

In the High Court of Fiji
at Labasa
Companies jurisdiction
Winding Up Action No. 2 of 2017
In the matter of Nadi Motor Parts Limited

Between

Seruwaia Tagi Patel and Rajeshhwana Dusara

Petitioners

and

Deo Anand

Respondent

Counsel: Mr A. Kohli for the petitioners
Ms Vreetika for the respondent

Date of hearing: 14th October, 2019

Date of Ruling: 16th October, 2019

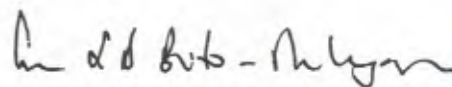
Ruling

1. On 20th April, 2018, Amaratunga J ordered Nadi Motor Parts Limited to be wound up. The Order was stayed on 13th March, 2019, on the following conditions, which were made Orders of Court:

- a) *That the Petitioners Solicitors advertise for sale of the company property being Crown Lease No. 11185 Lot 4 DP 2630, through private tender, upon the advertisement being approved by Solicitors for the Respondent.*
- b) ..
- c) ..
- d) *That the highest tender above the valuation may be accepted by the parties.*
- e) *In the event that the highest tender is not accepted then the property may be sold privately.*
- f) ...
- g) *Upon sale of the property the Petitioners shall be entitled to half of sale price after deduction of any Capital Gains Tax and moneys owing to Westpac Banking Corporation Limited not exceeding \$250,000.00.*

2. By inter partes summons filed on 27th June, 2019, the respondent seeks the following Orders:
- a) *THAT the tender for property comprised in State Lease 11185 (the said property) be awarded to the Highest bidder, Khera Brothers Pte Limited, in the sum of \$1,200,000.00 (One Million Two Hundred Thousand Dollars) which tender was lodged in accordance with the consent orders of the High Court of 13th March, 2019.*
 - b) *THAT the Petitioners to execute all relevant documents for transfer of the said property to the highest bidder.*
 - c) *THAT in the event that the Petitioner fails to execute the transfer documents for the said property the Deputy Registrar may execute the same on behalf of the Petitioner and all related papers including any Capital Gain Tax Application for the sale of the land comprised in State Lease 11185.*
 - d) *Any further or other Orders of this Honourable Court;*
 - e) *Cost of this application to be in cause.*
3. The respondent, in his affidavit in support of the summons states that the petitioners' solicitors had advertised the property for sale. He has been advised by his solicitors that the highest tender received was a sum of \$1,200,000.00. The property was valued at \$1,250,000.00. He accepted the highest tender and asked his solicitors to proceed with the sale. He has also been advised that the petitioners had rejected that tender and said that they will proceed with the sale, if either of the bidders agreed to purchase the property for \$1,500,000.00. The petitioners are intending to re-advertise the property without a valid reason and call for tenders, in breach of the consent orders of 13th March, 2019.
4. The first petitioner, in his affidavit in opposition states that the property was valued on 30th October, 2017, for more than \$2 million. The petitioners were prepared to sell it for \$1.5 million, which would have been beneficial to both parties. The consent order clearly states that in the event that the highest tender is not accepted, then the property may be sold privately. They have instructed their solicitors to re-advertise. The order does not prohibit re-advertising, if the property is not privately sold.
5. The respondent, in his affidavit in reply states that the petitioners obtained a valuation of the property on 30th October, 2017 without his knowledge. He has been advised that the consent order only entitles the party to sell the property privately, in the event that the highest tender is not accepted. It does not give the right to re-advertise, which will cause further delay. He intends to conclude the proceedings.

6. Ms Vreetika, counsel for the respondent submitted that the respondent objects to the petitioners re-advertising the property for sale. The option to advertise has been exhausted. The option now available is a private sale. She submitted that the Court must set a time limit to complete the sale, as this was not covered in the consent order. The respondent is facing financial difficulties.
7. Mr Kohli, counsel for the petitioners said that the tender received is well below the valuation. The consent order does not provide that the property has to be sold to the highest bidder and does not prohibit the re-advertisement of the property. There is no impediment to the property being re-advertised.
8. In my view, the consent order clearly provides that the parties are not bound to accept the highest tender received. Clause 1 (d) states that the "*highest tender above the valuation may be accepted by the parties*". Clause 1 (e) enables "*the property (to) be sold privately*", if a party does not accept the highest tender.
9. The consent order does not set out how the private sale is to be conducted. The Court is functus and cannot alter nor vary the consent order and stipulate the manner it is to be effected.
10. I decline the summons.
11. I do not find it necessary to consider the submission made by Ms Vreetika, to set a time limit to complete the sale. The summons does not seek an order to that effect.
12. **Orders**
 - (a) The respondent's summons is declined.
 - (b) The respondent shall pay the petitioners a sum of \$ 500 summarily assessed within 14 days of this Ruling.



A.L.B. Brito-Mutunayagam
JUDGE

16th October, 2019

