محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2021] QIC (F) 24

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

17 October 2021

CASE No. CTFIC0012/2021

IN THE LIQUIDATION OF POWERGLOBE LLC

APPLICATION

by

THE DIRECTORS AND SHAREHOLDERS OF POWERGLOBE LLC

for

A STAY OF THE PROCEEDINGS

JUDGMENT

Members of the Court
Justice Arthur Hamilton
Justice Rashid Al Anezi
Justice Ali Malek QC

ORDER

1. The Application is dismissed.

JUDGMENT

1. On 4 August 2021, on the application of Noble Clean Fuels Limited ("Noble"), this Court ordered that PowerGlobe LLC ("the Company") be compulsorily wound up under the provisions of the Insolvency Regulations 2005 ("the Regulations"). Liquidators were appointed. The basis for that order was that the Company was deemed unable to pay its debts under Article 78(1)(A) of the Regulations by reason of its failure to pay the sum (US$ 14,574,920.92 plus interest) demanded in a written demand served on it on 24 January 2021. The Court observed that, had it been necessary, it would have also found that the evidence adduced proved that the Company was unable to pay its debts as they fell due within the meaning of Article 78(1)(B). In those proceedings service of documents was conducted electronically.

2. On 17 August 2021 the Court received a communication purportedly on behalf of "PowerGlobe LLC Shareholders and Directors" which included the statement "our proposal is put the liquidation process on hold…". That communication was addressed to the Judges who had made the winding up order and was marked for the attention of the Registrar. On 23 August the Court received a further communication headed "Letter from the Directors and Shareholders of POWERGLOBE LLC". This communication was again addressed to the Judges but, on this occasion, marked for the attention not only of the Registrar but also of, among others, Noble and the Liquidators appointed by the Court. This communication included the statement "we kindly request from the Court to suspend decision [the order of 4 August] until the end of the financial year 2020-21 (ended March 31st, 2022) and then to be reconsidered on the basis of what the Company has done to repay the debt."

3. Article 86 of the Regulations provides that the Court "may at any time after an order for winding up, on the application either of the Liquidator or any creditor or shareholder or other person liable to contribute to the assets of the Company, and on proof to the satisfaction of [the Court] that all proceedings in the winding up ought to be stayed,

make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as [the Court] thinks fit".

4. Article 86 does not allow the Directors of the Company to present any such application. Their powers ceased on the appointment of the Liquidators (Article 83A). The Article does, however, allow any shareholder, at least in some circumstances, to present such an application. Although none of the shareholders of the Company is named nor any personal address given, the Court is prepared to assume for present purposes that the Letter of 23 August was duly instructed by all of them and that its purpose was to invoke Article 86. The application suffers from at least one further irregularity: it is not endorsed with any statement of truth (cf. Article 23.5 of the Court's Procedural Rules).

5. Nonetheless, the Liquidators have recently enquired of the Court as to when it might deal with the application to suspend the liquidation. It thus appears that the Liquidators in fact received the Letter of 23 August electronically and that they understand that there is an application awaiting judicial decision. It may be assumed, for present purposes, that the other persons (including Noble) for whose attention it was addressed also received it electronically. Whatever the procedural flaws in the application, it is desirable that it be dealt with promptly so that there is no uncertainty as to whether the liquidation proceedings are, or are not, to be stayed.

6. In the application it is emphasised that the Company has a strong intention to satisfy the debt (which it acknowledges to be due) and that it "must take all necessary measures to provide immediate cash payment of a substantial part of the debt by the end of the [financial] year". It is stated during that year the Company "shows remarkable operational performance in energy consultancy and midstream activity across the LNG, natural gas and power value-chain, with high potential profits in order to cover part of its debt". It is further stated that the Company is currently under due diligence process with strategic partners and investors for potential acquisition of at least 35% ownership and that "the expected funds will be directly deposited to cover partly the debt of the Company…".

7. No responses to the Application, from Noble or any other person, have been received by the Court. Nor has there been any concurrence or indication of any likely concurrence with the Application. The Company resisted the earlier application for its winding up on the basis of its readiness to pay the debt and offers to re-schedule the payment. Noble, however, pursued its application that the Company be wound up. The Court held that the fact that the Company sought time for negotiation or to make payments by instalments was not a defence. There is nothing to suggest that Noble or any other creditor of the Company has expressed willingness that the liquidation proceedings be stayed, either altogether or for a limited period, on any identified terms and conditions. The inference must be that there is no such willingness.

8. The substantial debt on the basis of which the Court ordered that the Company be wound up has not, it appears, been paid to any extent. In these circumstances and in the absence of any evidence of concurrence of creditors in the proposals advanced in the Application the Court sees no ground on which it can be satisfied that the proceedings ought to be stayed. The Application is accordingly dismissed.

By the Court,

Justice Arthur Hamilton