

PYE (IR) Ltd

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THE HIGH COURT

1984 No. 692Sp Ct6

IN THE MATTER OF THE COMPANIES ACT 1963 to 1983,
AND IN THE MATTER OF PYE (IRELAND) LIMITED.

ON THE APPLICATION OF

THOMAS P. HOGAN, AIDAN P. KELLY,
JOSEPH W. LITTLE AND LIAM DILLON DIGBY.

Judgment of Costello J. Delivered 12th day of November 1984 at 2.15 p.m.

This is an application pursuant to Section 201 of the Companies Act 1963. The Court has been requested to call meetings of the various classes of creditors and shareholders to consider a scheme of arrangement now to be presented to the meeting. This application is an unusual application in that it is the second application to the Court to exercise its discretion within a short period of time under the Section. Mr. Cooke indicated that he was appearing on the application on behalf of the Collector-General although he was not a notice party to the proceeding and not having been served with the Summons. Mr. Cooke on behalf of the Collector-General, applied to be heard and I gave him liberty so to appear. The Special Summons in this case should in the particular circumstances have been served on the Collector-General. Mr. McCracken agreed that Mr. Cooke could appear as if the Special Summons had been served on the Collector-General and Mr. McCracken had indicated that he was prepared to serve the Collector-General with the Summons. Mr. McCracken indicated that the other creditors should be heard and this is fully appreciated by me but I am prepared to consider this application on the basis of the attitude of the other creditors remaining unchanged.

The Court gave its sanction to the calling of meetings of creditors and members in relation to the previous scheme and those meetings were duly held and the scheme was opposed by the Collector-General and consequently did not obtain the necessary statutory majority. Very shortly afterwards a second scheme of arrangement is proposed which is substantially the same as the previous scheme, but contains certain concessions in favour of the Collector-General. The Collector-General has not modified his position and his Counsel has informed me that he will oppose this scheme should the Court see fit to authorise the calling of the various meetings.

The matter before me is whether I should exercise my discretion under Section 201. In my view the Section as interpreted in normal circumstances is that a second application should not be entertained unless very exceptional circumstances arise, as to do so would be to allow the Section to be used as a means of improving a bid, which had failed under the first scheme, in favour of dissenting creditors, and it would be undesirable if the Section was to be so used. The consequences of a defeat therefore should flow; I would depart from this view only in exceptional cases. I cannot find that exceptional

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circumstances exist in the present case and therefore I must decline to exercise my discretion in this case.

There is another reason which requires me to decline to exercise my discretion. The Collector-General is the principal objector to this scheme on the basis, as Mr. Cooke points out, that what is proposed is that the Company ceases to trade as a radio and television manufacturing Company and will instead become a property development Company managing its very valuable lands at Dundrum and obtaining Planning Permission for the lands and selling them off; that is the scheme. No doubt this might well turn out to be of considerable benefit to the creditors and the shareholders. However, the Collector-General is opposed to this proposal.

The Court should not regard the Collector-General as just another creditor similar to other creditors; he is charged with the collection of monies due to the State. In this case I do not think that the Collector-General should be required to surrender for the benefit of other creditors, contingently, money owed to the public. The debt due to the State in respect of V.A.T., P.R.S.I., P.A.Y.E. and Customs and Excise is at least £522,000. In these circumstances if the Collector-General has decided that this scheme is not in the

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public interest, I should be very slow indeed to order these meetings given the opposition of the Collector-General. I see no reason to order this scheme to proceed. He has the duty of deciding how the Public Interest is best served and he has considered the public interest and has decided that the Public Interest would not be served by postponing the State's debt. I must therefore refuse this application and will make no order as to costs.

*Approved**SC*

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