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IN THE SEYCHELLES COURT OF APPEAL

Tropicolor (Proprietary) Ltd.

APPELLANT

v.

Arthur Hetherington and or.

RESPONDENTS

Civil Appeal No. 3 of 1990

JUDGMENT OF THE COURT

This appeal arises out of a judgment of the learned Chief Justice ordering the winding up of the Appellant Company (hereinafter called Tropicolor) in terms of section 221 of the Companies Act 1972.

In the winding-up petition dated 31.5.1989 the respondents averred, inter alia, that (1) the Tropicolor was indebted to them in the sum of R.274,073 as at 31.5.1989.

(2) it was called upon by the respondents to pay the sum of R.274,073 and the Tropicolor failed to do so.

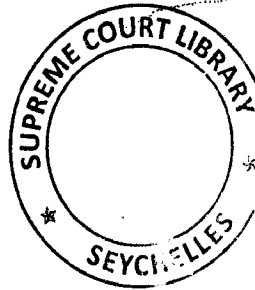
The Tropicolor admitted the debt and pleaded that "it will be in a position to pay its debt within a reasonable period, now that it has resolved its initial difficulties and it would be in the interest of all parties concerned that the Tropicolor is not wound up."

Evidence was heard and the learned Chief Justice came to the conclusion that in the circumstances of the case he had no option but to grant the prayer of the petitioners and he ordered the winding up of the company. The judgment of the learned Chief Justice is being impugned on the following two grounds:

(1) The learned Chief Justice failed to consider adequately any alternative order which he could have made consistent with the evidence and undertakings of the appellant - during the proceedings in Court.

(2) The learned Chief Justice failed to consider adequately, or at all the case for the appellant.

In the course of the proceedings before the Chief Justice the Tropicolor made a promise to make a part payment of R.100,000 and asked for time to pay the balance of R.174,073. It appears from the record that the sum of R.100,000 was paid on 21.2.90 leaving a balance of R.174,073 which sum remained unpaid till the day judgment was delivered on 23.3.1990. Mr. Renaud counsel for Tropicolor submitted before as that the learned Chief Justice failed to apply his mind to the case of his client. In his view, being



given the undertaking given by his client and the promise to clear the debt within a reasonable time, it was not just and equitable for the learned Chief Justice to have made an order for the winding of the company. According to him the learned Chief Justice should either have dismissed the petition or made a winding-up conditional on the non-payment of the debt at a later date.

In his judgment the learned Chief Justice said the following: The petitioners based themselves on the grounds that the respondent Company Tropicolor owed huge sums of money to the petitioners and that it has been unable to discharge the said indebtedness..... There was practically no defence to the petition He went on to add: The debt exceeded SR.1,000 as required by section 206(a) of the(Companies) Ordinance(1972) and the respondent failed to pay after due notice had been served by the petitioners. In fact up to the date of the hearing the indebtedness has not been discharged. After satisfying himself that all the requirements of the law have been complied with, he made the winding-up order as prayed for.

The case is governed by sections 205 and 206 of the Companies Ordinance of 1972.

Section 205 of the Ordinance lists the cases in which a Company may be wound up by the Court. "A Company being unable to pay its debts" is one of the grounds (sub-section (d)) of section 205 for the winding up of a company by the Court.

Section 206 of the Ordinance reads as follows:

A company shall be deemed to be unable to pay its debts (a) if a creditor to whom the company is indebted in a sum exceeding one thousand rupees then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the Company to pay the sum so due, and the Company has for three weeks thereafter neglected to pay the sum

In view of the clear language of the law on the subject the just and equitable principle mooted by Counsel does not arise in this case. We cannot find fault with the judgment of the learned Chief Justice. His decision, both in law and on fact, is sound.

The appeal is of no merit and is dismissed with costs.

Dated this 19th day of Oct 1990.

(sd) A. Mustafa.. President

(sd) H. Johardhan Justice of Appeal

(sd) T. Georges.. Justice of Appeal