

**IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 186 of 2017

**BETWEEN : SHAREEN LATA HANS
PLAINTIFF/ APPLICANT**

**AND : MAHENDRA DEO
DEFENDANT/RESPONDENT**

CIVIL ACTION NO. HBC 121 of 2018

**BETWEEN : MAHENDRA DEO
PLAINTIFF/ RESPONDENT**

**AND : SHAREEN LATA HANS
DEFENDANT/ APPLICANT**

CIVIL ACTION NO. HBE 11 of 2017

IN THE MATTER OF PACIFIC WEST BUILDERS LIMITED.

A limited liability company having its registered office at Lot 9,
Bountiful Subdivision, Namaka Lane, Namaka, Nadi.

AND:

**IN THE MATTER OF WINDING UP APPLICATION UNDER
COMPANIES ACT -2015.**

**BETWEEN : PACIFIC WEST BUILDERS LIMITED
APPLICANT**

**AND : SHAREEN LATA HANS
RESPONDENT**

BEFORE : Hon. JUSTICE. MOHAMED MACKIE.

DATE OF HEARING : 17th May 2023

SESSION : 01 at 10.30 AM.

APPEARANCE : Mr J. Sharma -For Ms Shareen Lata Hans.
Mr A. Narayan - (junior) For Mr. Mahendra Deo.
Mr R. Gordon- for the current Liquidator (Mr. W. Crosbie)
Mr R. Singh – For the former Liquidator
Mr J. Mainavolau – For the Official Receiver.

RULING : On 26th May 2023.

RULING

1. This Ruling is made pursuant to the oral Application made by Mr. Gordon, learned Counsel for the current Liquidator, at the commencement of the hearing, into some other Applications between the contesting parties in the above styled matters, was taken up before me on 17th May 2019.
2. This Ruling pertains to the Winding Up matter bearing No- HBE 11 of 2017, in which the Winding up order was finally made by my predecessor Hon. A.G. Stuart -J, as he then was in this Court.
3. Sometimes after the Winding up order as aforesaid was made, the appointed Liquidator Mr. Steven Pickering and/ or Ernest & Young, Chartered Accountants was discharged and **Mr. William Crosbie and/ or HLB Maan Judd (Fiji)** Chartered Accountants was appointed by Consent Order dated 21st November 2022.
4. Now the impediment faced by the Liquidator, according to the learned Counsel for the Liquidator, is the non-availability of funds for the Liquidator to commence and continue with the process of Liquidation. This seems to have paralysed the Liquidator to function in the manner expected of in terms of the orders made by the Court and the relevant provisions Companies Act of 2015.
5. Admittedly, apart from other assets both movable and immovable, a substantial amount of money is said to be available in two Bank Accounts operated by the Company at the ANZ Bank Nadi Branch under Account number: 13423171 being an operational account and in another Account bearing No: 8924907.
6. In order to facilitate the Liquidator in commencing and continuing with the Liquidation this Court on 27th April 2023, with the consent of both the parties, made order for the Liquidator to become the signatory to the Account bearing No. 13423171 at the ANZ Bank.
7. Counsel for the Liquidator brought to the notice of the Court that despite the said order, the relevant Bank is showing reluctance in releasing or transferring the money to an Account to be operated by the Liquidator for the winding up purposes. The reason adduced by the Bank, according to the Counsel, is an outstanding amount of a loan facility granted to the Company, which is said to be in the range of \$100,000.00 to \$150,000.00 and the Bank has expressed its willingness to release the funds only after deducting the dues on the said Loan Account.
8. It is also revealed that the Bank is holding a Mortgage on certain immovable property of the Company against the said loan facility. Accordingly, court observes that no necessity would arise for the Bank to withhold or deduct the said Loan amount from the available funds as the Bank is at a better position to recover its Loan arrears before the disposal of the assets of the Company through the process of Liquidation. When the assets of the Company are disposed in the Liquidation process, it is only on the full settlement of the all dues to the bank, the Mortgage on the subject property will be discharged by the Bank.

9. So, there is no reason for the Bank to withhold or deduct any sum on account of the said Loan facility to the Company as the Bank as a Mortgager would get the priority during the settlement process by the Liquidator.
10. Section 541 and 542 of the Companies act 2015 stipulates as follows.

Custody of Company's Property

'541. Where a winding up order has been made or where an interim liquidator has been appointed, the liquidator or the interim liquidator, as the case may be, must take into that person's custody or under his or her control all the Property and things in action to which the Company is or appears to be entitled'.

Vesting of Property of Company in liquidator

'542. Where a Company is being wound up by the Court, the Court may, on the application of the liquidator, by order, direct that all or any part of the Property of whatsoever description belonging to the Company or held by trustees on its behalf must vest in the liquidator by his or her official name, and thereupon the Property to which the order relates must vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend, in his or her official name, any action or other legal proceeding which relates to that Property or which it is necessary to bring or defend for the purpose of effectually winding up the Company and recovering its Property'.

11. The above section are very clear on the duties of the Liquidator, on the custody of the properties and on the authority of the Court to make required Orders for the vesting of the Company's properties.
12. Mr. A. Narayan (Junior), Learned Counsel for the Applicant, Mahendra Deo, informed that they do not have any objection for the necessary orders being made on the ANZ Bank Nadi Branch in respect of the Monies in the aforesaid Accounts. On the other hand Mr J. Sharma, Learned counsel for Ms. Hans, while consenting for an order being made in respect of the operational Account No13423171 , expressed his client's (Ms. Hans's) unwillingness to release the Money the other Account No; 8924907.
13. Mr. Sharma made further submissions that the delay on the part of the Liquidator to hold the Creditors and Contributors meeting has been a matter of great concern for his client Ms. Hans. He submitted further that if the Liquidator can give a firm commitment to have the said meeting as soon as possible, his client would be consenting for the whole Application by the Liquidator and there will not be any objection.
14. What Mr. Gordon for the Liquidator has stated on the time frame for the said meeting is that his client wants to fulfil his duty at the earliest possible and they can call a meeting within 4 weeks' time provided all the monies could come in, though he had indicated that it would take around 8 weeks to have the meeting.

15. Counsel for the Liquidator also pointed out that if a formal Application is to be made for this purpose, there will be delays and it would involve unnecessary expenses to be borne by the parties and the burden would also be on the assets of the Company.
16. The winding up matter hereof, along with the other connected matters stated above, have been pending for a long time causing the parties to litigate at the expense of colossal sum of Money. The delay caused will have serious effect on the assets of the Company by devaluation and also will undoubtedly cause prejudice to the creditors waiting to come up with their claims. The assets of the wound-up Company, particularly Vehicles, are said to be facing depreciation as a result of abandonment of them at the yard of the Company.
17. The Liquidator should be at liberty to take over all the assets of the Company and discharge his duties in the manner expected of him in terms of the orders of the Court and the relevant provisions of the Companies Act 2015, with the least possible delay. There should not be any hindrance of this nature in performance of the Liquidator's duties. Thus, making of following orders will not prejudice the parties or the ANZ Bank Nadi branch, in which the funds are held through the said Accounts.
18. Accordingly, I make following Orders.
 - a. The Application made on behalf of the Liquidator on 17th May 2023 is hereby allowed.
 - b. The Liquidator is authorized to access the total amounts of funds available in both Account Nos. 13423171 and 8924907 held by the Company at the ANZ Bank Nadi Branch.
 - c. The Liquidator can either be the signatory to the said existing Bank Accounts or have the total funds in both Accounts transferred to an Account to be opened / maintained for the purpose of the Liquidation of the Company in question.
 - d. The Liquidator is at liberty to seek further orders for the smooth and speedy Liquidation.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 26th day of May, 2023.

SOLICITORS:

For the Plaintiff:

For the Defendants:

Sairav Law for Shareen Lata Hans

AK Lawyers for Mahendra Deo

Messrs Gordon & Co. for the current Liquidator

Munro Leys for the former Liquidator

AG's Chamber for the Official Receiver