

HONG KONG / JUDGMENT

RE KOKIN LTD

COURT

Court of First Instance

DECIDED

31 October 2016

CASE / FILE NUMBER

HCCW298/2014

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bjbj HCCW 297/2014 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE COMPANIES (WINDING UP) NO 297 OF 2014

IN THE MATTER OF the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap
32) and IN THE MATTER OF Easy Carry Limited

AND HCCW 298/2014 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE COMPANIES (WINDING UP) NO 298 OF 2014

IN THE MATTER OF the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap
32) and IN THE MATTER OF K.C.K. Garment Factory Limited (^ gP lQ \FUm i g R gP er 2016 D E C
I S I O N I have before me five winding-up petitions. The petitions were issued on 17 October 2014
on the application originally of the companies and provisional liquidators were appointed. The
companies, which are all private companies, carry out associated businesses concerning garment
manufacturing and have common ultimate beneficial shareholders who initiated these
proceedings. The petitions have been adjourned frequently during the course of the last two
years in order to give the contributories the opportunity to introduce a plan for restructuring the
debt of the companies. The key to this as I have understood it has been realisation of the value of
land owned by an associated company. It is not proved possible for the contributories to produce
a firm proposal. By firm I mean a form of agreement which can be signed by the provisional
liquidators on behalf of the various companies and whatever entity that is proposing to inject
capital into the company in order to restructure its debt sufficient to satisfy its creditors. When
the petition was last before me I made it clear that unless that kind of proposal was available by

today's date, I would wind the five companies up. The position as it has always been on the hearing of the petitions previously is that once again the contributories have failed to produce a concrete proposal with supporting agreements. In the case of two of the petitions HCCW 300/2014 and HCCW 301/2014, what is now the petitioning creditor, China CITIC Bank International Limited, seeks a winding-up order today and in the case of HCCW 300/2014 this is supported by various employees who I understand from the liquidators are owed in total about HKD million. I will make winding-up orders in the case of those two companies. In the case of the other three petitions I have been urged, by Mr Clifford Smith SC on behalf of the contributories, to at least adjourn those petitions in order to give the contributories one last opportunity to see if they can come up with a concrete restructuring proposal. I am not minded to do that. It is quite clear from what I have read of the papers during the course of the last year or so that the debts of the companies are interrelated and that realistically for the principal debtors which are in HCCW 300/2014 and HCCW 301/2014 to recover value in order to pay their creditors, it is necessary for them to take action to recover from the other companies in particular the company in HCCW 298/2014. In many ways what has happened during the last two years is an unsatisfactory example of the misuse of the provisional liquidation jurisdiction. Whilst the reality is that on occasions the jurisdiction, despite the decision of Court of Appeal in *Re Legend International Resorts Ltd*

[2006] 2 HKLRD 192, has continued to be used as a mechanism through which the debt particularly of listed companies is restructured, it is quite clear that that is not the principal purpose of the jurisdiction. In Hong Kong, the purpose is primarily to allow the court to appoint provisional liquidators to protect the assets of a company in order that their value is maintained for the benefit of creditors. In the present case it seems to have been assumed when the provisional liquidation application was made, what would effectively be achieved was a moratorium on the enforcement of debt and a structured mechanism for restructuring for the benefit in part of the contributories who of course, as the companies are insolvent, did not have a material interest qua shareholders in the companies. As a result this matter has dragged on, in large part I admit because when it became apparent to me that matter was not proceeding satisfactorily, it still seemed sensible all the time the creditors and the provisional liquidators thought there might be some possibility of the debt being restructured, to allow the provisional liquidations to continue in the hope that it would prove beneficial for creditors. Clearly the stage has now been reached where it would be inappropriate to continue to allow the provisional liquidations to continue and I will therefore make the normal winding-up orders in respect of each of the five companies. I will also order that the current provisional liquidators continue in office. (Jonathan Harris) Judge of the Court of First Instance High Court Ms Janine Cheung, instructed by Stephenson Harwood, for the provisional liquidators (in all actions) Mr Clifford Smith SC and Mr Edward Tang, instructed by S hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y h&dP gdZ%Y hZ%Y hZ%Y h&dP hZ%Y hZ%Y hZ%Y tltc^ZVQLQ h&dP hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y hZ%Y h&dP gd;? hZ%Y hZ%Y hZ%Y hZ%Y h&dP hZ%Y hZ%Y hZ%Y hZ%Y nia\ hZ%Y

hZ%Y hZ%Y hP%/ hZ%Y hZ%Y 2.W.Tai & Co, for the contributories Woo Koo Ping and Woo Siu Hong Eric (in all actions) Mr Tony Ko, instructed by V. Hau & Chow, for the petitioner China CITIC Bank International Limited (in HCCW 300/2014 & HCCW 301/2014) Ms Ada Chau of the Legal Aid Department, for the supporting creditor Ng Wai Chi (in HCCW 300/2014) Lai Wai Fong, a creditor, appeared in person (in HCCW 300/2014) Leung Kwong Wa, a creditor, appeared in person (in HCCW 300/2014) Attendance of the Official Receiver was excused PAGE - 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 [Content_Types].xml Iw}, \$yi} _rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v)I`n 3Vq%'#q x}r :T'ZaG 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"/ > * OJ) ^Y<<7 vZb3 MV;\$l A>VT{B 9c}{^ 9c}{ HCSD 17/2012 High Court CACC 283-2007.dot Judiciary Microsoft Office Word Judiciary Hong Kong HCSD 17/2012 Title <b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{6D91CE35-5B0D-4872-8202-7BF48995EBA3}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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