

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 654

MA 251/2021

Arising in Exparte 121/2021

In the matter between:

IN THE MATTER OF AIR SEYCHELLES LIMITED

(rep. by Mr Bernard Georges)

Applicant

and

IN THE MATTER OF THE COMPANIES ACT 1972

AND INSOLVENCY ACT 2013 & IN

THE MATTER OF AIR SEYCHELLES LIMITED

(rep. by Mr Durup)

Respondent

Neutral Citation: In the matter of Air Seychelles Ltd v/s In the matter of the companies Act 1972 and Insolvency Act 2013 & in the matter of Air Seychelles Ltd (MA251/2021) [2021] SCSC 654 (13 October 2021).

Before: Govinden CJ

Summary: Stay of hearing of winding up Petition.

Heard: 13 October 2021

Delivered: 13 October 2021

RULING

GOVINDEN CJ

- [1] This is a Notice of Motion filed under Section 100(1) (d) and Section 244(2) of the Insolvency Act. In it Air Seychelles Limited (the company) is applying for the stay of the hearing of the Petition for winding up of the company while a reorganisation of the company proceeds in terms of a resolution passed by its directors appointing administrators to take control with a view to proposing of a

rescue plan for it, which plan will address, inter alia, the payment of the debts due to the company's creditors.

- [2] The Motion is supported by the Affidavit of Miss Veronique Laporte, the Chairperson of the company. In this Affidavit she avers that the company has by way of a resolution of its board members dated the 3rd of October 2021, resolved to appoint Mr Bernard Pool and Mr Suketu Patel as administrators of Air Seychelles limited. The minutes of meeting at which the resolution was taken is annexed to the Affidavit.

- [3] In it the deponent avers further that as a consequence the company is in reorganisation with a view to its restructuring and if that is not possible to seek a better return for the creditors and shareholders' than would result if the winding up was to take place.
- [4] She also avers that putting the company in administrations will be in the best interest of the creditors and shareholders as well as the employees and the country as the Petitioner will not be placed as a result in a worst off position than it would have been from the immediate winding up of the company.
- [5] The shareholders of the company are not objecting for Stay and neither is the government as creditor. As to the Petitioner it filed an Affidavit in respond dated the 7th of October 2021. The Affidavit is sworn by Colin Arthur Benford a director of the Appex Corporate Trustees (UK). In it the Petitioner takes notice of Ms Laporte's Affidavit and without admitting to the content thereof it avers that it does not object to the prayer for staying of the hearing of the Petition for winding up of the company whilst a reorganisation takes place.
- [6] I have thoroughly considered the content of the Motion for Stay, its supporting Affidavit and the position of the parties thereon. I find that Section 100(1)(d) provides as follows "*on hearing of a winding up Petition, the Court may in the case of a company, adjourn the Petition under Section 244(2).*" This is the provision that gives to this Court powers to make orders following the hearing of a winding up Petition, adjournment for reason of reorganisation, being one of many remedies available to the parties.
- [7] Section 244(2) on the other hands states as follows "*the Court may adjourn an Application under Section 100(1)(d) for the appointment of a liquidator of a company in reorganisation if it is satisfied that it is in the interest of the company to continue in reorganisation instead of appointing a provisional liquidator.*"

- [8] Upon reading the two provisions together, which is what it literally calls for, it becomes clear that they are not necessarily conjunctive but disjunctive. The 1st being a power given to this Court upon hearing of a winding up Petition. The latter relates an Application to appoint a liquidator or provisional liquidator which may or may not takes place upon the hearing of a winding up Petition. Moreover no Application arises under Section 100 (1) (d) of the Act, regarding appointment of liquidators or provisional liquidators.
- [9] I find therefore that only Section 100(1) (d) to be applicable to this Motion. However, on a strict interpretation of this provision it would appears that it is not applicable. It is applicable only after the hearing of a winding up Petition and the Court making a determination of the applicable remedy. The literal interpretation being that the Court will only be able to consider a Stay of a winding up Petition to allow a reorganisation to proceed only after the Petition is heard.
- [10] However, it is clear that attempts to reorganise a company can take place any time following the presentation of a winding up Petition and that staying of a winding up Petition may be in the best interest of all parties even before the hearing takes place. In fact seemingly the pleadings before me seems to unanimously support this view. All parties wants to reorganise the company before they go to the penultimate procedure of deciding upon its winding up.
- [11] Accordingly, I am of the view that a strict Application of this Section would lead to absurdity or possible injustices. I will therefore impose a purposive interpretation to it and apply the Mischief Rule. When I do so I find that the intent behind Section 100 (1) (d) was to allow this Court the possibility of allowing a reorganisation of a company where that will be in the best interest of all parties before it. If that be so it, gives a determination before it proceeds to give a determination on the winding up Petition. I will therefore impose a purposive interpretation to that provision and adjourn this case even before the hearing takes place in order to give a chance to the company's to reorganise. I do this especially given the overwhelming views of the parties before the Court.

[12] Accordingly, I Stay the hearing of the winding up Petition for 3 months from the date hereof, subject to Learned Counsel for the Petitioner to be able to file his Affidavit in Reply to the Affidavits in Opposition on the date which is fixed, being the 27th of October this year.

Signed dated and delivered at Ile du Port Victoria on 13th October 2021

Govinden C J