

IN THE HIGH COURT OF FIJI  
AT SUVA

Winding Up Action No. HBE 26 of 2017

IN THE MATTER of ALL DEVELOPMENT PTE  
LIMITED

A N D

IN THE MATTER of the Companies Act 2015

BEFORE : Master Vishwa Datt Sharma

COUNSELS : Ms. Lagilevu - for the Petitioner  
: Non appearance - for the Respondent Company.

Date of Ruling : 24<sup>th</sup> July, 2018 @ 9 am

## RULING

*[Application for winding up pursuant to Companies Act 3 of 2015]*

**INTRODUCTION**

1. This is ZHENDA DEVELOPMENT ENTERPRISES LIMITED application seeking to wind up ALL DEVELOPMENT PTE LIMITED on the basis that it is unable to pay its debt OF \$62,231.63.
2. The application was unopposed and no Affidavit in Opposition was filed as was required by the Rules.
3. The Applicant relied on the affidavit evidence and the written submissions filed in this proceeding.
4. The Application was heard unopposed.

**BACKGROUND**

5. The Respondent Company was indebted to the Applicant for the sum of \$62,231.63 for invoice Nos. INV 0438 and 0439 for the excavation, loading and supplying of backfill soil provided to the Company by the Applicant and which sum was then due and payable by the Company to the Applicant.
6. A statutory Demand notice pursuant to section 515 of the Companies Act 2015 was personally served at the Company's registered office on 05<sup>th</sup> June 2017 requiring the Company to pay the debt and costs. The Company failed to pay the same.
7. The Applicant feels that there is no genuine dispute to the existence or the amount of Debt of \$62,231-63.
8. The Respondent Company failed to pay the money/Debt owed and hence filed a Winding up Petition against the Respondent Company.

**SERVICE of the APPLICATION and AFFIDAVIT VERIFYING PETITION**

9. On 25<sup>th</sup> July, 2017 at 4.51 pm, All Development Limited at 12 Ravouvou Street Lautoka was served with a true copy of the Application for Winding Up and Affidavit Verifying Application for Winding Up by Ashok Chand.
10. The Winding-up Petition was listed to be heard before the Master of the High Court on Monday 24<sup>th</sup> August 2017, at 9:00 am, for the Petitioner or his barrister and solicitor to appear for the purposes *Section 513 and 523 of the Companies Act*.
11. The Affidavit of Billy Chen Verifying Application for Winding Up (Statutory Affidavit) was deposed on 10<sup>th</sup> June, 2017.

ADVERTISEMENT of the PETITION

12. The Petition was duly advertised in the *Fiji Times* newspaper on 04<sup>th</sup> August, 2017, and in the Republic of the Fiji Islands Government Gazette (No. 4, Volume 18) on 02<sup>nd</sup> August, 2017 respectively.

MEMORANDUM of DUE COMPLIANCE

13. On 08<sup>th</sup> August, 2017, a certificate signed by the Court Registrar was issued and sealed on 16<sup>th</sup> January, 2017 pursuant to *rule 19 (1) of the Companies (Winding Up) Rule, 2015* and the *High Court Practice Direction No. 2 of 1986*.

THE LAW

14. *Section 513 of the Companies Act 03 of 2015* provides for cases in which a Company may be wound by Court. *Section 513 (c) of the Act* herein is the relevant section for Court to consider in determining this application before court-  
"A company may be wound up by the Court," if the Company is Insolvent."

15. As indicated in *Arjun & Sons Timber Mills Ltd v Babasiga Timber Town Ltd* the onus is on the Petitioner to establish that the Company is unable to pay its debt. Justice Pathik stated:

*This Petition is brought on the ground that the Company is unable to pay its debts. I find that such is the situation here. The creditor has to prove a negative, that negative being that the Company cannot pay its debts.*

(my emphasis)

16. In terms of *section 515 of the Act*, a company is deemed to be insolvent (unable to pay its debt) if it fails to pay its debt within **3 weeks** of the creditor issuing a statutory demand. Justice Pathik went on to state (in *Arjun* [supra])

*No question of statutory demand arose in GLOBE (supra) but the Companies Act Cap. 247 has provided for certain situations where deemed inability to pay debts arises. Even if the company can show that it is able to pay its debts, it will do no good whatsoever. If the situation exists, it is deemed unable to pay its debts whether or not that is in fact correct. It was so held in CORNHILL INSURANCE PLC v IMPROVEMENT SERVICES LTD and OTHERS (1986 1 WLR p.114) as follows:-*

*"Held, refusing the application, that where a company was under an undisputed obligation to pay a specific sum and failed to do so, it could be inferred that it was unable to do so; that, accordingly, the defendants could properly swear to their belief in the plaintiff company's insolvency and present a petition for its winding up."*

(my emphasis)

DISPUTED DEBT

17. Where the debt is disputed, the Company must prove that the dispute is on substantial grounds. Justice Pathik in *Arjun & Sons* [supra] stated:

*The Company says that the debt alleged is disputed. To be able to succeed in a case of this nature, the Company has to prove that the dispute is on 'substantial grounds' Re Lympne Investments Ltd [1972] 2 All ER 385).*

(my emphasis)

18. Justice Pathik had a similar view in *Vivraas Development Ltd v Australia and New Zealand Banking Group Ltd*<sup>2</sup>. Justice Pathik stated:

The question therefore is whether the debt is disputed on substantial grounds. If so, whether the Court ought to grant the relief sought by the plaintiffs.

It is a general principle that a petition for winding up with a view to enforcing payment of a disputed debt is an abuse of the process of the Court and should be dismissed with costs (Palmer's Company Law Vol.3 15.214 and cases cited therein). In Palmer (ibid), on the principles involved it is further stated:

To fall within the general principle the dispute must be bona fide in both a subjective and an objective sense. Thus the reason for not paying the debt must be honestly believed to exist and must be based on substantial or reasonable grounds. Substantial means having substance and not frivolous, which disputes the court should ignore. There must be so much doubt and question about the liability to pay the debt that the court sees that there is a question to be decided. The onus is on the company to bring forward a prima facie case which satisfies the court that there is something which ought to be tried either before the court itself or in an action, or by some other proceedings.

(my emphasis)

19. The Company after service of the Statutory Demand Notice was effected failed to take any pro-active measures to pay and/or dispute the Debt.
20. Therefore, the Company has failed in its bid either to take any pro-active measures and/or appear or counter the Debt in court. It has also failed to adduce sufficient evidence to establish a prima facie case which satisfies this Court that *there is something which ought to be tried either before the court itself or in an action, or by some other proceedings*, let alone any evidence to establish its solvency.

## CONCLUSION

21. The case before this Court is a simple one. The evidence clearly indicates that **debt** is owed by the Company to the Applicant. The Applicant issued a **statutory demand** which the Company failed to satisfy within **3 weeks** of its issue. The Applicant has complied with the requirements of the **Act** and the **Rules** accordingly.
22. The Company has failed to provide any evidence to establish a **dispute** on substantial grounds. There is no evidence before this Court to indicate the Company is **solvent** or that it is **able to pay its debts**, bearing in mind there was never any court appearance personally and/or by Counsel.
23. Bearing in mind the nature and the circumstances in which the current case was handled by the Respondent, the Applicant is entitled to a cost in the sum of \$1,000, to be paid within 14 days
24. The Application for Winding Up was filed on 14<sup>th</sup> July, 2017 and thereafter listed before the Deputy Registrar for compliance and issuance of the Certificated in terms of Rule 19 (1) of the Companies (Winding Up) Rules, 2015. The matter was then listed before the Master for further deliberation of the application. Since the filing and issuance of the Application for Winding up, over 12 months has lapsed. Section 528(1) of the Companies Act states that '*an application for a Company to be wound up in Insolvency is to be determined within 6 months after it is made.*'
25. *Section 528 (2) of the Act states that the Court may by order (on such conditions as it considers fit) extend the period within which an application must be determined, but only if-*
  - (a) *'the Court is satisfied that special circumstances justify the extension; and*
  - (b) *the order is made within that period as prescribed by subsection (1), or as last extended under this subsection, as the case requires."*
26. The case was heard and concluded on 31<sup>st</sup> October, 2017 and Judgment to be delivered today (25<sup>th</sup> July, 2018).
27. The Court in justifying the special circumstances states that because of the voluminous nature of the work load and the pressure under which Master's court was in operation was unable to dispose off this matter in 6 months' time frame as was provided in law. Therefore this very special circumstances justified the extension till today (24<sup>th</sup> July, 2018).
28. For the above reasons, the following orders are made in terms of its Petition.

## FINAL ORDERS

- (i) That ALL DEVELOPMENT PTE LIMITED is hereby wound up under the provisions of the Companies Act 3 of 2015;

- (ii) That the Official Receiver is appointed as the Liquidator to the conduct of the Winding Up herein; and
- (iii) That there will an order for costs against the Respondent All Development Pte Limited summarily assessed at \$1,000 to be paid within 14 days timeframe.
- (iv) Special circumstances justified the extension to the delivery of Judgment to 24<sup>th</sup> July, 2018.
- (v) Orders accordingly

DATED AT SUVA THIS 24<sup>TH</sup> JULY 2018



MASTER  
VISHWA DATT SHARMA

cc. Lateef & Lateef, Suva  
All Development Pte Limited, Lautoka