

VOLUNTARY INSOLVENCY OF TE CE CHIAN & CO., INC.; GERMAN LIMJAP ET AL., OPPOSITORS AND APPELLEES.*G.R. No. 47275. May 21, 1941*

Ponente: LAUREL, J.

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On September 9, 1935, in Civil Case No. 48782 of the Court of First Instance of Manila, Te Ce Chian & Co., Inc., a domestic corporation, through its manager, Cu Tu Chang, filed an application for voluntary insolvency. It was represented that the corporation could not meet its obligations amounting to P21,828.32 but would be willing to dispose of all its properties for the benefit of its creditors. The trial court, on September 21, 1935, entered an order declaring the corporation insolvent and directing the sheriff, until the election of an assignee, to take possession of and safely keep the properties and effects of the petitioner. On October 1, 1935, Fernando Yapcinco, a stockholder of the corporation and one of its creditors, in an amended motion, prayed that the order of September 21, 1935, be reconsidered on the ground that the petitioner had sufficient funds to meet its indebtedness and carry on its business. The following day, German Limjap, Te Ben Tong, Ana Yap Vda. de Te Ce Chian, and Elena, Gelasio, Maura and Pedro, all surnamed Te Ce Chian, other stockholders of the corporation, presented a similar motion for reconsideration pleading their complete ignorance of the institution of the insolvency proceedings and alleging that the object of the manager in filing the petition was to avoid liability in connection with a criminal complaint lodged against him for misappropriating the funds of the defunct partnership, Te Ce Chian & Co., to whose assets and liabilities the petitioner had succeeded. The corporation having submitted an answer to the two motions, a hearing was held and the parties were allowed to adduce oral as well as documentary evidence. Thereafter, the case was submitted for decision.

Before the trial court, however, could render its decision, the petitioner, on January 7, 1936, moved for the dismissal of its application, explaining that some days prior, or on December 12, 1935, a new and independent petition for voluntary insolvency had been filed and docketed as Civil Case No. 41979 in the Court of First Instance of Manila, which, unlike the former, was authorized by the vote of the board of directors at a meeting called for that purpose as well as by the assent in writing of a majority of said directors of the corporation. This petition for dismissal was denied and, on February 4, 1936, the trial court rendered its judgment, in which it concluded that the corporation was not insolvent and set aside the declaration of insolvency contained in the aforementioned order of September 21, 1935.

Petitioner appeals from this judgment and assigns various errors in its brief. The errors converge upon the following" two propositions; (1) whether or not the trial court could entertain oppositions to a petition for voluntary insolvency filed by a corporation under section 52 of Act No. 1956 and, in that connection, pass upon the actual solvency or insolvency of the corporation; and (2) whether or not the trial court erred in not allowing the amendment, and in refusing the dismissal of the petition in Civil Case No. 48782.

Appellant contends that, under sections 14 and 18 of Act No. 1956, with the filing of a petition for voluntary insolvency, it becomes the "ministerial duty of the court to adjudge the petitioning debtor insolvent without any

previous trial or hearing." We do not think so. Under section 52, the petition must exhibit, besides the actual insolvency of the corporation, the required authorization by "the vote of the board of directors or trustees at a meeting specially called for that purpose, or the assent in writing of a majority of the directors or trustees as the case may be." It is clear that in such proceedings the financial condition of the petitioner and the authority of the officer filing the petition are necessarily involved, as to which, upon the evidence submitted pro and con, the court, in the exercise of sound judgment, must act. The petitioner must establish its allegations to entitle it to an adjudication of insolvency; on the other hand, any stockholder of the corporation having knowledge of its solvent financial state or the absence of authority on the part of the officer filing the petition, may move for the dismissal of the petition or, if a declaration of insolvency has been rendered, for the vacation thereof.

With respect to the third question, appellant argues that, as the court below held that the petition for insolvency filed by its manager, Cu Tu Chang, was not in accordance with section 52 of Act No. 1956, it should have dismissed the proceedings without passing upon the solvency or insolvency of the corporation. The argument is good on general principle, but it is of no weight here for the reason that the petition for dismissal was interposed belatedly. It should be observed that the lower court had heretofore declared the corporation insolvent; that various stockholders sought to have the decree of insolvency reconsidered and evidence had to be taken on the motions for reconsideration; and that the dismissal of the proceedings prayed for by the appellants on the ground that another petition had been filed and docketed as Case No. 41979 was presented during the pendency of said motions for reconsideration in which section 52 was invoked. The lower court correctly held, in its order of January 18, 1936, that "no procede sobreseer este asunto escuetamente sin hacer pronunciamiento alguno sobre las cuestiones de que hemos hecho mencion." (Record on Appeal, p. 43.) The final action of the court setting aside its decree of insolvency on the evidence presented was furthermore motivated by its desire to avoid multiplicity of suits.

As to the other assignments of error dealing with pure questions of fact, we are satisfied that the findings of the trial court are supported by the record and should not be disturbed. (*Jalandoni vs. Lizarraga*, 6 Phil., 471; *Baltazar vs. Alberto*, 33 Phil., 336; *Melliza vs. Towle & Mueller*, 34 Phil., 345.)

The judgment of the lower court is affirmed, with costs against the appellant. So ordered.

Avancena, C. J., Imperial, Diaz, and Moran, JJ., concur.

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