

HONG KONG / JUDGMENT

RE JINHONG ENTERPRISES LTD

COURT

Court of First Instance

DECIDED

2 November 2011

CASE / FILE NUMBER

HCCW216/2011

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bjbj HCCW216/2011 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) PROCEEDINGS NO. 216 OF 2011

IN THE MATTER of the Companies Ordinance, Chapter 32 of the Laws of Hong Kong and IN THE MATTER of JINHONG ENTERPRISES LIMITED

Before: Mr Recorder Shieh, SC in Court Date of Hearing: 2 November 2011 Date of Judgment: 2 November 2011

JUDGMENT

This is a hearing of a winding-up petition presented by the Petitioner, Hong Kong Wahsheung Properties Limited, against the company, Jinhong Enterprises Limited. I shall call them the Petitioner and the Company respectively. The debt upon which the petition is based came about in this way. The Company and the Petitioner were involved in a separate piece of litigation in Hong Kong in High Court Action No. A862 of 2008. The Company was the Plaintiff and the Petitioner was the Defendant. The dispute arose |v gP ad failed to provide documents to enable the company to complete the approval and registration procedure in relation to the transfer of shares, and that this was in breach of certain obligations under the sale and purchase agreement dated 22 November 2009. In April 2010 the Company applied in the Hong Kong court for leave to re-amend its statement of claim. By order dated 20 October 2010, Master Wong dismissed the application with a costs order nisi in favour of the Petitioner. By a consent order dated 8 February 2011, Master Wong ordered that the Company should pay to the Petitioner HK\$200,000 on or before 16 February 2011 in full and final settlement of the costs order made by Master Wong, inclusive of interest. I should say that up to this stage the Company was legally represented in the

Hong Kong proceedings. The Company did not pay, and a statutory demand dated 23 February 2011 was served on the Company. No payment having been received, the petition herein was presented on 5 July 2011. On 12 September 2011, Mr Justice Barma gave directions as to the filing of evidence in opposition and an affirmation in reply. The Company filed an affirmation of Mr Zhao Yusong. The Petitioner replied by the second affirmation of Wong King-yuen. The petition was presented on the ground that the Company was unable to pay its debts. It is abundantly clear that the Company is unable to pay its debts for the purpose of supporting a winding-up order. It has not paid the debt due under the consent order despite service of a winding up order is made, it would be unfair to the Company because the Company was embroiled in litigation in the Mainland in which it had been treated unfairly and that this had resulted in the deprivation of its only asset in the Mainland. Put shortly (and putting it as simply as I can without getting bogged down in irrelevant details) one Mr Tsui Po-kei has alleged that the Company entered into the sale and purchase agreement as Mr Tsui's agent. A piece of litigation ensued in the courts in the Shandong Province between, among others, Mr Tsui Po-kei and the Company. A court has upheld Mr Tsui's claim and this was confirmed on appeal. The Company was aggrieved by this decision and claimed that it had invoked or may invoke a Mainland legal process of challenging the decision. However, no particulars have been given of the legal nature or the contents of such a challenge; nor is any time frame or estimated time frame given as to when the process was expected or was supposed or estimated to be completed. There are uncertainties and ambiguities in the documents as to whether the process had even started in the Mainland courts. It could well be a complete black hole, and the time scale involved could well be completely open-ended. Mr Zhao had said that information as to the challenge could not be provided because they were confidential matters and the Company did not want any interference from other persons. Even assuming all these to be true (and I must not be taken as accepting the truth of these reasons) the consequence is that this court has been deprived of information on which it is being asked by the Company to refuse a winding-up order. In my judgment, what has happened and what might happen in the Mainland does not give rise to any legal ground under the laws of Hong Kong for refusing a winding-up petition. I was not referred to any legal principle which suggests why a court in Hong Kong should refuse a winding-up order on the basis of an undisputed debt in circumstances such as the present. Mr Zhao had referred before me to certain alleged false evidence given on behalf of the Petitioner, but the truth or falsity of the evidence that he has referred to is not a material consideration for me for the purpose of deciding whether to grant a winding-up petition. Insofar as any broad or macro or layman concept of unfairness be relied upon (and I emphasise that I have not been referred to any legal principle as to why and how such considerations may be relevant) I note that in any event, the Company has not adduced any legally admissible evidence, expert or otherwise, as to why the liquidator could not pursue or recover the Company's assets which had allegedly been misappropriated. Mr Zhao, while on his feet, made certain factual assertions as to Mainland procedure or practice, but I disregard those because they are not in an admissible format under Hong Kong Law. Mr Zhao did not even claim to be qualified as a Mainland expert. Furthermore, I note that according to Mr Zhao, the Company was owed assistance as to whether or why the Company could not call upon its parent to provide further funding or why the parent would refuse to or is unable to provide such support.

Any suggestion that a winding-up order would be unfair or that the 3,000-odd staff was viewing the Hong Kong proceedings with concern must be viewed in light of such considerations. In these circumstances, I am satisfied that the Company is unable to pay its debts. No reason has been shown to me why a winding up orde h;]m gdB2 9!ABa\$ |pd|Q| hL+| uFRfH h!0e h]K? hB ! h7d\ gdaP gd]K? gd0h gd]K? h!0e h7d\ h]K? h]K? h!0e gdn\\$ r_rI h_{X hHt= h_{X r should not be made, and I hereby make an order for winding up the Company. (Paul Shieh, SC) Recorder of the Court of First Instance High Court Mr Rimsky Yuen SC, instructed by Gallant Y T Ho & Co, for the Petitioner Respondent in person Official Receiver, absent PAGE - PAGE - CRT36/2.11.2011/KS HCCW216/2011/Judgment A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V &`#\$ gd\_{X gd\_{X h\_{X &`#\$ gd_{X :ppO [Content_Types].xml Iw}, \$yi} _rels/.rels theme/theme/ theme/ themeManager.xml K Y, sQ}# theme/theme/ theme1.xml w toc'v)I`n 3Vq%`#q x}r :TZaG I u3 L+M2 e\O* \$*c?)6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/ themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/ themeManager.xmlPK theme/theme/ theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> urn:schemas-microsoft-com:office:smarttags PlaceType urn:schemas-microsoft-com:office:smarttags PlaceName urn:schemas-microsoft-com:office:smarttags place w69 C hc_trans_06 JUDGE.DOT setup Microsoft Office Word judiciary Title Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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