

IN THE HIGH COURT OF THE REPUBLIC OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Winding Up Action No. 04 of 2014

IN THE MATTER OF IMOMA'S
HOLDING CO LIMITED a limited
liability having its company registered
office at 3 Tukani Street, Lautoka

-AND-

IN THE MATTER of the Companies
Act.

Before: Master M H Mohamed Ajmeer

Counsel:

Ms A Swamy for the petitioner
No appearance for the respondent

Date of Hearing : 25 June 2014

Date of Judgment : 25 June 2014

J U D G M E N T

Introduction

- [1] **IMOMA'S HOLDING CO LIMITED** (hereinafter may be sometimes referred to as "the Petitioner") presented and filed on 15 April 2014 a Petition for a voluntary winding up order pursuant to section 221 of the Companies Act ("the Act") and prayed for the following orders:

- a) That **IMOMA'S HOLDING CO LIMITED** a limited liability company having its registered office at 3 Tukani Street, Lautoka may be wound up by the Court under the provisions of the Companies Act.
- b) Or that such other Order may be made in the premises as to the Court shall deem just.
- [2] The Petitioner has also filed affidavit of Johanna Lydia Beasley sworn and filed on 17 April 2014 verifying the petition ("the verifying affidavit").
- [3] The petition was duly advertised in the Fiji Sun newspaper on 4 June 2014 and in the Fiji Government Gazette on 6 June 2014. Memorandum of due compliance was filed on 12 June 2014.
- [4] No objection was filed in court objecting the voluntary winding up of the petitioning company.

Factual background

- [5] The brief facts of the case are these. The petitioner is indebted in the sum of \$30,000.00 to **JOHANNA LYDIA BEASLEY** ("JLB") in respect of monies loaned to the petitioner. The petitioner received at its registered office a demand notice in respect of the debt on the 11 December 2013 requesting the petitioner to pay within 3 weeks. Over twenty one (21) days have now elapsed since Petitioner received the demand but the petitioner is unable to settle the debt or to make any offer to the creditor to secure or compound the same.

Issues

- [6] The issue to be determined by the Court is whether the petitioner is entitled to be wound up by the court under section 213 of the Act.

The law

[7] The Act in relation to winding up provides as follows:

213.-(1) *the winding-up of a company may be either-*

(a) by the court; or

(b) voluntary; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding-up apply, unless the contrary appears, to the winding-up of a company in any of those modes

219. *The Supreme Court (now the High Court) shall have jurisdiction to wind up any company registered in Fiji.*

220. *A Company may be wound up by the court, if-*

(a) ...;

(b) ...;

(c) ...;

(d) ...;

*(e) **the company is unable to pay its debts;***

(f) the court is of opinion that it is just and equitable that the company should be wound up;

(g)... (Emphasis added).

235. *For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, **the court may appoint a liquidator** or liquidators (Emphasis added).*

221. *A company shall be deemed to be unable to pay its debts-*

*(a) **if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding \$100 then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has, for 3 weeks thereafter; neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;** (Emphasis provided) or*

(b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Determination

[8] The Petitioner has preferred this petition seeking to wind up itself on the ground that it is unable to pay its debts.

[9] The petitioner is indebted to JLB, creditor in the sum of \$30,000.00. JLB had served, pursuant to section 221 of the Act a statutory demand notice at its registered office requiring it to pay the debt within 21 days. The demand notice had been served on 11 December 2013. 21 days allowed for the petitioner to settle the debt had already elapsed. The petitioner is still unable to settle the debt demanded by the notice. Apparently, the petitioner had neglected to pay the debts for more than 3 weeks. In the circumstances the deeming provisions envisaged under section 221 will come into operation. According to that section, a company will be deemed to be unable to pay its debts if a creditor, to whom the company is indebted in a sum exceeding \$100 (in this case the demanded sum is \$30,000.00) then due has served on the company, a demand requiring the company to pay the sum so due and the company has, for 3 weeks thereafter; neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor.

[10] A company may be wound up by the court under section 213 (1) (a) of the Act. Pursuant to section 220 (e), the ground on which a company may be wound up by the court is that the company is unable to pay its debt. The petitioner is deemed to be unable to pay its debts. In

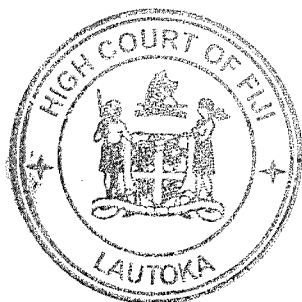
addition, the petitioner also admits that it is unable to pay its debts, a valid ground for the petitioner to be wound up by the court.

Conclusion

[11] The petitioner is insolvent and unable to pay its debts. Therefore I make order that the petitioner to be wound up. The costs of these proceedings must be taxed and paid out of the company's (petitioner's) assets.

Final orders:

1. **Imoma's Holdings Limited** is to be wound up;
2. Official Receiver is appointed liquidator;
3. Costs to be taxed and paid out of company's assets;
4. Orders accordingly.



M. H. Mohamed Ajmeer

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M. H. Mohamed Ajmeer

Master of the High Court

At Lautoka

25/06/14