

IN THE HIGH COURT OF FIJI
AT SUVA
COMPANIES JURISDICTION

Civil Action No. HBE 24 of 2020

IN THE MATTER OF TAIWAN PLYBOARD
INDUSTRIAL LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT
3 of 2015

BEFORE: Justice Vishwa Datt Sharma

COUNSEL: [Mr Solanki B.]: For the Applicant/Petitioner
Non-appearance: For the Respondent
[Ms Naidu]: For Supporting Creditor

DATE OF DECISION: 7th July, 2020 @ 9.30 am

RULING

[Application seeking Winding Up pursuant to the Amended Companies Act 3 of 2015]

- [1] Before Court is the Winding Up Application filed by the Creditor, Export Freight Services (Fiji) Limited and seeks the following Orders:
- (i) That Taiwan Plyboard Industrial Limited be wound up by the provisions of the Companies Act 2015; and
 - (ii) That a Liquidator be appointed to conduct the Winding Up and for such further or other Orders as may be just.
- [2] The Application is made pursuant to the provisions of Section 513 of the Companies Winding Up Act 3 of 2015.
- "Circumstances in which Company may be wound up by the Court
513. A Company (which where applicable in this Part includes a Foreign Company) may be wound up by the Court, if—
- (a) --
 - (b) --
 - (c) the Company is Insolvent;
 - (d) the Court is of opinion that it is just and equitable that the Company should be wound up."
- [3] The Affidavit Verifying Application for Winding Up was deposed by Rony Chan in his capacity as the Company Director.
- [4] The Company **TAIWAN PLYBOARD INDUSTRIAL LIMITED** was served with the Winding Up Application together with the Affidavit Verifying Application on 26th May 2020.
- [5] The Affidavit of Advertisement pursuant to Rule 19(1)(a) of the Companies Rules 3 of 2015 was advertised in the Fiji Times on 21st May 2020 and subsequently in the Fiji Government Gazette on 28th of May 2020.
- [6] The office of the Official Receiver gave consent for the appointment of the Liquidator in terms of the provisions of Rule 19(1)(c) of the Companies Rules 3 of 2015.
- [7] Full Compliance Certificate was issued in the current proceedings pursuant to Rule 19(2)(a) of the Companies Rules 3 of 2015.
- [8] The matter came up for first call before me on 16th of June 2020. The Court noted that there was no appearance of the Respondent Company and further no Affidavit in Opposition was filed by **TAIWAN PLYBOARD INDUSTRIAL LIMITED**.
- [9] Hence the Hearing was scheduled on 2nd of July 2020 at 9.30am. Still, there was no appearance nor any Affidavit in Opposition filed by **TAIWAN PLYBOARD INDUSTRIAL LIMITED**.
- [10] The counsel representing the Creditor, Export Freight Services (Fiji) Limited sought for the Winding Up Orders as enumerated at paragraph 1(i) and (ii) hereinabove.
- [11] From the 31st May 2018 to 13th July 2018, the Company was indebted to the Applicant in the sum of \$24,497.21 being the balance amount currently due and owing for freight and other services to the

Creditor Company at their request, full particulars have been supplied to the Debtor Company and is well known to the Company.

- [12] A Demand Notice was served on the Debtor Company on 31st October 2019 requiring the Debtor Company to pay the balance outstanding amount of \$24,297.21.
- [13] All requirements to be carried out in terms of the provisions of the Companies Act 3 of 2015 were complied with.
- [14] The Company failed for consecutive three weeks after service of the Demand to pay the balance amount of \$24,497.21 and/or to secure or compound for it to the reasonable satisfaction of the Applicant.
- [15] The Company is unable to pay its debts.

Section 513 deals with the Definition of inability to pay debts-

513. Unless the contrary can be proven to the satisfaction of the Court, a Company must be deemed to be unable to pay its debts—

- (a) *if a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding \$10,000 or such other Prescribed Amount then due, has served on the Company, by leaving it at the Registered Office of the Company, a demand requiring the Company to pay the sum so due ("Statutory Demand") and the Company has, not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice; or*
- (b) *if during or after a period of 3 months ending on the day on which the winding up application is made—*
 - (i) *execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the Company is returned unsatisfied in whole or in part;*
 - (ii) *a Receiver or Manager has been appointed, or Property of the Company was appointed under a power contained in an instrument relating to a Floating Charge on such Property; or*
 - (iii) *it is proved to the satisfaction of the Court that the Company is unable to pay its debts, and, in determining whether a Company is unable to pay its debts, the Court must take into account the contingent and prospective liabilities of the Company.*

- [16] Further since there was no appearance and/or any Affidavit in Opposition filed by the Debtor Company **TAIWAN PLYBOARD INDUSTRIAL LIMITED**, it is obvious that there is no genuine dispute as to the existence of the debt sought by the Creditor Company Export Freight Services (Fiji) Limited.
- [17] Having taken into consideration the Application filed coupled with the fact that there has been all compliance by the Applicant, Export Freight Services (Fiji) Limited in terms of the Companies Winding Up Rules 3 of 2015 together with the fact that there has been no appearance and/or any Affidavit in Opposition filed by the Debtor Company **TAIWAN PLYBOARD INDUSTRIAL**

LIMITED, it is proved to the satisfaction of the Court that the Company is unable to pay its debts and is therefore insolvent.


- [18] I have no alternative but to proceed to grant the Order Winding Up TAIWAN PLYBOARD INDUSTRIAL LIMITED in terms of the provisions of the Companies Act 3 of 2015.
- [19] Further, the Applicant Company, Export Freight Services (Fiji) Limited is entitled to costs of the proceedings which I summarily assess at \$650.
- [20] I appoint the Official Receiver as the Liquidator in the matter to take necessary steps hereinafter in terms of the Companies Act/Rules 3 of 2015 accordingly.
- [21] In the result, I make the following Orders:

ORDERS

1. That TAIWAN PLYBOARD INDUSTRIAL LIMITED is wound up under the provisions of the Companies Act 3 of 2015.
2. That the Official Receiver is appointed as the Liquidator.
3. The Debtor Company TAIWAN PLYBOARD INDUSTRIAL LIMITED to pay summarily assessed costs in the sum of \$650 to the Creditor Company EXPORT FREIGHT SERVICES (FIJI) LIMITED.
4. Orders accordingly.

Dated at Suva this 07th Day of July, 2020




Vishwa Datt Sharma
Judge

cc: Solanki Lawyers, Suva
AP Legal, Suva
Taiwan Plyboard Industrial Limited, Dreketi, Vanua Levu