

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

WINDING UP ACTION No. HBE 18 of 2020

IN THE MATTER of **NILA**
INTERNATIONAL PTE LTD a company
having its registered office at Vuda Point, Lautoka

AND

IN THE MATTER of the Companies Act 2015.

Date of Hearing : 06 March 2023
Date of Ruling : 09 June 2023
Appearances : Mr. Krishneel Patel for Nila International Pte Limited
Mr. Josefa Mainavolau (Attorney-General's Chambers) for the Official Receiver

RULING

1. An issue has arisen in this case as to how much the Official Receiver is entitled to be paid in costs for its services as the court appointed Liquidator. That appointment was made by Mr. Justice Mohammed Ajmeer on 15 September 2020 when he ordered that Nila International Pte Limited (“NIPL”) be wound up and that the Official Receiver be appointed as Liquidator. The Official Receiver claims the sum of \$20, 860 – 00 (twenty thousand, eight hundred and sixty dollars) in costs. This is based on Rule 118 section 7 (b) of the Companies (Winding Up Rules) 2015.
2. Rule 118 provides as follows:

Fees 118. The fees specified in Schedule 1 must be paid to the Official Receiver in accordance with the provisions of Schedule 1.
3. Schedule 1 (to the Companies (Winding Up Rules) 2015 provides as follows at paragraphs 5,6 and 7:

5. Where the Official Receiver acts as Provisional Liquidator only—

(a) where no winding up order is made upon the application, or where a winding up order is rescinded, or all further proceedings are stayed before the summoning of the statutory meetings of creditors and contributories: such amount as the Court may consider reasonable to be paid

by the applicant, or by the Company as the Court may direct, in respect of the services of the Official Receiver as Provisional Liquidator.

(b) where a winding up order is made but the Official Receiver is not continued as liquidator after the statutory meetings of creditors and contributories—

(i) in respect of every 10 members, creditors and debtors, and every fraction of 10 up to 1,000.....	\$30.00
for every fraction of 10 above, 1,000	\$20.00
(ii) on the value of the Company's Property as estimated in the statement of Affairs, or, where the Court has dispensed with the submission of a statement of Affairs, on the value of the Company's Property as estimated by the Official Receiver after deducting (in cases where a person other than the Official Receiver has, before but not on the day of, the making of a winding up order been appointed Receiver for debenture holders) the amount due to debenture holders—	
up to and including \$500,000.....	5%
from \$500,001 and up to and including \$1,000,000.....	3%
more than \$1,000,000	2.5%

6. Where the Official Receiver acts as liquidator of the Company and a special manager is appointed (to include the Official Receiver's services as provisional liquidator): such amount as the Court on the application of the Official Receiver may consider reasonable.

7. In all other cases where the Official Receiver acts as liquidator of the Company (to include his or her services as Provisional Liquidator)—

(a) in respect of every 10 members, creditors, and debtors, and every fraction of 10.....	\$10.00
(This fee to include cost of official stationery, printing, books, forms, and inland postages.)	
(b) upon the total assets, including produce of calls on contributories, realised or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under item 8 of this Schedule, and the amount spent out of the money received in carrying on the business of the company—	
up to and including \$500,000.....	15%
from \$500,001 and up to and including \$1,000,000.....	10%
more than \$1,000,000	7.5%
(c) on the amount distributed in dividend or paid to contributories, preferential creditors and debenture-holders by the Official Receiver, half the above percentages	

4. It must be noted that liquidators are officers of the Court (see section 32 of the Companies (Winding Up) Rules 2015).

5. In their submissions, Mr. Patel and Mr. Mainavolau are at variance as to which of paragraphs 5 to 7 above should apply.
6. Mr. Mainavolau bases his figure of \$20, 860 – 00 (twenty thousand, eight hundred and sixty dollars) on Rule 118 and paragraph 7 (b) of Schedule 1 – that is – because the total debt owed by NIL in this case was 139,000-00 – this attracted a 15% fee.
7. He resists Mr. Patel’s submissions that the appropriate applicable provision should be paragraph 5 of Schedule 1 on the ground that paragraph 5 deals with Provisional Liquidators only whereas the Official Receiver in this case was appointed as Liquidator and not Provisional Liquidator.
8. While the difference between a Provisional Liquidator and a Liquidator may be a material distinction in some situations – in my view, in the circumstances of this case – the distinction is not so material.
9. In saying that, I am agreeing with Mr. Patel’s submissions that it would be harsh if the Official Receiver should be able to claim \$20, 860 – 00 (twenty thousand, eight hundred and sixty dollars) in costs in the circumstances of this case considering:
 - (a) that, on 30 December 2020, some three and a half months following the above Order, NIPL was granted a temporary stay of Ajmeer J’s Winding Up Order
 - (b) thereafter – the matter was adjourned several times over to allow NIPL time to organize a sale of one of its properties to pay off the debt of its unsecured and secured creditors.
 - (c) permanent stay was finally granted in 2021.
10. While I acknowledge that paragraph 5 of Schedule 1 is concerned with a situation where the Official Receiver acts as Provisional Liquidator only – I also note that under section 2 of the Companies (Winding Up) Rules 2015 – the term “liquidator” and “Provisional Liquidator” are defined as follows:

“liquidator” includes, where the context so permits or requires, a Provisional Liquidator”

“Provisional Liquidator” means an Official Receiver appointed by the Court to be Provisional Liquidator”
11. In this case, paragraph 5 of Schedule 1 applies perfectly well considering the following:
 - (a) the winding up order was stayed temporarily shortly after Ajmeer J’s Orders, as I have said above.
 - (b) there has been no need for the Official Receiver to summon a statutory meeting of creditors and contributories –
 - (c) and, given NIPL has since settled all its debts – Ajmeer J’s Orders are now permanently stayed
12. Accordingly, I am of the view that the amount of fees which may be claimed by the Official Receiver will have to be one which this Court considers reasonable to be paid by NIPL in respect of the services of the Official Receiver as Provisional Liquidator.

13. I am of the view that this must include the attendances in Court of the senior counsel from the Office of the Attorney-General for and on behalf of the Official Receiver.
14. Doing the best that I can – I am of the view that the sum of \$5,500-00 is sufficient.



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Anare Tuilevuka
JUDGE

09 June 2023