

IN THE HIGH COURT OF FIJI
AT SUVA

Winding Up Action No. HBE 37 of 2020

IN THE MATTER of CHIBA MOTORS PTE
LIMITED a Limited Liability Company by shares having
its registered office situated at Lot 1 Ratu Dovi /Road,
Nadera, Suva in the Republic of Fiji.

A N D

IN THE MATTER of the Companies Act 2015.

BEFORE : Hon. Justice Mr. Vishwa Datt Sharma

COUNSELS : Ms. Seduadua. - for the Petitioner
: No appearance - by the Respondent Company

Date of Ruling : 03rd December, 2020 @ 9am

DECISION

[Application for winding up pursuant to Companies Act 3 of 2015]

INTRODUCTION

1. This is **M.IQBAL INVESTMENT LTD's** application seeking to wind up **CHIBA MOTORS PTE LIMITED** on the basis that it is **unable to pay its debt of FJD\$165,000**.
2. The application was heard unopposed.
3. No **Affidavit in Opposition** was filed by the Respondent Company Chiba Motor Pte Limited as was required by the Rules.
4. The Applicant relied on the affidavit evidence and the written submissions filed in this proceedings and submitted her oral arguments formal hearing.

BACKGROUND

5. The Applicant is the *Creditor* of the Respondent company, Chiba Motors Pte Ltd.
6. On 02nd March, 2020 to date, the Respondent Company Chiba Motors Pte Limited was indebted to the Applicant in the sum of FJD **\$165,000**. This debt was due for the purchase of motor vehicles on or about 02nd March, 2020, which sum was then due and payable by the company.
7. Statutory Demand notice pursuant to section 515 of the Companies Act 2015 was served on the Company on 02nd May, 2020, requiring the Company to pay the debt.
8. The Company failed for three weeks after service of the Demand Notice to pay the same and/or secure or compound for it to the reasonable satisfaction of the Applicant.
9. The Applicant feels that there is no genuine dispute to the existence or the amount of Debt of FJD \$165,000 and believes that the Company Chiba Motors Pte Limited is unable to pay its outstanding Debt.
10. The Respondent Company failed to pay the money/Debt owed and hence filed a Winding up Petition against the Respondent Company.

SERVICE of the APPLICATION and AFFIDAVIT VERIFYING PETITION

11. On 30th June, 2020, Chiba Motors Pte Ltd was served with a true copy of the Application for Winding Up and Affidavit Verifying Application for Winding Up by Asena Vole at the registered Office located at Lot 1 Ratu Dovi Road, Nadera, Suva.
12. The Winding-up Petition was listed to be heard before the Judge of the High Court on 12th October, 2020, at 9:30 am, for the Petitioner or his barrister and solicitor to appear for the purposes of **Sections 513 and 523 of the Companies Act**.

13. The Affidavit of Mohammed Imthiyaz Verifying Application for Winding Up (Statutory Affidavit) was deposited on 09th June, 2020.

ADVERTISEMENT of the PETITION

14. The Petition was duly advertised in the *Fiji Sun* newspaper on 13th July, 2020, and in the Republic of the Fiji Islands Government Gazette (No. 64, Volume 21) on 08th July, 2020 respectively.

MEMORANDUM of DUE COMPLIANCE

15. A certificate signed by the Deputy Registrar was issued and sealed on 15th July 2020 pursuant to *rule 19 (1) of the Companies (Winding Up) Rule, 2015* and the *High Court Practice Direction No. 2 of 1986*.

THE LAW

16. *Section 513 of the Companies Act 03 of 2015* provides for cases in which a Company may be wound up by Court. *Section 513 (c) of the Act* herein is the relevant section for Court to consider in determining this application before court-

"A company may be wound up by the Court," if the Company is Insolvent."

17. As indicated in *Arjun & Sons Timber Mills Ltd v Babasiga Timber Town Ltd* the onus is on the Petitioner to establish that the Company is unable to pay its debt. Justice Pathik stated:

This Petition is brought on the ground that the Company is unable to pay its debts. I find that such is the situation here. The creditor has to prove a negative, that negative being that the Company cannot pay its debts.

(my emphasis)

18. In terms of *section 515 of the Act*, a company is deemed to be insolvent (unable to pay its debt) if it fails to pay its debt within **3 weeks** of the creditor issuing a statutory demand. Justice Pathik went on to state (in *Arjun* [supra])

No question of statutory demand arose in GLOBE (supra) but the Companies Act Cap. 247 has provided for certain situations where deemed inability to pay debts arises. Even if the company can show that it is able to pay its debts, it will do no good whatsoever. If the situation exists, it is deemed unable to pay its debts whether or not that is in fact correct. It was so held in CORNHILL INSURANCE PLC v IMPROVEMENT SERVICES LTD and OTHERS (1986 1 WLR p.114) as follows:-

"Held, refusing the application, that where a company was under an undisputed obligation to pay a specific sum and failed to do so, it could be inferred that it was unable to do so;

that, accordingly, the defendants could properly swear to their belief in the plaintiff company's insolvency and present a petition for its winding up."

(my emphasis)

DISPUTED DEBT

19. Where the debt is disputed, the Company must prove that the dispute is on substantial grounds.

Justice Pathik in *Arjun & Sons* [supra] stated:

The Company says that the debt alleged is disputed. To be able to succeed in a case of this nature, the Company has to prove that the dispute is on 'substantial grounds' Re Lympne Investments Ltd [1972] 2 All ER 385).

(my emphasis)

20. Justice Pathik had a similar view in *Vivress Development Ltd v Australia and New Zealand Banking Group Ltd*. Justice Pathik stated:

The question therefore is whether the debt is disputed on substantial grounds. If so, whether the Court ought to grant the relief sought by the plaintiffs.

It is a general principle that a petition for winding up with a view to enforcing payment of a disputed debt is an abuse of the process of the Court and should be dismissed with costs (Palmer's Company Law Vol.3 15.214 and cases cited therein). In Palmer (ibid), on the principles involved it is further stated:

To fall within the general principle the dispute must be bona fide in both a subjective and an objective sense. **Thus the reason for not paying the debt must be honestly believed to exist and must be based on substantial or reasonable grounds.** Substantial means having substance and not frivolous, which disputes the court should ignore. **There must be so much doubt and question about the liability to pay the debt that the court sees that there is a question to be decided. The onus is on the company to bring forward a prima facie case which satisfies the court that there is something which ought to be tried either before the court itself or in an action, or by some other proceedings.**

(my emphasis)

21. The Company after service of the Statutory Demand Notice failed to take any pro-active measures to pay and/or dispute the Debt. The Company even failed to file and serve any Affidavit in Opposition.
22. The application for winding up was heard unopposed. This meant that the debt owed by the Respondent Company Chiba Motors Pte Limited was neither disputed on any substantial grounds by failing to file any affidavit in opposition nor was the Company able to show any evidence of being solvent.
23. The evidence before this court establishes that the Respondent, Company Chiba Motors Pte Ltd owes the debt of FJD \$165,000 to the Petitioning Company and is insolvent.

CONCLUSION

24. The Applicant issued a **statutory demand** which the Company failed to satisfy within **3 weeks** of its issue.
25. The Applicant has complied with the requirements of the Winding Up **Act** and the **Rules** accordingly.
26. The evidence clearly indicates and establishes that the **debt** of FJD \$165,000 is owed by the Respondent company, Chiba Motors Pte Limited to the Applicant. The Respondent Company Chiba Motors Pte Ltd is insolvent.
27. The Company has failed to provide any evidence to establish a **dispute** on substantial grounds. There is no evidence before this Court to indicate the Company is **solvent** or that it is **able to pay its debts, bearing in mind there was never any court appearance personally and/or by Counsel**. The Respondent Company Chiba Motors Pte Ltd is accordingly wound up.
28. The Applicant is entitled to a cost Summarily assessed in the sum of **\$500**, to be paid within 14 days
29. For the above reasons, the following orders are made in terms of its Petition.

FINAL ORDERS

- (i) That Chiba Motors Pte Ltd Limited is hereby wound up under the provisions of the Companies Act 3 of 2015;
- (ii) That the Official Receiver is appointed as the Provisional Liquidator to the conduct of the Winding Up herein; and
- (iii) That there will an order for costs against the Respondent Chiba Motors Pte Ltd summarily assessed at \$500 to be paid within 14 days timeframe.
- (iv) Orders accordingly

DATED AT SUVA THIS 03rd December 2020



cc. Lal, Patel, Bale Lawyers, Suva
Chiba Motors Pte Ltd, Suva.


VISHWA DATT SHARMA
Judge