

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC ...
MC 25/2022

In the matter between:

JULIETTE MICHEL CLARISSE
(*rep. by Mr. J. Camille*)

Petitioner

And

**REGISTRAR OF INTERNATIONAL
BUSINESS COMPANIES**

Respondent

Neutral Citation: *Clarisse v Registrar of International Business Companies* (MC25/2022)
[2022] SCSC (29 July 2022)

Before: Carolus J

Summary: Application to restore name of International Business Company to the
Register – International Business Companies Act 2016.

Heard: 06 July 2022

Delivered: 29 July 2022

ORDER

CAROLUS J

[1] The Petitioner Juliette Michel Clarisse in her capacity as former director of A&G Holding Corp. (“the Company”) has petitioned this Court to restore the name of the Company to the Register of International Business Companies (“the Register”) pursuant to section 277(1) of the International Business Companies Act 15 of 2016 as amended (“the 2016 Act”). The petition is supported by an affidavit sworn by the petitioner to which relevant documents are exhibited. The respondent has filed objections to the application supported by an affidavit sworn by Damien Thesee the Chief Executive Officer of the Financial Services Authority and consequently the respondent.

[2] The Company is an International Business Company (“IBC”) incorporated in Seychelles on 14th June 2016 with Company Registration No. 184092, under the International Business Companies Act 1994 (Cap 100A) as amended (“the 1994 Act”) which was repealed and replaced by the 2016 Act in its section 392. The 2016 Act came into operation on 1st November 2016 by virtue of the International Business Companies Act, 2016 (Commencement) Notice, 2016 (S.I. 72 of 2016). The Company was deemed to be automatically re-registered as an international business company under the 2016 Act with effect from its commencement date pursuant to section 383(1) of the same Act. Upon its re-registration the Company continued holding the same Company Registration No 184092.

[3] The Company was dissolved by way of a voluntary dissolution under sub-part II of Part XVII of the 2016 Act. It was resolved by a resolution of shareholders dated 20th December 2021 that the Company be voluntarily wound up in accordance with a Voluntary Winding up Plan (“the plan”) also dated 20th December 2021, and signed by the petitioner in her capacity of director of the Company. According to the Voluntary Winding up Plan the reason for the winding up of the Company was that it had ceased trading. Notice of Completion of the Winding up by the Company’s liquidator dated 21st January 2022 was filed with the respondent in accordance with section 297(1) of the 2016 Act. The Company was dissolved on 21st January 2022 as per a Certificate of Dissolution issued by the respondent on the same date.

[4] Section 277 of the 2016 Act as amended by Act 32 of 2021 under which the present application is made, provides in its subsections (1) and (2) in relevant part as follows:

277. (1) Subject to subsection (2), where the name of a company has been struck off the Register for any reason, an application to restore the name of the struck off or dissolved company to the Register may be made to the Court by —

(a) a creditor, member, former member, director, former director, liquidator or former liquidator of the company; or

(b) any other person who can establish an interest in having the company restored to the Register.

(2) An application to restore the name of a struck off or dissolved company to the Register under subsection (1) may be made to the Court —

[...]

(b) within three years of the date of dissolution under Sub-Part I, II, III or IV of the Part XVII of this Act.

[5] The petitioner, being a former director of the Company, therefore has the necessary standing to make the present application. The present application was also filed within the prescribed time frame of three years of the date of dissolution, as the application was filed on 21st March 2022 and according to the Certificate of Dissolution the Company was dissolved on 21st January 2022.

[6] Subsection (4) of section 277 provides as follows:

277. [...]

(4) On an application under subsection (1) and subject to subsections (4A), (4B) and (5), the Court may—

(a) restore the company to the Register subject to such conditions as it considers appropriate; and

(b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been dissolved or struck off the Register.

[7] Subsection (4A) of section 277 further provides for certain matters as to which the Court must be satisfied before making a Restoration Order as follows:

(4A) The Court shall not restore the name of a struck off or dissolved company if the Court is not satisfied that the company is in compliance of its obligations—

(a) under this Act relating to accounting records, register of members and register of director; and

(b) under the Beneficial Ownership Act, 2020 (Act 4 of 2020) relating to register of beneficial owners.

[8] In that regard it is averred at paragraph 8 of the petition that “... *the Company is able and willing to provide to the Court and the Respondents, its ability and willingness to meet all legal*

requirements under the Act so as to have the Company restored on the Register including the payment of all fees and penalties thereof". This is denied by the respondent who states in his objections at paragraph 2 thereof that he is not satisfied that the Company is in compliance with its obligations as stated under section 277(4A) reproduced at paragraph [7] above.

[9] Subsections (5) and (6) of section 277 further provide for the filing of the Restoration Order with the Registrar, whereupon the Registrar shall restore the company to the Register with effect from the date and time of the filing of the Order. However this is subject to subsection (7) which reads as follows:

(7) Notwithstanding its receipt of a copy of the sealed restoration order, the Registrar shall not restore the company to the Register until -

(a) payment to it of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the company; and

(b) if the proposed registered agent of the company was not the company's registered agent when it was struck off the Registrar (the "outgoing registered agent"), the Registrar receives a written consent to the change of registered agent by the outgoing registered agent (who must provide such consent unless any fees due and payable to it have not been paid).

[10] In that regard the petitioner has averred the following at paragraphs 9, 10 and 11 of the petition:

9. As a condition of the grant of this Petition ... the Petitioner undertakes and confirms that the Company is ready, willing and able prior to restoration of its name to the Register, to pay to the Respondent all fees and all penalties payable by virtue of section 277(7) of the Act, including the restoration fee payable under the IBC Act, and all annual licence fees payable by virtue of section 12 and any late payment penalty payable thereon under the Act.

10. The Petitioner wishes to put in order all the matters concerning the company and to this end seeks for the Company to be restored to the Register. The Company has outstanding commercial obligations which it is unable to fulfil, and its own assets which is unable to deal with, unless its prior status as a registered company is restored.

[11] In response the respondent states in his objections that he is unaware of the averments contained at paragraphs 9 and 10 of the petition and denies the same. He also denies the petitioners averments at paragraph 11 of the petition that “*In the circumstances ... it would be fair and reasonable for the name of the Company to be restored to the Register.*” Consequently he prays for dismissal of the petition.

[12] Consequent to the filing of objections by the respondent, the Petitioner requested and was granted time to rectify the matters giving rise to the objections made by the respondent. The respondent has confirmed that everything is now in order and withdrew his objections to the application.

[13] I am therefore satisfied that the conditions for the Court to make a Restoration Order under section 177 has been fulfilled. Accordingly, pursuant to the same section, I make order for the Registrar of International Business Companies to restore the name of the Company A&G Holding Corp to the Register of International Business Companies, subject to compliance with the requirements of the IBC Act 2016 for such restoration, and upon payment to the Registrar of:

- (a) all outstanding fees and penalties payable under the IBC Act, 2016 as amended;
- (b) the restoration fee payable under paragraph (y) of Part II of the Second Schedule to the IBC Act, 2016 as amended; and
- (c) any other fees payable.

[14] Pursuant to section 277(9), upon restoration of the name of the Company to the Register, the Company is deemed to have continued in existence as if it had not been dissolved.

Signed, dated and delivered at Ile du Port on 29th July 2022

E. Carolus J