

IN THE HIGH COURT OF FIJI AT SUVA

COMPANIES JURISDICTION

Winding up Action No. HBE 15 of 2021

IN THE MATTER of **DAULOMANI PLANT HIRE PTE LIMITED** a limited liability company having its registered office at Lot 3 Nakasi Road, Nausori in the Republic of Fiji.

AND

IN THE MATTER of the Companies Act 2015

Counsel : Ms. Sauduadua I. for the Applicant
Mr. Singh K. for the respondent

Date of Hearing : 06th October 2021

Date of Judgment : 29th October 2021

Judgment

[1] The applicant instituted this proceeding pursuant to Companies Act 2015 to have the respondent company wound up.

- [2] The learned counsel for the respondent company submits that the statutory demand and the winding up petition was not served on the respondent. The position of the applicant is that both statutory demand and the winding up petition were served by leaving copies at the registered office as there was no one at the premises. The learned counsel submits that there is no proof of service such as a photograph of the place where the documents were left.
- [3] Rule 11 of the Companies (Winding Up) Rules 2015 provides:
- (1) Subject to this Part, an application must be served on the company unless it is made by the company.
 - (2) If there is no registered office of the company, the application may be served on the company at the principal or last known principal place of business of the company—
 - (a) by leaving a copy with a member or officer of the company at the place;
or
 - (b) if no member or officer of the company can be found at the place, by leaving a copy at the place; or
 - (c) by serving it on the member or officer of the company that the court directs.
 - (3) If the application is made by a person other than the liquidator of the company in relation to a company that is in the course of a voluntary winding up, the application must be served personally on the liquidator.
 - (4) The application must be served not later than 2 days before it is advertised in a newspaper or published in the Gazette.
- [4] The Rules do not require photograph evidence as proof of service. The affidavit evidence is sufficient to show that the documents have been served.
- [5] Learned counsel for the respondent also submits that the applicant has initiated these proceedings against the wrong company. There are two businesses with similar names owned by the same person one of which is a sole proprietorship and the other is a limited liability company. As per the Certificates of Registration the name of the limited liability

company is “**DAULOMANI PLANT HIRE PTE LIMITED**” and the name of the other business is “**DAULOMANI PLANT HIRE & TRANSPORT SERVICES**”.

- [6] The applicant’s position is that the sole proprietorship has ceased its business operations in 2016. On 22nd November 2016 Notice of Ceasing to carry on business using the business name **DAULOMANI PLANT HIRE & TRANSPORT SERVICES** was given to the Registrar of Companies. On 15th December 2016 the Registrar of Companies has placed the stamp “CANCELLED on 5/12/16” and he has also placed the same stamp on the Certificate of Registration. However, for reasons unknown to the court the Registrar of Companies has not placed his signature on these documents confirming the cancellation. Therefore, the business registration of **DAULOMANI PLANT HIRE & TRANSPORT SERVICES** still valid and operative.
- [7] A company being a separate legal entity, its rights and duties are separate from the rights and duties of its directors and shareholders. This means the liability of shareholders are limited as the personal assets of the owners cannot be touched to pay the debts of the company. This protection is called “the corporate veil”. This fundamental principle of law was established by the House of Lords in *Salomon v Salomon & Co Ltd* [1897] AC 22 / [1896] UKHC 1.
- [8] Although both these business are run by the same person the applicant cannot claim for the work done for the sole proprietorship from the respondent company.
- [9] From the letter of acceptance sent by the applicant company it is clear that the offer had been made to the applicant company by **DAULOMANI PLANT HIRE & TRANSPORT SERVICES** and not by **DAULOMANI PLANT HIRE PTE LIMITED**.
- [10] The respondent has tendered nine Tax Invoices issued by the applicant company. Invoice No. 0702 bears the name “DAULOMANI”. Receipt Nos. 0752, 0766, 0806 and 0833 are addressed to **DAULOMANI PLANT HIRE & TRANSPORT SERVICES LTD**. The court does not have any material showing that a company with that name is in existence. Invoice Nos. 0857, 0858 and 0859 are addressed to **DAULOMANI PLANT HIRE & TRANSPORT**. There is no company registered by the name of **DAULOMANI PLANT HIRE & TRANSPORT**.

- [11] It is also important to note that the invoices tendered in evidence does not bear any signature of the recipient confirming that the services mentioned therein have in fact been performed.
- [12] For the reasons set out above the court is of the view that the applicant has failed to show court that the respondent company owes any money to it.
- [13] Therefore the application for winding up must fail.

ORDERS

- (1) The application for winding up is dismissed.
- (2) The applicant is ordered to pay \$1000.00 as costs to the respondent within 30 days from the date of this judgment.



A handwritten signature in blue ink, appearing to read "Lyone Seneviratne", is written over a horizontal line.

Lyone Seneviratne

JUDGE

29th October 2021