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IRB's Application To Reinstate Company Was Dismissed

KPHDN v SSM & AHBH (Liquidator) (HC)

The Inland Revenue Board (**IRB**) filed an application to reinstate a company that had been dissolved in order to raise additional tax assessments, but it was dismissed by the High Court. Our lawyers from the firm's Tax, SST & Customs Practice successfully represented the former liquidator of the company.

Facts

The IRB's application was filed under Section 535(1) of the Companies Act 2016 (**CA 2016**). The Companies Commission of Malaysia and the former liquidator of the company were named as co-defendants. Section 535(1) of the CA 2016 reads:

(1) Where a company has been dissolved, the Court may, at any time within two years after the date of dissolution, on an application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and such proceedings may be taken as might have been taken if the company had not been dissolved.

The IRB's application was made just within the two years from the date of the company's dissolution. However, by the time the matter was fixed for trial, the two-year period had lapsed. The question arose as to whether the two-year period refers to the period within which the application had to be made OR the making of the order by the court.

High Court's Ruling

The High Court allowed our application for a determination of a question of law under Order 14A and/or Order 33 of the Rules of Court 2012 (**RoC 2012**): Whether the court has the jurisdiction under Section 535(1) of the CA 2016 to grant an order declaring the dissolution of a company void after the expiration of the two-year period from the date of the company's dissolution, as prescribed within Section 535(1) itself.

The High Court held that it has no jurisdiction to make such an order after expiration of the two-year period from the date of dissolution. In doing so, the court accepted the arguments advanced by us on behalf of the liquidator that:

- (a) Section 535(1) of the CA 2016 must be given its plain, natural and ordinary meaning applying settled law on statutory interpretation. Legislation is always to be understood first in accordance with its plain meaning and cannot be extended to meet a case for which provision has clearly not been made. Once the ordinary meaning is found, it is the court's duty to obey that meaning, even if the result might be thought to be inconvenient, impolite or improbable.
- (b) Unlike some other provisions in the CA 2016, there is no provision to extend time within Section 535(1) itself. It is clear that Parliament must have intended for the court to only be able to make such an order within two years from the date of dissolution. This is also in accordance with Section 45 of the Interpretation Acts 1948 & 1967.
- (c) Other jurisdictions like the UK, Hong Kong and Australia have amended their respective legislations to remove and/or extend the time period within which such an order can be made. By contrast, Malaysia, in enacting Section 535(1) of the CA 2016, has merely adopted Section 307 of the CA 1965 in its entirety.

Further:

- (a) The two Malaysian cases relied on by the IRB can be distinguished as these decisions have not, among others, considered the argument raised by the liquidator in the present case;
- (b) The IRB cannot rely on, among others, Order 1A and/or Order 92 of the RoC 2012 for the court's inherent powers to be invoked as the question at hand is a jurisdictional point and not a mere technical non-compliance with the rules of court. An irregularity may be waived by the court, but a want of jurisdiction cannot.

Conclusion

This case is a stark reminder to taxpayers that the IRB is intensifying its efforts to collect additional taxes, including attempting to reinstate a company which had been wound up in accordance to the due process of the law. It appears that even a company which has been wound up is targeted by the IRB. Accordingly, there is an urgent need for taxpayers, liquidators and former directors to be mindful of this and seek proper legal consultation to preserve their rights.

The liquidator in this matter was successfully represented by partners, **Datuk D P Naban** and **S Saravana Kumar**, together with associate, Chris Toh Pei Roo, and pupil, Tan Iyan Xin, from the firm's Tax, SST & Customs Practice.

If you require any representation or legal strategy to challenge the IRB's tax recovery mechanisms, please contact S Saravana Kumar at tax@lh-ag.com

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