

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 32

XP 132/2019

In the ex parte matter of:

FIRE & ICE LIMITED

represented by its Director Kirschlee Ezra Naidoo
(rep. by S. Rajasundaram)

Petitioner

Neutral Citation: *Ex Parte FIRE & ICE LIMITED* (XP 132/2019) [2021] SCSC 32 (15 January 2021)

Before: Burhan J

Summary: Winding up of company by court

Heard: 21 January 2020 and 13th December (written submission).

Delivered: 15 January 2021

ORDER

1. Fire & Ice Limited 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.
-

ORDER

BURHAN J

[1] This is a petition filed by Fire & Ice Limited, a registered company under the provisions of the Companies Act 1972, represented by its director Kirschlee Ezra Naidoo seeking 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 Fire & Ice Limited was incorporated under the Companies Act 1972 and was incorporated on the 3rd of October 2017. As borne out by the evidence of its Director Mr. Kirschlee Naidoo given on the 21st of January 2020 and as averred in the petition, the company was carrying on a business at Shop No 10 Eden Plaza, Eden Island and at Angel Fish Marina/Bayside, Eden Island, Mahe, Seychelles.

[3] In his evidence in support of the petition, the director, Mr. Kirschlee Naidoo avers that the principal object of the company was to carry on the business of Bar. He further avers that the company is now running at massive losses and as a result, the company owed money and was unable to pay its debts. Attempts to redress the financial situation of the company have not been successful. He tendered the financial report of the company for the year ending 31st December 2017 and 2018 as P2 and P3.

[4] At a meeting held on the 1st day of September 2018, it was decided by a special resolution by two directors namely Kirshlee Ezra Naidoo and Marsha Parcou Naidoo that as the company was unable to pay its debts, it should be wound up and that Mr. Peter Roselie be appointed as the liquidator. The directors of the company further resolved that the company be wound up immediately. A copy of the said resolution has been filed produced as P4.

[5] It is to be noted that even though evidence was led on the 21 of January 2020, it was only on the 6th of August 2020 that the consent of Mr. Peter Roselie was received to be appointed as a liquidator.

[6] Further the updated accounts audited by Bhanderi & Co Chartered Certified Accountants has been filed P5. According to the report the loss for the year ending 31 December 2018 was SCR 755,996.00.

[7] 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;”

[8] Section 97 (d) provides:

“A company shall be deemed to be unable to pay its debts if –

...

(d) the Court, taking into account the contingent and prospective liabilities of the company , is satisfied that the company is unable to pay its debts.

[9] I am satisfied from the affidavit produced, the evidence of Kirschlee Naidoo and the audited accounts tendered, that the company, Fire and Ice Limited, is unable to pay its creditors mentioned in the audit report. I am also satisfied on perusal of the audit report and taking into account the contingent and prospective liabilities of the company set out therein that the company is unable to pay its debts.

[10] In addition at the request of court learned Counsel for the petitioner Mr. Rajasundaram has furnished relevant information in his submission dated 13 December 2020 and stated that as required under regulations 23 and 28 of the Companies (winding up) regulations, he has published the necessary advertisement in the official gazette on the 9th of November 2020 and the Nation newspaper on the 6th of November 2020. Copies of notices have been produced to court. He further mentioned to court that he has received a letter from Mr. Frank Elizabeth Attorney at Law dated 13th November 2020 on behalf of his client International Food Solutions (Pty) Ltd stating the petitioner Fire and Ice Limited owes his client a sum of R 208,838.50 and the only person submitting a claim in the given period of time was International Food Solutions.

[11] The matter was refixed for hearing for the 14 December 2020 but on that date International Food Solutions (Pty) Ltd was not present or represented in court. Thereafter the matter was fixed for order on the 15 January 2021.

[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. Fire & Ice Limited 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.

Signed, dated and delivered at Ile du Port on 15 January 2021

Burhan J