

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

WINDING UP ACTION NO. HBE 30 OF 2021

IN THE MATTER of WESTBUS (NAD) PTE LIMITED a limited liability Company having its registered office at NADI Back Road , Nadi, FIJI.
AND

IN THE MATTER OF THE COMPANIES ACT 2015

BETWEEN

NEW INDIA ASSURANCE COMPANY PTE LTD a foreign Company duly incorporated under the laws of India and having its place of business at 2nd floor, Harifam Centre, Cnr Renwick Rd. & Greig St, P.O.Box 71, Suva, Fiji.

APPLICANTS

AND

WESTBUS (NADI) PTE LTD, a limited liability Company having its registered office at Nadi Backroad, Nadi, Fiji.

RESPONDENT

APPEARANCES : Mr. N. Kumar -for the Applicant Company.
Ms. Arthi . B. Swamy –for r the Respondent Company

DATE OF HEARING : 18th November, 2022.

WRITTEN SUBMISSIONS: By the Applicant on 08th November, 2022.
By the Respondent on 13th January , 2023.

DATE OF DECISION : 27th February, 2023.

DECISION

1. The Applicant Company on 01st December,2021 filed this Application under Companies Act 2015 seeking following orders;
 - a. That WESTBUS (NADI) PTE LIMITED 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 were complied with, as per the AFFIDAVIT OF COMPLIANCE sworn and filed on 23rd December,2021 and the Registrar's Report dated and filed on 4th January,2022 .

3. The bone of contention between the parties is the alleged debt of \$43,181.09, being the outstanding premium for the Insurance Cover the Applicant had provided to the Respondent Company from 1st January,2018 to 31st December,2019
4. The Applicant Company had on 12th March,2020 served on the Respondent Company a Statutory Demand requiring the said sum of \$43,181.09 , the alleged debt be paid and settled.
5. The Respondent Company, admittedly, failed for more than three weeks, after the service of the demand to pay the amount or to secure or compound for it to the reasonable satisfaction of the Applicant Company.
6. However, the Respondent Company on 11th January, 2022 filed its AFFIDAVIT IN OPPOSITION sworn on the same date by, AJAY KUMAR, the Director of the Company, along with annexures marked from "A" to "H". A Reply Affidavit sworn on 8th June, 2022 by, ASHNEEL KUMAR, an Insurance & Claim officer, was filed on 19th July,2022.
7. Accordingly, when the matter came up for hearing , both Counsel for the Applicant and Respondent Companies took up preliminary objections as follows.
 - a. Learned Counsel for the Applicant Company, Mr. S. Kumar, raised the objection that as the Respondent Company had failed to seek leave of the Court to file Affidavit in opposition and oppose the Application, they cannot participate at the hearing. The reason adduced by the Counsel in this regard is the Respondent Company's failure to have the Statutory Demand set aside, by making the relevant Application during the prescribed time period.
 - b. Conversely, learned Counsel for the Respondent Company took up the objections , inter-alia, since the Application for Winding up has not been determined within the period of 6 months as stipulated under section 528 of the Companies Act 2015 and that leave has not been granted by this Court to extend the prescribed period for the determination of the Winding up Application.
8. On careful perusal of the record , particularly, the date of the Application, and the relevant provisions of the Companies Act 2015, I found that the Application for winding up filed on 1st December,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.*

9. 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 01st December, 2021 and the matter should have stood disposed by 01st June, 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.
10. Under section 528(2) (a) an extension of time can be given only if there are special circumstances warranting such an extension. The Respondent Company has filed its Affidavit in Opposition on 11th January, 2022 without any objection being raised on behalf of the Applicant Company, and this Court on 4th April, 2022 has allowed the Applicant Company to file its Affidavit in Reply, which has been filed on 19th July, 2022.
11. I now observe that the matter had already stood dismissed on 01st June, 2022 by the 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)].”***
13. 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.
14. Had this been drawn to the attention of the Court by the counsel for the Applicant Company before the expiry of initial six months period, the Court on its own motion itself could have extended the period, if the circumstances demanded even without any formal Application being made.
15. Accordingly, I find that the orders / directions made by this Court or the proceedings, after the expiry of 6 months' time period ie; 01st June, 2022, have to be treated as null and void as the matter should have stood dismissed on 01st June, 2022 by the operation of law as provided under section 528 of the Companies Act 2015.
16. In the light of the above, the preliminary objection taken up by the learned Counsel for the Applicant with regard to the failure of the Respondent to seek permission to file Affidavit in opposition in order to oppose the Winding up Application need not be considered as there is no a live action on foot after the expiry of 6 months period on 1st June, 2022.
17. Undisputedly, no an Application for the extension of time had been made on behalf of the Applicant Company before the expiry of the prescribed time period of 6 months on 1st June, 2022.

18. In *Western Wreckers Ltd, In re [2018] FJHC 406; HBE24.2016 (22 May 2018)*, L. 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”.
19. The situation would have been different had the Applicant Company made an Application, seeking for extension of time with sufficient ground/s on or before 01st June, 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 01st June, 2022 by operation of law.
20. For the reasons aforementioned, I make the following orders:
- a) The preliminary objection raised on behalf of the Respondent Company is upheld.
 - b) The winding up Application hereof has stood dismissed on 1st June, 2022, by the operation of law.
 - c) The proceedings could not have continued and no orders / directions could have been made after 01st June, 2022.
 - d) No orders for Costs or any further reliefs are made for the reasons given above.



A.M. Mohammed Mackie
Judge

At High Court Lautoka this 27th Day of February, 2023.

Messrs. KRISHNA & COMPANY – Barristers and Solicitors –For the Applicant Company.
Messrs. Patel and Sharma – Barristers and Solicitors- for the Respondent Company.