

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Companies Action No. **HBE 26** of 2023

IN THE MATTER of a Statutory Demand dated 12th April 2023 taken out by New India Assurance Company Limited "(the Respondent") against Hide-A-Way Resort Company Pte Limited ("the Applicant")

AND

IN THE MATTER of an application by the Applicant for an Order setting aside the Statutory Demand pursuant to Section 516 of the Companies Act 2015.

BETWEEN: **HIDE-A-WAY RESORT COMPANY PTE LIMITED** a limited liability company having its registered office at 1 - 3 Berry Road, Fiji.

APPLICANT

AND: **NEW INDIA ASSURANCE COMPANY LIMITED** having its offices at 2nd Floor, Harifam Centre, Cnr. Renwick Road & Greig Street, Suva, Fiji.

RESPONDENT

BEFORE: **Hon. Mr. Justice Vishwa Datt Sharma**

COUNSELS: **Mr. Kumar S.** for the Applicant
Mr. O'Driscoll G. for the Respondent

DATE OF DECISION: 05th March, 2025 @ 9.30 am.

DECISION

[Setting Aside Statutory Demand]

On the outset, a Statutory Demand has no effect whilst there is in force an order setting aside the demand.

Therefore, a party to the proceedings cannot commence winding up proceedings until the determination and disposition of the Application seeking Setting Aside Statutory Demand.

Introduction

1. The Applicant filed an **application for Setting Side Statutory Demand** together with an **Affidavit in Support of Chandar Dutt** on 02nd May 2023 and sought for the following Orders:
 - [1] That the Statutory Demand dated 12th April 2023 and taken out by the Respondent against the Applicant be **SET ASIDE**;
 - [2] That pending hearing and determination of the said application to set aside, there be a stay of proceedings on the Statutory Demand dated 12th April 2023;
 - [3] And/or the Respondents be restrained from presenting an Application for Winding Up against the Applicant based on the Statutory Demand dated 12th April 2023, pending the hearing and determination of this action;
 - [4] That the Respondent pay the costs of and incidental to this application.
 - [5] Any further and/or other relief as this Honourable Court may deem fit.
2. The Respondent, New India Assurance Company Limited filed an affidavit opposing the Setting Aside of the Statutory Demand.
3. Both parties to the proceedings filed their respective written submissions to the Court.

The Law and the Legal Principles:

4. The relevant principles with regard to Setting Aside Statutory Demand are set out in Sections 516, 517 and 524 of the Companies Act 2015.
5. *Section 516* states that: "A Company may apply to the Court for an order Setting Aside a Statutory Demand served on the Company."
6. *Section 517* applies, where, on an application to set aside a Statutory Demand, the Court is satisfied of either or both of the following—
 - (a) *that there is a genuine dispute between the Company and the respondent about the existence or amount of a debt to which the demand relates;*
 - (b) *that the Company has an offsetting claim.*

7. The Court may also order that a Demand be Set Aside if it is satisfied that:
 - (a) *because of a defect in the demand, substantial injustice will be caused unless the demand is set aside; or*
 - (b) *there is some other reason why the demand should be set aside.*

Applicant's Contention

8. On 12th April 2023, the Respondent took out a Statutory Demand against the Applicant claiming a sum of \$87,456.70.
9. Previously, on 9th September, 2022 the Respondent also issued a demand Notice claiming a sum of \$141,811-00.
10. The Respondent is unsure of the actual debt, if any owed by the Applicant and denies being indebted to the Respondent for the sum claimed in the Demand Notice.
11. The Respondent is well aware of the disputed figure.
12. The Applicant has substantial assets and not insolvent and undoubtedly in a position to pay all its legitimate debts.
13. Sought for Setting Aside of the Statutory Demand.

Respondent's Contention

14. The Applicant is allegedly disputing the debt owed to the Respondent.
15. No Response was obtained from the Applicant as to the proof of the alleged payment of \$179,354-65.
16. The Applicant accepts that it had policies with the Respondent for which it should pay premiums. No genuine dispute has been established.
17. The Application for Setting Aside Statutory Demand is wholly misconceived.
18. Solvency has not been established.

Determination

19. The Respondent served a demand notice onto the Applicant and sought for the outstanding payment of \$87,456.70.
20. The Applicant is asking Court to set aside demand notice dated 12th April 2023.
21. The purported claim relates to outstanding balance due for outstanding premiums provided for various policies in respect of insurance to the Applicant, Hide-A- Way Resort Company

Pte Limited.

22. The Applicant informs Court that it had paid an approximate sum of \$179,354.54 to the brokers, insurance holdings (Pacific) Ltd which was for the outstanding Insurance premiums.
23. Subsequently, the Applicant discontinued with the Respondent for the 2017 period due to a very High premium and decided to change its insurance company to sun insurance.
24. Evidence before Court is that the Respondent issued and served an earlier Demand Notice onto the Applicant on 9 September 2022 which was also disputed by the Applicant. There is no explanation by the Respondent in his Affidavit in Opposition as to why two demand notices were issued and served with variation amounts i.e. Statutory Demand dated 9th September 2022 showed a sum owed as \$141,811 whereas subsequent demand issued on 12 April 2023 reflected \$87,456.70, a difference of \$54,354.30. However, the Applicant denies being indebted to the Respondent.
25. Reference is made to the case of **Raghwan Construction Co Ltd v MY Group Ltd (trading as Metromix Concrete (Fiji))** [2019] FJHC 29; HBC 333.2018 (31 January 2019).

"Winding up proceedings are not recovery proceedings. The court, before making the winding up order must also be satisfied that the company is unable to pay the statutory minimum which is \$10,000.00. In the instant matter, from the affidavits filed it shows that the applicant company refusing to pay the amount claimed by the respondent **company not because it does not have means to pay amount claimed but because it challenges the amount claimed by the respondent.**"

26. In the case of **In the matter of Douglas Aerospace Pty Ltd** [2015] NSWSC 167 (9 March 2015),

"The Applicant applied to set aside the demand on the grounds that there is a genuine dispute as to the existence and/or amount of the debt claimed, and/or that it has an offsetting claim, and/or that there is some other reason why the demand should be set aside."

27. Time and again the Court in their various Judgments and Decisions have said that -

"Winding up Proceedings are not a debt recovery action and Courts do not see it as such. What winding up proceedings are directed towards are when a company is insolvent and cannot pay its debts as and when it arises."

28. I find that the Applicant disputes the debt as claimed by the Respondent on Two (2) Demand notices served onto the Applicant whereby the amount of debt varies.
29. The reason for the Applicant not paying the debt to the Respondent honestly believes that the alleged debt is not paid since the Applicant had in 2017 paid an approximate sum of \$179,354.54 to the Brokers. Insurance Holdings (Pacific) Ltd for the outstanding premiums and that the Applicant was unaware of any outstanding payments thereafter.

The Applicant company is refusing to pay the amount claimed by the Respondent **company not because it does not have means to pay the amount claimed but because it challenges the amount claimed by the Respondent.**

30. The Applicant is a prominent and substantial company and has been in active business for several years as a resort and has substantial assets, is clearly at this stage of proceedings not insolvent and is undoubtedly in a position to pay all its legitimate debts.
31. The Applicant is a Company incorporated in Fiji and is trading as a Resort and Spa offering Fijian Style accommodation and great deal of leisure activities.
32. Whereas, the Respondent engages in the business of providing security services in the current proceedings.
33. The Applicant in its affidavit deposed that-

"It discontinued with the Respondent for the 2017 period because of very high premiums compared to market rates and decided to change its Insurance Company to Sun Insurance instead."
34. The Applicant has raised in their affidavit evidence and submissions both oral and written that there is a **genuine dispute** as to the sum of money claimed by the Respondent in its Demand Notice dated 09 September 2022.
35. Further, the Respondent's earlier Statutory Demand dated 9 September 2022 was also genuinely disputed by the Applicant and was later withdrawn by the Respondent because of incorrect address.
36. There are triable issues and genuine dispute raised by the Applicant and therefore, seeks the setting aside of the Statutory Demand Notice served onto the Applicant.
37. Accordingly, I uphold the argument and evidence of the Applicant that there is a genuine dispute as to the sum claimed on the Statutory Demand.
38. Further, proceedings to seek Statutory Demand of the Debt and/or sum owed by way of winding up of the Applicant, Hide-A-Way Resort Company Pte Limited is not the Answer.
39. If the Respondent has any strong evidence to establish the debt then, the Respondent should proceed by way of a civil proceedings to recover its civil debt in terms of the existing laws accordingly.

In Conclusion

40. I have no alternative but for the reasons of *Genuine Dispute* and aforesaid rational, I proceed to Set Aside the Statutory Demand of the Respondent served onto the Applicant dated 09 September 2022 accordingly.

Costs

41. The matter proceeded to full hearing, and parties to the proceedings furnished Court with

written submissions and affidavit evidence.


42. It is only just and fair that the Respondent pays the Applicant a sum of \$1,000 as summarily assessed cost at the discretion of this Court within 14 days timeframe.

Orders

- (i) The Applicant's Setting Aside of Statutory Demand Application succeeds.
- (ii) The Statutory Demand dated 09 September 2022 is accordingly set aside.
- (iii) The Respondent to pay the Applicant a sum of \$1,000 as summarily assessed costs within 14 days timeframe.

Dated at Suva this 05th day of March, 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

*Cc: Neel Shivam Lawyers, Suva
Messrs. O'Driscoll & Co., Suva*