

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
COMPANIES JURISDICTION

WINDING UP CAUSE 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.

Appearances : Mr N. Nambiar for the applicant
Mr D. S. Naidu for the respondent
Mr N. Kumar for the supporting creditors
Date of Hearing : 14 September 2020
Date of Ruling : 15 September 2020

DECISION

[on winding up]

Introduction

- [01] This is an application for the winding up of Nila International Pte Ltd ("*NIPL*") filed by ASAS Consulting Pte Ltd ("*the applicant*"). The applicant seeks to wind up NIPL on the ground that it is unable to pay its debt in the sum of \$139,000.00.
- [02] Babu's Farm Produce Marketing and Jay Lal & Co ("*the supporting creditors*") have filed notice of intention to appear on the hearing of the application. According to the supporting creditors, NIPL is also indebted to them in the sum of \$26,651.60 and \$11,386.28 respectively.

- [03] The applicant served a statutory demand under section 515 of the Companies Act (“Com Act”) on NIPL demanding payment of the debt within 21 days of the service of the statutory demand. NIPL did not pay the debt as requested by the statutory demand. However, it unsuccessfully attempted to set aside the statutory demand.
- [04] NIPL did not file any affidavit in opposition to the winding-up application, albeit Mr Naidu represented NIPL at the hearing.

Background

- [05] The applicant is a creditor of NIPL. It was indebted to the applicant in the sum of \$100,000.00 for the loan given to it by the applicant and further sum of \$39,000.00 being the interest calculated at a rate of 15% per month for non-payment of the principal debt, which is due and payable by NIPL to the applicant.
- [06] On 6 May 2020, the applicant served a statutory demand on NIPL requiring it to pay the debt. NIPL however failed for more than 3 weeks after service of the demand to pay the amount or to secure or compound for it to the reasonable satisfaction of the applicant. NIPL unsuccessfully made an application to set aside the statutory demand. That application was dismissed by the court. As a result, the applicant has presented an application to have NIPL wound up on the ground that it is unable to pay its debt. The applicant believes that there is no genuine dispute as to the existence or amount of the debt.

The law

- [07] The Com Act, section 515 (a) provides:

“Definition of inability to pay debts

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..."

Discussion

- [08] The court has jurisdiction to wind up any company or foreign company registered in Fiji (see section 512, Com Act).
- [09] The Com Act, section 513, sets out the circumstances in which a company may be wound up by the court, which includes insolvency. A company or foreign company is solvent if, only if, it is able to pay all its debts, as and when they become due and payable (see 514 (1)). Further, a company or foreign company which is not solvent is insolvent (see 514 (2)).
- [10] The definition of inability to pay debts is given in section 515 of the Com Act. Unless the contrary can be proven to the satisfaction of the court, a company must be deemed to be unable to pay its debts if a creditor to whom the company is indebted in a sum of exceeding \$10,000 has served on the company a demand requiring the company to pay the sum so due 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.
- [11] NIPL has failed to pay the sum demanded under the statutory demand or secure or compound for it to the satisfaction of the applicant (creditor) within 3 weeks of the date of notice, i.e. 6 May 2020. In the circumstances, NIPL is presumed to be unable to pay its debts by operation of section 515a of the Com Act. Putting in other words, the legal presumption created under that section that the company (NIPL) is insolvent operates against it.
- [12] It is worth noting that the presumption created under section 515a that the company (NIPL) is unable to pay its debts has been displaced by NIPL. It did not file any opposition to the winding-up application.
- [13] The winding-up application appears to be in order. The applicant has properly complied with all the requirements under the Companies (Winding Up) Rules 2015 ("*the Rules*"). The court registrar (deputy registrar) has filed a certificate of compliance as required by Rule 19 of the Rules. The certificate of compliance is evidence that:

- (a) the application has been advertised in a newspaper and published in the Gazette;
- (b) the statutory affidavit and the affidavit of service (if any) have been properly filed;
- (c) the written consent of the liquidator has been filed; and
- (d) the applicant has properly complied with these Rules in relation to application for a winding up order.

[14] The application for winding up remains unopposed. This means that the legal presumption created under section 515a that NIPL is unable to pay its debts has not been displaced. In the circumstance, it would be just and equitable that NIPL should be wound up. I would, therefore, grant winding up order as sought.

Result

- 1. The respondent company, Nila International Pte Limited be wound up.
- 2. Official receiver is appointed as liquidator.

M.H. Mohamed Ajmeer
15/9/20
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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
15 September 2020

Solicitors:

Gosai and Nambiar Lawyers for the applicant

Pillai Naidu & Associates, Barristers & Solicitors for the respondent

Krishna & Company, Barristers & Solicitors for the supporting creditors