

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**CIVIL JURISDICTION**

**Winding Up Action No. HBE 28 of 2020**

**IN THE MATTER** of **PAPER SOURCE FIJI PTE LIMITED** a limited liability  
company having its registered office at 11 Salala Place, Lautoka.

AND

**IN THE MATTER** of the Companies Act 2015

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BETWEEN

**PAPER SOURCE FIJI LTD** a limited liability company having its registered office at  
Tax Free Zone, Tuvu, Lautoka.

**APPLICANT**

AND

**COSMOS LOGISTICS PTE LIMITED** a limited liability company having its  
registered office at Lot 16, Reddy Diamond Building, Lautoka.

**RESPONDENT**

**Counsel** : Ms. Sadrata A. for the Applicant  
Mr. Naivalu M. for the Respondent

**Date of Hearing** : 14<sup>th</sup> August 2023

**Date of Ruling** : 15<sup>th</sup> September 2023

<b>RULING</b>
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[1] The applicant filed this summons on 25<sup>th</sup> November 2022, seeking the following orders:

1. An order that the matter be re-instated for the purpose of costs alone.
2. Any other order the Honourable Court deems just and expedient.

[2] The respondent on 15<sup>th</sup> October 2020 filed an application to have the applicant company wound up but the matter was not determined within the period prescribed by section 528 of the Companies Act 2015.

[3] Section 528 of the Companies Act 2015 provides;

- (1) An application for a Company to be wound up in Insolvency is to be determined within 6 months after it is made.

(2) The Court may by order (on such conditions as it considers fit) extend the period within which an application must be determined, but only if—

(a) the Court is satisfied that special circumstances justify the extension; and

(b) the order is made within that period as prescribed by subsection (1), or as last extended under this subsection, as the case requires.

(3) An application is, because of this subsection, dismissed if it is not determined as required by this section.

[4] The respondent company filed an application on 15<sup>th</sup> October 2020, seeking to have the applicant company wound up pursuant to section 513(c) of the Companies Act 2015.

[5] Under section 528(1) & (2) of the Companies Act 2015 an application for winding up in insolvency must be determined, unless the time is extended by the court, within six months. Section 528(3) provides that an application is, because of this subsection, dismissed if it is not determined as required by the section.

[6] It is therefore, clear that after the expiration of the period of six months prescribed by section 528 the application for winding up in insolvency stands dismissed by operation of law and there is no necessity to make an order for dismissal.

[7] Before this matter was allocated to me it was before another judge and I cannot find any order extending the time under section 528(2) of the Companies Act 2015.

[8] The action was not dismissed for non-appearance of the applicant's counsel in court on 28<sup>th</sup> October 2022. What the court said was that since the period of six months had already lapsed the matter had automatically come to an end and

there was no dismissal recorded on that day. It is more so because the matter had already come to an end by operation of law.

- [9] The respondent instituted these proceedings to have the applicant company wound up. However, it had not prosecuted the application for winding up with due diligence. It had not requested the court to extend the time prescribed by section 528 of the Companies Act. In my view the applicant is entitled to recover the costs incurred by it in these proceedings.

### ORDERS

1. The matter is reinstated only for the purpose of deciding the issue of costs.
2. There will be no order for costs.

  
Lyone Seneviratne



JUDGE

15<sup>th</sup> September 2023