THE COURT OF APPEAL
CIVIL

Neutral Citation Number: [2020] IECA 63

Record No. 2019/112

Whelan J.
Power J.
Murray J.

BETWEEN/

IN THE MATTER OF PPF CAPITAL SOURCE LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

JUDGMENT of Mr. Justice Murray delivered on the 11th day of March 2020

1. On 30 July 2018, PPF Capital Source Limited ('the company') was wound up by the High Court pursuant to the provisions of the Companies Act 2014. Mr. Ken Fennell was appointed Liquidator. He was replaced as Liquidator by Mr. Myles Kirby pursuant to an Order of the High Court (O'Moore J.) of 9 December 2019. The winding up order was made on foot of a petition presented by Global Management Solutions Limited ('Global'). Global alleged that it was a creditor of the company.

2. Mr. Stamp was one of the two then directors of the company. Its sole shareholder was Galaxy Funding Foundation. Mr. Stamp advised the Court that this is a Belize entity established by him. He contends that he was unaware of the Petition until the Petition documents were received by him in the post at his home in England, on 3rd August 2018. They were posted there by the service providers who operated the company's registered office on 26 July. This appears to have been seven days after the Petition was received by those agents. The Petition itself is dated 22 June and was presented to the High Court on 3 July.

3. By the time the papers were received by Mr. Stamp, the winding up order had been made. Mr. Stamp thereupon issued a notice of motion seeking to annul the winding up pursuant to s.669 of the Companies Act 2014. That application was grounded upon three affidavits sworn by him, the first of which was sworn on 29 August, it being supplemented by affidavits of 31 August 2018 and 8 October 2018. Global responded to the application via two affidavits sworn by Mr. Martin Boulton on 1 October and 18 October. The application came for hearing before the High Court (Pilkington J.) on 31 January 2019. Pilkington J. refused the relief. This appeal is against that order.

4. Mr. Stamp's essential case is that the Petition was grounded on a contrived and disputed debt. He says that this debt was thus used as part of a strategy to frustrate proceedings brought by the company against a Mr. Bhupinder Singh in the High Court in London. The background giving rise to this is complex, but the essential facts as alleged by Mr. Stamp are as follows.

5. The company was engaged in the business of undertaking capital markets transactions. Mr. Stamp says that in November 2013 the company entered into an agreement with an entity called Greenmybusiness Limited (now known as Scotmarit Limited) ('GMB') pursuant to which PPF paid $1.5 million to GMB for it to procure a $100M letter of credit that PPF could monetise. GMB was controlled by Mr. Singh. The letter of credit was not procured, and the claim is made that Mr. Singh enriched himself by utilising the $1.5M for his own benefit. Mr. Stamp says that this money was supposed to be protected and was the subject of a *Quistclose* Trust. This transaction and alleged misuse of these funds, is the subject of the proceedings in England to which I have referred. In those proceedings, essentially, the company alleged that Mr. Singh had engaged in an advance fee fraud. Those proceedings have the record number and title '*Claim No : HC-2016-001088 Between PPF Capital Source Limited, Claimant, and Bhupinder Pall Singh and anor. Defendants*'. Since the appeal was first listed in this Court, Mr. Stamp advised the Court, Mr. Singh has entered bankruptcy in the United Kingdom. While this may mean that the proceedings taken by the company against him will go no further, Mr. Stamp intends to pursue recovery of the company's monies insofar as it can from Mr. Singh and to identify how and to whom those monies were ultimately transferred. He contends that the company would have 'priority' in the bankruptcy in respect of this claim.

6. The agreement with GMB was followed by a second agreement entered into on 21 January 2014. This was between the company and a separate entity controlled by Mr. Singh – Lyza Limited ('Lyza') - whereby Lyza was to procure a $100M letter of credit. I will refer to this agreement as 'the Lyza agreement'. It was Mr. Stamp's case that no funds were due to Lyza under this agreement until the letter of credit was obtained. $2M was to be paid to this end. Mr. Singh, on the other hand, maintained that the Lyza agreement replaced the GMB agreement and that PPF owed Lyza a further sum of $500,000 to procure the letter of credit. The relationship between the two agreements is relevant to an issue in the case before the English Courts.

7. On 9 May 2018, a Deputy Master of the English High Court refused an application by Mr. Singh for security for costs against PPF in those proceedings. Mr. Stamp places very heavy reliance upon the judgment of the Deputy Master in that application. He adopts the position that the decision of the Deputy Master on this application was helpful to him because, in particular, he says that the Deputy Master considered that the GMB agreement and the Lyza Agreements were largely the same, but with the significant difference that no fee was immediately payable by the company on signing. The statement upon which he relies in this regard appears at paragraph 15 of the Deputy Master's decision:

"… on 21st January 2014 the Claimant entered into another agreement with a company called Lyza Limited controlled by the First Defendant. This is in substance a very similar agreement to the GMB agreement providing for Lyza to procure a letter of credit to the value of $100 million. There was however a significant difference in that no fee was immediately payable by the Claimant. A fee of $2 million was to be payable but only on receipt of a letter from the bank issuing the letter of credit stating that it was ready willing and able to do so."

Emphasis Added.

8. Mr. Stamp contends that were this the correct characterisation of the agreements, the company could not be said to have owed $500,000 to Lyza.

9. It was Mr. Singh's contention as recorded in the Deputy Master's decision, that the GMB agreement was discharged and replaced by the Lyza agreement. While the Deputy Master was most careful to observe that the Court was not seeking to shut out Mr. Singh from putting forward his case as to what exactly was agreed in this regard, and indeed while he emphasised throughout his decision that all the Court could do at that interlocutory stage of the application was to form a '*general impression of where the probabilities lie on the main issues as matters stand*' , Mr. Stamp says that the Deputy Master concluded that Mr. Singh's argument that the Lyza agreement replaced the GMB agreement was without merit on the evidence presented.

10. Thus, the Deputy Master expressed the view that this defence 'faces serious difficulties' (para. 36). He said :

"I also consider that the First Defendant's defence that the GMB agreement was discharged and replaced by the agreement with Lyza Limited faces serious difficulties. As Mr. Casey points out there is nothing in the agreement with Lyza which in any way suggests that it is anything other than a separate and additional contract. What I regard as particularly significant here is the provision in that agreement for payment by the Claimant of $2 million in specified circumstances. This is on its face inconsistent with the sum of $1.5M already paid by the Claimant to GMB being treated as part payment of the sum due to Lyza. If that was what was intended one would have expected the agreement with Lyza to so provide. I would emphasise that I do not regard this as shutting out the first defendant from putting forward his case as to what was actually agreed but it does seem to me to present that case with real problems."

11. The Deputy Master continues (para. 44):

"Overall it seems to me highly likely that the Claimant will succeed against the First Defendant on the basis that he procured a breach of contract by GMB in paying away the money in the GMB bank account. I am not however persuaded that its case satisfies that test in relation to any of the other ways in which it puts its case against him …"

12. The latter reference is to claims of fraud and deceit that were also made in that case.

13. Mr. Stamp relies upon these findings to buttress his view that at the relevant time the company did not owe Lyza $500,000 or any sum. In this regard, considerable caution is required. The Deputy Master's findings are, as I have noted, necessarily qualified. The matters of fact and law relevant to the merits of the case in issue before him can only be fully and finally determined at a plenary hearing. He was sceptical of aspects of the company's claim, and indeed critical of Mr. Stamp for '*falling a long way short of meeting the requirement of candour*' expected of a party resisting an application for security for costs on the basis that its claim would be stifled by any such order (as he seemingly sought to do). What can be said, however, is that the analysis in the ruling is helpful to Mr. Stamp in showing that he had at least a *prima facie* basis for contending in good faith that Lyza was not owed anything by the company.

14. This is important because it was the alleged debt due by the company to Lyza that formed the subject matter of the winding up Petition. Specifically, on 19 January 2018 Lyza purportedly assigned the alleged debt owed to it by the company, to Global. The purported assignment (for which the consideration was £100 together with 50% of any recoveries made in respect of the alleged debt) records the reason for the agreement as being that '*the Assignor does not have the skill base to recover the debt and wishes the Assignee to do so on behalf of the Assignor*'. That agreement was signed on behalf of Global by a Martin Boulton and on behalf of Lyza by Mr. Singh. It predated the statutory demand served prior to the presentation of the winding up petition by six days. Mr. Stamp says that Mr. Boulton was struck off as a solicitor in October 2012 in England for dishonesty and seeks to suggest that his averments fall to be appraised in that light. Mr. Boulton denies this and allied allegations in non-specific terms. I have disregarded these claims of Mr. Stamp's for the purposes of determining this application. What is more relevant is that Mr. Stamp also says that that Mr. Boulton is working for Mr. Singh. Mr. Boulton denies that he is working closely with Mr. Singh but elaborates no further on their relationship.

15. Global was wound up by HMRC on 10 April 2019. The official receiver is on notice of this appeal but has declined to take any part in it.

16. The essential point made by Mr. Stamp in this application is that the winding up petition was an abuse of process in circumstances where the issue of whether $500,000 was owed is a live issue before the English Courts, and where the effect of the winding up will be to stymie the claim being pursued by the company. He further says that the centre of main interests of the company for the purposes of Council Regulation (EC) No. 848/2015, is England as this is where he, the other director and the business of the company were located.

17. Section 669(1) of the Companies Act 2014 provides as follows:

> *"At any time after an order for winding up is made, the court –*

(a) on the application of the liquidator or any creditor or contributory, and

(b) on proof to the satisfaction of the court that the order for winding-up ought to be annulled,

may make an order annulling the winding up on such terms and conditions as the court thinks fit."

18. Pilkington J., in refusing Mr. Stamp's application, concluded that Mr. Stamp had not established that he was a creditor or contributory of the company, as required by this provision. In this regard, Mr. Stamp relied upon and exhibited a contract of employment with the company, on foot of which Mr. Stamp claimed he was owed back salary, he not having been paid since 2014. He said that while he was initially paid for three months, he stopped drawing salary when the case against Mr. Singh began. Mr. Stamp said that he had been working for the benefit of the company since then, that he was incurring expenses in connection with the litigation, and that he was a creditor to the extent of his unpaid earnings and those unpaid expenses.

19. This contract of employment was dated 5 June 2013. That was before the company was incorporated, that occurring on 19 June 2013. Mr. Stamp in his second affidavit averred that he was to be paid approximately €60,000 a year. In the course of this appeal (in which Mr. Stamp both represented himself and was unopposed in his application by any other party), Mr. Stamp tendered to the Court a later version of this agreement, dated 10 October 2013. He has also submitted invoices, and an e-mail from him to the company dated 8 October 2014, in which he is recorded as directing that '*all payments*' should be stopped until he said otherwise, and that he would draw his remuneration '*when the case settles against GMB/Singh*'.

20. Pilkington J. said the following :

"The only document in support of his entitlement to claim monies is a document of 5th June 2013, which … whilst it purports to be a nomination of Mr. Stamp as a director of the company, predates the date of incorporation of the company …

… on the basis of the documentation and the arguments advanced before me today I am not satisfied that Mr. Stamp has properly advanced the position that he's a creditor."

21. The attention of Pilkington J. does not appear to have been drawn to the provisions of s.45 of the Companies Act 2014. This provides that a contract purporting to be entered into by a company prior to its formation may be ratified by the company, upon which ratification the contract is binding on it. The case law is clear that such ratification does not have to be by express resolution: a company may ratify a contract by treating it as binding after incorporation, *HKN Invest Oy v. Incotrade PVT* [1993] 3 IR 152. In this case, Mr. Stamp averred that he was paid salary for a time, and thereafter ceased to receive it (although he says that other directors continued to draw their salaries). In my

view those averments when combined with the pre-incorporation contract exhibited were sufficient to establish Mr. Stamp as a creditor of the company for the purposes of s.669. That being so, it is not necessary for this Court to address the additional evidence Mr. Stamp has sought to adduce establishing that he was a creditor.

22. That leads to the substantive issues presented by the application. Applications under s.669 or its predecessor – s.234 of the Companies Act 1963 – are rare, and authority is sparse. In this jurisdiction, the cases have arisen in circumstances where there was a failure to comply with statutory requirements in connection with the winding up process. Thus, an analogous jurisdiction was exercised by Carroll J. in *Oakthorpe Holdings Limited* [1987] IR 632 in respect of a members' voluntary winding up where no statutory declaration of solvency was delivered as required by ss. 256(1) and (2) of the 1963 Act. The jurisdiction was exercised on similar grounds by Costello J. in *Re Favon Investments Limited* [1993] 1 IR 87.

23. The section reflects in its language the consequence of a successful application to show cause against an adjudication in bankruptcy (Bankruptcy Act 1988 s.16), and in its effect it mirrors the power in the English insolvency code to stay or sist a winding up order (see s.147 of the United Kingdom Insolvency Act 1986). While noting the obvious differences between the terms and context of the various provisions, authorities considering those analogous powers suggest the following relevant features of the jurisdiction, which seem to me in any event to flow from the language and purpose of the section.

24. First, the effect of the annulment of a winding-up order is that the winding-up order is ineffective *ab initio*. In this respect, it contrasts with an order rescinding the winding up (insofar as the jurisdiction to rescind such an order continues in Ireland – see Courtney *The Law of Companies* (4th Ed. 2016 para. 14.160)). The distinction between rescission and annulment was explained in *Yang v. Official Receiver* [2017] EWCA Civ. 1465 at para. 54, (Gloster LJ): '*rescission terminates the bankruptcy whereas annulment treats the [Bankruptcy Order] as having never been made*'.

25. Second, the application for such an order must be made promptly. Obviously, once the winding up order is made, the consequence is to effect a significant alteration of the company's management and control, and of the entitlements and expectations of the general body of creditors. An applicant who delays in signalling his intention to seek to annul the winding up will forgo his entitlement to claim that relief (see *Re Ponsford ex parte Ponsford* [1904] 2 KB 704, where a three-month delay was held to be fatal to such an application).

26. Third, and following from this, the reason the applicant for the relief did not attend in Court and advance the contention now relied upon in support of annulment will be important to the exercise of the jurisdiction. Given the import of the order sought, and the extensive provision made by law to ensure that affected persons are aware of and in a position to make any relevant submissions at the hearing of a winding-up petition, an applicant for such relief will have to demonstrate not merely that he was not aware of the application, but that the reasons he was so unaware are both explained, and excusable.

27. Fourth, central to the exercise of the jurisdiction is the position and interests of all parties potentially affected by the order. The importance of this consideration was emphasised in *McGruther v. James Scott Ltd.* [2004] SC 514:

> *"As the granting of a sist will bring to an end, or interrupt, the control over the management of the company's affairs exercised by the liquidator, an officer having ultimate responsibility to the court for his conduct, the court will wish, before such control is released, to be satisfied that the interests of all parties potentially affected by any such release are duly considered; there may in some cases also be a wider public interest to address."*

28. Fifth, finally and most importantly, the statute does not specify any factors to which the Court should have regard nor the matters which it must disregard, in making an order. Logically, it seems that central to the jurisdiction are a number of related issues. For a start, it is hard to see that any order of annulment can be contemplated unless the applicant establishes that had the grounds on which he relies been advanced at the hearing of the application, the winding up order would likely have been refused (see *Hoare v. Inland Revenue Commissioners* [2002] EWHC 775 at para. 8). However, while this is a necessary requirement for such an application, it will not always be sufficient. Considerable weight must be afforded to the necessity for certainty as to the legal efficacy of a winding up order once made. The law has designed a process intended to ensure that all parties likely to be affected by the making of such an order are in a position to make their case at one, and only one, hearing of the matter. While each case will depend very much on its own facts, and while in a case in which an applicant has a good explanation for his non-participation in the original hearing, in which he has moved expeditiously, and in which there is no party that has relied to its detriment upon the fact of the winding up order, a good ground on which the order would have been refused may suffice, the Court should be more inclined to make such an order where a strong *prima facie* case of abuse of process or sharp practice has been established. Obviously, if it is clear that the company is insolvent and has creditors other than the original Petitioner, then irrespective of whether the applicant is correct in the case he makes, it is hard to see that the winding up order could be annulled save in the most exceptional of circumstances. In this regard, the starting point should be that the winding up order is lawful, effective and properly obtained, so that if there are matters on which the Court has doubts it should not annul (see *Re Telescriptor Syndicate Ltd*. [1903] 2 Ch. 174). The Court should refuse to annul if there are '*shady practices or unattractive incidents which would disable the applicants from having the company restored to their hands (Re Lowston Ltd.* [1991] BCLC 570, 573).

29. Applying these considerations to this case, I have concluded that the Court should annul the winding up order.

30. Insofar as the position of the applicant, and the question of whether his explanation for not attending the initial application for the winding up order, is concerned, I believe that in all the circumstances the explanation he provides is adequate, if less than ideal. In that

regard, while Mr. Stamp attaches significance to the fact that no letter before action was received by PPF from GMSL or Lyza Limited, no such letter is required in law. What is required is a statutory demand. The evidence before the High Court was that this statutory demand was served on 25 January 2018. Specifically, the affidavits delivered at the time of the application to wind up the company disclose that a statutory demand was left at the company's then registered office on 25 January, that this was handed to a Christine Murphy, and that an acknowledgement of receipt was provided by her. This is stated in the affidavit of Mr. Hyland of Walkers Solicitors. Before this Court, Mr. Stamp expressed himself unaware of this (although a similar point is made in the first affidavit of Mr. Boulton). Mr. Stamp has advised the Court that he had understood from the papers that the demand had been served at the company's previous registered office at 12 Merrion Square.

31. What is more important, however, is that the evidence clearly establishes that Mr. Stamp did not receive the winding up papers until after the hearing. It is clear that the winding up papers were served at the registered office of the company on 19 July. The evidence of Mr. Ajorque of Mason Hayes and Curran is that he attended the same premises on that date, and that the representatives of Kendlebell (the company agents operating from that address) advised that they did not know where the offices of the company were but left the papers at the post box at the entrance to that property later that afternoon. It is unclear why this happened. However, Mr Stamp is emphatic that these were not despatched to him until 26 July, and not received until 3 August.

32. Overall, the position on the evidence in relation to these matters is not entirely satisfactory. Mr. Stamp could, and should, have ascertained and explained to the Court how it came about that the demand was not delivered to him. He could, and should, have ascertained and explained to the Court how papers delivered to the company agents on 19 July were not despatched to him until one week later, in the context of a Court application to take place on 30 July.

33. However, the fact remains is that the evidence before the Court is that Mr. Stamp did not know of the application, and I find his repeated assertion that had he known of it he would have attended at the hearing, convincing. He avers that had he known of the statutory demand, he would have immediately challenged it on the grounds that there is no debt due to Lyza Limited and never has been. Whether or not the premise is correct, his actions throughout have reflected that belief. For him to have ignored a statutory demand that would have undermined the case against Mr. Singh would have made no sense having regard to his personal investment in that action.

34. Insofar as the question arises as to whether the applicant moved with sufficient promptitude when hearing of the petition, the motion issued on 29 August. In the circumstances, the period that elapsed does not appear to be unreasonable. The time that did pass is explained in the affidavit evidence by reference to attempts made to obtain legal assistance in this jurisdiction. I believe this to be a reasonable explanation for the

period that elapsed between his learning of the winding-up order, and the issuing of his motion.

35. As regards the position of third parties, it appears clear that nothing substantive has happened in the liquidation since the winding up order. This is attributed in the papers to the fact of this application. The original liquidator appointed by the Court has, as I have noted, been replaced, and neither he nor the present liquidator have chosen to oppose the application. The Court has been advised of no prejudice to any party (apart from Global) if the application to annul is granted. Global itself has been wound up, and the Official Receiver representing it is not opposed to the application. In letters to the Court dated 27 June 2019 and 13 November 2019, the Official Receiver's Office has confirmed that he is adopting a neutral stance on the application. This is subject to the condition that no costs order is sought against either Global or the Official Receiver. No other creditors whose interests might be affected by the order being granted, have been identified.

36. The next question arises from the basis on which the application is brought. Here, a number of features of the application are relevant. It certainly seems to me that had Mr. Stamp presented to the High Court at the time of the winding up application the evidence and arguments he advances to this Court, the Court could not and would not have wound up the company. The debt in issue was disputed on what are clearly *bona fide* grounds. More fundamentally, the debt is alleged to have been contrived, and it is claimed that it was assigned and deployed to wind up the company for the purposes of spancelling proceedings in England. The circumstances in which, and reasons why, it is alleged that this is being done sustain a *prima facie* case to that effect.

37. A similar issue was addressed in *Re Genport Limited* [1996] IEHC 34 in the context of a winding up application, where it was made clear by the Court that if a *prima facie* case is made out that a petition is not for the benefit of a class of creditors to which the Petitioner belongs, and if a case is made out that the Petition is for an ulterior object, the burden shifts to the petitioner to establish that the winding up is for the benefit of those creditors. That conclusion followed from the decision of the Supreme Court in *Re Bula Limited* [1990] 1 IR 440 and, in particular, the comments of McCarthy J. (at p.448):

> *"… a creditor is prima facie entitled to his order so as to shift the initial burden to those who oppose the winding-up; the petitioner does not have to demonstrate positively that an order for winding-up is for the benefit of the class of creditors to which he belongs, but, if issue is joined on the matter, and a case made that the petition is not for that purpose but for an ulterior, though not in itself improper object, then the burden shifts back to the petitioner".*

38. Although these comments were made in the context of the hearing of a winding-up Petition, similar considerations must apply to this application, not least of all in a situation in which the purpose alleged by Mr. Stamp is not merely ulterior, but also improper. Mr. Stamp has laid out in considerable detail the precise reasons he says there is no debt owed by the company to Lyza and has presented a coherent basis for his contention that

the assignment of the Lyza debt to Global and subsequent presentation of the winding up Petition was undertaken for the purposes of disrupting the claim then being actively pursued before the English Courts. The fact that Global has not addressed the claims made by Mr. Stamp around the enforceability of the debt and subsequent assignment in any proper way in the affidavits tendered on its behalf in connection with this application, is as striking as it is surprising. Notwithstanding the clear case advanced by Mr. Stamp in his affidavits to this effect, nothing of substance has been said in response.

39. Specifically, apart from blanket denials and the raising of queries as to whether Mr. Stamp was a creditor or contributory of the company, the suggestion that there was some irregularity around the company's use of 12 Merrion Square as a registered office, the identification of other companies related to the company which have been dissolved or wound up, Mr. Boulton (who swore these affidavits on behalf of Global) has not engaged with these allegations. In particular:

(a) He provides no explanation of any kind as to why the Lyza assignment was undertaken, nor of what (beyond an uninformative denial) the response of Global is to the claim that this assignment and the subsequent Petition was undertaken for the purposes of spancelling the proceedings in England;

(b) He does not address how the debt allegedly arising from the Lyza assignment is valid and effective having regard to the contentions advanced by Mr. Stamp and accepted at least on a *prima facie* basis by the Deputy Master of the English High Court. The totality of his response to Mr. Stamp's averments in this regard is the statement in Mr. Boulton's affidavit of 1 October 2018 that '*this position is totally misconceived', that the proceedings 'have no bearing on the matter*' and the – cryptic – comment that:

> *"It is factually incorrect to state that the petition was brought to avoid negative consequences in live proceedings and to suggest otherwise is contrary to the provisions of the Act set out above."*

(c) In the same affidavit Mr. Boulton adopts the position that the English litigation is (for reasons which are also unexplained) without merit, suggesting some familiarity with the proceedings themselves. If Global was aware of these proceedings at the time of the hearing of the winding up Petition, it knew (a) that the Lyza debt was disputed, (b) that the circumstances surrounding the incurring of that debt were to fall for consideration (at least collaterally) in the proceedings in England and (c) that an officer of the English High Court had expressed the view that the defence to that claim insofar as based upon the agreement faced '*serious difficulties*'. If it was not aware of any or all of these matters at the time of the presentation of the Petition to the High Court, it is most surprising that Mr. Boulton makes no averment to this effect in the affidavits sworn in connection with this application. It does not appear that the Court was advised of any of these matters at the time the winding-up order was made.

(d) Mr. Boulton provides no information whatsoever as to his relationship with Mr. Singh. This is remarkable, given the allegations made in Mr. Stamp's affidavit of 8 October 2018 that Mr. Boulton had been working for Mr. Singh since 2014 to undermine the company's case against Mr. Singh in respect of the alleged advance fee fraud. Absolutely nothing is said by Mr. Boulton in response to this claim beyond a bland denial that he has been '*working closely with Mr. Singh*'.

(e) His response to the claim that the winding up prevents the proceedings in England from proceeding – that the liquidator can pursue them if appropriate – lacks any reality in the context of a company with limited assets. Mr. Stamp has made it clear that it is his intention to pursue the proceedings on its behalf. In any event, it does not answer the basic question facing the Court here. The point being made by Mr. Stamp is that the company should never have been wound up in the first place.

40. I also note that Mr. Stamp's claims that the centre of main interests of the company was at all times in the United Kingdom are not addressed in this affidavit. Having regard to the other conclusions I have reached on the evidence, it is not necessary for me to deal with this aspect of the application.

41. In Mr. Stamp's original affidavit, he said that the value of the company's claims (including the claim against Mr. Singh) was in the region of US$2.6M, excluding consequential losses which he estimates in the sum of US$5M. Critically, he averred that as of the date of the liquidation, PPF had no liabilities. Mr. Boulton in his replying evidence asserts that the company is in any event insolvent. He points to the financial statements of the company for the period from 19 June 2013 to 18 December 2014, and avers that the balance sheet of the company highlights a net liability of $2,039,351. Mr. Stamp responded asserting that the company has a positive cash balance, and a significant contingent asset in its case against Mr. Singh. He avers that the company does not have any other creditors as the bonds it issued do not cause a liability to the company until such time as it has sufficient balance sheet assets to repay them. This affidavit was not responded to by the petitioner. The evidence before the Court on the issue of whether there are creditors other than Global who would be adversely affected by the winding up order being annulled is, at best, inconclusive. If there are such creditors, they of course retain the entitlement to petition to wind up the company should they wish to do so, and to that end I will direct that the fact of the making of this Order be duly advertised.

42. In those circumstances, I would accede to the application to annul the winding up order. I believe that Mr. Stamp has provided an adequate explanation for his failure to attend the original winding up hearing. I am satisfied, for the reasons explained above, that had he done so he would have made a case consequent upon which the company would not have been wound up. I believe that the allegation he makes in these proceedings goes beyond the mere claim that the debt on foot of which the Petition was pursued was disputed on *bona fide* grounds, but that he has laid before the Court credible evidence supporting his contention that the winding up of the company was undertaken for ulterior purposes which, if established conclusively in evidence, would represent an abuse of the process of

the Court. Those allegations having been made, they have not been convincingly or adequately refuted. In circumstances in which neither the original Petitioner nor the Liquidator are opposing the application, in which no other party has been identified who would be prejudiced by this order, and in a context where nothing has been done (consequent upon this application) to move the liquidation along since the making of the winding up order, it is in my view appropriate to grant the relief claimed.

43. Mr. Stamp is directed to forthwith advise the Companies Registration Office of the Order of this Court. Subject to hearing the Liquidator, the books, records and seals of the company should be furnished to Mr. Stamp. The annulment of the winding up Order should be advertised in two national newspapers circulating in the State. The Court will require an undertaking from Mr. Stamp that this will be done within five days of this judgment.