

BETWEEN : IN THE MATTER OF COMFORT HOME FURNISHING LIMITED

A N D : IN THE MATTER OF THE COMPANIES ACT

BEFORE : Hon. Justice Mayadunne Corea

COUNSEL : Ms. Gandhi Deepti for the Applicant

Date of Hearing : 11<sup>th</sup> June, 2014

Date of Decision : 11<sup>th</sup> June, 2014

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## **JUDGMENT**

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[1]. The applicant has filed the Exparte Notice of Motion dated 27.5.2014 seeking following orders:

**A. *That the time for registration of a charge as described in the schedule hereto in the manner required by Section 98 (1) of the Companies Act be extended to Thirty (30) days from the date of the order to be made hereon.***

**B. *That there be no costs of this application.***

[2]. When the case was taken up before me on 11.6.2014. The applicant counsel supported the motion.

[3]. The motion has been filed under Section 98 and Section 104 of the Companies Act. One Mr. Pascal Peckam has filed his affidavit in support of the motion.

## Determination

- [4]. As per the submission made and the affidavit filed Comfort Home Furnishing Limited had tendered the following securities to the petitioner Westpac Banking Corporation.
- (a) *First Registered Mortgage dated 24<sup>th</sup> day of March, 2014 over CT 24491 stamped to secure the sum of \$210,000.00 (Two Hundred and Ten Thousand Dollars) as a Prime Security.*
  - (b) *First Registered Mortgage dated 24<sup>th</sup> day of March, 2014 over CT 24492 stamped collateral to the Prime Security.*
  - (c) *First Registered Mortgage dated 24<sup>th</sup> day of March, 2014 over CT 24493 stamped collateral to the Prime Security.*
  - (d) *First Registered Mortgage dated 24<sup>th</sup> day of March, 2014 over CT 24495 stamped collateral to the Prime Security.*
- [5]. The copies of said mortgage bonds were submitted marked B, C, D and E respectively. It was submitted the mortgage documents had been stamped by the Commissioner for Stamp Duties on 26.3.14. However the applicant has failed to lodge the stamp mortgage and the copies thereof together with particulars of charge relating to the said mortgages with the Register of Companies officer within the stipulated time period of 42 days.
- [6]. When the mortgagor fails to register the said charges within the stipulated time period they have to seek the court's permission to do so under the Companies Act. Thus the applicant has filed the application before me.
- [7]. As per section 104, for the success of this application the applicant has to establish and satisfy court that the omission to register a charge within the time required by the act or that the *omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that, on*

*other grounds, it is just and equitable to grant relief, may, on the application of the company or any person interest.*

- [8]. The counsel submitted that the delay in filing the charges was due to the delay in effecting the settlement. To effect the settlement the vendor was not able to obtain the capital gain tax certificate from FRCA. Therefore the settlement could not be affected and the charges could not be registered within the stipulated time period as contemplated by the Companies Act.
- [9]. The court has also considered the affidavit evidence where it has been deposed that no winding up notice has been issued against the company and that this application was not likely to prejudice the position of creditors or shareholders of the applicant.

### **Conclusion**

- [10]. The court has considered the submission made, affidavit evidence tendered with the annexures. For the above stated reasons I think the applicant has satisfied the requirements under Section 104 to obtain the relief's prayed.
- [11]. The applicant has been successful in satisfying court that it is just and equitable to grant the prayed reliefs. Accordingly the court make the following orders:

- A. *That the time for registration of a charge as described in the schedule to the notice of motion dated 27.5.14 in the manner required by Section 98 (1) of the Companies Act be extended to Thirty (30) days from the date of this order.***



  
Mayadunne Corea

**JUDGE**

**11.06.2014**