Re Specialty Laboratories Asia Pte Ltd (fka Specialty Labratories Asia (Singapore) Pte Ltd [2001] SGHC 62

Case Number : CWU 162/2000

Decision Date : 28 March 2001

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Lim Yee Ming and Thanuja (Ng Chong & Hue) for the petitioning creditor; S Bhaskaran and Goh Sze Hui (J Koh & Co) for Remedi Pharmaceuticals (M); Samuel Chacko (Colin Ng & Partners) for Paul Frank Fasi

Parties : —

Companies – Registered office – No board resolution to effect change of address – Whether petitioning creditor could rely on statutory notice of change of registered office – Rule in Turquand's case – Whether petitioning creditor could rely on presumption of regularity

Companies – Winding up – Service of statutory demand on registered address – Registered address changed without directors' resolution – Whether statutory demand validly served – s 254(2)(a) Companies Act (Cap 50, 1994 Ed)

: Specialty Laboratories International Ltd (`SLI`) is a company incorporated in the British Virgin Islands. Specialty Laboratories Asia Pte Ltd (`SLA`) is a company incorporated in Singapore. In Suit S32/2000/E, SLI claimed against SLA the repayment of a loan. SLA did not enter appearance and on 22 March 2000, SLI entered judgment in default of appearance in the sum of US$1,951,554.24 plus interest and costs.

On 29 March 2000, SLI issued a statutory demand to SLA for the judgment sum plus interest and costs and served it at the purported registered office of SLA. SLI did not receive payment within the statutory three weeks and on 26 May 2000, in CWU 162/2000, they petitioned the court to wind up SLA. This was also served on the purported registered office of SLA on 2 June 2000. On 14 July 2000, the court appointed provisional liquidators pending the hearing of the winding up petition.

Remedi Pharmaceuticals (M) Sdn Bhd (`RP`) is a company incorporated in Malaysia. They are minority shareholders of SLA and hold 30% of the issued share capital. They oppose the petition.

This matter is fraught with allegations of fraud. SLI is the majority shareholder of SLA, holding 60% of the total issued share capital. RP allege that SLI, being both the controlling shareholder and the petitioning creditor, had permitted SLA to be placed in a position where they are liable to be wound up. RP submit that this is apparent from the fact that SLA allowed judgment in default of appearance to be entered. RP had, on 21 June 2000, applied to the court in OS 923/2000 for various orders for the purposes of intervening in these winding up proceedings and to wrest control of SLA in order to set aside the default judgment and defend that action. This matter is further complicated by parallel proceedings in California. There, another creditor of SLI, Mr Paul Fasi (`Fasi`), had applied ex parte for a receiver to be appointed. On 28 April 2000, the Superior Court of California in the County of San Diego appointed a receiver against the assets of SLI. Fasi is also an opposing creditor in this petition.

At the hearing for the winding up order on 21 December 2000, counsel for Fasi, Mr Chacko, raised a preliminary objection to the application. After hearing submissions of counsel for the parties, I upheld the objection and dismissed the petition. I awarded costs on the standard basis against the petitioner in favour of the opposing creditor, Fasi and minority shareholder, RP. On 19 January 2001, SLI appealed against my decision and I now give my written grounds.

incorrectly sent to me Specialty Laboratories Asia Pte Ltd is not located at this address Mr Chacko`s objection pertains to the service of the statutory demand of 29 March 2000. It was addressed to and served on ***105 The Inglewood, Singapore 575112*** (`the Inglewood`). Although this was the address that appeared in the records of the Registry of Companies & Businesses (`RCB`) at the material time as the registered office of SLA, Mr Chacko submitted that it was in fact not the registered office of SLA and SLI was aware, or ought to be aware, of this fact. From the affidavits the following facts emerged.

(i) On 2 February 2000, a notice of change of registered office (Form 44A) was lodged with the RCB. It was dated 24 January 2000 and gave notice to the registrar that the registered office of SLA would be at the Inglewood with effect from 1 January 2000. The notice was signed by one Dr James Bernard Peter (`Peter`) in his capacity as a director of SLA.

(ii) Peter has effective control of both SLI and SLA through his shareholdings in them.

(iii) There was no evidence of any resolution passed by the board of directors of SLA in respect of this purported change of registered office.

(iv) At the material time, there were only two directors in the board of SLA, Peter and one Miss Ng Wai Fun (`Ng`). Ng was not aware of this purported change of registered office on 2 February 2000. The Inglewood is in fact Ng`s residence.

(v) Even when the petition was served on her residence on 29 March 2000, Ng was not aware that a notice had been filed in respect of the change of registered office. Ng deposed that she was shocked to receive at her home in the Inglewood on 7 March 2000 a letter of demand from SLI`s solicitors for payment of the debt. This was followed by a writ of summons on 11 March.

(vi) Ng said that on 14 March 2000, she returned the letter of demand and the writ to SLI`s solicitors with a letter stating that they were `. `.

(vii) Ng deposed that on 29 March 2000, she received the statutory demand which was served on her residence at the Inglewood. A copy of the judgment entered against SLA was also served on her residence. She was still puzzled as to why these documents should be addressed to her home. Ng`s affidavit is silent as to whether she returned these documents to SLI`s solicitors. There is no submission from counsel for SLI that she had sent the statutory demand to any of the other directors or officers of SLA. Indeed, the implication from the rest of Ng`s affidavit is that she did not. This is because she had stated elsewhere in her affidavit that she had forwarded other documents to Bart Thielen, the then managing director of SLA, including the winding-up petition. Therefore, I find as a fact that Ng did not send the statutory demand to any of the other officers of SLA.

I now turn to the relevant law. Section 142 of the Companies Act (Cap 50, 1994 Ed) (`the Act`) requires a company to have, from its date of incorporation, a registered office to which all communications and notices may be addressed. This section states as follows:

> *(1) A company shall as from the date of its incorporation have a registered office within Singapore to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each day, Saturdays, weekly and public holidays excepted.*
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> *(2) If default is made in complying with subsection (1), the company and every*

officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 and also to a default penalty.

Under s 143, the registrar must be notified within 14 days of any change in the address of the registered office. The relevant part of s 143 provides as follows:

> *(1)* ***Notice*** *in the prescribed form* ***of the situation of the registered office*** *, the days and hours during which it is open and accessible to the public,* ***shall*** *, in the case of a proposed company,* ***be lodged with the Registrar*** *together with its memorandum and its articles, if any, at the time of lodgment for the incorporation of the proposed company* ***and in the case of any subsequent change of the particulars therein be so lodged within 14 days of any such change*** *, ...*
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> *(1A) In subsection (1),* ***the word "particulars*** *", in relation to the situation of the registered office,* ***shall be deemed to include the*** *address and designation of the situation or* ***address of the registered office*** *. [Emphasis is added.]*

The company is obliged to maintain an agent at the registered office and this is provided for in s 171(3) which states as follows:

> *The secretary or secretaries shall be appointed by the directors and at least one of those secretaries shall be present at the registered office of the company by himself or his agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.*

It is clear from these provisions that a registered office is required to be established by a company incorporated under the Act for the purpose of service of all communications and notices. To this end, the company is obliged to keep such office open for a minimum number of hours on each weekday and have someone there who can receive any notices or documents on behalf of the company. There are many provisions in the Act that deem delivery of a document on the registered office to be sufficient service on the company for various purposes. In the present case, for example, s 254(2)(a) deems a company to be unable to pay its debts if a statutory demand has been served on it by leaving it at its registered office and the debt is not paid, secured or compounded within three weeks.

The first question is whether the registered office of SLA was changed prior to 2 February 2000 when the Form 44A notice was lodged with the RCB. There was no board resolution to change the existing registered office to the Inglewood. The case of **Ross v Invergordon Distillers** [1961] SLT 358 involved a company that changed its registered office to another location. The directors of the company had resolved at a meeting to remove the registered office but this was not notified to the Registrar of Companies in accordance with the Companies Act before a writ was served at the original registered office. The Scottish Court of Session held that the writ was regular because the registered office was not effectively changed within the meaning of the Companies Act until the statutory notice to the registrar has been given. Lord President Clyde said at p 360:

> *Although the directors had at [the date of service of the writ] resolved to*

> *change the registered office, they had not effectively done so. For, in my view, the new office cannot be the registered office until the statutory machinery of intimation to the registrar has been carried out ...*
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> *In my view, there is not a registered office within the meaning of the Companies Act until,* ***not merely have the directors resolved where the office is to be****, but the statutory notice to the registrar has been given. It is then, and then only, that the company`s registered office is `registered` or, if a change has been made, is changed. Till intimation of a change, the creditors and others dealing with the company are entitled to assume that the registered office remains where it originally was and it is only when the necessary steps have been taken to inform the registrar of the change, so that he may record the same in terms of section 17, that the original registered office ceases to be the registered office of the company. [Emphasis is added.]*

This decision was cited with approval and applied by the High Court in **Re Shangri-la Cruise** [1990] SLR 799 [1991] 1 MLJ 22

The present case involves the reverse situation. Here, there was no resolution passed to effect the change of registered office, but the statutory notice was given of a purported change. Lord President Clyde had said in ***Ross v Invergordon Distillers*** that there are two conditions precedent to an effective change of address of the registered office, viz (i) a directors` resolution to make the change; and (ii) statutory notification being made. It follows that failure of the first condition renders the change ineffective, subject to any overriding principle (which I shall consider below).

The first condition really pertains to the power to change the registered office. This power is vested in and exercisable by the board of directors. It is only if the board have delegated such power to any person that he may change the registered office without a resolution. However, counsel for the petitioning creditors, Mr Lim, did not submit that such power was delegated to Peter, the director of SLA, who filed the statutory notice. Indeed, there is no evidence that this had been done. Instead, Mr Lim relies on the rule in **Turquand** (Unreported) **Royal British Bank v Turquand** (Unreported)) and argued that the petitioners are entitled to rely on the address of the registered office of SLA that is found in the RCB records. This is the overriding principle that I have alluded to in the preceding paragraph. However, this rule is only a presumption of regularity that a third party, who would not be in a position to ascertain whether the company had properly carried out the necessary procedural matters, is entitled to rely on. SLI is far from being a third party in this matter. Indeed, Peter, who is the controlling mind of the both SLI and SLA, was the person who filed the notice of change of registered office. He was responsible for the irregularity. And SLI is the controlling shareholder of SLA. In the circumstances, SLI cannot rely on this presumption. Moreover, the petitioners` arguments cannot be sustained from the point of view of the one of the objectives of the registered office scheme, which is to enable documents served on a company to be brought to the attention of their management. This was not done in this case because on Ng`s evidence, the statutory demand was not forwarded to nor brought to the attention of those in control of SLA. While the law will hold that an unrelated third party is entitled to rely on the address of the registered office on record in the RCB, in the circumstances of the present case, SLI will be denied recourse to this presumption.

It therefore follows that the statutory demand was not validly served on SLA pursuant to s 254(2)(a) because it was not left at the registered office of the company. Accordingly, s 254(2)(a) does not operate to deem SLA to be unable to pay its debts and the petitioner`s application, which is based on this provision, fails. As for costs, I see no reason why it should not follow the event and awarded the

opposing creditor, Fasi, and minority shareholders, RP, their costs on a standard basis, to be paid by the petitioners.

Outcome:

Petition dismissed.