

IN THE COMMERCIAL HIGH COURT OF THE WESTERN PROVINCE
(EXERCISING CIVIL JURISDICTION) HOLDEN IN COLOMBO

In the matter of an application for Winding Up by Court under Part XII of the Companies Act, No. 07 of 2007.

In the matter of **EXPO BRAND PACKS (PVT) LTD.**, of No.144, Pickering Road, Colombo 13 and at Welisara Industrial Complex, 309/3, Colombo Road, Welisara.

Case No: CHC 70/2016/CO

AND

COMMERCIAL BANK OF CEYLON PLC.

No. 21, Sir Razik Fareed Mawatha,
Colombo 01.

PETITIONER

AND

G. J. DAVID,

H. SJMS Associates,
No. 11, Castle Lane,
Colombo 04.

LIQUIDATOR

AND NOW

In the matter of an application under and in terms of Sections 293(5), 520 and 521 of the Companies Act, No. 07 of 2007.

TEXPRO INDUSTRIES LTD.,

1st Floor, Lakshman's Building,
321, Galle Road,
Colombo 03.

PETITIONER

Vs.

In the matter of **EXPO BRAND PACKS (PVT) LTD.**, of No. 144, Pickering Road, Colombo 13 and at Welisara Industrial Complex, 309/3, Colombo Road, Welisara.

COMPANY SOUGHT TO BE WOUND-UP

COMMERCIAL BANK OF CEYLON PLC.

No. 21, sir Razik Fared Mawatha, Colombo 01.

PETITIONER-RESPONDENT

AND

G.J. DAVID,

SJMS Associates, No. 11, Castle Lane,
Colombo 04.

LIQUIDATOR-RESPONDENT

Before : Pradeep Hettiarachchi, High Court Judge

Decided on : 22.11.2024

Order

1. The petitioner instituted the present action under Chapter XII of the Companies Act, seeking to have the company, Expo Brand Packs (PVT) Ltd, wound up.
2. At the conclusion of the inquiry, the court ordered the company to be wound up, and a liquidator was subsequently appointed. The liquidator filed several reports and later applied for a forensic audit, which the court granted.
3. Based on the forensic audit report, the liquidator applied for interrogatories to be served on the former directors of the company. This application was also granted by the court.
4. Thereafter, the liquidator filed an application seeking to orally examine the directors of the company, which was objected to by the directors.

5. In response, the court directed all parties to file their respective written submissions.
6. The petitioner, along with another creditor, namely the National Development Bank, supports the liquidator's application, whereas the directors of the company oppose it.
7. The liquidator and the parties supporting the application to summon the directors for oral examination rely on Sections 310 and 311 of the Companies Act. Additionally, the petitioner relies on Section 376(1)(a) of the Act.
8. Opposing the liquidator's application, the directors submit that when a person is summoned under Section 310(1), they may either be examined orally or be required to respond to written interrogatories. The directors further argue that once a person has been served with interrogatories and has submitted their answers, they should not be allowed to be examined orally, as Section 311 does not permit both options to be used simultaneously.
9. Section 310 reads:

310(1). The court may at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or alleged to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may examine on oath any officer or person summoned under the provisions of subsection (1) on any matter referred to in that subsection, either orally or on written interrogatories, and may where such examination is conducted orally, reduce the answers to writing and require such officer or person to sign it.

(3) The court may require any officer or person summoned under the provisions of subsection (1), to produce any books and papers in his

custody or power relating to the company, but where such officer or person claims any lien on such books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) Any officer or person summoned under the provisions of subsection (1) who refuses or fails without reasonable cause, to appear before court or to produce any books or papers required to be produced by him at the time and on the date specified in the summons, shall be liable to be arrested and produced before court for examination.

311. (1) *Where an order has been made by the court for the winding up of a company and the official receiver has made a further report under the provisions of this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the court may after consideration of such report, direct that such person or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealing as officer thereof.*

(2) The official receiver may make representations at the examination referred to in subsection (1), and for that purpose may be represented by an attorney at-law.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by an attorney-at-law.

(4) The person or officer examined under the provisions of this section shall be examined on oath or affirmation and shall answer all such questions as the court may put or allow to be put to him

10. In view of the arguments advanced by the parties, the key question to be determined is whether section 310(2) permits the court to orally examine a person who has already been served with interrogatories and has provided answers to them.
11. The purpose of serving interrogatories under Civil Procedure Code was succinctly stated in ***Kennedy vs Dodson (1895) 1 Cha 341*** as follows:
The legitimate use and the only legitimate use, of interrogatories is to obtain from the party interrogated admission of facts which it is necessary for the party interrogating to prove in order to establish his case.
12. However, in my view, serving interrogatories under section 310(2) of the Companies Act is warranted only when the circumstances stipulated in section 310(1) of the Act are present. Specifically, if it appears to the court that any officer of the company, or any person known or suspected to have possession of company property, or alleged to be indebted to the company, or any person whom the court deems capable of providing information concerning the promotion, formation, trade, dealings, affairs, or property of the company.
13. Thus, serving interrogatories under section 310(2) is primarily intended to ascertain information related to the affairs and assets of the company under liquidation.
14. Although section 310(2) states 'either an oral examination or written interrogatories,' I do not believe that the legislature intended to impose any restriction on obtaining the information required. Therefore, if the answers provided to the interrogatories are insufficient, I see no reason not to call any person whom the court deems capable of providing information regarding the affairs and property of the company under winding-up, notwithstanding the phrase 'either an oral examination or written interrogatories' in section 310(2).

15. In the present case, the interrogatories were served on the directors at the request of the liquidator, and the directors subsequently submitted their answers. The legislature, in its wisdom, has granted the power to summon a director or other individual to obtain information about the affairs or property of the company under liquidation. It is not the legislature's intention to impose any restrictions or to limit the acquisition of information necessary for the winding-up of the company.
16. A careful examination of the answers provided to the interrogatories reveals that some of the responses are either insufficient or evasive. Therefore, I am of the view that it would be prudent to call the concerned directors for oral examination in order to obtain further information regarding the affairs and property of the company.
17. Accordingly, acting under section 310(2), I order the relevant directors to be present in court for oral examination, solely for the purpose of obtaining further information related to the interrogatories served on them.

Pradeep Hettiarachchi,
Judge of the Commercial High Court,
Colombo.

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