HCMP 534/2021
[2022] HKCFI 958

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

MISCELLANEOUS PROCEEDINGS NO 534 OF 2021

IN THE MATTER of MATSUN INDUSTRIES (GROUPS) LIMITED (美新實業(集團)有限公司) (Company Number: 313893)

and

IN THE MATTER of Section 765(2) of the Companies Ordinance (Cap 622 of the Laws of Hong Kong)

BETWEEN

YUNG HO (翁浩)	1st Applicant
YUNG TO (翁濤)	2nd Applicant
and	
THE REGISTRAR OF COMPANIES	Respondent
and	
廣州市萬溪管理有限公司	Intended Intervener

Before: Deputy High Court Judge Laurence Li, SC in Chambers

Date of Hearing: 24 September 2021

Date of Decision: 24 September 2021

DECISION

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1. The Applicants apply to restore the company to the Companies Registry. The Intended Intervener applies to join in these proceedings and to oppose the Applicants' application. First, let me deal with the application to join. For the legal reasons largely as explained by Mr Chow, I think the Intended Intervener does not have rights which will be directly impacted by the application to restore.

2. Factually, first, the Intended Intervener is not a contractual counterparty to the company. Second, by the Intended Intervener's own evidence, it carefully considered the contract and the fact that the company had been deregistered when it bought the contractual counterparty. And further, by its own evidence, what it suffers at most is in its view overpayment for that purchase.

3. Mr Liao, SC, is quite right to point out that judicial reasoning should not be read as though they were statutory words. It is exactly for that reason that references to the looser concepts of interest and prejudice and change of position cannot be read as setting a generous test.

4. As I have indicated in my exchange with Mr Liao, those judicial discussions when read in the context of the facts of those cases indicate that the courts in those cases were dealing with quite different

issues. However, as I have also indicated, both the authorities and common sense suggest that there will be situations when an Intended Intervener has something else to contribute and be useful to the court in addition to or quite outside of its strict rights and liabilities.

5. On the evidence filed so far, in no small part because of the deficiency in the evidence, there is such a possibility that the Intervener has something useful to the court to contribute. For that reason, I grant the application to intervene or joinder.

6. Turning to the application to restore the company, I start with the Applicants' evidence which is quite seriously deficient. Its explanation as to the reason for deregistration was succinct but at least recited events which allow the court to understand the proposition that it deregistered because its then only asset being the contract was, at the time, thought to be of little practical value since the contractual counterparty had no funds to proceed.

7. Turning, however, to the reason for restoration which surely is the matter which required more explanation and more care, yet the Applicants' evidence there boils down to a single proposition of now that the contractual counterparty is owned by a new shareholder with funds, the subject company can resume pursuing the contract.

8. As I have indicated to counsel to the Applicants, when parties apply for restoration of a company, it is obvious that that restoration will have impact on others and it is incumbent on the Applicant or Applicants to give the court a sense of what that impact may be and what the affected third parties' position might be. This is not to say that adverse impact on

third parties is in any way tending against restoration. In fact, logic dictates that for the company to be worth restoring, it will almost certainly have some adverse impact on some other party. Nonetheless, those applying for restoration ought to explain that situation and explain whether they anticipate the third parties to be co-operative or not.

9. It may be that in either case the company ought to be restored but an application should not be made on the assumption that the court would agree in either case it ought to be restored. The duty is on the Applicants to explain its position and the facts leading to its application. The court appreciates that the Applicants and its legal representatives will have to make a judgment as to how much detail to disclose but there should at least be some contours and rough shapes to the picture. A simple assertion just leaves everyone guessing.

10. In the circumstances of this case, after the applications were made, some parties related to the current Intended Intervener spoke out already and the Applicants could have taken that opportunity to supplement its evidence. However, I will not as yet count this against the Applicants since the court is mindful that on the last occasion, it specifically told the parties that it would bring the matter back on for this hearing quickly and would take a dim view of any application to adduce further evidence. At the time, that remark was more directed at the Intended Intervener who showed up rather late in the day but it did apply to both sides equally.

11. With that in mind, the court consider very carefully whether to direct the Applicants or give the Applicants a chance to file further evidence. The court thought about this very carefully in no small part because on the present evidence, it seems likely, if not in all likelihood, to

be the case that the Applicants will simply admit to certain recent events, perhaps apologise for not proactively disclosing them, but nonetheless take a position that they have more than a shadowy case to pursue under Mainland law and in Mainland courts or otherwise in the Mainland. This will be even if the Intervener produces, arguendo, sterling legal opinions, perhaps even pointing to the first instant decision of the 越秀法院 for a position that the company as restored would in the Intervener's view be doomed to fail in asserting its purported rights.

12. As I say, it appears likely, if not in all likelihood, that that is how the evidence might turn out to be and applying well-established principles, this court would not be in a position to determine the prospects of success under those Mainland legal issues. In that case, the company would then end up being restored.

13. With that in mind, the court was for a time attracted to the position which Mr Chow has pointed out by reference to a case that the court could say even if it is wrong as to whether the prospects were shadowy, that would be quickly fought out in the Mainland court and no significant prejudice would be caused. As I said the court was, for a time, attracted to that argument. On reflection, however, the court believes it is important that Applicants for restoration take their duty of disclosure and equally their duty to assist the court seriously.

14. In the circumstances, even if chances are that the evidence may well turn out to be as one imagines, it seems right for the Applicants to have to do things properly and put in the supplemental evidence.

15. The application for restoration is adjourned pending further evidence.

(Laurence Li, SC)
Deputy High Court Judge

Mr Val Chow, instructed by Alvan Liu & Partners, for the Applicants

The Respondent was not represented and attendance being excused

Mr Andrew Liao, SC, leading Ms Kristy Wong, instructed by Wellington Legal, for the Intended Intervener