

HONG KONG / JUDGMENT

RE RAYDAR TRADING (INTERNATIONAL) LTD

COURT

Court of First Instance

DECIDED

12 February 2007

CASE / FILE NUMBER

HCCW618/2006

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bjbj ;@VKO HCCW 618/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 618 OF
2006

IN THE MATTER of RAYDAR TRADING (INTERNATIONAL) LIMITED and IN THE MATTER of the
Companies Ordinance, Cap. 32 of the Laws of HKSAR

Before: Hon Kwan J in Court Date of Hearing: 12 February 2007 Date of Judgment: 12 February
2007

J U D G M E N T

This is a petition presented by the Hang Seng Bank Limited to wind up Raydar Trading (International) Limited (the Company). The petition was presented on the basis of a judgment debt obtained against the Company in HCA No.1723 of 2006 on 20 September 2006. The judgment debt is in the sum of \$1,530,382.05 with interest and costs. A statutory demand was served by the petitioner on the Company on 17 October 2006. The Company has filed two affirmations in these proceedings. They were made by its managing director Cheung Kwok Leung. Mr Cheung does not dispute the petitioning debt. In his earlier affirmation, he sought an adjournment of 45 days so that the petitioning debt could be fully settled through the funding of a company known as NIT Holdings Limited (). According to Mr Cheung, NIT and the Company had reached an agreement for NIT to acquire the Company and it was envisaged that on completion of the acquisition, NIT would be in a position to effect the transfer of sufficient funding to fully settle the petitioning debt. When the petition came before me on 29 January 2007, I refused the Company s application

to adjourn the petition for 45 days. I gave directions for the Company to file and serve within 7 days an affirmation to exhibit the acquisition agreement between the Company and NIT and to adduce evidence on the financial position of both the Company and NIT, including the financial statements of both companies. I adjourned the petition to today. The Company has not complied with the directions given. The 2nd affirmation of Mr Cheung was filed only on 9 February 2007. No financial statements of the Company were exhibited and as pointed out by Mr Jenkin Suen for the petitioner, the evidence filed by the Company is far from satisfactory or convincing. Although an acquisition agreement dated 15 May 2006 was exhibited, the copy agreement did not bear the signature of anyone whether on behalf of the Company or NIT. According to Clause 9 of the acquisition agreement, the latest settlement of accounts was one year from the effective date of signing and execution of the agreement, so it would appear that creditors could only be fully paid one year after the completion of the acquisition. No information was provided on the financial position of the Company whatsoever. The only financial statement exhibited was the audited account of NIT and that was for the year of 2002 to 2003 only. Further, the balance sheet showed that NIT had an accumulated loss. In his 2nd affirmation, Mr Cheung seeks a further adjournment of 31 days on the ground that the Company would need further time for completion of its acquisition by NIT. It was submitted on the Company's behalf that a further adjournment of 31 days would not cause prejudice to the petitioner and that NIT has substantial assets. I do not accept these submissions. As a judgment creditor, the petitioner is entitled *ex debito justitiae* to a winding-up order in this situation. On the evidence before the court, it would appear that the alleged acquisition has not been completed despite a lapse of 8 months. The scheduled completion date was postponed repeatedly from August 2006 to September and then to the end of December 2006. From the correspondence exchanged, it would appear that the Company and/or NIT had only envisaged to settle the Company's debts by instalments. The initial instalment of US\$100,000 was promised to be paid on 6 September 2006. On 27 October 2006, NIT stated that it would inform the creditors of the Company the exact date for the execution of the first scheduled settlement of accounts. In the end, the promise to make part payment was never honoured. On the evidence adduced by the petitioner, apart from owing the judgment debt to the petitioner, the Company is indebted to a number of financial institutions. The total indebtedness to all the financial institutions is in the region of HK\$36 million and US\$54,000 odd. The petitioner has exhibited letters from a number of financial institutions giving support to this petition. Several financial institutions have obtained charging orders *nisi* against the Company and their applications for an order absolute have been adjourned pending the outcome of this petition. I see no ground at all to adjourn the petition further and it will be in order to wind up 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 Mr Jenkin Suen, instructed by Messrs Li, Kwok & Law, for the Petitioner Mr Stephen Fong, instructed by Messrs Tai Mak & Partners, for the Company Miss Vivian Ye

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