

HONG KONG / JUDGMENT

RE HI-TECH WEALTH GROUP LTD

COURT

Court of First Instance

DECIDED

29 October 2007

CASE / FILE NUMBER

HCCW358/2007

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Before: Hon Kwan J in Court Date of Hearing: 29 October 2007 Date of Judgment: 29 October 2007

J U D G M E N T

This is a petition presented by Hiddenite International Finance Limited to wind up Hi-Tech Wealth Group Limited (the Company). The petitioner is a company incorporated in the British Virgin Islands as a special purpose vehicle formed and used by GEMS Fund II. According to the petition, the Company is indebted to the petitioner of HK\$100 million, being part of the redemption money payable by the Company to the petitioner as holder of 110 million convertible preferential shares upon redemption of these shares. Pursuant to article 3.2.4(a) of the articles of association of the Company adopted by a special resolution on 21 June 2002, the petitioner is entitled to require all the convertible preferential shares be redeemed on the 5th anniversary of the date of adoption of the articles of association, namely on 21 June 2007 (the redemption event), upon giving 10 business days written notice to the Company. Pursuant to article 3.2.4(e), on the date of the redemption event, the redemption money shall become a debt due and payable by the Company to the petitioner, whether or not the Company has enough profits available for distribution or other requisite funds to pay the redemption money. On 1 June 2007, the petitioner through its solicitors issued a notice of redemption to the Company, requiring all the convertible preferential shares to be redeemed and demanding the Company to pay the redemption money in full to the petitioner by 5 p.m. on 21 June 2007. The redemption money amounted to US\$29,473,449.00, equivalent to about HK\$229.9 million. On 22 June 2007, the petitioner served a demand on the Company under section 178(1)(a) of the Companies Ordinance, Cap. 32, demanding payment of HK\$100 million being part of the redemption money payable. As the demand was not met, the petition was presented on 9 August 2007. Provisional liquidators were appointed on the ex parte application of the petitioner on the same day. A notice of intention to

appear on the petition and to oppose it was filed on 14 August 2007 by Star Cluster Incorporated, claiming to be a contributory of the Company. This entity has not appeared at the hearing today. The petition is opposed by the Company and by Rising Investment Development Limited (Rising). Rising claims to be a creditor of the Company to the tune of US\$31.8 million. Rising has appeared by Mr Jonathan Chang of counsel. No notice of intention to appear at the hearing has been filed by Rising as yet and Mr Chang informed the court that he only received his instructions today and he appeared on a limited basis. The petitioning debt is not in dispute, as confirmed by Mr Wilson Hui who appeared for the Company. Both the Company and Rising sought an adjournment of 7 days. I understand from Ms Linda Chan for the petitioner that there had been negotiations between the petitioner and the Company and that Rising did not participate in the negotiations. No acceptable proposal was forthcoming from the Company so the petitioner seeks an order to wind up the Company today. Mr Hui informed the court that the purpose of the adjournment for a week was to enable the Company to put forward a new or improved proposal for settlement to the petitioner. He is unable to tell the court what such new proposal might be. As for Mr Chang, he informed the court that there is at the moment no proposal forthcoming from Rising and he is unable to assist the court as to the viability of any proposal that might be put forward. I bear in mind that the petition was presented in August 2007, and that the provisional liquidators had written to the creditors disclosed in the statement of affairs submitted on 3 September 2007, making enquiries about their debts and no response was received from any of the creditors including Rising. I am not prepared to adjourn the petition when neither the Company nor Rising is able to tell the court of any concrete proposal that might be put forward on their side. There is no dispute of the petitioning debt, which is a very substantial amount. The petitioner is entitled ex debito justitiae to a winding-up order. No purpose would be served in delaying the matter for 7 days in the absence of any or any reasonable prospects of settlement. The Company should be wound up so that the liquidators can carry out their investigation into the affairs of the Company without further delay. No prejudice would be suffered by the Company as it has ceased business for some years, as admitted by the Company. For the above reasons, I make a winding-up order against the Company. The petitioner's costs are to be paid out of the Company's assets. (S Kwan) Judge of the Court of First Instance High Court Ms Linda Chan, instructed by Messrs Wilkinson & Grist, for the Petitioner Mr Wilson Hui, instructed by Messrs Li & Partners, for the Company Mr Jonathan Chang, instructed by Messrs Oldham Li & Nie, for the opposing Creditors U V i\$&`G T![> hccw (for Susan Kwan only).dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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