

IN THE HGIH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Winding Up Action No. 63 of 2022

BETWEEN

IN THE MATTER of AVOSER PTE LIMITED a limited liability company incorporated in Fiji
having its registered office at O1 2A Commercial Complex, Port Denarau, Nadi

AND

FINANCE PACIFIC CORPORATION PTE LIMITED of level 1, 37, Bau Street, Suva
APPLICANT

Counsel : Mr. A. Chand for the Applicant Company

Application Filed : 20th December 2022

Decision Delivered : 10th March 2023

DECISION

- [1] The Applicant company filed this application for the winding up of the Avoser Pte Limited, a company incorporated on 10th November 2006.
- [2] Affidavit deposed by Arveen Anand in support of Applicant Creditor, states that Avoser Pte Limited [Debtor] owed \$159,598.13 from a loan given by the Applicant.
- [3] On 11th March 2022 the Applicant served a Statutory Demand Notice through their Solicitors at the Debtor Company's registered office in Nadi. The Debtor Company failed to pay the sum owed or to secure the amount in a reasonable way to the satisfaction of the Applicant.
- [4] Section 529 of the **Companies Act 2015** provides:
- (1) In so far as an application for a Company to be wound up in Insolvency relies on a failure by the Company to comply with a Statutory Demand, the Company may not, without the leave of the Court, oppose the application on a ground—
 - (a) that the Company relied on for the purposes of an application by it for the demand to be set aside; or
 - (b) that the Company could have so relied on, but did not so rely on (whether it made such an application or not).
 - (2) The Court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the Company is Solvent.
- [5] The Debtor Company did not make any application to set aside the Statutory Demand. The Applicant confirms that the Application for Winding Up and the Affidavit verifying

the application had been served on the Debtor company by pasting both documents on the front door of the registered office.

- [6] The Debtor company neither make any application to have the statutory demand set aside nor did file an affidavit and notice opposing the application for winding up as required by Rule 15 of the **Companies (Winding Up) Rules 2015**.
- [7] In paragraph 7 of the affidavit in support it is averred that the Applicant through the services of a registered bailiff on 11th March 2022 effected service of the Statutory Demand Notice on the Debtor company to pay \$159,598.13 (one hundred fifty nine thousand five hundred ninety eight dollars and thirteen cents) together with their legal cost. However the company failed to secure the amount.
- [8] There is no evidence contrary to the above position before me.
- [9] Section 515 of the Companies Act 2015 defines the inability to pay debts in the following manner;
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, 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.
- [10] The Court has no reason to disbelieve affidavit evidence of the Applicant. Whether the Debtor has the ability to pay the amount which exceeds the statutory minimum is within the exclusive knowledge of the Debtor company, but no evidence was adduced to show that they have means to pay the debt.

[11] Therefore Court grants following orders in Applicant's favour.

ORDERS

1. The Company AVOSER PTE LIMITED is hereby wound up.
2. The Official Receiver is appointed as the Provisional liquidator.
3. There will be no order for costs.



Yohan Liyanage

JUDGE

At Suva on 10th March 2023