

IN THE HIGH COURT AT SUVA
CENTRAL JURISDICTION
CIVIL JURISDICTION

WINDING UP ACTION HBE: 37 of 2022

IN THE MATTER OF PATTERSON
BROTHERS SHIPPING COMPANY LIMITED
a limited liability company having its registered
office at Suite 1 & 2, Epworth House, Nina Street,
Suva.

AND

IN THE MATTER of the Companies Act.

AND:

SUPREME FUEL

PETITIONING CREDITOR

OCEANIA GAS

BOS EQUIPMENT

HIGHWAY PLAZA PTE LTD

FUEL SUPPLIES PTE LTD

GOLD ROCK INVESTMENTS
LTD

RAMESH CRANE HIRE LTD

FIJI PORTS LIMITED

SUPPORTING CREDITORS

Date of Hearing : **26 September 2023**

For the Debtor: **Mr. Rokodreu V.**

For the Petitioning Creditor: **Mr. Singh K.**

For the Supporting Creditors: **Mr. Chand A.**

Mr. Katia P.

Mr. Khalim M.

Date of Decision: **12 October 2023**

Before: **Levac SLTTW, Acting Puisne Judge.**

J U D G M E N T

(APPLICATION FOR WINDING UP)

Cause and Background

1. The initial Petitioning Creditor, Rajnesh Investments had filed a notice for winding up against the Debtor on 24 August 2022 together with an Affidavit verifying application for winding up containing the Statutory Demand that was issued to the debtor, the advertisements and the consent from the Official Receiver to act as provisional liquidator.
2. On 13 October 2022 to 17 October 2022 the Supporting Creditors filed their Notice of intention to appear in the same matter.
3. On 15 November 2022 the petitioning creditor sort to withdraw their application and no Winding up Orders were made.
4. On 5th December 2022 a formal application by the supporting creditor was made to substitute the application in accordance with section 16 (2) of the Winding up Rules under the Companies Act which was granted by this Court.
5. On 5th April 2023, 1 May 2023 and 13 July 2023, the Defendant Debtor sort to adjourn the matters in Court seeking to settle the matter with the creditors and to file an Affidavit in reply or in opposition. This was granted by the Court on these various occasion. The matter thereafter was affixed for Hearing on the 13 of July 2023.

6. On 28 September 2023 the Defendant Debtor applied for adjournment of Hearing as he was unable to proceeding to Hearing and was awaiting settlement. There was no dispute as to the debt. They were still negotiating payment of the debt.
7. All supporting creditors including the substituted petitioning creditor objected to the application for adjournment on the basis that the Defendant Debtor was given 6 months to file their Affidavit in Response or to finalize settlement. They have not done either and hence in accordance with the Winding Up Rules, the time period for the proceedings in Court had has nearly lapsed.

Application

8. The substituting Petitioning Creditor together with Supporting Creditors had filed their Intention to be heard on the basis that the Debtor Company owed a total sum of \$1,509,914.49 to all of them.
9. The Debtor Company has not filed an Affidavit in Opposition, although leave was granted for him to do so and sort time for settlement.
10. On the date of Hearing, the Counsel admitted to the debt against the Petitioning Creditor but denied debts owing and payable for the other Supporting Creditors. He was making further arrangements to settle their accounts. However the Court did not accept these submissions as no Affidavit and attaching evidences was filed into Court.
11. To date, no outcome of the arrangements was made known to this Court by the debtor company by filing their Affidavit in opposition despite the Court granting leave for a period of 6 months for the Defendant Debtor to file their opposition or settle the matter.

Law on Winding Up Rules

12. Winding up in Section 513 of the Companies Act is a discretionary remedy that the Court can exercise where the Petitioner has met all the conditional requirements.
13. A company can be wound up if it is insolvent in accordance with section 514 of the Companies Act 2015. Solvency is defined as -

“A company is defined as solvent if it is able to pay its debts, as and when they become due and payable”.
14. Therefore when the coin is flipped, so to speak, insolvency is the inability to pay debts when it is due and payable.
15. Section 515 (a) of the Companies Act requires that a company is unable to pay its debts if the creditor serves a notice of a debt exceeding \$10,000 and the company is unable to settle the debt to the satisfaction of the creditor.

16. For the Court to consider an objection to the winding up petition under section 529 of the Companies Act 2015, the objecting Debtor Company must seek leave of the Court opposing winding up and must prove that the company is solvent.
17. A defect in the winding up procedure does not of itself constitute a ground to seek leave to oppose winding up.

Analysis

18. Before this Court is a Petitioning Creditor’s application arguing that a debt is owing for \$131,764.50 being the amount due and payable by the Debtor Company to the Petitioning Creditor.
19. The Court is satisfied that despite leave being granted, the Debtor Company has not attempted to satisfy the Petitioning Creditor by paying off the debt due and payable.
20. The Court also notes that despite the statutory demand being served on the Debtor Company, the debtor Company has never sort for setting aside of the Statutory Demand to date.
21. The Supporting Creditors have filed their Notice of Intention to Appear in accordance with Rule 12 of the Winding Up Rules 2015 and a List of Persons to appear in accordance with Rule 14 of the Winding Up Rules 2015.
22. Section 21 of the Winding Up Rules 2015 does not require an Affidavit of indebttness is to be filed by the applicant on or about the date of hearing.
23. The following are the List of Creditors and the Debt owing and payable by the Debtor Company –

Ramesh Crane Hire Ltd	\$55,929.50;
Fuel Supplies Pacific Pte Ltd	\$240,827.10;
Highway Plaza Pte Ltd	\$13, 692.68;
Gold Rock Investments Pte Ltd	\$660,000.00 (AUD);
Bos Equipment and Engineering Pte Ltd	\$10,464.28;
Fiji Ports Corporations Limited	\$52, 905.38.

24. The Court is satisfied from the provisions of the Winding Up Rules that the Petitioning Creditor and the Supporting Creditors has satisfied the Court that the Debtor Company has the following abovementioned debts due and payable and has not fully satisfied any of the creditors.

25. The Court also finds that these provisions have not been disproved by the Debtor Company at all despite the Court giving leave and extended time for the Debtor Company to file their Affidavit in Opposition or to settle their debts.
26. The Court has noted the written consent of the Official Receiver as preferred appointed provisional liquidator.
27. The Court will therefore grant the application and Order for Winding Up of the Debtor Company.

Court Costs

28. The Creditors have all sort for Court costs to be awarded to them for the manner in which the hearing commenced.
29. As much as I sympathize with the Creditors, the Court was exercising its discretion to grant further time to the Debtor Company in accordance with the Winding Up Rules.
30. The Court however finds that Court costs will still be imposed and will award all the Supporting Creditors Costs of \$700 and the Petitioning Creditor \$2000.

Orders:

31. The Court Orders as follows:

- (i) Application for Winding Up of Patterson Brothers Pte Limited be granted on the basis of the Petitioning Creditors application and the Supporting Creditors submissions;
- (ii) The Court appoints the Official Receiver as the Provisional Liquidator;
- (iii) That Court costs be imposed against the Debtor Company for \$2000 to be awarded to the Petitioning Creditor and \$700 each for all the Supporting Creditors.




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Mrs SLTTW-Levaci
A/Pusine Judge of the High Court