IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 172 OF 2007

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

AND IN THE MATTER OF "E"

Appearances:	**Ms. Sandie Corbett of Walkers for "T" the Petitioner** **Mr. Michael Roberts instructed by Colette Wilkins of Truman Bodden & Company for "E", the Company, the Respondent**
Before:	**Hon. Justice Henderson**
Heard:	**November 22, 2007**

RULING

I have before me a petition filed April 27th, 2007 by "T" seeking an order for the winding up of "E". The Petitioner pleads an indebtedness of some US $1.76 million. A statutory demand has been made but not satisfied. On this hearing, the company asks that I strike the petition as an abuse of the process of the Court.

The parties entered into a series of agreements for the provision of telecommunications equipment and services in this jurisdiction. A dispute arose over the value and quality of what was and was not provided. "E" alleges that it was induced to enter into these agreements through misrepresentations of fact by "T".

The master agreement (termed "the framework agreement") provides in clause 15.9.1 that the governing law is that of the Republic of Singapore. Clause 15.10.1 in the same agreement is an arbitration clause requiring that any dispute arising under the agreements be referred to arbitration in Singapore.

For a full appreciation of the position advanced by “E”, one needs to understand the procedural history, to which I now turn.

The agreements were entered into in the latter half of 2004 and early 2005. By August of 2005 the parties were exchanging correspondence about the germinating dispute to which I have referred earlier.

On November 23rd, 2005, a writ was issued in the High Court of Singapore claiming the sums now demanded in this petition together with other amounts.

On September 13th, 2006 an Assistant Registrar of the High Court in Singapore required the parties to attend mediation and stayed the majority of the claims until that had occurred. An appeal was taken from that decision but it was unsuccessful.

On November 13th, 2006, a Judge of the High Court in Singapore ruled that the proceedings were to be stayed in favour of arbitration.

Notwithstanding that ruling, the solicitors to "T" in Singapore demanded a defence from "E" within 14 days. Not having received that pleading, those same solicitors proceeded on December 19th, 2006 to take out a default judgment. That judgment was set aside on January 17th 2007 by a Senior Assistant Registrar on the basis of non-disclosure. The non-disclosure in question was of the salient fact that a stay in favour of arbitration had been granted earlier.

Remarkably, an appeal was taken from the setting aside of the default judgment. That appeal was set for hearing on April 24th, 2007.

By this time "T" had got wind of the fact that "E" was planning to seek an anti-suit injunction in the Cayman Islands arising from its concern (which proved to be justified) that "T" would ask for a winding-up order here. In Singapore, "T" sought to delay the appeal.

That attempt was unsuccessful. The appeal was heard and dismissed on April 24th.

The following day, the Cayman Islands' solicitors for "E" served evidence which put "T" on notice (if they had not had notice earlier) that an anti-suit injunction would be requested here.

"T" proceeded with what might be considered indecent haste to file the present petition. It was filed April 27th, 2007 but unaccompanied by the required affidavit verifying the facts alleged in it. That affidavit was filed some three days later.

The debts pleaded in this petition are a part, but not the whole, of what the Court in Singapore said must be referred to arbitration. The parties agreed that disputes arising under the agreements would be resolved in that way. They agreed that the law of the Republic of Singapore was to be the governing law. That law does not require a showing of a triable issue before proceedings are stayed in favour of arbitration. It is enough that the claim is not admitted.

Despite all of that, "T" asks me to proceed now to wind up this company. Its attempts to proceed with a civil action in the Singapore Court have been rebuffed at every turn. It took out a default judgment in highly questionable circumstances. In its haste to file a winding-up petition here before its adversary could apply for an anti-suit injunction, it neglected to file any sworn evidence in support. To permit this petition to proceed would be to allow "T" to circumvent and frustrate the agreement to arbitrate and to do so in defiance of the order of the Singapore Court. That cannot be an appropriate use of the equitable jurisdiction to wind up a company.

I am satisfied that this petition is, as "E" says, an abuse of the process of this Court. The petition is dismissed.

Dated this 22nd day of November, 2007

Henderson, J.
Judge of the Grand Court