Lexis®Nexis Case Summaries

Re Klimvest plc Duneau v Klimt Invest SA and others

[2022] EWHC 596 (Ch), [2022] All ER (D) 126 (Mar)

The Chancery Division made an order to wind up the company. The petitioner sought an order to wind up the company under s 122(1)(g) of the Insolvency Act 1986 on the basis that it was just and equitable to wind up the company. The court held, among other things, that although the alternative grounds for seeking to wind up the company on the just and equitable ground had not been made out, the petitioner and the third respondent had made out the ground for winding up based upon loss of substratum or purpose. Further, having concluded that the petitioner had not unreasonably refused to pursue some alternative remedy, and having considered the various discretionary considerations that arose, including the allegation that the petitioner had not come to court with clean hands, the court made an order to wind up the company.

Catchwords

COMPANY – WINDING UP – PETITION TO WIND UP COMPANY

Background

The petitioner was the beneficial owner of 44.05% of the shares in the second respondent company (the Company) and also a director from its incorporation until he was excluded from that role at an annual general meeting. The Company was incorporated as a corporate vehicle through which to hold the shares of a director (MB) of the first respondent company. The petitioner presented a petition seeking an order that the Company be wound up under s 122(1)(g) of the Insolvency Act 1986 (IA 1986) on the basis that it was just and equitable that the Company be wound up. The petitioner contended, among other things, that the purpose, or substratum, of the Company had come to an end, or had failed following the sale of the Company's assets and business, and that the petitioner was entitled to expect a return of his investment in the Company in light of assurances alleged to have been given to him by MB prior to the sale of the Company's assets that the Company would be wound up. MB contended that the Company had become what was, in essence, an investment company, and that purpose could and was intended to be achieved through the investment of the Company's cash reserves in promising technology companies.

Issues and decisions

Whether the company should be wound up on just and equitable grounds.

It could properly be said that it was now impossible for the Company to pursue its main or paramount object or purpose given the sale of the Company's assets and the particular nature of the business of the Company. Even if that was not correct, and the pursuit of the Company's main or paramount object or purposes was still practically possible, the sale of the assets of the Company taken together with what was proposed with regard to investing in promising technology companies, given the very different nature of the venture that was being proposed, represented a clear abandonment of the pre-existing main or paramount object or purpose of the Company such that it was just and equitable that the Company be wound up. Accordingly, the loss of substratum ground for seeking to wind up the Company on just and equitable grounds had been made out (see [244], [313] of the judgment).

Petition granted.

Judgment date
17 March 2022

Judge
Judge Mark Cawson KC (sitting as a High Court judge) (Chancery Division Court)

Representation
Daniel Lightman KC and Max Marenbon (instructed by Marriott Harrison LLP) for the petitioner and third respondent.
Charlie Newington-Bridges (instructed under the Direct Access Scheme) for the first respondent.
The company did not appear and was not represented.

This Digest was first published on Lexis®PSL and Lexis®Library.