

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 427

MA141/2021

Arising in CC14/2017(MA365/2019)

In the matter between

IN THE MATTER OF ORCHID HOLIDAYS PTY LTD

Respondent

Neutral Citation: In the matter of Orchid Holidays Pty Ltd (MA141/2021) [2021] SCSC 427
2020) .

Before: Govinden CJ,

Summary Question arising out of a liquidation, S162 (1) (a) of the Insolvent Act

Heard: 15 January 2020

Delivered: 16 July 2021

RULING

GOVINDEN CJ

- [1] The liquidator in this matter has applied to this Court for the correction of a typographical error that appears in this Court's Ruling dated the 30th July 2020 and to give certain miscellaneous orders, including validating the payment of the liquidator's and Attorney's Fees.
- [2] I have given careful consideration to the motion and its supporting affidavit.
- [3] Having done so I am satisfied that a typographical error has occurred in the Ruling of this Court dated the 30th of July 2020, accordingly, I apply the "*Slip Rule*" and amend

paragraph 5 of the said order and substitute the sum SR12,201.78 with the sum of SR12,201,218.78.

[4] As far as approval of the Attorney's Fees and liquidator's Fees are concern I find that the applicable provision of the law to the Section 116(1) of the Insolvency Act 2013 which provides as follows:-

(1) A provisional liquidator or liquidator other than the Official Receiver shall be entitled to receive remuneration approved by the Court on presentation of a claim, whether provisional or final, at such rates and intervals as may be determined.

(2) A liquidator other than the Official Receiver shall be entitled to receive such remuneration at such rates as may be determined —

(a) subject to subsection (2)(b), by agreement between the liquidator and the committee of inspection;

(b) failing such agreement or where there is no committee of inspection, but subject to subsection (4), by a resolution, passed at a meeting of creditors, by a majority of not less than 75 per cent in value and one half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, convened by the liquidator by a notice to each creditor accompanied by a statement of all expenses incurred by the liquidator and the amount of remuneration sought by him or her.

(3) Where the remuneration of a liquidator is determined in the manner specified in subsection (2)(a), the Court may, on the application of a shareholder or shareholders whose shareholding represents not less than 10 per cent of the issued capital of the company made within 14 days of determination, confirm or vary the determination.

(4) Where the remuneration of a liquidator is determined in the manner specified in subsection (2)(b) the Court may, on the application of the liquidator or a shareholder referred to in subsection (3), made within 14 days of determination, confirm or vary the determination.

[5] As in this instance there appears to be no agreement between the liquidator and the Committee of Inspection as to the Fees. I would take it therefore that it needs the resolution of a meeting of creditors under Section 116 (2) (b) of the Insolvency Act. As this Court can

only confirm the remuneration of the liquidator, and in the absence of any specific provision saying otherwise, also the remuneration of an Attorney, only after there has been compliance to Section 116 (2) (b) of this Act.

[6] As far as the judgment debt of the *Bord Mer villa* is concern, there is no proof of debt submitted by the liquidator, therefore I cannot make any pronouncement on this averment. At any rate, I find that debts referred to in paragraphs 3 (i) and (ii) of the Ruling of the 30th of July 2020 would have priority of payment over this debt.

Signed, dated and delivered at Ile du Port Victoria on 16 July 2021

A handwritten signature in black ink, appearing to be 'Govinden R.', written over a horizontal line.

Govinden R.

Chief Justice