

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: XP 170/2017

[2018] SCSC 776

EX PARTE:

ISLE SECURITY AGENCY LIMITED

Heard: 19 March 2018

Counsel: Mr. Leslie Boniface Attorney at Law for the Petitioner

Delivered: 17 August 2018

ORDER

Burhan J

[1] This is a Petition by Isle Security Agency Ltd (inadvertently referred to as Isle Security Agency Company Ltd in the petition) represented by its director Mr. Phillip Barbe for an order that the Company be wound up by the Court and for the confirmation of Mr. Peter Roselie as the Liquidator of the Company under the provisions of the Insolvency Act (Act 4 of 2013).

[2] It is apparent from the Certificate of Incorporation and the Memorandum of Association that Isle Security Agency Ltd was incorporated under the Companies Act 1972 and is a limited liability Company.

[3] In his affidavit in support of the petition, the director, Mr. Phillip Barbe avers that the principal object of the Company was to carry on the business of security services. He

further avers that the Company is now unable to fulfil its objectives and is unable to pay its debts. Attempts to redress the financial situation of the Company have not been successful.

[4] At a meeting held on the 20th of March 2017, the directors of the Company namely Clef Laporte and Phillip Barbe resolved that the Company be wound up. At the said meeting it was decided that the Company would stop trading with effect from the 31st of March 2017. A copy of the said resolution has been filed in the record.

[5] Further the updated accounts audited by Moustache and Associates have been tendered which confirms the fact that the said Company, Isle Security Agency Ltd, is in debt and has a total sum of 12,912,620.45 payable to its creditors.

[6] Section 96 (a) of the Insolvency Act provides inter alia that:

“A company may be wound up by the Court if

...

(a) the company has by special resolution resolved that the company be wound up by the Court.”

[7] Section 97 (c) (i) A company shall be deemed to be unable to pay its debts if –

(b)

(c) it is proved to be satisfaction of the Court that –

(i) The debts of the company immediately due exceed in total the value of the company’s readily realisable assets, that is to say, its holdings of cash, bank notes, treasury bills, securities quoted on a securities exchange in Seychelles or on a recognised overseas securities exchange, and money deposited at a bank in Seychelles being money which is repayable on demand or upon not more than 14 days’ notice; or...”

- [8] I am satisfied from the affidavit produced, the evidence of Mr. Phillip Barbe and the audited accounts tendered, that the Company, Isle Security Agency Ltd, is unable to pay its creditors mentioned in the audit report. I am also satisfied on perusal of the audit report that the debts of the Company immediately due, exceed in total the value of the Company's realisable assets.
- [9] On perusal of the audited reports it was observed that the main creditor to the said Company was the Revenue Commissioner. Therefore this Court issued notice on the Revenue Commissioner. Learned Counsel for the Attorney General who appeared for the Revenue Commissioner, drew the attention of Court to section 23 (1) (b) of the Revenue Administration Act and sections 23 (2), (3) and (4) which sets out the duties of the Liquidator towards the Revenue Commissioner to give notice to the Revenue Commissioner within 14 days of becoming trustee, of the taxpayers assets and shall not dispose of such assets without the leave of the Revenue Commissioner. Further the sections set out, the duty of the Liquidator to set aside assets available for the payment of the revenue due from the taxpayer and the Liquidator's personal liability in respect of same if he fails to do so.
- [10] Learned Counsel for the Attorney General also further brought to the attention Court section 106 (1) of the Insolvency Act, where the duty of the Liquidator was to prepare a statement of affairs of the Company to be given to the Official Receiver showing the particulars of its assets, debts and liabilities, names, residences, and occupations of its creditors, and the securities and privileges held by them and the dates which the securities were given.
- [11] This Court thereafter made order that the Liquidator be present in Court on the date of the Order for him to be notified and be aware of his duties as Liquidator. Accordingly the Liquidator Mr. Peter Roselie is present and the order is read out in open Court for his benefit.
- [12] Having considered all the afore mentioned facts of this case and the provisions of the law as set out above, I make the following Orders:

1. Isle Security Agency Company Ltd is hereby wound up.
2. Mr. Peter Roselie is confirmed as Liquidator of the Company together with all powers as provided under section 119 of the Insolvency Act and especially in respect to paying the debts of the Company to the creditors or making alternative arrangements as is practicable in order to satisfy as fully as is possible debts of the Company to the creditors. A copy of this order is to be served on him.

[13] As the resolution for the winding up of the Company was taken on the 20th of March 2017, it is deemed that the winding up commenced at the time of the passing of the resolution.

Signed, dated and delivered at Ile du Port on 17 August 2018

M Burhan
Judge of the Supreme Court