

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
COMPANIES JURISDICTION

WINDING UP CAUSE NO. HBE 15 OF 2020

IN THE MATTER of **NADI CONTRACTORS LIMITED** a limited liability company having its registered office at C/-Peat Marwick, Mitchell & Co, Chartered Accountants, Vakabale Street, Lautoka in the Republic of Fiji Islands.

AND

IN THE MATTER of Section 515 of the Companies Act 2015.

Appearances : Ms S. Sonika for the applicant
Mr S. Luvena for the respondent
Mr R. Prakash for the supporting creditor

Date of Hearing : 3 September 2020

Date of Ruling : 08 September 2020

R U L I N G

[on winding up]

- [01] This is a winding up application. The applicant seeks to wind up the respondent Company, Nadi Contractors Limited (“NCL”) on the ground that it is unable to pay its debt of \$93,048.44.
- [02] Fiji National University is supporting this application. It says NCL is also indebted to them in the sum of \$8,000.00.
- [03] Statutory demand under section 515 of the Companies Act (“Com Act”) was served on NCL demanding payment of the debt within 21 days of the service of

the statutory demand. NCL neither paid the debt nor made an application to set aside the statutory demand.

[04] The Com Act, section 515 (a) provides:

“Definition of inability to pay debts

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...”

[05] The legal presumption under the above section that the company, NCL is insolvent operates against it.

[06] The winding up application is not opposed by NCL as it had failed to file an affidavit in opposition within 7 days before the hearing as required by the Companies (Winding Up) Rules 2015 (*“the Rules”*), Rule 15. It requires that on the hearing of a winding-up application, a person may not, without the leave of the court, oppose the application unless the person has filed an affidavit in opposition to the application and served on the applicant or the applicant’s solicitor within 7 days of the hearing. The respondent company did not file any affidavit in opposition to the application. But rather it seeks a conditional adjournment on the ground that NCL is willing to settle the debt in installments.

[07] The applicant opposes to a conditional adjournment. They say if the respondent company wanted to settle the debt it ought to have paid when the statutory demand was issued.

[08] The petitioner has properly complied with all the requirement for a winding-up application. The Court Registrar (Deputy Registrar) has filed a certificate of compliance in terms of the Rules, Rule 19.

[09] Mr Prakash who appeared for Fiji National University (FNU), a supporting creditor submits that FNU is a supporting creditor, if the applicant’s debt is

settled FNU will stand as the petitioner, and FNU supports the winding-up application.

[10] The applicant served a statutory demand on the respondent company demanding payment of \$93,048.44 being an outstanding debt in respect of services provided to the respondent company. The respondent company did not make payment as demanded in the statutory demand or make an application to the court to have it set aside. The respondent company has not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor (the applicant) within 3 weeks of the date of the statutory notice. Since the respondent company had failed to pay sum (demanded in the notice), or secure or compound for it to the satisfaction of the applicant within 3 weeks of the date of the notice, the respondent company is deemed to be unable to pay its debts by operation of section 515 of the Com Act.

[11] The application for winding up remains unopposed and the respondent company is deemed to be unable to pay its debts by reason of section 515 of the Com Act. In the circumstances, I am satisfied that I should grant an winding up order against the respondent company. I would accordingly grant orders in terms of the application.

1. Nadi Contractors Limited be wound up.
2. Official Receiver is appointed as Liquidator.

M.H. Mohamed Ajmeer
8/9/20

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
08 September 2020

Solicitors:

Legal Department, Credit Corporation (Fiji) Pte Limited for the petitioner