

IN THE HIGH COURT OF FIJI AT SUVA
COMPANIES JURISDICTION

Winding Up Action No. HBE 12 of 2023

IN THE MATTER of an Application to set aside a Statutory Demand.

BETWEEN

RPA GROUP (FIJI) PTE LIMITED a limited liability company incorporated in Fiji having its registered office at Level 1, RPA Building, Lot 1 Queens Highway, Wailekutu, Lami.

APPLICANT

AND

ON CALL CRANES (FIJI) PTE LIMITED a limited liability company incorporated in Fiji having its registered office at Leonidas Street, Drasa Vitogo, Lautoka.

RESPONDENT

Counsel : Ms. S. Sheik for Applicant
Ms. A. Degei for the Respondent

Date of the Hearing : 25th May 2023

Judgment Delivered on : 30th June 2023

JUDGMENT

- [1] The Applicant filed this Originating Summons to seek following orders from the Court.
- I. That the Statutory Demand issued by the Respondent through its Solicitors under section 515 of the Companies Act 2015 and served on the Applicant on 27th February 2023 be set aside as the alleged debt is both genuinely disputed and subject to a set-off and counter claim;
 - II. That all winding up proceedings pertaining to the execution of the same be wholly stayed pending the determination of this application;
 - III. That the Respondent pay the Applicant costs;
 - IV. Such other orders Court deems just and expedient in the circumstances.
- [2] The application was made pursuant to section 516 of the **Companies Act 2015** and Order 7 and 28 of the **High Court Rules 1988**.
- [3] The application was supported by the affidavit deposed by Mr. Rinesh Kumar the Group Financial Controller of the Applicant Company. The Applicant has fulfilled the requirements in section 516 (2) and (3) in making this application.

- [4] Subsequently the Court received an affidavit in opposition by the Respondent and an affidavit in reply by the Applicant for the completeness of the proceedings.
- [5] The Applicant states that on 27th February 2023 the Company was served with a Statutory Demand dated 20th February 2023 seeking an immediate payment of \$7,425 (Seven thousand four hundred and twenty five dollars) for the balance owing in respect to services provided time to time by the Respondent Company. The Applicant further states that they have a counter claim to off-set the debt claimed by the Respondent.
- [6] At the hearing the arguments were narrowed down to one issue. Whether the Respondent can maintain the Statutory Demand under the provisions of the Companies Act as the amount demanded is below \$10,000.
- [7] Section 515 provides the definition of inability to pay debts in the following manner. '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;
- [8] Insolvency is one of the grounds to initiate winding up proceedings against a company as per section 513 of the Companies Act 2015.
- [9] At the hearing Ms. Degei submitted that they agree to the sum that was due and payable by the Applicant was \$ 7,425. According to her the counter claim and the set-off claimed by the Applicant relates to some other proceedings between different companies, which has nothing to do with the debt relates to this application. She also agreed that the amount

due is lower than the statutory requirement in section 515 (a). The learned counsel invited the Court to consider her argument to maintain the Statutory Demand below \$10,000 as the section provides for 'such other Prescribed Amount then due'. The Respondent is of the view that an amount lower than \$10,000 could become a possibility to send out a Statutory Demand under the Act.

- [10] Ms. Sheik argued that the Statutory Demand must fail as it has not met the preliminary requirement of \$10,000 threshold. In support of her argument she provided Hon. Justice Seneviratne's judgment in **Raghwan Construction Co Ltd v My Group Ltd (trading as Metromix Concrete (Fiji))** [2019] HBC333 of 2018 where his lordship held that "*Winding up proceedings are not recovery proceedings. The court, before making the winding up order must also be satisfied that the company is unable to pay the statutory minimum which is \$10,000.00*".
- [11] In **Fiji Public Service Association v Redox Ltd** [2021] HBE69 of 2020 Hon. Justice Amaratunga held that "*Service of statutory demand in terms of Section 515(a) of Companies Act 2015 is void, if the conditions contained in the said provision is not fulfilled. The mandatory condition, is that the 'Company is indebted in a sum exceeding \$ 10,000...This is not the same as Petitioner's belief, of a debt, whether it was genuine or otherwise. The existence of debt above \$ 10,000 at the time of service of the demand notice in terms of Section 515 of Companies Act 2015 is the locus for Plaintiff to proceed to winding up of the Company... If there was no such debt Petitioner cannot issue a statutory demand to the Company. The Petitioner obtains the right to seek winding up only if there was a debt that was due and payable and it was over \$ 10,000. If not all the proceedings relating to application for winding up, taken by the Petitioner becomes a nullity as there was no locus to issue a demand in terms of Section 515(a) of Companies Act 2015*".
- [12] I requested Ms. Degei to provide me with any legal precedents in support of her argument. The Court did not receive any supporting case law.
- [13] It would be necessary to refer section 3 of the Companies Act 2015 in order to comprehend the meaning of the 'Prescribed Amount' in section 515. Interpretation of 'Prescribed

Amount' states that it would be an amount prescribed by the Minister responsible for company affairs, pursuant to section 713 of the Act. Section 713 grants powers for the Minister to make regulations and rules in relation to fees and fines applicable in the Act. The Act does not allow to include any other amount due to a creditor within the meaning of 'Prescribed Amount'.

[14] Therefore Respondent's argument to proceed on a Statutory Demand below \$10,000 lacks merit. The act of serving a demand which is void could be considered as lack of good faith or abuse of process by the Respondent.


[15] Serving of the Statutory Demand dated 20th February 2023 by the Respondent therefore has no legal effect.

[16] For the foregoing reasons Court makes following orders.

ORDERS

1. Statutory Demand dated 20th February 2023 hereby set aside.
2. Respondent to pay \$2000 (two thousand dollars) as cost to the Applicant within 7 days of this judgment.




Yohan Liyanage
JUDGE

At Suva on 30th June 2023