1) of the Companies Act an additional requirement that the creditor who presents a winding up application against a foreign company in Singapore must be a Singapore creditor. Of course, the Singapore liquidator who is appointed must, in accordance with s 377(3)(c) of the Companies Act, accord priority to all the preferential debts as defined in s 328 of the said Act and the debts and liabilities incurred in Singapore by the foreign company but this does not mean that the effect of s 377(3)(c) is that only local creditors and the liquidator appointed in foreign liquidation proceedings are entitled to apply for a foreign company to be wound up in Singapore.

Abuse of process

19 Mitsui next argued that ING's application to wind up Projector SA should not be heard as it is an abuse of process. Mitsui asserted that the timing of ING's application was rather telling. ING filed the present winding up application one day after Mitusi obtained judgment for US$69 million against Projector SA. According to Mitsui, ING's ulterior motive in filing this application is to prevent Mitsui from enforcing its judgment against Projector SA and not to enable all creditors of Projector SA to get an equal share of the available assets.

20 ING countered that there is no hidden or ulterior collateral purpose for its application to wind up Projector SA and insisted that its intention is to put in place the insolvency regime for *pari passu* distribution of assets to unsecured creditors in Singapore. It pointed out that both Mitsui and Samsung are unsecured creditors and there is no reason why they should be allowed to steal a march on other creditors of Projector SA.

21 Mitsui referred to *Lai Shit Har & Anor v Lau Yu Man* [2008] 4 SLR 348 ("*Lai Shit Har*"), where the Court of Appeal held that the application before it to wind up a company was an abuse of process. However, this case is distinguishable as it concerns an attempt by a director or shareholder of a company to wind-up the company for the purpose of suppressing an action against himself by the company for his breach of director's duties. In fact, the director in question initiated the winding up application several years after the ground relied on for winding up had come into existence and after the company's suit against him was on the brink of trial. As a result, the Court held that it could be readily inferred from these facts that the application was brought for the collateral purpose of preventing the company from pursuing its suit against the allegedly errant director altogether or, at

the very least, to make it more costly and time-consuming for the company to do so. The facts in *Lai Shit Har* are thus a far cry from the position of a creditor who seeks to wind up a company in accordance with the insolvency regime established by the Companies Act.

22 When considering whether there has been an abuse of process, the decision in *Re Griffin Securities Corporation* [1999] 3 SLR 346 ("*Re Griffin*") is also instructive. In this case, the petitioner, Yeo, obtained judgment against a foreign company, Griffin, but was unable to recover the judgment sum. He thus sought a winding-up order. Chua, an opposing creditor, had earlier obtained a garnishee order against Griffin's only known asset in Singapore but Yeo succeeded in getting the garnishee order discharged. The following comment by Rajendran J at [22] with respect to the arguments of the opposing creditor, Chua, in that case is pertinent:

> By opposing the petition Chua was seeking, merely by reason of the fact that he was the first to commence proceedings against Griffin in Singapore, to arrogate for himself all the assets that Griffin had in Singapore. Chua would, of course, be entitled to those assets if he had priority over the other creditors but that was not an issue that was before me for determination. In asking that the petition be dismissed, Chua was seeking to put himself at an advantage over the other creditors. It seemed to me that Chua was not trying to avoid an injustice to himself – he was really trying to get the assistance of the court in effecting an injustice on the other creditors. I could see no merit in that submission.

23 Mitsui and Samsung have every right to seek enforcement of their judgments against Projector SA and are understandably upset that just when they are on the verge of obtaining the fruits of the judgments obtained against Projector SA, their efforts have been put on hold by ING's application to wind up Projector SA. In truth, they are strenuously objecting to the application because they want to complete execution proceedings to satisfy their judgments.

24 While Mitsui and Samsung are entitled to take steps to protect their respective positions, other creditors of Projector SA, whether local or foreign, cannot, without more, be restrained from taking advantage of the insolvency regime established under the Companies Act to protect their own positions. In *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 WLR 305, the House of Lords considered the position of a creditor who applied for a charging order in the hope of obtaining an advantage over other unsecured creditors and the position of the shareholders who, on professional advice, put the company into voluntary liquidation in the hope of depriving that creditor of the advantage in question. Lord Brightman put matters in their proper perspective when he said [at p 313G]:

> Neither step nor counterstep casts any discredit on those involved. There was nothing in the nature of sharp practice on either side, nor has this been suggested in your Lordships' House. A person who has the misfortune to have given credit to a company which runs into financial difficulties has every right to seek to secure himself. And such company or its other creditors has every right to hasten liquidation in order to thwart such a purpose.

25 It follows that in the absence of other evidence to the contrary, ING's application to wind up Projector SA in Singapore cannot be regarded as an abuse of process.

Assets in or connection with Singapore

26 For the Court to have jurisdiction to make a winding up order in respect of a foreign company, it must be shown *either* that Projector SA has assets in Singapore *or* that Projector SA has a sufficient nexus or connection with Singapore. In *Re Griffin* ([22], *supra*), Rajendran J explained (at [17]):

Although s 351 grants the court a discretion to wind up a foreign company, the courts will not exercise this discretion, even when the requirements of s 351 are met, unless there is a sufficient nexus between the foreign company and Singapore to justify the winding-up of the foreign company. The position in England (where the statutory provisions are broadly similar), as summarised in 7(3) *Halsbury's Laws of England* (1996 Ed), at para 2909, is as follows:

> A foreign company … may be wound up as an unregistered company if it has assets in England, *or* if a sufficient connection with England and Wales can be shown and there is a reasonable possibility that benefit would accrue to the company's creditors from the winding up.

[emphasis added]

27 ING asserted that the court has jurisdiction because Projector SA satisfies both requirements, namely that it has assets in Singapore and there is a sufficient nexus between Projector SA and Singapore.

Whether Projector SA has assets in Singapore

28 ING pointed out that Projector SA has assets in Singapore in the form of two substantial receivables and a 50% shareholding in a Singapore company, which it holds through a wholly-owned Belize subsidiary.

29 To begin with, it appears from Projector Asia's draft financial statements for the period ended 30 June 2008 that this company owes Projector SA USD16,540,775. ING thus submitted that this debt represents an asset of Projector SA in Singapore and also shows a sufficient nexus or connection between Projector SA and Singapore.

30 Secondly, there also appears to be a debt due from BP Singapore Pte Ltd ("BP"), which is a Singapore company, to Projector SA. However, Samsung asserted that this debt had been assigned to ING and that it is questionable if BP owes Projector SA any money. ING retorted that it has not received any payment from BP and that Samsung has no evidence to the contrary. It pointed out that what is clear is that there is a debt due from BP to Projector SA even though an issue may arise as to whether there has been an assignment of this debt.

31 Apart from the receivables due from Projector Asia, Projector SA's Belize-incorporated subsidiary, FR8 Limited, owns 50% of the entire issued and paid up share capital of a Singapore company, FR8 Holdings ("the FR8 shares"). As has been mentioned, Mitsui's position is that these shares belong to Projector SA and it was on this basis that Mitsui applied for a Writ of Seizure and Sale against the FR8 shares to enforce its judgment for US$69 million against Projector SA in Suit No 397 of 2008. In an affidavit, Mitsui had claimed that these shares were valued at US$125 million in early 2008, a sum well in excess of the amount owed to Singapore creditors, which is estimated to be around US$87 million. It was only because of ING's successful application for a stay of proceedings that Mitsui's execution proceedings were stayed. It follows that on Mitsui's own case, Projector SA has assets within the jurisdiction. ING thus submitted that Projector SA's foreign creditors would have an interest in the Singapore liquidator exercising control over the FR8 shares even though the first priority of a Singapore liquidator is to pay off the Singapore creditors.

32 Mitsui asserted that for ING to succeed in its application, it must be shown that that there would be a surplus after payment to local creditors. In support of this, it referred to cases where shareholders of a company have tried to wind up the company, including *Re Ah Yee Contractors (Pte)*

Ltd [1987] SLR 383. In my view, creditors are in a different position from shareholders and the cases involving attempts by shareholders to wind up a company are not really relevant to the present proceedings. In any case, if it is not necessary for a foreign company to have assets in the jurisdiction before it can be wound up, the Courts should not impose an additional burden on an applicant to prove that there will be a surplus of funds after local creditors have been paid.

33 That the presence of a foreign company's assets within a jurisdiction will show a close connection with that jurisdiction is evident but the fact that it is not determinative of whether the Court has jurisdiction to order a winding up of such a company has been made clear in many cases. For instance, in *Eloc ElectroOptieck and Communcatie BV, In re* [1982] Ch 43, Nourse J wound up a Dutch company that had no assets in England on the ground that there was a reasonable possibility of benefit accruing to the petitioners consisting of assets not from the company but from an outside source which can only be tapped if an order is made. This case was followed in *A Company (No 00359 of 1987), In re* [1988] 1 Ch 210, where Peter Gibson J said [at pp 225 - 226]:

> [I] am prepared consistently with the *Eloc* case … to hold that the presence of assets in this country is not an essential condition for the court to have jurisdiction in relation to the winding up of a foreign company. In my judgment, provided a sufficient connection with the jurisdiction is shown, and there is a reasonable possibility of benefit for the creditors from the winding up, the court has jurisdiction to wind up the foreign company.

Whether there is a sufficient nexus

34 As for what constitutes a sufficient nexus between Projector SA and Singapore, reference may be made to *Compania Merabello San Nicholas SA, In re* [1973] 1 Ch 75, where Megarry J said as follows [at pp 91-92]:

> I would accordingly attempt to summarise the essentials of the relevant law relating to the existence of jurisdiction to make a winding up order in normal cases in respect of foreign companies as follows:

(1) There is no need to establish that the company ever had a place of business here.

(2) There is no need to establish that the company ever carried on business here, unless perhaps the petition is based upon the company carrying on or having carried on business.

(3) A proper connection with the jurisdiction must be established by sufficient evidence to show (a) that the company has some asset or assets within the jurisdiction, and (b) that there are one or more persons concerned in the proper distribution of the assets over whom the jurisdiction is exercisable.

(4) It suffices if the assets of the company within the jurisdiction are of any nature; they need not be "commercial" assets, or assets which indicate that the company formerly carried on business here.

(5) The assets need not be assets which will be distributable to creditors by the liquidator in the winding up: it suffices if by the making of the winding up order they will be of benefit to a creditor or creditors in some other way.

(6) If it is shown that there is no reasonable possibility of benefit accruing to creditors from making the winding up order, the jurisdiction is excluded.

35 In the present case, Projector SA carried on business in Singapore for quite a long time. It

registered itself as a foreign company in Singapore, a step required by s 368(1) of the Companies Act only if it has a place of business or carries on business in Singapore. Projector SA maintained its registration with ACRA as a foreign company until as late as 10 July 2008. This shows a significant connection between Projector SA and Singapore. ING pointed out that it is significant that Projector SA deregistered itself just two days after ING served it a statutory demand and asserted that this deregistration had very little to do with ceasing business in Singapore on 10 July 2008 and everything to do with a misguided attempt to evade this Court's winding up jurisdiction over it.

36 Apart from its own operations, Projector SA has very close links with Projector Asia, whose shares it holds through an intermediate holding company. These two companies share a common registered office in Singapore and according to ING, as late as May 2008, Projector Asia was confirming contracts to Samsung on behalf of Projector SA. It may be recalled that in its suit against Projector SA, Samsung pleaded, *inter alia,* that Projector SA induced Projector Asia to breach the latter's said agreements with Samsung and knowingly assisted Projector Asia's breaches of trust. It cannot be overlooked that Samsung had asserted in its proceedings against Projector SA that it had been informed that Projector SA provides funding to Projector Asia and controls the financial management and operations of Projector Asia.

37 In short, Projector SA's presence and operations in Singapore show that there is a sufficient nexus between Projector SA and Singapore for the purpose of winding up Projector SA in Singapore.

38 Apart from Projector SA's own business activities in Singapore and links with Projector Asia, Projector SA's links with FR8 Limited, which owns half the shares in FR8 Holdings, another Singapore company, must be taken into account. ING correctly asserted that the economic benefit of the ownership of the FR8 shares rests ultimately with Projector SA. All dividends declared on the said shares and all proceeds of the sale of the shares accrue up the corporate chain to Projector SA. If nothing else, Projector SA's link with FR8 Holdings adds to the strength of the connecting links between Projector SA and Singapore.

39 It should not be overlooked that both Samsung and Mitsui saw it fit to sue Projector SA in Singapore and that they had obtained judgments against Projector SA for US$9.4 million and US$69 million respectively. Furthermore, both of them had persuaded the Singapore Courts to issue world-wide Mareva injunctions against Projector SA, and Mitsui has even proceeded with execution proceedings against Projector SA's assets.

40 I thus find that there is evidence of a sufficient nexus between Projector SA and Singapore.

The Court's decision on the application

41 The next question to be considered is whether or not there are sufficient factors to persuade me to exercise my discretion in favour of winding up the company. In *Lai Shit Har* ([22] supra), VK Rajah JA, who delivered the judgment of the Court of Appeal said [at 33]:

> Although the statutory grounds for winding up a company may have been technically established, the court retains the residual discretion to consider all the relevant factors, including the utility, propriety and effect of a winding up order as well as the overall fairness and justice of the case, before deciding whether or not to wind up the company…. *In most cases, this enquiry will be a brief one, but in some, the court is duty-bound to evaluate the evidence and weigh all the factors before making a determination*.
>
> [emphasis in original]

42 That the Court must balance the interests of all parties concerned is obvious. In *Mitchell & Anor v Buckingham International plc (in liq) and Ors* [1998] 2 BCLC 369, Harman J said [at p 379]:

> The thrust of the decision must be based upon doing justice in the sense of holding an even balance between the interest of the applicants on the one hand and the interest, not of the liquidators who have no personal interest in the result at all, but of the class whom the liquidators represent, that is all the other unsecured creditors of the company in liquidation on the other hand.

43 Whether a winding up order will be beneficial in the present case was answered in different ways by the parties. Both Mitsui and Samsung submitted that winding up proceedings in Singapore are unnecessary and serve no practical purpose since Projector SA is already in liquidation in Belize. However, this assertion cannot, without more, be countenanced in view of s 351(3) of the Companies Act, which provides as follows:

> A company incorporated outside Singapore may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under the laws of the place under which it was incorporated.
>
> [emphasis added]

44 If all interests are balanced, an order for Projector SA to be wound up in Singapore appears to be the better option. To begin with, such an order, which will reinforce the insolvency regime which the Belize Court put in place on 10 October 2008, will result in the general body of creditors receiving the benefit of the statutory protection available under the Companies Act, including the automatic stay of proceedings, the prohibition on the disposal of assets and the inhibition on execution proceedings. The limited assets of Projector SA will be conserved and not depleted by unnecessary legal challenges. In fact, fearing that ING's application to wind up Projector SA may not be successful, the Belize liquidators have already filed a separate application to wind up Projector SA in Singapore. Furthermore, if a winding up order is not made, Projector SA's Belize liquidators will need to utilise Projector SA's assets to challenge the execution proceedings commenced by Mitsui and potential execution proceedings which may be commenced by Samsung.

45 The winding up order in Singapore will vest control of Projector SA's Singapore assets in Singapore liquidators to administer those assets in line with Singapore law for the benefit of the general body of creditors. The Singapore liquidators can exercise powers under the Companies Act to investigate the affairs of the company and to claw back assets, all of which are not available to the Belize liquidators. Admittedly, section 377(2)(b) provides that if a foreign company goes into liquidation or is dissolved in its place of incorporation or origin, the liquidator shall, until a liquidator for Singapore is duly appointed by the Court, have the powers and functions of a liquidator for Singapore. However, in *Official Receiver of Hongkong v Kao Wei Tseng & Ord* [1990] SLR 29, the Court of Appeal made it clear that the powers of the foreign liquidator are not as extensive as those of a Singapore liquidator. In this case, the appellant, a foreign liquidator, applied pursuant to s 285 of the version of the Companies Act which was then in force for orders to summon before it the three respondents and for them to be examined on oath regarding the affairs and property of China Underwriters Life and General Insurance (in liquidation), a foreign company incorporated in Hong Kong. The application was refused by Chan Sek Keong JC, as he then was, who said that the jurisdiction of the Court in relation to the winding up of companies and unregistered companies is derived from Part X of the Companies Act and the Court has no jurisdiction under Part X in respect of corporations not wound up thereunder. On appeal, the appellant argued that it had the power to make the application under Part X by virtue of s 377(2)(b) of the said Act. This contention was roundly rejected by the Court of

Appeal. Lai Kew Chai J, who delivered the judgment of the Court, said [at p 36]:

> In our view, the powers and functions of a liquidator contemplated by the legislature under s 377(2)(b) of the Act are to enable the foreign liquidator to collect and recover the assets of the foreign company in Singapore. It does not confer on the foreign liquidator all the powers and functions of a liquidator appointed by the High Court pursuant to a companies winding-up petition. In our view, it is not permissible to presume that Parliament, by the insertion of s 377(2)(b) has by an oblique, if not tortuous, process of reasoning and a side-wind, as it were, also enlarged the jurisdiction of the High Court to exercise its extraordinary powers under s 285 of the Act to extend, extra-territorially, to investigate into the affairs and property of foreign companies which are not wound up and therefore not controlled by the High Court.

46 For the reasons stated, I order that Projector SA be wound up. It may be disappointing for Samsung and Mitsui that the company should be wound up at this stage, but as the Court of Appeal reiterated in *Transbilt Engineering Pte Ltd (in liquidation) v Firebuild Systems Pte Ltd* [2005] 3 SLR 550 at [5], an unsecured creditor of an insolvent company should not be allowed to retain the benefit of a garnishee order "if the court is of the view that the company is in liquidation or irretrievably on the road to liquidation".

47 I also order that Kon Yin Tong and Aw Eng Hai of M/s Foo Kon Tan Grant Thornton be appointed liquidators of Projector SA and that the costs of these proceedings be taxed and paid out of the assets of Projector SA.