

IN THE HIGH COURT OF FIJI
AT LABASA
COMPANIES JURISDICTION

Winding Up Cause HBE No. 04 of 2021

IN THE MATTER OF MILLS MANAGEMENT
(FIJI) PTE LTD a duly incorporated company
having its registered office at Dreketi, Labasa,
Vanualevu, Fiji.

AND

IN THE MATTER of the Companies (Winding
Up) Rules 2015

BEFORE: Hon. Mr. Justice Vishwa Datt Sharma

COUNSEL: Mr Jamnadas K. - for the Applicant
No Appearance - for the Respondent

DATE OF JUDGMENT: 07th July 2022 @ 9.30am.

DECISION

[Application seeking Winding Up pursuant to the Amended Companies Act 3 of 2015]

Introduction

- [1] This is a Winding up Application filed by the Applicant; Tianjin Quan Xiang Ming Yu Import and Export Trading Co. Ltd, seeking for Winding up Order against the Respondent Company, Mills Management (Fiji) Pte Ltd.
- [2] The Applicant alleges that the Respondent Company on 9th April 2021, was indebted to the Applicant for the amount of \$54,553.63 being sum due and owing for deposit paid to the Company for the supply of rain tree sawn timber as per Timber Sale Agreement executed in July 2022 and \$545 Solicitors costs.
- [3] The Applicant in its Winding Up Application sought for the following orders:-
- (i) That Mills Management (Fiji) Pte Ltd be wound up under the provisions of the Companies Act 2015;
 - (ii) That a liquidator be appointed to conduct the Winding Up; and
 - (iii) For such further or other orders as may be just.
- [4] The Applicant complied with the issuance and service of the statutory demand notice, service of the Winding up Application together with the Affidavit Verifying Application for Winding Up and Advertisement. Accordingly, **Rule 19 (1) compliance Certificate** was issued on 08th December 2021.
- [5] The Respondent Company did not file any **Setting Aside of the Statutory Demand** nor filed any **Opposition Affidavit** to counter the Winding up Application.
- [6] This Court granted an **extension of time to determine the Winding up Application in terms of S.528 of the Companies Act 2015** until the 16th July 2022. [S. 528 refers-*An Application for a Company to be wound up in Insolvency is to be determined within 6 months after Application is made*].

Applicant's Case

- [7] The Applicants submitted that:-
- The Winding up Application is unopposed.
 - Statutory Demand served and set aside.
 - Rule 19 Certificate issue for Compliance.
 - Debt is \$54,559.63.
 - Substantial costs of \$3,500.

Determination

- [8] The issue for this court to determine is "Whether the Respondent Company Mills Management (Fiji) Pte Ltd be wound up on the grounds of Insolvency?"

- [9] **Section 513 of the Companies Act 03 of 2015** provides for cases in which a Company may be wound by Court. **Section 513 (c) of the Act** in the current case is the relevant section for Court to consider in determining this application before court-

"A company may be wound up by the Court," if the Company is Insolvent."

- [10] As indicated in *Arjun & Sons Timber Mills Ltd v Babasiga Timber Town Ltd* the onus is on the Petitioner to establish that the Company is unable to pay its debt. Justice Pathik stated:

This Petition is brought on the ground that the Company is unable to pay its debts. I find that such is the situation here. The creditor has to prove a negative, that negative being that the Company cannot pay its debts.

- [11] In terms of **section 515 of the Act**, a company is deemed to be insolvent (unable to pay its debt) if it fails to pay its debt within **3 weeks** of the creditor issuing a statutory demand. Justice Pathik went on to state (in *Arjun* [supra])

No question of statutory demand arose in GLOBE (supra) but the Companies Act Cap. 247 has provided for certain situations where deemed inability to pay debts arises. Even if the company can show that it is able to pay its debts, it will do no good whatsoever. If the situation exists, it is deemed unable to pay its debts whether or not that is in fact correct. It was so held in CORNHILL INSURANCE PLC v IMPROVEMENT SERVICES LTD and OTHERS (1986 1 WLR p.114) as follows:-

"Held, refusing the application, that 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 defendants could properly swear to their belief in the plaintiff company's insolvency and present a petition for its winding up."

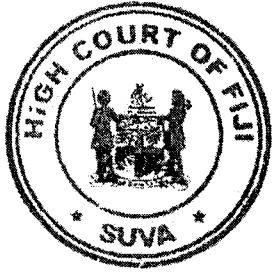
- [10] The Company Mills Management (Fiji) Pte Ltd was served with a Demand Notice on 09th April, 2021.
- [11] The Company failed for a period of three (3) weeks after the service of the Demand Notice to pay the amount or to secure or compound for it to the reasonable satisfaction of the Applicant.
- [12] The Winding up Application together with the Affidavit Verifying Application was served onto the Respondent Company on 24th November 2021.
- [13] The Affidavit of Advertisement pursuant to **Rule 19(1) (a) of the Companies Rules 3 of 2015** was advertised in the Fiji Sun on 23rd November 2021 and subsequently in the Fiji Government Gazette on 26th November 2021 respectively.
- [14] Full Compliance Certificate was issued in the current proceedings pursuant to **Rule 19(2) (a) of the Companies Rules 3 of 2015**.
- [15] The matter came up for first call before me on 24th January 2022, adjourned to 28 February 2022, 20 March 2022 and 21 April 2022 since parties were talking settlement. The matter was finally scheduled for Hearing on 02nd May 2022.
- [16] On the hearing date, the Court noted that there was no appearance of the Respondent Company and further no Affidavit in Opposition was filed by Mills Management (Fiji) Pte Ltd to counter and oppose the Applicant's claim, if it intended to do so in any circumstances.

- [17] The counsel representing the Applicant sought for the Winding up Orders as enumerated at paragraph 3 (i), (ii) and (iii) hereinabove of my decision.
- [18] From the 09 April 2022 to the current time, the Company was indebted to the Applicant in the sum of \$54,559.63 being the sum due and owing for deposit paid to the Company for the supply of rain tree sawn timber as per Timber Sale Agreement executed in July 2020 and \$545.00 Solicitors costs.
- [19] Further, since there was no appearance and/or any Affidavit in Opposition filed by the Debtor Company Mills Management (Fiji) Pte Ltd, it is obvious that there is no genuine dispute as to the existence of the debt sought by the Credit/Applicant, Tianjin Quan Xiang Ming Yu Import and Export Trading Co. Ltd.
- [20] Having taken into consideration the Application filed coupled with the fact that there has been the compliance by the Applicant, in terms of the Companies Winding Up Rules 3 of 2015 together with the fact that there has been no appearance and/or any Affidavit in Opposition filed by the Debtor Company Mills Management (Fiji) Pte Ltd, it is hereby proved to the satisfaction of the Court that the Respondent Company Mills Management (Fiji) Pte Ltd is unable to pay its debts and is therefore insolvent.
- [21] Bearing in mind all above, I have no alternative but to proceed to grant the Order for the Winding up of Mills Management (Fiji) Pte Ltd in terms of the provisions of the Companies Act 3 of 2015.
- [22] Further, I have taken into consideration the short oral submissions made by the applicant's Counsel in terms of seeking a substantial sum of \$3,500 costs against the Respondent Company. However, the court was not furnished with any evidence and/or breakdown as to how this costs was made of and/or arrived at.
- [23] However, the Applicant Company, Tianjin Quan Xiang Ming Yu Import and Export Trading Co. Ltd. is therefore only entitled to costs of the proceedings which I summarily assess at \$850.
- [24] Further, I appoint the Official Receiver as the Liquidator in the matter to take necessary steps hereinafter in terms of the Companies Act/Rules 3 of 2015 accordingly.
- [25] In the result, I make the following Orders:

ORDERS

- (i) That Mills Management (Fiji) Pte Ltd is wound up under the provisions of the Companies Act of 2015.
- (ii) That the Official Receiver is appointed as the Liquidator.
- (iii) The Debtor Company Mills Management (Fiji) Pte Ltd to pay summarily assessed costs in the sum of \$850 to the Creditor Company Tianjin Quan Xiang Ming Yu Import and Export Trading Co. Ltd.
- (iv) Orders accordingly.

Dated at Suva this 07th day of July 2022.



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Vishwa Datt Sharma
JUDGE

cc. Messrs Jamnadas & Associates, Suva.