

IN THE HIGH COURT OF FIJI  
AT SUVA

Winding Up Action No. HBE 10 of 2016

IN THE MATTER of 3SA CARPETS  
LIMITED a Limited Liability Company having its  
registered office situated at c/c Aliz Pacific, Level 8 Bsp  
Life Center, 3 Scott Street, Suva, P O Box 2475,  
Government Building Suva.

A N D

IN THE MATTER of the Companies Act  
1983, Section 221

BEFORE : Master Vishwa Datt Sharma

COUNSELS : Mr. Nilesh Sharma : for the Petitioner  
: Mr. Kunal Singh : for the Respondent Company.

Date of Ruling : 20<sup>th</sup> April, 2017

## RULING

*[Leave to Oppose the Winding up Application and serve the Opposition on the  
Petitioner pursuant to Order 3 Rule 4 of the High Court Rules, 1988  
and Section 15 (1) of the Companies (Winding Up) Rules, 2015]*

APPLICATION

1. The is the Inter-Parte Motion filed by the Respondent Company, 3SA Carpets Limited seeking the following orders-
  - (a) That 3SA Carpets Limited be granted leave to oppose the winding up application lodged by the Petitioner, UB Freights (Fiji) Limited;
  - (b) That time for service of the Affidavit in Opposition to the Petitioner's application for winding up order and the Form D6 be abridged;
  - (c) Further or other relief(s) as the Court deems just and expedient for the purposes of this Application; AND
  - (d) The Cost of the matter be in cause.
2. The Motion is supported by an Affidavit deposed by Arvin Datt in his capacity as the Director of the Company.
3. The application is made pursuant to *Order 3 Rule 4 of the High Court Rules, 1988 and Section 15 (1) of the Companies (Winding Up) Rules, 2015.*
4. The Respondent's application is strongly opposed by the Petitioner.

AFFIDAVITS FILED:

- (i) *Affidavit in Support deposed by Arvin Datt on 7<sup>th</sup> September, 2016;*
- (ii) *Affidavit in Opposition deposed by Kamleshwar Kant on 17<sup>th</sup> October, 2016; and*
- (iii) *Affidavit in Reply deposed by Arvin Datt deposed on 27<sup>th</sup> October, 2016.*

THE LAW

5. *Order 3 Rule 4 of the High Court Rules, 1988 stipulates-*

*Extension, etc., of time (O.3, r.4)*

*4.-(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these rules, or by any judgment, order or direction, to do any act in any proceedings.*

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

6. Section 15 (1) of the Companies (Winding Up) Rules, 2015 states-

### ANALYSIS AND DETERMINATION

7. The only issue before this Court in terms of the Respondent Company's application is 'Whether this Court should grant leave to file and serve his Affidavit in Opposition to the Petitioner's winding up application pursuant to Section 15(1) of the Companies (Winding Up) Rules, 2015?
8. In order to answer this Question, I had to resort to the **chronology of events** that had taken place in this case as set out hereunder and relate to the requirement in terms of **Section 15 (1) of the Companies (Winding Up) Rules, 2015** accordingly.
- 01<sup>st</sup> August, 2016- Petitioner's winding up application together with an Affidavit in Support filed in Court - Forms D1 & D3;
  - 16<sup>th</sup> August, 2016- Notice of winding up Application filed- Form D4;
  - 23<sup>rd</sup> August, 2016- Affidavit of service filed;
  - 24<sup>th</sup> August, 2016- Certificate issued in terms of Rule 19 (1) of the Companies (Winding Up) Rules, 2015;
  - 31<sup>st</sup> August, 2016- Affidavit verifying Advertisement filed;
  - 08<sup>th</sup> September, 2016- Inter -Parte Motion with Affidavit in Support filed by Respondent seeking the current orders in impending Application before this court ; and
  - 12<sup>th</sup> September, 2016- Adjourned before Master.
9. As can be ascertained from the chronology of events hereinabove, that the Registrar after granting the Certification in terms of Rule 19 (1), adjourned the Application to the 12<sup>th</sup> September, 2016 before the Master of the High Court.
10. Subsequently, the Defence Counsel an **Inter- Parte Motion** coupled with a **Notice to Opposition** together with an **Affidavit in Opposition** on 08<sup>th</sup> September, 2016 wherein he

sought for Court's leave to file his Affidavit in Opposition and serve the same on the Petitioner in terms of **section 15 (1) of the Companies (winding up) 2015**. The Court Registry only issued his Inter-Parte Motion and assigned a returnable date on it. The Remaining documents were not issued but just received and kept on the court file awaiting a decision to be made by the Court on the Motion.

11. It is clear from the Court Records that the 12<sup>th</sup> September, 2016 date assigned before the Master by the Registrar was only prima facie for mention or can be said to be for the first call before the Master and definitely not a hearing date per se. Therefore there was no hearing date assigned by the Master to hear and determine the current case at any time. The duty of assigning Court hearing and mention dates are for the Judicial Officers to do so in terms of the available dates in their Court diary.
12. I find that in absence of any Hearing date assigned in the current matter before me, and upon the careful perusal of *Section 15 (1) of the Companies (Winding up) Rules, 2015*, the Respondent Company is at liberty to file an Affidavit in Opposition to the Petitioner's Application together with the Notice in the Form D6 in Schedule 2 on the grounds on which the Respondent Company opposes the application and a copy of the Affidavit in conformity with *Section 15 (1) of the Companies (Winding up) Rules, 2015* accordingly.
13. Accordingly, I grant the leave together with the abridgment of time for the service of the Affidavit in Opposition to five (5) days, as sought for in prayers (a) and (b) in the Inter-Parte Motion filed herein on 08<sup>th</sup> September, 2016.
14. In terms of the Costs sought for by the Respondent Company, I will order costs to be in cause at the discretion of the Court.
15. *Section 528 of the Companies Act 3 of 2015* requires an action for a Company to be wound up in Insolvency, to be determined within 6 months after it is made. The current action was initiated on 01<sup>st</sup> August, 2016. The 6 months' time frame expired on 01<sup>st</sup> February, 2017. The Respondent Companies Inter-Parte Application became necessary to be determined first before proceeding any further with the Substantive Winding up Application.
16. Therefore, in terms of *Section 528 (2) (a) of the Companies Act 3 of 2015*, this Court is justified that special circumstances did exist and therefore it justified the extension to hear and determine the substantive Winding Up Application at its earliest without any further delay.

17. Accordingly, I grant an extension in terms of *Section 528 (2) (a) of the Companies Act 03 of 2015*.

18. **ORDERS**

- A. The Respondent, 3SA Carpets is granted leave to Oppose the Winding Up Application;
- B. The Respondent 3SA Carpets to file and serve the Affidavit in Opposition and the Notice of Opposition in 5 days' time frame as abridged herein ;
- C. Time is also extended beyond the 6 months' time frame to hear and determine the substantive Winding Up Application at its earliest;
- D. Costs to be in the Cause at the discretion of this Court.
- E. Orders accordingly.

DATED AT SUVA THIS 20<sup>TH</sup> DAY OF APRIL 2017



.....  
VISHWA DATT SHARMA  
Master of the High Court  
Suva.

cc: Nilesh Sharma Lawyers, Suva.  
K. S. Law, Nausori.