

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
CIV 2009 404 3170**

UNDER The Companies Act 1993

IN THE MATTER OF Company liquidation

BETWEEN **SELVATHAS ARIYATHAS**  
29 A, Marion Avenue, Mount Roskill  
Auckland. (**Director/Shareholder**) of  
Ariya New Zealand Limited (**in liq**)

**Applicant**

AND **THE CONTROLLER OF CUSTOMS**  
of 50 Anzac Avenue, Auckland,  
New Zealand

**First Respondent/ Plaintiff**

AND **ROBERT WALKER** of 72 Mornington  
Road, Brooklyn, Wellington, New  
Zealand, Liquidator

**Second Respondent**

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ON NOTICE INTERLOCUTORY APPLICATION TO  
TERMINATE LIQUIDATION

DATED 5<sup>th</sup> November 2009

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**G.P. LEGAL**  
**Barristers & Solicitors**  
14 Britton Ave, Mt. Roskill,  
Auckland 1041.  
Phone: 09 629 2660  
Fax: 09 6292669

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**Counsel**  
B. Castelino  
60 Castelfinn Drive  
Weymouth.  
Phone: 09 2696077  
Fax: 09 269 6075

**Interlocutory application on notice**

To the Registrar of the High Court at Auckland

And

To The Controller of Customs, First Respondent, and Robert Walker,  
Second Respondent.

This document notifies you that –

1. The applicant, will on 13<sup>th</sup> day, of November 2009 at 11:45 am  
apply to the court for orders that:
  - (a) The judgment by default entered against the Applicant on 9 September 2009 be set aside on such conditions, if any, as the Court deems fit.
  - (b) Leave be granted to the Applicant to file a Statement of Defence within seven days of the Orders being granted.
  - (c) The Order to put the Applicant into liquidation be set aside.
  - (d) The Respondent pays the Applicant's costs of this Application.
2. The grounds on which each order is sought are as follows:
  - (a) Upon receiving the First Respondent's statutory demand, the Applicant made arrangements with the First Respondent to pay off the debt.
  - (b) The Applicant has paid said debt in full.
  - (c) The Applicant's company is solvent.
  - (d) The Applicant has a reasonable explanation for his delay in defending his case, with the delay arising due to the First and Second Respondent's actions, and the Applicant's poor English language comprehension.
  - (e) The Respondent has not come to the court with clean hands and has abused the court liquidation process.

- (f) The cost of the liquidator outweighs the benefits to the Applicant.
- (g) It would not be in the interest of justice for the judgment by default to be allowed to remain in force.
- (h) The Respondent will suffer no prejudice if the matter was to be allowed to proceed to trial.

AND UPON THE FURTHER GROUNDS set out in the affidavits of Selvathas Ariyathas and Rakesh Sharma sworn and filed in support of this Application.

This Application is made in reliance on:

- High Court Rules 7.19 and 15.13
- Sections 241, 250, 289, 290 Companies Act 1993
- *Commissioner of Inland Revenue v Chester Trustee Services Ltd* [2003] 1 NZLR 395
- *Taxi Trucks Ltd v Nicholson* [1989] 2 NZLR 297
- *Jenkins v Supscraf Ltd* [2006] 3 NZLR 264

Dated 5<sup>th</sup> November 2009



B. Castelino  
Counsel for Applicant

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of 50 Anzac Avenue, Auckland,  
New Zealand

**First Respondent/ Plaintiff**

AND **ROBERT WALKER** of 72 Mornington  
Road, Brooklyn, Wellington, New  
Zealand, Liquidator

**Second Respondent**

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AFFIDAVIT OF RAKESH SHARMA IN SUPPORT OF  
INTERLOCUTORY APPLICATION TO TERMINATE  
LIQUIDATION

DATED 5<sup>th</sup> November 2009

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**Barristers & Solicitors**  
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Auckland 1041.  
Phone: 09 629 2660  
Fax: 09 6292669

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**Counsel**  
B. Castelino  
60 Castelfinn Drive  
Weymouth.  
Phone 09 269 6077  
Fax 09 269 6075

## AFFIDAVIT OF RAKESH SHARMA

I Rakesh Sharma of Auckland, Accountant swear that:

1. I am qualified and practicing accountant and I have read the documents that filed by the First and Second Respondents.
2. I am in the position to comment on the financial status of the Applicant ("Ariya"), as I have been given access to and viewed the financial transactions of Ariya. I understand that a liquidator has been appointed and the company has not been wound up and is having its day to day activities conducted by the Applicant Director.
3. Attached and marked Exhibit "A 1" is Ariya's Statement of Assets and Liabilities as of 30<sup>th</sup> September 2009.
4. Ariya is able to pay its usual business debts as they become due in the normal course of business.
5. The value of the Ariya's assets is greater than the value of its liabilities.
6. Ariya's sole Director, Selvatha Ariyathas is also Ariya's financial guarantor for Ariya's overdraft facilities with the Bank. Mr Ariyathas' residential properties are offered as security to the Bank.
7. Mr Ariyathas has a share capital of \$ 1,000.00 and \$43,685.00 in his Current Account with the company as of 31<sup>st</sup> March 2009.
8. As of <sup>th</sup> September 2009, Mr Ariyathas' Current Account has been increased by \$43,249.00 by inducting additional funds into Ariya.
9. Mr Ariyathas infuses funds into the Ariya as and when contingent liabilities arise as he says that he believes his company should not be wound up.
10. I believe that the action plan put in place by the Second Respondent is not economically feasible.
11. I believe that Ariyas is a solvent company and liquidation is unnecessary.

SWORN at Auckland this 5<sup>th</sup> day of November 2009.



Rakesh Sharma

Before Me

  
Registrar High Court of New Zealand

**Deputy Registrar**  
High Court  
Auckland

**L Lefao-Setoga**

This is the exhibit marked "A 1" referred to in the affidavit of Selvathas Ariyathas sworn this 5<sup>th</sup> day of November 2009.

Registrar of the High Court of New Zealand.



**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
CIV 2009 404 3170**

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BETWEEN **SELVATHAS ARIYATHAS**  
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**First Respondent/ Plaintiff**

AND **ROBERT WALKER** of 72 Mornington  
Road, Brooklyn, Wellington, New  
Zealand, Liquidator

**Second Respondent**

---

AFFIDAVIT OF SELVATHAS ARIYATHAS IN SUPPORT OF  
INTERLOCUTORY APPLICATION TO TERMINATE LIQUIDATION

DATED 5<sup>th</sup> November 2009

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**Counsel**  
B. Castelino  
60 Castelfinn Drive  
Weymouth.  
Phone: 09 269 6077  
Fax: 09 269 6075



I, Selvathas Ariyathas, of Auckland, Businessman, swear that:

1. I am the Applicant and sole Director and shareholder of Ariya New Zealand Limited (in liq), ("Ariya").
2. Ariya New Zealand Limited is a New Zealand company that was incorporated on 17 September 2001 and has its registered office at 539 Sandringham Road, Sandringham, Auckland. The company carries on business as an importer and retailer of groceries.
3. I am responsible for the day-to-day workings of Ariya, and am authorised by section 250 (2)(c) of the Companies Act 1993 to make this affidavit. The facts and matter referred to me in this affidavit are either from my own knowledge and are true, or have been obtained from the relevant business records of Ariya, which records I believe to be true.

#### **Background to debt**

4. In October 2008, Ariya imported grocery items, mainly foodstuffs, from India. The total value of the consignment was approximately USD\$28,000. There is no customs duty on foodstuffs except GST of approximately NZD\$4,500.00.
5. Among the imported items was mouth freshener. This item is either non-tobacco based or tobacco based.
6. The consignment arrived in New Zealand in October 2008. The Applicant paid the GST immediately and in full.
7. New Zealand Customs then advised the Ariya that in the course of its inspection, the Respondent found that the consignment also contained items that were tobacco based, which are banned in New Zealand. Ariya was unaware that the tobacco based items were banned, and voluntarily forfeited the goods.
8. On or about 20<sup>th</sup> January 2009, New Zealand Customs issued Ariya with an assessment notice advising that Ariya owed the First Respondent \$ 31,044.94 for importing the tobacco based item.
9. I was surprised at receiving this assessment notice and thought it did not seem right that Ariya had to pay for importing an item that it had voluntarily forfeited. The sum requested was also significant.
10. I contacted New Zealand Customs to seek clarification for the reassessed duty, who maintained that the reassessed duty was correct. I assumed that New Zealand Customs, being a government entity, would know the law better and so did not think to challenge it.

11. The extra payment of \$31,044.94 was not foreseen by Ariya and so it had not provided for the amount in its cash flow of the month. Therefore, I contacted New Zealand Customs and made arrangements for paying this amount in instalments.
12. Ariya also agreed to pay the additional duty that accrued on the original demand.
13. On or about 9<sup>th</sup> April 2009 the total duty payable by Ariya to New Zealand Customs, inclusive of additional duty, was \$33,249.13.

**Ariya's responses to statutory demand**

14. On or about 9<sup>th</sup> April 2009, the First Respondent served Ariya Statutory Demand dated 9<sup>th</sup> April 2009, under section 289 of the Companies Act 1993.
15. Upon receiving the Statutory Demand, I immediately contacted New Zealand Customs with an offer to pay the full amount in instalments starting in July 2009 and completed on or before the 24<sup>th</sup> of August 2009. I was given the impression that the instalment payment plan offered was agreeable.
16. On the 2<sup>nd</sup> June 2009, the First Respondent served Ariya with the Notice of Proceedings. The first court date was 10<sup>th</sup> July 2009.
17. I was shocked to receive this Notice as I believed that Ariya had an agreement with New Zealand Customs to pay the debt in instalments beginning July 2009.
18. I immediately contacted a friend who took me to a lawyer in the city, whose name I cannot remember. The lawyer asked me for an upfront payment of \$2,000 for getting the court date extended by two weeks. I thought that the lawyer's fee was expensive.
19. So I decided to contact New Zealand Customs again to see if I could resolve matters without incurring legal costs. However, I was unable to resolve matters.
20. Thereafter, I contacted another Lawyer who also wanted an upfront payment which I found to be excessive. This lawyer suggested that I try to contact New Zealand Customs again to see if I could resolve matters on my own.
21. I followed the advice and contacted New Zealand Customs once again in an attempt to resolve matters. The New Zealand Customs told me that its lawyer was only carrying out the court process as a matter for formality, but the instalment payment plan as agreed upon between Ariya and New Zealand Customs on or about 10 April 2009 was agreeable and would resolve matters. The New Zealand Customs also told me that I did not need to attend Court on 10 July 2009 as the First Respondent would not be pursuing the matter in the High Court.

22. As agreed, Ariya paid the first instalment of \$10,000 on 7 July 2009.
23. On or about 27 July 2009, Ariya paid the second instalment of \$15,000. I personally went and met with New Zealand Customs to hand over a bank cheque for this payment. At this meeting, I asked the New Zealand Customs to put the terms of instalment payments agreement in writing.
24. On 27 July 2009, the New Zealand Customs confirmed in writing the terms of the instalment payments arrangement via email. Attached and marked Exhibit "A" is a copy of this email, which was also addressed to the First Respondent's lawyer.
25. The final instalment was due on or before 24 August 2009. However, this payment was delayed as my wife went into labour at this time and delivered our first born child on 25 August 2009.
26. On or about 26 August 2009, I personally went to New Zealand Customs with a cheque of \$2,000. I also explained that as my wife had just delivered a child, I could only pay the final balance of \$6,249.13 on or before 10 September 2009. This offer was accepted and confirmed by New Zealand Customs via email. Attached and marked Exhibit "B" is a copy of this email.
27. As agreed, on or about 10 September 2009 I hand delivered the final cheque for the outstanding amount of \$6,269.13.
28. On 11 September 2009, my wife saw an email from the First Respondent dated 8 September 2009 and sent at 12.35pm. The email issued an ultimatum to Ariya to repay the outstanding balance of \$6,249.13 before close of business hours, failing which the First Respondent will pursue their application in the High Court to put Ariya into liquidation at the hearing on 9 September 2009. Attached and marked Exhibit "C" is a copy of this email.
29. As my wife and I were preoccupied with our newborn, we had not checked our email for several days and so did not see this email until after 8 September 2009. However, I note that the New Zealand Customs did not mention anything of this 8 September 2009 email to me or that matters were being pursued in the High Court, when I met with them on 10 September 2009.
30. A summary of the instalment payments made by Ariya to New Zealand Customs are set out below.

Date paid	Amount paid NZD\$
7 July 2009	\$10,000
27 July 2009	\$15,000
26 August 2009	\$2,000
10 September 2009	\$6,249.13
<b>TOTAL</b>	<b>\$33,249.13</b>

### **Ariya's attempts to respond to court proceedings**

31. When I received the notice that the Ariya had been put into liquidation, I immediately contacted a number of lawyers to try and have the matter sorted out. This has taken me some time as I was unable to find a lawyer that could explain matters to me as my understanding of English is very poor.
32. I also contacted the Second Respondent, the liquidator, who was unhelpful. Please refer to paragraphs 40 to 43 below.
33. Eventually, with the help of friends and well-wishers, I was put in contact with the Indian Welfare and Business Association, a charitable trust. The Association's lawyers explained to me the contents of the legal proceedings instituted by the First Respondent. I am the person who deals in the Applicant's affairs at all times. The lawyers also explained to me the purpose of this affidavit and the contents of the legal documents that accompany the proceedings in the case.
34. I am surprised at the behaviour of the First Respondent. I believe that the First Respondent has treated Ariya unfairly and abused the court process as they went on collecting monies as per our agreement and assuring me that the court process had been stopped, when in fact they continued with the court process.
35. I believe that once Ariya and New Zealand Customs had reached an agreement re payment, the effect of the statutory demand lapsed.
36. I also note that the First Respondent's affidavit is misleading in that it does not disclose the fact that an agreement had been reached with Ariya, and that substantial repayments (\$27,000) had already been made with only one final payment of \$6,249.13 to be made on 10 September 2009 as agreed.


### **Further proof of Ariya's solvent status**

37. I believe that Ariya is a solvent company, and it has proven this by fully paying all its debts to the New Zealand Customs as agreed.
38. I understand that Rakesh Sharma, an Accountant, will also be filing an affidavit showing that Ariya is a solvent company.
39. Furthermore, on or about 6 October 2009, Ariya imported from India, rice of a value of USD\$30,000. Ariya paid the applicable GST in full on this consignment. However, due to the current liquidation order, the New Zealand Customs will not release the product. The product is A perishable item.

**Ariya's dealings with liquidator**


40. I believe that the Second Respondent, the liquidator appointed by the Court, is not acceptable or necessary. Ariya is a solvent company and therefore does not require a liquidator. It is a strain on the resources of the company and I feel that my company has to incur unnecessary expenses.
41. Furthermore, the Second Respondent has not treated Ariya with any professionalism. When I contacted the Second Respondent to determine the extent of matters he made offensive comments such as "*you bloody bastard, you are doing all illegal activities*", and would not provide me with any helpful details to assist me in resolving matters.
42. I also note that the Second Respondent mentioned in his Report the incorrect figure of \$23,000 as the amount outstanding to the First Respondent, and for which Ariya has been put into liquidation.
43. I believe that the Second Respondent's behaviour unacceptable and unprofessional for a liquidator. I am a small businessman and cannot afford the luxury of a liquidator who is making unnecessary demands that will result in permanent closure of my business. To date, the Second Respondent has already been paid \$10,000, an amount which I feel is excessive particularly given that his appointment was unnecessary in the first instance.
44. I believe that Ariya has conducted itself appropriately at all times throughout this matter, and paid its debts in full as per legal agreements made with New Zealand Customs. Therefore, on the date of the Order putting the Ariya into liquidation, I believe that there was no just and equitable ground for Ariya to be liquidated.
45. I believe that whatever public notices have been given by the Respondents for creditors to come forward have been met with a blank.

SWORN at Auckland this 5<sup>th</sup> day of November 2009.



Selvathas Ariyathas  
Deponent

Before me

  
Registrar of the High Court

Deputy Registrar  
High Court  
Auckland

L Lefao-Setoga

This is the exhibit marked "A" referred to in the affidavit of Selvathas Ariyathas sworn this 5<sup>th</sup> day of November 2009.

Registrar of the High Court of New Zealand.

This is the exhibit marked "C" referred to in the affidavit of Selvathas Ariyathas sworn this 5<sup>th</sup> day of November 2009.

Registrar of the High Court of New Zealand.

This is the exhibit marked "B" referred to in the affidavit of Selvathas Ariyathas sworn this 5<sup>th</sup> day of November 2009.

Registrar of the High Court of New Zealand.



**YAHOO! xtra MAIL**

Exhibit "A"

Monday, 27 July, 2009 4:46 PM

**Ariya New Zealand Limited (the company) - Crown Debt**

**From:** "SHALFOON Damien" <Damien.Shalfoon@customs.govt.nz>  
**To:** dayanaselvathas@yahoo.co.nz  
**Cc:** peoplesneed@yahoo.co.nz

Dear Messrs Ariyathas and Balamurugan

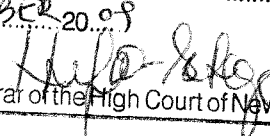
I thank you for your hand-delivered payment of \$15,000.00, received today by way of bank cheque. You have suggested making final payment of \$8,249.13 on or before 24 August 2009. For the time being, Customs would agree to this arrangement.

I will discuss with you the matter of the assessment for \$23,363.54 following full and final settlement of the company's debt currently subject to the statutory demand notice.

Yours sincerely

Damien Shalfoon  
Debt Case Manager  
DDI (09) 359 6546

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This is the document marked "A" referred to in  
the annexed affidavit of SELVATHAS  
ARIYATHAS  
sworn before me at Auckland this FIFTH day of  
NOVEMBER 2009  
  
Deputy Registrar of the High Court of New Zealand

Deputy Registrar  
High Court  
Auckland

L Lefao-Setoga

Exhibit "B"

**From:** SHALFOON Damien  
**Sent:** Wednesday, 26 August 2009 9:33 AM  
**To:** ' dayanaselvathas@yahoo.co.nz '  
**Cc:** ' peoplesneed@yahoo.co.nz '; 'Kelly Quinn'  
**Subject:** Ariya New Zealand Limited (the company)

Dear Messrs Ariyathas and Balamurugan

Thank you for delivering to this office on Monday a cheque for \$2,000.00 in part settlement of the balance of the company's debt totalling \$8,249.13, due and payable on or before 24 August 2009 under assessment 86572079.

Would you please advise when you would expect to be in a position to repay the remaining sum of \$6,249.13.

We will also need to take a view on the outstanding ~~core duty~~/GST totalling \$23,363.54, due and payable by the company on 13 July 2009 under assessment 87786824A. Additional duty continues to accrue on this debt at approximately \$600.00 per month.

I look forward to your earliest response in relation to these matters.

Yours sincerely

Damien Shalfoon  
Debt Case Manager  
DDI (09) 359 6546

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<http://nz.mc632.mail.yahoo.com/mc/showMessage?sMid=9&filterBy=&.rand=12966...> 21/09/2009

This is the document marked "B" referred to in the annexed affidavit of SELVATHAS ARIYATHAS sworn before me at Auckland this FIFTH day of NOVEMBER 2009  
Lefao-Setoga  
Deputy Registrar of the High Court of New Zealand

Deputy Registrar  
High Court  
Auckland

L Lefao-Setoga

**YAHOO! xtra MAIL**

Exhibit "C"

**Ariya New Zealand Limited (In liquidation)**

Thursday, 10 September, 2009 10:20 AM

**From:** "SHALFOON Damien" <Damien.Shalfoon@customs.govt.nz>  
**To:** dayanaselvathas@yahoo.co.nz  
**Cc:** "speed link" <peoplesneed@yahoo.co.nz>, "Robert B Walker" <walkerrb@actrix.co.nz>, "Kelly Quinn" <kfquinn@ihug.co.nz>

Dear Messrs Ariyathas and Balamurugan

Following our meeting earlier today at the Customhouse, I acknowledge receipt of your payment in the sum of \$6,269.13 representing the company's final instalment of the excise duty/GST due and payable under assessment 86572079A.

As the company is now in liquidation, its affairs, including any settlement of the outstanding duty/GST totalling \$26,210.64 (including additional duty), will be dealt with by the liquidator, Mr Robert Walker. As previously discussed, it is likely that Mr Walker would wish to meet with you sometime next week to discuss the company's future. A representative of his office will contact you in advance to confirm the necessary arrangements. Should you need to contact Mr Walker in the interim, you may do so on 029 650 829.

Thank you for providing your alternative telephone numbers: 021 0616564 and 021 1243127.

Yours sincerely

Damien Shalfoon  
Debt Case Manager  
DDI (09) 359 6546

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This, the document marked "C" referred to in the annexed affidavit of SELVATHAS ARIYATHAS sworn before me at Auckland this FIFTH day of NOVEMBER 2009

*L Lefao-Setoga*  
Deputy Registrar of the High Court of New Zealand

Deputy Registrar  
High Court  
Auckland

L Lefao-Setoga