

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No. HBE 20 of 2020

IN THE MATTER of TOUCHWOOD SAWMILLER PTE LTD a limited
liability company having its registered office at Kings Road, Navua.

AND

IN THE MATTER of THE COMPANIES ACT 2015

Counsel : Ms. L. Jackson for the Applicant
Mr. Naco A. for the Respondent

Date of Hearing : 19th October 2020

Date of Ruling : 23rd October 2020

RULING

- [1] All Freight Logistics Pte Limited, the applicant filed this application on 20th April 2020, seeking to have Touchwood Sawmiller Pte Ltd, the respondent, wound up.
- [2] The respondent filed the Notice of Motion seeking leave to file its affidavit in opposition to the application.
- [3] Section 529 of the Companies Act 2015 provides:

- (1) In so far as an application for a Company to be wound up in Insolvency relies on a failure by the Company to comply with a Statutory Demand, the Company may not, without the leave of the Court, oppose the application on a ground—
 - (a) that the Company relied on for the purposes of an application by it for the demand to be set aside; or 294 Companies—3 of 2015
 - (b) that the Company could have so relied on, but did not so rely on (whether it made such an application or not).
- (2) The Court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the Company is Solvent.

[4] Rule 15(1) of the Companies (Winding Up) Rules Provides:

On the hearing of an application under section 513 of the Act, a person may not, without the leave of the Court, oppose the application unless the person has, not less than 7 days before the time appointed for the hearing –

- (a) Filed an affidavit in opposition to the application; and
- (b) served on the applicant or the applicant's solicitor –
 - (i) a notice in the form of Form D6 in Schedule of the grounds on which the person opposes the application; and
 - (ii) a copy of the affidavit.

[5] The learned counsel for the applicant cited the decision in **Ratman v Coomaraswamy and Another** [1064] 3 All ER 933 at 935 where it was held:

The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure required to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.

[6] The discretion conferred upon the court under the Companies (Winding Up) Rules 2015 is very wide. Rule 3 of the Companies (Winding Up) Rules 2015 provides:

The Court may dispense with compliance with all or any of the provisions of these Rules.

[7] However, the court must have a valid ground to disregard these rules.

[8] Rule 15(1) does not say that the respondent is not entitled to oppose the application for winding up if it does not oppose the application in not less than 7 days before the day appointed for the hearing. If it does not oppose the application within that period then it needs to seek leave of the court.

[9] The relevant paragraph of the Notice of Winding up Application reads as follows:

An application for the winding up of Touchwod Sawmiller Pte Ltd was made by All Freight Logistics Pte Limited on 20th April 2020 and will be heard by the High Court of Fiji at Suva before the Master at 8.30 am on Wednesday 3rd June 2020.

[10] In the application for winding up it is stated, "*Will apply to the High court of Fiji on 3rd day of June 2020 at 8.30 am for the following orders:..*".

[11] From the above it appears that the date, that is, 3rd June 2020 has not been fixed by the court for hearing. It was the date nominated for by the Registry for mention. In this matter hearing date has not yet been fixed by the court.

[12] It is also important to note that winding up procedure is not a debt recovery procedure. The court in these proceedings will have to consider whether the company is solvent, which is a fact within the exclusive knowledge of the respondent. Therefore, it is nothing but reasonable to allow the respondent to file its affidavit in opposition.

[13] For these reasons the court makes the following orders.

ORDERS

1. The respondent is allowed to filed its affidavit in opposition within 7 (seven) days from the date of this ruling.
2. Parties will bear their own costs of this application.



23rd October 2020


Lyone Seneviratne

JUDGE