

IN THE MAGISTRATE'S COURT AT SUVA

IN BANKRUPTCY

Bankruptcy Action No. 25 of 2022

Civil Action No. HBC 179 of 2021

RE: **NAVITALAI NABUCA** of Lot 1, Khalas Road, Waisoqele Place, Nasinu, Fiji.

JUDGMENT DEBTOR

EX-PARTE: **CARPENTERS FIJI PTE LIMITED t/a CARPENTERS FINANCE** a limited liability company having its registered office at 34, Rodwell Road, Suva Fiji and **COMPUTECH ELECTRONICS PTE LIMITED t/a ONE STOP TRADING** a limited liability company having its registered office at 34, Rodwell Road, Suva, Fiji.

JUDGMENT CREDITORS

For the Judgment Debtor: **M/S O' Driscoll & Co.**

For the Judgment Creditor: **M/S Patel Sharma Lawyers**

RULING

A) Introduction

1. The Judgement Creditors ("JC") abovenamed have filed the Request for Bankruptcy Notice together with the sealed copy of the Default Judgement of High Court Civil Action No. HBC 179 of 2021 in their favour, and the Bankruptcy Notice on 04-08-2022.
2. The above was served on the abovenamed Judgement Debtor ("JD") on 18-08-2022 and the Affidavit of Service filed in court on 01-09-2022.
3. Thereafter the JC filed the Bankruptcy Petition on 14-11-2022 and Affidavit Verifying the Petition on 25-11-2022 and the same was served on the JD and an Affidavit of service is filed on 08-12-2022.

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4. This matter was first called before this court on 09-12-2022 and the JD was present in court and sought time to obtain legal representation. Time had been granted.
5. On 23-01-2023 counsel appeared for the JD sought time to file submissions. JCs sought to reply for the submission of the JD, which was allowed by the court. The submissions was later filed on behalf the JD on 26-07-2023.
6. In his submissions JD raised two objections. That is :
 - a) That JCs have not complied with section 6 (1) (c) of the Bankruptcy Act,
 - b) Service of sealed judgement have not been complied with Oder 42, Rule 08 of the High Court Rules.
7. On 07-08-2023 JCs sought permission to file affidavit verifying debt, the permission was granted and the same was filed on 30-08-2023.
8. Reply to the submission of the JD was filed on behalf of the JCs on 06-09-2023.
9. After considering the above mentioned all pleadings and written submissions, this court proceeds for following ruling.

B) Law

10. The specifically applicable legal provision in this case under Bankruptcy Act are :
 - Section 05- Jurisdiction to make receiving orders,
 - Section 06- Conditions on which creditor may petition,
 - Section 07- proceedings and order on creditor's petition, and
 - Section 128 - Formal defects not to invalidate proceedings.

C) Analysis on the application of the Judgement Debtor to dismiss these proceedings.

11. In his submission counsel for the JD claimed that the bankruptcy petition has not been presented to court within three months of the act of bankruptcy, as provided in section 6 (1) (c) . But the Bankruptcy Notice was served on the JD on 18-08-2022 as per the Affidavit of Service. JD was given 07 days to comply with the bankruptcy notice thus act of bankruptcy had been occurred since 26-08-2022. According to section 6(1)(c), the bankruptcy petition has to be filed on or before 26-11-2022, in the instance case, the bankruptcy petition had been filed on 14-11-2022, well within the time limit. Therefore , there was no merit in the 1st objection made by the JD.

12. The second objection made by the JD is that the default judgement had not been served to the JD within 14 days thereof, and thus infringed the Order 42, Rule 08 of the High Court Rules. However, section 128 (1) of the Bankruptcy Act Provides as follows:
"128.-(1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court."
13. The judgement of the high court had been sealed on 26-11-2021, but as per the JD's submission it had been served on them in July 2022. Well after 14 days of the date of default judgement. However, no application had been filed to set aside the default judgment and stay the execution proceedings on the same. No order of High Court as such before this court. I therefore assume that the JD has opted not to take such remedies available to him. Thereby, I decide that no substantial and unremedial injustice has been caused by the said defect or irregularity. The second objection of the JD is also failed.
14. Therefore, the application of the JD to dismiss the proceedings is hereby dismissed.

D) Making a Receiving Order

15. As for the reasons mentioned above, when this court dismissed the application of the JD to dismiss the bankruptcy proceedings, this Court has no impediment to proceed to make a receiving order.
16. Section 5 of the Act conferred the jurisdiction to make a receiving order. It read as:
" Subject to the conditions hereinafter specified if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate."
17. The JD had filed the Request for Bankruptcy Notice together with the sealed copy of the Default Judgement of High Court Civil Action No. HBC 179 of 2021 in their favour, and the Bankruptcy Notice on 04-08-2022.
18. It was served on the JD on 18-08-2022 and the Affidavit of Service filed in court on 01-09-2022.

19. Thereafter the JC filed the Bankruptcy Petition on 14-11-2022 and Affidavit Verifying the Petition on 25-11-2022 and the same was served on the JD and an Affidavit of service is filed on 08-12-2022. According to the Bankruptcy Petition, JD had failed to comply with the Bankruptcy Notice.
20. JC has satisfied the conditions to present a Petition to this Court as set out in Section 6 (1) of the Bankruptcy Act to viz:
- “(a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors joint in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to one hundred dollars; and*
 - (b) the debt is a liquidated sum, payable either immediately or at some certain future time; and*
 - (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and*
 - (d) the debtor is domiciled in Fiji, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, or has carried on business, in Fiji, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Fiji by means of a partner or partners, or an agent or manager”*
21. This Court is satisfied of proof of debt as per the Affidavit Verifying Debt filed on 30-08-2023, service of the Bankruptcy Notice on JD as per the Affidavit of Service dated 01-09-2022, and the Act of Bankruptcy.
22. Request for Bankruptcy Notice provides that the execution of the aforementioned High Court Judgement has not been stayed.
23. In the circumstances, this Court makes a Receiving Order in pursuance of the Bankruptcy Petition and having satisfied that it is in accordance with Sec. 7 (2) of the Act, which read as follows: *“At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy and, if satisfied with the proof, may make a receiving order in pursuance of the petition.”*

E) Orders of the Court

- a) Application to dismiss the bankruptcy proceedings made by the Judgment Debtor is dismissed,
- b) Receiving Oder is issued against the Judgment Debtor.
- c) Parties to bear their own cost.




Lakshitha Jayawardhana
Resident Magistrate

At Suva, on this 11th day of October 2023