

IN THE HGIH COURT OF FIJI AT SUVA
COMPANIES JURISDICTION

Winding Up Action No. 17 of 2023

BETWEEN

IN THE MATTER of **VUNIMOLI HIRE SERVICE LIMITED** a limited liability company
incorporated in Fiji having its registered office at Estate of Umar Building, Nanuku Street,
Labasa.

AND

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED of 67-69 Victoria Parade,
ANZ House, Suva

APPLICANT

Counsel	:	Ms. K. Singh for the Applicant
Application Filed	:	05 th April 2023
Hearing on	:	07 th July 2023
Decision Delivered	:	07 th July 2023

DECISION

- [1] The Applicant filed this application for the winding up of the Vunimoli Hire Service PTE Limited, a company incorporated on 06th July 2004.
- [2] Affidavit deposed by Mohid Dean, Team Leader Recoveries, in support of Applicant Creditor, states that Vunimoli Hire Service PTE Limited [Debtor] owing \$72,067.19 in respect to an overdraft account and lease finance facility given by the Applicant.
- [3] On 03rd March 2022 the Applicant served a Statutory Demand Notice through their Solicitors at the Debtor Company's registered office in Labasa. The Debtor Company failed to pay the sum owed or to secure the amount in a reasonable way to the satisfaction of the Applicant.
- [4] Section 529 of the **Companies Act 2015** provides:
 - (1) In so far as an application for a Company to be wound up in Insolvency relies on a failure by the Company to comply with a Statutory Demand, the Company may not, without the leave of the Court, oppose the application on a ground—
 - (a) that the Company relied on for the purposes of an application by it for the demand to be set aside; or
 - (b) that the Company could have so relied on, but did not so rely on (whether it made such an application or not).
 - (2) The Court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the Company is Solvent.
- [5] The Debtor Company did not make any application to set aside the Statutory Demand. The Applicant confirms that the Application for Winding Up and the Affidavit verifying

the application had been served on the debtor company by leaving both documents at the registered office. Later on Court's direction it was personally served on the Director of the debtor company.

- [6] The debtor company neither made any application to have the statutory demand set aside nor did file an affidavit and notice opposing the application for winding up as required by Rule 15 of the **Companies (Winding Up) Rules 2015**.
- [7] In paragraph 7 of the affidavit in support it is averred that the Applicant on 03rd March 2022 effected service of the Statutory Demand Notice on the debtor company to pay \$72,067.19 (seventy two thousand sixty seven dollars and nineteen cents). However the company failed to secure the amount.
- [8] There is no evidence contrary to the above position before me.
- [9] Section 515 of the Companies Act 2015 defines the inability to pay debts in the following manner;

Unless the contrary can be proven to the satisfaction of the Court, a Company must be deemed to be unable to pay its debts—

if a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding \$10,000 or such other Prescribed Amount then due, has served on the Company, by leaving it at the Registered Office of the Company, a demand requiring the Company to pay the sum so due ("Statutory Demand") and the Company has, not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice.

- [10] The Court has no reason to disbelieve affidavit evidence of the Applicant. Whether the Debtor has the ability to pay the amount which exceeds the statutory minimum is within

the exclusive knowledge of the debtor company, but no evidence has been adduced to show that they have means to pay the debt.

[11] Therefore Court grants following orders in Applicant's favour.

ORDERS

1. The debtor company Vunimoli Hire Service PTE Limited hereby wound up.
2. The Official Receiver is appointed as the Provisional liquidator.
3. There will be no order for costs.

The seal of the High Court of Fiji is circular, featuring a central emblem with two figures and a shield, surrounded by the text "HIGH COURT OF FIJI" and "SUVA". A handwritten signature in black ink is written over the right side of the seal.

Yohan Liyanage

JUDGE

At Suva on 07th July 2023