

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBE 20 of 2021

IN THE MATTER DOMINION TRANSPORT
COMPANY PTE LIMITED a limited liability
company having its registered office at SVS Road,
Malolo Road, Nadi in the Republic of Fiji.

AND

IN THE MATTER OF THE COMPANIES ACT

BETWEEN : **AUTOCARE (FIJI) PTE LIMITED** a limited liability Company
having its registered office at 181 Mead Road, Suva in the Republic
of Fiji Islands.

APPLICANT

AND: **DOMINION TRANSPORT COMPANY LIMITED** a limited
liability Company having its registered office at SVC Road, Malolo,
Nadi in the Republic of Fiji Islands.

RESPONDENT

Appearances: Mr. W. Pillay on instructions of K. S. Law for Applicant
Ms. L. Koroitamudu for Respondent Company
Mr. M. Anthony for Supporting Creditor
Date of Hearing: 25 October 2021
Date of Ruling: 25 October 2021

R U L I N G

1. On 09 June 2021, K. S. Law filed an *Application for Winding Up* for and on behalf of Autocare (Fiji) Pte Limited ("**Autocare**") to wind up Dominion Transport Company Pte Limited ("**Company**").

2. Kalpesh Kumar Patel is a Director of Autocare. Autocare has filed a supporting affidavit sworn by Patel on 31 May 2021. In this Affidavit, Patel deposes inter alia as follows:
 - (1) Autocare is a creditor of the Company.
 - (2) on 31 December 2020, the Company was indebted to Autocare for the amount of \$62,100.86 (Sixty Two Thousand, One Hundred Dollars and Eight Six Cents) VIP on account of fuel sold to the Company.
 - (3) on 17 February 2021, Autocare served on the Company a duly executed Demand requiring the Company to pay the amount the sum of \$62,100.86 within three weeks of service of the said Demand.
 - (4) the Company has failed to satisfy the Demand.
 - (5) the Company is unable to pay its debts.
 - (6) there is no genuine dispute as to the existence or amount of the debt.
3. On 13 July 2021, Chetty Law filed an affidavit of Satya Nandan which was sworn on the same day. Nandan is a Director of the Company. He deposes as follows:
 - (1) the debt amount was from the fuel supplied to the Company by Autocare.
 - (2) after being served with the Statutory Demand Notice, the Company continued to make payments despite the hardship the nation was going through during the COVID-19. Their business as bus operators was not as productive as usual but they continued to make payments till 09 April 2021.
4. Nandan outlines in his affidavit that after being served with the Statutory Demand Notice, the Company did not seek legal advice. Accordingly, the Company did not challenge the said Notice.
5. Later however, upon legal advice, the Company came to realise that the Demand Notice was defective. However, by that time, it was too late for the Company to file the necessary process to challenge the said Notice. Nandan deposes that the Company is settling the debt and does not dispute it.

That we have no intention of deviating from our outstanding bills with our creditors however it is rather unfortunate that given this current COVID-19- World Pandemic our business has taken a downturn on the business.
6. Nandan deposes that the Company is in the business of providing transportation from Nadi Town to commuters along the Queens Highway to Sigatoka Town. However, the current COVID-19 situation has really affected its business. Nonetheless, the Company is committed to paying off Autocare.
7. On 10 August 2021, Nilesh Sharma Lawyers filed a Notice of Intention to Appear for and on behalf of Pacific Energy South Pacific Ltd. Pacific Energy alleges that it is owed \$41,047.78 by the Company. This debt was also confirmed in Court this morning by Ms. Koroitamudu.

8. On 24 August 2021 Kalpesh Kumar Patel filed an Affidavit in Reply sworn on 23 July 2021.

9. Section 523 (1) of the Companies Act provides:

On hearing a winding up application, the Court may;

(a) dismiss the application;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order, or any other order that it thinks fit, but the Court must not refuse to make a winding up order on the ground only that the assets of the Company have been mortgaged to an amount equal to or in excess of those assets or that the Company has no assets.

10. Section 513(c) of the Companies Act states that a Company may be wound up by the Court if the Company is insolvent. Section 514 states that a Company is solvent if, and only if, it is able to pay all its debts as and when they become due and payable. Otherwise, the Company is insolvent (see section 514(2)).

11. Section 515 (a) of the Companies Act states that:

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 of 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.

12. The Company is clearly in default of settling its debt which is well above the \$10,000 threshold. It was given well over three weeks after the Statutory Demand was served. However, it has failed to clear the debt. Even though the Company has made some payments, the payments received is below 0.5% of the actual defaulted amount. There is no guarantee that the Company would be able to settle its debts any time soon.

13. In Court, Ms. Koroitamudu advised the Court that the Company is currently not in operation.

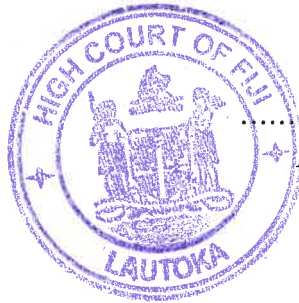
14. As was mentioned in the case of **Mohammed Nadeem Builders Ltd, Re [2018] FJHC 681; HBEog.2016(30 July 2018):**

"...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 Defendant could properly swear to their belief in the Plaintiff Company's insolvency and present a petition for winding up...."

15. Two other Companies have filed their intention to appear in order to recover their debts. The company has also admitted to these debts in Court. This increases the total debt owing by the Company to around \$105,000.00.
16. The Company clearly is not able to clear all its debts and should be wound up.
17. I sympathise with the Company. The effects of Covid -19 on businesses the world over is undeniable. However, in this case, I take into account that the debt in question was due and payable well before the 2021 lockdown and that the Company has not been in operation for some time now. In the circumstances, I am inclined to grant Order in Terms of the Application.

ORDERS

- (a) Order In Terms of the Winding Up Application
- (b) Costs of \$2,000.00.
- (b) Official Receiver is hereby appointed as Liquidator



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Anare Tuilevuka
JUDGE
Lautoka

25 October 2021