

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

**WINDING UP ACTION NO. HBE 24 OF 2021**

**IN THE MATTER of NABOU GREEN ENERGY PTE LIMITED**  
a limited liability Company having its registered office at  
Lot 56, NLC 466, Nakabi, Nadroga, Sigatoka.

**AND**

**IN THE MATTER OF THE COMPANIES ACT 2015**

**BETWEEN:** **GIMCO ENERGY SERVICE PTE LIMITED** a limited liability company having its registered office  
at Navutu, Nabou, Sigatoka.

**APPLICANT**

**AND:** **NABOU GREEN ENERGY PTE LIMITED** a limited liability company having its registered office  
at Lot 56, NLC 466, Nakabi, Nadroga, Sigatoka.

**RESPONDENT**

**APPEARANCES** : Mr. Prakashan for the Applicant  
Mr. R. Singh for the Respondent

**DATE OF HEARING** : 20<sup>th</sup> May 2022

**DATE OF DECISION** : 19<sup>th</sup> July, 2022

**DECISION**

1. The Applicant, **Gimco Energy Pte Limited** on **20<sup>th</sup> July 2021** filed an Application seeking following orders;
  - a. That **Nabou Green Energy Pte Limited** be wound up under the provisions of Companies Act 2015;
  - b. That a liquidator be appointed to conduct the winding up; and for such further or other orders as may be just.
  
2. The Rules for Winding up being partially complied with, as per the Registrar's Report dated 09<sup>th</sup> September 2021, when the matter had come up before my predecessor Judge on 21<sup>st</sup> September 2021, the court adjourned the matter to be mentioned on 10<sup>th</sup> November 2021, along with the connected setting aside Application.

3. As the Court did not sit on 10<sup>th</sup> November 2021, owing to Judge's workshop, the matter was mentioned before the learned Master on 2<sup>nd</sup> December 2021, by when the Respondent Company had, on 30<sup>th</sup> November 2021, filed "**Summons for Stay of Winding Up Proceedings Pending Determination of Application to Set Aside the Statutory Demand**", which the learned Master directed to be issued returnable on 16<sup>th</sup> February 2021. This Summons was not followed up by the Respondent Company.
4. However, the matter being rescheduled for 10<sup>th</sup> May 2022, and when it was mentioned before me with the presence of the Counsel for both the parties, learned Counsel for the Applicant made an oral Application to extend time period for the determination of this matter, by giving various reasons for the delay, in response to which the learned Counsel for the Respondent Company vehemently objected on the basis that it cannot be extended for any further time period as the time for extension has already expired in terms of section 528 (3) of the Companies Act 2015.

**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. (emphasis mine)*

5. Section 528(1) of the Companies Act 2015 requires the court to determine a winding up Applications in insolvency within six months from the date of the Application for winding up. In this matter in hand, it is common ground that the Application for winding up was made on **20<sup>th</sup> July 2021** and the matter should have been determined on or before **20<sup>th</sup> January 2022**, unless the time period was extended before the expiry of six months period as provided under section 528 (2) of the Companies Act 2015.
6. Under section 528(2) (a) an extension of time can be given only if there are special circumstances warranting such an extension. Unfortunately, no such an Application had been made on behalf of the Applicant Company on or before 20<sup>th</sup> January 2022, which was the expiry date of initial six months period. Accordingly, the matter has stood dismissed from 21<sup>st</sup> of January 2022 by operation of section 528 (3) of the Companies Act 2015.
7. 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). The grounds adduced by the learned

Counsel for the Applicant Company, prima-facie, do not constitute special or exceptional circumstances. However, the Court is not in a position for a deep scrutiny since the matter stands dismissed and court cannot act any further, as the Application was not made for the extension of time before the expiry of initial six months as required by the section.

8. Learned Counsel for the Respondent Company drew my attention to the decision dated 22<sup>nd</sup> May 2018 in *Western Wreckers Ltd, In re [2018] FJHC 406; HBE24.2016 (22 May 2018)* , wherein Hon. Seneviratne-J, observed "*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*".
9. The situation would have been different had the Applicant Company made an Application, seeking for extension of time by relying on special circumstances on or before **20th January 2022**. This Court now is not in a position to extend its helping hand to the Applicant Company as it has failed to apply for extension within the prescribed time period. Failure to comply with the provisions of section 528(1) and (2) is fatal to the Application for winding up. The Application for winding up has stood dismissed from 21<sup>st</sup> January 2022 by operation of law.
10. For the aforesaid reasons, the court makes following orders:
  - I. The oral Application made by the Counsel for the Applicant Company on 10<sup>th</sup> May 2022, seeking the extension of time for the determination of this matter, is hereby dismissed.
  - II. The Application for winding up has stood dismissed from 21<sup>st</sup> January 2022 by operation of law under section 528 (3) of the Companies Act 2015.



**A.M. Mohamed Mackie**  
Judge

At High Court Lautoka this 19<sup>th</sup> day of July, 2022

**SOLICITORS:**

**For the Petitioners: Messrs. Prakashan and Associates**

**For the Respondent: Munro Leys**