

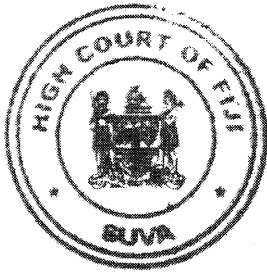



## RULING

- [1]. On 16<sup>th</sup> May, 2022, the Court made an Order Winding Up the Appellant Company pursuant to Section 513 (c) of the Companies Act, 2015.
- [2]. This is an application filed by the wound up company (?) pursuant to Section 553(1) of the Companies Act, 2015 seeking a stay of winding up order pending the determination of the appeal.
- [3]. Counsel for the Respondent Company raised a legal objection as to the *locus standi* of the wound up company to file an application for stay of the winding up order.
- [4]. Counsel for the Respondent submits that in terms of Section 553 (1) of the Companies Act, it is only the liquidator or the Official Receiver or any creditor or the contributory can file an application for stay of the winding up order.
- [5]. On the other hand, counsel for the Appellant submits that since the liquidator has not been appointed so far, the wound up company has the *locus standi* to file or apply for stay of a winding up order.
- [6]. I cannot agree with counsel of the Appellant. I draw my attention to Section 553(1) of the Companies Act, 2015 , which provides,
- “The Court may, at any time after an order for winding up, on the application either of the liquidator or Official Receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit. “*
- [7]. In Fiji, in terms of Companies Act, 2015, Winding Up order can be stayed only in terms of Section 553 (1) of the Companies Act and the parties who can make such an application are:
- (a) Liquidator
  - (b) Official Receiver
  - (c) Creditor
  - (d) Contributory
- [8]. Therefore, no application for stay can be made by any other party other than the parties specified. There is no residuary power vested with the Board of Directors of the company

already wound up in relation to the stay of the Winding Up order. The company which is the subject of the Winding Up order does not have *locus standi* under section 553 (1) of the Companies Act, 2015 . This is so based on the underlying need to protect the interests of the general body of creditors as a whole as per Pennycuick V.C in "Practice Note (Winding Up Order ; Rescission No – 2.) 1971 (1) W.L.R 757.

- [9]. Also I note that counsel for the Appellant company has not sought leave of the Official Receiver for the appeal as well as for the application for stay. It should be noted that the written consent of the Official Receiver to act as Provisional Liquidator has been provided by the respondent by letter dated 24.03.2022.
- [10]. The company that was ordered to be wound up or its Board do not have power to seek stay of the Winding Up Order and therefore the Preliminary objection is upheld. The application for stay is struck out and dismissed. I make no order as to costs.



  
..... 20.05.2022.  
Jude Nanayakkara  
[Judge]

High Court - Suva  
Friday, 20<sup>th</sup> May, 2022