

IN THE HIGH COURT AT SUVA
CENTRAL JURISDICTION
CIVIL JURISDICTION

WINDING UP ACTION HBE: 16 of 2024

IN THE MATTER OF ENCIVIL INVESTMENT PTE LIMITED limited liability company having its registered office at Level 1, Lot 65 Wanibuku Sub, Nakasi, Nausori, Viti Levu.

AND

IN THE MATTER of the Companies Act.

AND:

ANASEINI LIKUBULILEKA COLATA aka ANASEINI COLATA

PETITIONING CREDITOR

Date of Hearing : 23 May 2024
For the Petitioning Creditor: Mr. Faktaufon. V
Date of Decision: 18 June 2024
Before: Levaci SLTTW, Puisne Judge.

J U D G M E N T
(APPLICATION FOR WINDING UP)

Cause and Background

1. By way of an application for Winding Up, the Petitioning Creditor, Ms Anaseini Likubulileka Colata aka as Ms Anaseini Colata filed for winding up against the Debtor Company.
2. The Debtor Company, Encivil Investment Pte Limited entered into a construction and building of works agreement with the Petitioning Creditor to construct her farmhouse on the property located at Naduruvakalulu, in Namalata, Tailevu for an agreed amount of \$40, 335,21 (VIP) [Forty Thousand Three Hundred and Thirty Five Dollars and Twenty One Cents].
3. The Petitioning Creditor paid the sum of \$30,336.00 [Thirty Thousand Three Hundred and Thirty Six Dollars] to the Debtor Company as a deposit of the total agreed sum.
4. Despite having made payment, no progress was made on the construction of the farm house on the said property.
5. The Petitioning Creditor sort a claim against the Debtor Company in the Magistrates Court and on formal proof, the Magistrates Court granted the Judgment Debt for the sum of \$30,336.00 [Thirty Thousand Three Hundred and Thirty Six Dollars] with costs of \$1500.00 [One Thousand Five Hundred Dollars].
6. A Statutory Demand Notice was issued on 21 November 2023 for the sum of \$30,336.00 [Thirty Thousand Three Hundred and Thirty Six Dollars] to the registered address of the Company for the sum claimed.

Application and the Laws on Winding Up of registered Companies

7. The Petitioning Creditor has filed their Intention to be heard on the basis that the Debtor Company owed a total sum of \$30, 336.00 (Thirty Thousand Three Hundred and Thirty Six Dollars) to them.
8. The Debtor Company has not filed an Affidavit in Opposition nor sort Leave of the Court to Object to the Winding Up Petition pursuant to section 525 of the Companies Act and has failed to appear on all court dates despite the documents and statutory demand notices being duly served at the Company's registered address.

9. Under Section 513 of the Companies Act, the Court can exercise its discretion to grant an application for Winding Up by the Petitioning Creditor where the Debtor Company has, by special resolution, resolved to Wind Up, Where the Debtor Company has failed to commence or having been suspended, did not commence after 12 months and eventually, if the Debtor Company is insolvent.
10. The Court must be satisfied that the Debtor Company is '*insolvent*' in accordance with section 514 of the Companies Act 2015 when it is unable to pay its debt when it is due and payable.
11. Section 515 (a), (b) and (c) of the Companies Act clarifies that an '*insolvent*' Company is a Company that is unable to satisfy the Petitioning Creditor of its debt in excess of \$10,000 for 3 weeks from when it was served with a statutory demand notice and execution of a judgment is returned unsatisfied.
12. A defect in the Winding Up proceedings does not of itself constitute a ground to seek leave to oppose winding up.

Analysis

13. Before this Court is the Petitioning Creditor's application for Winding Up of the Debtor Company on the basis that a debt is owing for \$30, 336.00 (Thirty Thousand Three Hundred and Thirty Six Thousand Dollars) being the amount due and payable by the Debtor Company to the Petitioning Creditor.
14. That after Formal Proof, a judgment debt was entered against the Debtor Company on the 15 of December 2022 in the sum of \$30,336.00 [Thirty Thousand Three Hundred and Thirty Six Dollars] by the Resident Magistrates Court.
15. The Judgment Debt was sealed on 4 April 2023 and served on the Counsel for the Debtor Company on 5 April 2023.
16. That Debtor Company has not attempted at all to satisfy the Petitioning Creditor by paying off the debt due and payable.
17. The Court also notes that despite the Statutory Demand being served on the Debtor Company, the Debtor Company has never sort for setting aside of the Statutory Demand to date.
18. Section 21 of the Winding Up Rules 2015 does not require an Affidavit of Proof of Debt to be filed by the Petitioning Creditor on or about the date of hearing.

19. The Court is satisfied from the provisions of the Winding Up Rules that the Petitioning Creditor has established that the Debtor Company has not fully satisfied the Petitioning Creditor as to its debts.
20. The Court is also satisfied that Petitioning Creditor has complied with all procedures in order to enable this Court to exercise its discretion as to whether to grant winding up or otherwise.
21. The Court has noted the written consent of the Official Receiver as preferred appointed Provisional Liquidator.
22. The Court will therefore grant the application and Order for Winding Up of the Debtor Company.

Court Costs

23. The Court finds that Court costs will be imposed for the sum of \$700 awarded to the Petitioning Creditor.

Orders:

24. The Court Orders as follows:
 - (i) Application for Winding Up of Encivil Investment Pte Limited be granted on the basis of the Petitioning Creditors' application that the Debtor Company is found insolvent;
 - (ii) The Court appoints the Official Receiver as the Provisional Liquidator;
 - (iii) That Court costs summarily assessed against the Debtor Company for \$700.

 
Ms SLTT Waqainabete-Levaci
Puisne Judge
18 June 2024