

IN THE HIGH COURT OF FIJI
AT SUVA
COMPANIES JURISDICTION

Winding Up Case No. HBE 57 of 2021

IN THE MATTER of **FLAGSTAFF LAUNDRY SERVICE LIMITED** a limited liability company having its offices at 62 Bau Street, Suva, Fiji Islands.

AND

IN THE MATTER of the Companies Act 2015

BEFORE: Hon. Mr. Justice Vishwa Datt Sharma

COUNSELS: Mr Suguturaga P. for the Applicant
No Appearance for the Respondent

DATE OF DECISION: Monday, May 9th 2022 @ 9.30 am.

DECISION

[Winding Up in terms of the provisions of the Companies Act 2015]

Introduction

1. This is a Winding Up Application brought by the Applicant, Fiji Gas Pte Limited, who is seeking for a Winding Up order against the Respondent Flagstaff Laundry Service Limited as it alleges that the Respondent Company failed to pay the Applicant the outstanding sum of FJD\$31,256.23 (Thirty One Thousand Two Hundred Fifty Six Dollars and Twenty-three cents).
2. The amount due and owing was for goods supplied by the Creditor to the Debtor.
3. The Respondent was served with a Statutory Demand Notice on 22nd April 2021. The Demand Notice was also served on the Company Director Rajend Swamy on 22nd April 2021.
4. However, the Respondent failed to pay the debt as per the Statutory Demand nor did the Respondent file any application for Setting Aside of Statutory Demand.
5. Section 515 of the Companies Act 2015 provides as follows:-

Definition of inability to pay debts

515. Unless the contrary can be proven to the satisfaction of the Court, a Company must 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 \$10,000 or such other Prescribed Amount then due, has served on the Company, by leaving it at the Registered Office of the Company, a demand requiring the Company to pay the sum so due ("Statutory Demand") and the Company has, not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice; or

(b) if during or after a period of 3 months ending on the day on which the winding up application is made—

(i)

(ii)

(iii) 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 must take into account the contingent and prospective liabilities of the Company.

6. Section 513(a) provides the Circumstances in which Company may be wound up. The application is made in particular, pursuant to Section 513(c) "whether a Company may be wound up if the Company is insolvent?"
7. The Applicant submitted that the Respondent Company has the inability to pay the debt and there being no dispute as to the debt, the Respondent Company should be wound up.
8. However, the substantive question then arises "whether the Applicant has satisfied the requirements of Section 515 of the Companies Act as enumerated and paraphrased at paragraph 5 of my Judgment hereinabove."
9. Further, whether the Respondent Company is capable of paying off the debt amounting to \$31,256.23.
10. The Applicant has failed to prove to the satisfaction of this Court that the Respondent Company Flagstaff Laundry Service Limited was unable to pay its debt pursuant to the provisions of Section 515 of the Companies Act 2015. Further, this Court notes that the Respondent failed to either appear in

Court and oppose the Winding Up application nor did it file any affidavit in opposition and the Setting Aside of Statutory Demand notice.

11. Accordingly, for the aforesaid rationale, I have no alternative but to allow and grant the Applicant's Winding Up Application.
12. In *In re Angco Medical Clinic Ltd* [2014] FJHC 30; Winding Up 12.2013 (3 February 2014), the Court made winding up orders following the failure of the debtor in that matter to challenge the winding up proceedings. The Court at paragraph 14 said:

"[14] The company did not file any objection or affidavit in opposition, opposing the petition. In the result, the debts as alleged in the petition remain unchallenged. I therefore answer affirmatively to the issue whether the company is unable to pay its debts.

13. Also in *In re Northern Projects Fiji Ltd* [2011] FJHC 136; HBE 108.2009 (28 January 2011), the Court granted winding up orders on following the failure of the debtor in that matter to challenge the winding up proceedings.

"11. In this case, the Company sought to be wound did not file Affidavit in Opposition to the winding up application. The debt is therefore undisputed. I conclude that the Petitioning Creditor has satisfied this Court that the debt demanded is due and that the Company sought to be wound has failed to pay the debt."

14. In *Nikhil Buses Pte Ltd, In re* [2020] FJHC 891; HBE 43.2020 (29 October 2020), the Court also granted winding up orders after the debtor in that matter failed to file an opposing affidavit to the winding up application.

"23. The Company has failed to file and serve any affidavit in opposition and/or provide any evidence to establish a dispute on substantial grounds. There is no evidence before this court to indicate or establish that the Respondent Company is solvent or that it is able to pay its debts, bearing in mind that no opposition was filed and further there was no appearances personally or by counsel."

Costs

15. The Application proceeded to Hearing with the Applicant's Oral and Written Submissions.

It is only appropriate that I grant a sum of \$1,000 as summarily assessed costs at the discretion of this Court against the Respondent, Flagstaff Laundry Service Limited.

16. Following are the Orders of the Court.

Orders

- i. The Applicant's Winding Up Application is hereby accordingly granted.

- ii. There will be Order for costs summarily assessed at \$1,000 to be paid by the Respondent, Flagstaff Laundry Service Limited to the Applicant, Fiji Gas Pte Limited.
- iii. The Official Receiver is appointed as the interim administrator accordingly.

DATED at SUVA this 9th day of May, 2022.



VISHWA DATT SHARMA
JUDGE

cc. *Hanif Tuitoga, Suva.*
Flagstaff Laundry Services Limited, Suva.