

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBE 14 OF 2014**

**IN THE MATTER AIRPORT LAND**  
**DEVELOPMENT COMPANY LIMITED**

a limited company having its registered office at the premises of Messrs Pillai Naidu & Associates, Barristers & Solicitors, 17 Sagayam Road, Nadi

**-AND-**

**IN THE MATTER OF THE COMPANIES**  
**ACT, CAP 247**

**Appearance:**

Mr Reddy for petitioner  
No Appearance for respondent

**Date of Hearing** : 07/11/14

**Date of Ruling** : 07/11/14

**R U L I N G**

**Introduction**

[1] **Vishnu Deo Swarup** (hereinafter may be sometimes referred to as “the Petitioner”) presented on 3 July 2014 a Petition pursuant to section 221 of the Companies Act (“the Act”) and prayed for the following orders:

- a) That **AIRPORT LAND DEVELOPMENT COMPANY** may be wound up by the Court under the provisions of the Companies Act, Cap 247.

- b) *That the costs of the petitioner be taxed and paid out of the assets of the company.*
- c) *That Official Receiver attached to the Court be constituted provisional liquidator of the affairs of the Company.*
- d) *Or that such other Order may be made in the premises as to the Court shall deem just.*
- [2] The Petitioner filed his affidavit on 7 July 2014 verifying the petition (“the verifying affidavit”).
- [3] The petition was duly served on 14 July 2014 at Pillai Naidu & Associates, being the respondent’s registered office with a true copy of the verifying affidavit. Memorandum of due compliance was filed on 27 October 2014.
- [4] No objection was filed in court opposing the winding up petition.

**Factual background**

- [5] The brief facts of the case are these. The respondent company is indebted to the petitioner in the sum of \$87,076.42 plus post judgment interest at the rate of 5% per annum being the amount due and owing pursuant to High Court Judgment in Action No. HBC 296 and Court of Appeal in Action No. 0061 of 2012. A demand notice dated 2 June 2014 in respect of the debt was served on 11 December 2013 at the registered office of the respondent requesting it to pay within 3 weeks. Over twenty one (21) days have now elapsed since the petitioner served the demand but the respondent 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 have wound up the respondent company 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) the company has, by special resolution, resolved that the company be wound up by the court;*
- (b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;*
- (c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;*
- (d) the number of members is reduced, in the case of a private company, below 2, or, in the case of other company, below 7;*
- (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) in the case of a company incorporated outside Fiji and carrying on business in Fiji, winding up proceedings have been commenced in*

*respect of it in the country or territory of its incorporation or in any other country or territory in which it has established a place of business.*

**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**

[08] The Petitioner has preferred this petition seeking to wind up the respondent company on the ground that it is unable to pay its debts, a ground for winding up of a company under section 220 (e) of the Act.

[09] The respondent is indebted to the petitioner in the sum of \$ 87, 076.42. The petitioner 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 by 2 June 2014. 21 days allowed for the respondent to settle the debt had already elapsed. The respondent 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. That section gives definition of inability to pay debts. 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 instance the demanded sum is \$87,076.42) 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. By reason of section 221 (a) of the Act, the court has no option but to deem that the respondent is unable to pay its debts.

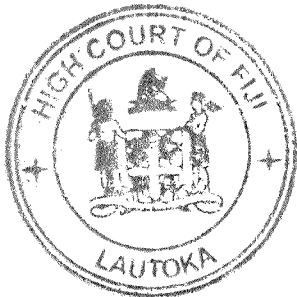
[11] In addition, there is another ground on which the respondent company may be wound up. That is, the amount due arose out a judgment given in favour of the petitioner against the respondent. The judgment amount remains unpaid by the respondent. A company will also be deemed to be unable to pay its debts, 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, see 221 (b) of the Act. Presumably, the execution process issued on a judgment in favour of the petitioner is returned unsatisfied. Because of this the court shall deem that the respondent is unable to pay the judgment amount. This would make another valid ground for the respondent's winding up by the court.

## **Conclusion**

[12] For these reasons, I find the respondent company is insolvent and unable to pay its debts. Therefore I would make order that the respondent to be wound up. The costs of these proceedings must be taxed and paid out of the respondent's assets.

## **Final orders:**

1. **AIRPORT LAND DEVELOPMENT COMPANY** is to be wound up;
2. Official Receiver is appointed liquidator;
3. Costs will be taxed and paid out of company's assets;
4. Orders accordingly.



**At Lautoka**

**10/11/2014**

*M. H. Mohamed Ajmeer*

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**M. H. MOHAMED AJMEER**

**PUISNE JUDGE**

For petitioner: Reddy & Nandan Lawyers, Barristers & Solicitors  
For respondent: No appearance