

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

WINDING UP ACTION NO. HBE 8 OF 2021

IN THE MATTER of WANANAVU GROUP OF COMPANIES LIMITED t/a WANANAVU PLUMBING WORKS a limited liability Company having its registered office at 14 Eden Plaza, Martintar, Nadi, now operating from Shop 15, Mestry Plaza, Nadi Town, Nadi.

AND

IN THE MATTER OF THE COMPANIES ACT 2015

BETWEEN **ASHNEEL VIKASH CHAND and PRITI PRATISHMA** **PETITIONERS**

AND **WANANAVU GROUP OF COMPANIES LIMITED t/a WANANAVU PLUMBING WORK** **RESPONDENT**

APPEARANCES : Ms. Ravuikadavu O/I for the Petitioners.
Mr. Daveta with Mr. E. Dass for the Respondent Company

DATE OF HEARING : 1st June, 2022

DATE OF DECISION : 1st June, 2022

DECISION

1. The Petitioners, namely, **ASHNEEL VIKASH CHAND** and **PRITI PRATISHMA**, on 03rd March 2021 filed this Application under Companies Act 2015 seeking following orders.
 - a. That **WANANAVU GROUP OF COMPANIES LIMITED**, Trading as **WANANAVU PLUMBING WORKS** 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.

2. Careful perusal of the record shows that the Rules for Winding up being complied with, as per the Registrar Report date on 15th April 2021, when the matter was mentioned before Hon. Allen Grahame Stuart- J on 15th April 2021, it was adjourned for 06th May 2021 with directions to be mentioned before Hon. Jude Nanayakkara-J, for the same to be dealt along with the connected Application for Setting Aside Statutory Demand in Action bearing No- HBM-08 of 2021.
3. In the meantime a Summons to Strike out dated 20th April 2021 being filed on 14th April 2021 into this matter by the Solicitors for the Company , which also was issued returnable on 06th May 2021. However, this matter being not called in Court on the said date, presumably, due to the closure of the Courts on account of the prevailed Covid 19 Pandemic condition in this area, same was mentioned before me on 21st March 2022 in the presence of the Counsel for both the parties and directions being sought, the court fixed the matter for hearing on 06th April 2022, by allowing the parties to file their respective affidavit in response and reply, which was complied with by the Petitioners.
4. Accordingly, a combined hearing into the Application for Setting Aside Statutory Demand and the purported Summons for Striking in the connected matter bearing No- **HBM-08 Of 2021** was taken up before me on 6th April 2022 and counsel for both the parties, having filed their respective written submissions, made oral submissions as well and the said matter was fixed for decision on 27th May 2022. The matter in hand (Winding Up) also was directed to be mentioned on the same date.
5. However, as this court did not sit due to my attendance for a workshop on 27th May 2022, both matters were re-fixed for today 1st June 2022 and the decision in connected matter **HBM-08 of 2021** was pronounced by me dismissing the Summons for Strike Out and the Application for Setting aside Statutory Demand with cost being ordered in favor of the Respondents. (Both case numbers are alike, except for the third alphabets E & M)
6. Subsequently, when this matter came up for consideration of the next move , on careful perusal of the record and the relevant provisions of the Companies Act 2015, I found that the Application for winding up filed on 03rd March 2021 had not been determined prior to the expiry of 6 months period as required by the Section 528 of the Companies Act 2015 (the Act), which 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.*

7. 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 03rd March 2021 and the matter should have stood disposed by 02nd 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.
8. 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 has on 21st March 2022 purported to have extended the time period by directing the parties to file respective affidavits , I now observe that this Court could not have made such an order as the matter had already stood dismissed on 2nd September 2021 by the operation of law.
9. 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 disregard or deviate from it. The Petitioners are penalized for no fault on their part.
10. The situation would have been different had the learned Counsel for the Petitioners made an Application before this Court prior to the expiry of 6 months’ time ,which fell on 02nd September 2021, as required by the very section of the Companies Act 2015.
11. 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 should stand dismissed by the operation law.
12. Had this been drawn to the attention of the Court before the expiry of initial six months period, the Court on its own motion itself could have extended the period, if the circumstanced demanded even without any formal application being made by the counsel for the Applicant.
13. Accordingly, I find that the orders / directions made by this Court on 21st March 2022 for the parties to file respective affidavits and fixing the matter for hearing have to be treated as null and void *ab-initio* or can be vacated acting under *per-incuriam* rule, as the matter should have stood dismissed on 2nd September 2021 by the operation of law as provided under section 528 of the Companies Act 2015.
14. This being brought to the attention of the learned counsel for both the parties today, it was conceded by both the counsel and they did not make any contrary submissions.

15. For the reasons aforementioned, I make the following orders:

- a) Orders made by this court on 21st March 2022, directing the parties to file affidavits and fixing the matter for hearing, have had no any effect.
- b) The winding up Application hereof has stood dismissed by the operation of law.
- c) No further orders made for the obvious reason given above.



A.M. Mohammed Mackie
Judge

At High Court Lautoka this 01st day of June, 2022

SOLICITORS:

For the Petitioners: Rams Law

For the Respondent: M/S Pillai Naidu & Associates, Barristers & Solicitors