

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**COMPANIES ACTION NO. HBE 10 OF 2021**

**IN THE MATTER OF N10 NABOUTINI CIVIL CONTRACTORS PTE LTD** a limited liability company having its registered office at Yalalevu, Ba, Fiji

**AND**

**IN THE MATTER** of the Companies Act 2015.

**BETWEEN** : **CR ENGINEERING PTE LIMITED** **APPLICANT**

**AND** : **N10 NABOUTINI CIVIL CONTRACTORS PTE LTD** **RESPONDENT**

**APPEARANCES** : Mr. A. Chand with Ms. S. Dass for the Applicant  
Ms. Ravuikadavu appearing on instructions for the Respondent  
Mr. Lesikikadavu for Supporting Parties

**DATE OF HEARING** : 23<sup>rd</sup> May, 2022

**DATE OF DECISION** : 23<sup>rd</sup> May, 2022

**DECISION**

1. The Applicant, C.R.ENGINEERING PTE Limited, on 08<sup>th</sup> March 2021 filed an Application seeking following orders.
  - A. That N10 NABOUTINI CIVIL CONTRACTORS PTE LTD be wound up under the provisions of the Companies Act 2015.
  - B. That a liquidator be appointed to conduct the winding up.
  - C. AND for such further or other order as may be just.
  - D. Costs be summarily assessed and paid out of the assets of N10 NABBOUTINI CIVIL CONTRACTORS PTE LTD to the Applicant within a prescribed period.

2. The Rules for Winding up being partially complied with as per the Registrar Report dated 06<sup>th</sup> April 2021, when the matter had come up before my predecessor Judge on 20<sup>th</sup> April 2021, same was adjourned for 11<sup>th</sup> May 2021 as the publication had not yet been effected and the parties were said to be discussing a settlement.
3. Subsequently, the matter being mentioned before the Master on 29<sup>th</sup> November 2021 and further time being moved for the Applicant, matter was fixed for mention on 19<sup>th</sup> January 2022.
4. Thereafter, when the matter was mentioned on 4<sup>th</sup> April 2021 before me for the first time, directions being sought by the Counsel for the Applicant , after hearing the counsel, this Court gave directions for the Applicant's Counsel to comply with the remaining rules in order to fix the matter for hearing and ordered the matter to be mentioned on 25<sup>th</sup> April 2022.
5. Subsequently, remaining rules being complied with, the matter was mentioned 25<sup>th</sup> April 2021 and fixed for hearing today.
6. Accordingly, when the matter came up for hearing today , learned Counsel for the Applicant informed the Court that the matter between the Applicant and the debtor Company, ( Respondent) has been settled and as such the Applicant does not wish to proceed with the Winding up Application, which was confirmed by the Counsel for the Respondent (Debtor Company)
7. However, Counsel who appeared for a party in support of the creditor, in view of the above development, moved for necessary direction by this Court.
8. On careful perusal of the record and the relevant provisions of the Companies Act 2015, now I find that the Application for winding up filed on 08<sup>th</sup> March 2021 had not been determined prior to 4<sup>th</sup> of September 2021, i.e. before the expiry of 6 months from the date of filing.
9. Section 528 of the Companies Act 2015 (the Act) provides as follows:
  - 1) *An application for a Company to be wound up for insolvency is to be determined within 6 months after it is made.*
  - 2) *The Court may by order (on such conditions as it considers fit) extend the period within which an application must be determined, but only if—*
    - (a) *The Court is satisfied that special circumstances justify the extension; and*
    - (b) *The order is made within that period as prescribed by subsection (1), or as last Extended under this subsection, as the case requires.*
  - 3) *An application is, because of this subsection, dismissed if it is not determined as required by this section.*
10. Section 528(1) of the Act 2015 requires the court to determine winding up applications in insolvency within six months from the date of filing the application for winding up. In this instance it is common ground that the application for winding up was made on 08<sup>th</sup> March 2021

and the matter should have been terminated before 4<sup>th</sup> of September 2021, unless the time period was extended before the expiry of six months period as provided under section 528 (2) of the Companies Act 2015.

11. Under section 528(2) (a) an extension of time can be given only if there are special circumstances warranting such an extension. Though, this Court on 4<sup>th</sup> April 2022 has purported to give an extension for the reasons stated in the order ( considering the Covid-19 pandemic situation prevailed ) , I observe that this Court could not have made such an order as the matter has stood dismissed on 4<sup>th</sup> of September 2021 on operation of law.
12. Section 528(3) provides that ***“An application is, because of this section, dismissed if it is not determined as required by this section”*** [section 528(2)]. This is a very harsh provision but the court is not entitled to deviate from it. The Applicant is penalized for no fault of it.
13. The situation would have been different had the learned Counsel for the applicant made an Application before the Master or Judge of this Court prior to the expiry of 6 months’ time ,which fell on 4<sup>th</sup> September 2021, as required by the very section of the Companies Act 2015. The failure to comply with the provisions of section 528(1) and (2) is fatal to the application for winding up and therefore, the application for winding up stands dismissed by operation law.
14. As per the letter written by M/s Amrit Chand Lawyers addressed to the Senior Court Officer, clarification has been called for by the Applicant’s Solicitors only on 30<sup>th</sup> November 2021. It is observed that immediately prior to writing of the said letter there has been a mention date before the Master on 29<sup>th</sup> November 2021. No such an application for extension has been made before the Master on that date. Even if an Application had been made before the Master on 29<sup>th</sup> November 2021, Master could not have made a favorable order to the applicant by extending the time period as the time period had already lapsed on 4<sup>th</sup> September 2021.
15. Instead of writing the said belated letter dated 30<sup>th</sup> November 2021 , the Solicitors for the Applicant could have filed a formal Application before the Master or Judge, prior to the expiry of the six months period (before 4<sup>th</sup> September 2021) moving to extend the time period and the Master or the Judge would probably have considered the Application favorably even in the absence of the parties or the Counsel for the Applicant, if the Court was still not functioning due to Covid-19 or on any other reason.
16. Accordingly, I decide that the orders made by this Court on 4<sup>th</sup> April 2022 extending the time period and fixing the matter for hearing cannot stand as valid orders and accordingly those orders are hereby vacated acting under per-incuriam rule. The Matter should have stood dismissed by the operation of law provided under section 528 of the Companies Act 2015 and no orders or direction could have been made by this Court.
17. The verbal application of the learned counsel for the supporting creditors, seeking directions, also cannot be considered for this court to make any order, as there is no pending matter before this court since it stands dismissed on operation of law as observed above.

18. For the reasons aforementioned the court makes the following orders:

- a) Orders dated 4th April 2022 made by this court , purportedly, extending the time period and fixing the matter for hearing are hereby vacated on the basis of per-incuriam rule
- b) The Application for winding up already stands dismissed with effective from 4<sup>th</sup> September 2021 in terms of section 528 (3) of the Companies Act 2015.
- c) No orders for cost or any further direction could be made as the Court has no jurisdiction to make such orders in a matter that stands dismissed as aforesaid.
- d) The verbal application by the counsel for the supporting creditor for direction is refused.



**A.M. Mohammed Mackie**  
Judge

At High Court Lautoka this 23<sup>rd</sup> day of May, 2022

**SOLICITORS:**

**For the Applicant: Amrit Chand Lawyers**

**For the Respondent: Toganivalu Legal**

**For the Supporting Parties: Reddy Law**