

IN THE HIGH COURT OF THE REPUBLIC OF FIJI
(WESTERN DIVISION) AT LAUTOKA

WINDING UP CAUSE

No. 13 of 2013

IN THE MATTER OF GENESI ASSET
MANAGEMENT (FIJI) LIMITED- a limited liability
Company having its registered office at 88 Milverton Road,
Suva, Fiji.

- AND -

IN THE MATTER OF COMPANY ACT

Counsel

Mr N Nand for the petitioner

Mr Qoro for the respondent

Date of Hearing: 24 Oct. 14

Date of Ruling: 24 Oct. 14

RULING

1. This ruling concerns with a winding-up application.
2. On 16 May 2013 **BLISS INTERNATIONAL (AUST)**, a limited liability company having its registered office at 5 Clover Crt, Gowanbrae, VIC 3043, Australia ('the petitioner) presented a petition to the High Court in Lautoka to have **GENESI ASSET MANAGEMENT (FIJI) LTD** ('the respondent') wound up on the ground that it is insolvent and unable to pay its debts.
3. The respondent did not file any objection to this application. Nor did they dispute the debts. They were seeking adjournment since the filing of the petition in court on 16 May 2013 on the promise that they will settle the matter but they failed to do so. Eventually, the matter was set down for hearing today, 24 Oct. 14.

4. When the matter came on for hearing, Mr Qoro sought to withdraw as counsel for the respondent and told that he has filed a summons to withdraw as counsel and that is yet to be served on the respondent. He also made an application to adjourn the hearing till next week to enable him to serve the same on the respondent.
5. Mr N Nand, counsel for the petitioner strenuously objected to this application and brought to the notice of the court that today's hearing was set down on 16 June 2014, some four months ago and the counsel had sufficient time to make that application. So, he insisted on the hearing to proceed.
6. Having carefully heard both counsels' submissions, I decided to proceed with the hearing. The application to withdraw as counsel for the respondent has been made at the eleventh hour. That application has been filed on 22 October 2014 and it is yet to be served on the respondent. I therefore refused leave for Mr Qoro to withdraw as counsel for the respondent. I also refused to adjourn the matter as there is no sufficient ground for the court to do so.
7. The respondent Company is indebted to the petitioner in the sum of \$49,835.35, that being the amount due and owing by the respondent in respect of failure to supply scrap Ferrous metal in particular Heavy Melting Steel Scrap – grade – I & II (ISRI-202-204) considered to be HMS I & II for which advanced payments were made including interest on the advance sum, legal costs incurred and loan advanced to one of the Directors. The petitioner gave several verbal and a written notice but the respondent failed to pay the sums or any part thereof. On the 7 February 2013 the petitioner by its solicitors served at its registered office a copy of demand notice requesting the respondent Company to pay the debts. Even then the respondent failed to fully pay or satisfy the sum or any part thereof or to make any offer to the petitioner to secure or compound the same.
8. The petition is made pursuant to s. 220 of the Companies Act, which provides so far as material that:

220. A Company may be wound up by the court, if-

(a) ...;

(b) ...;

(c) ...;

(d) ...;

(e) **the company is unable to pay its debts;**

(f) *the court is of opinion that it is just and equitable that the company should be wound up;*

(g)... *(Emphasis added).*

9. Section 221 of the Companies Act is a deeming provision. That section states that:

'221. A company shall 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 \$100 then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has, for 3 weeks thereafter; neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; (Emphasis provided) or

(b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if 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 shall take into account the contingent and prospective liabilities of the company.'

10. On 7 February 2014 demand notice under s.221 was served requiring payment the sum due on the respondent company at its registered office at Milverton Road, Suva, Fiji. Nonetheless, the respondent company has neglected to pay the sum or to secure or compound for it even after the service of the statutory demand notice. Under the circumstances, the respondent company could be deemed, by operation of s.221, that it is unable to pay its debts, which is a valid ground for winding up of the company by the court.

11. In addition, the respondent did not file any objection. Instead, the respondent company had admitted the debt in court.

12. The respondent Company is therefore insolvent and unable to pay its debts. The respondent Company may be wound up on that ground.

13. I therefore considering the petition and documents filed in court, make order winding up the respondent company, **GENESI ASSET MANAGEMENT (FIJI) LIMITED**. Official Receiver is appointed the liquidator and cost of the action to be assessed and paid out of the Company's asset.



At Lautoka
24/10/14

M H Mohamed Ajmeer

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M H Mohamed Ajmeer
Master of the High Court