

**IN THE HIGH COURT OF FIJI
AT SUVA
COMPANIES JURISDICTION**

Winding Up Action No. HBE 50 of 2024

**IN THE MATTER of STRUCTURAL
STEELWORKS ENGINEERING (FIJI) PTE
LTD** a limited liability company having its
registered office situated at 22 Johnson Street,
Toorak.

- AND -

IN THE MATTER of the Companies Act 2015.

Representation

Applicant: Mr. M. Saneem (Saneem Lawyers) – For the Creditor

Respondent: Mr. V. Rokodreu (Redwood Law) – For the Debtor

Supporting Creditors: Ms. S. Kumar (Mitchel Keil) – For Imran Mohammed Ismail.
Ms. S. Goundar (Amrit Chand Lawyers) – For Formscaff (Fiji) PTE
Limited.
Mr. A. Khan (Patel Sharma Lawyers)- For Varsha Jayanti Lal Patel.

Date of Hearing: 13th March 2025.

Statutory Demand Judgment

A. Introduction

- [1] An application for winding up of Structural Steelworks Engineering (Fiji) PTE Ltd was filed on 4th December 2024. It was filed on behalf of Pampha Devi Rimal trading as Same Day Services. An affidavit verifying the application for winding up of Ms. Rimal was filed with the application. An affidavit of service was filed that the application and affidavit was served on 16th December 2024. A statutory demand was served on the debtor on 21st October 2024.
- [2] I directed that the application be called on 6th February 2025. The Deputy Registrar Legal dealing with Rule 19 compliance listed it for 29th January 2025. An affidavit verifying advertisement and compliance was filed on behalf of the Applicant on 8th January 2025.
- [3] A notice of intention to support winding up petition was filed on behalf of Formscaff (Fiji) PTE Limited on 14th January 2025. On 29th January 2025, Deputy Registrar Legal directed that full compliance certificate to be issued under Rule 19 (2) (a).
- [4] A notice of intention to appear on application and an affidavit in opposition of Mr. Leslie Gee Way Wong was filed on behalf of the Debtor Company on 29th January 2025.

- [5] A notice of intention to appear on application was filed on behalf of Varsha Jayantilal Patel and Imran Mohammed Ismail on 5th February 2025, respectively.

B. The Law

- [6] The relevant law on statutory demand is set out in **Section 515** of the Companies Act 2015. It is titled “***Definition of inability to pay debts***”, it provides that:

“(a). Unless the contrary can be proven to the satisfaction of the Court, a Company must be deemed to be unable to pay its debts— (a) if a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding \$10,000 or such other Prescribed Amount then due, has served on the Company, by leaving it at the Registered Office of the Company, a demand requiring the Company to pay the sum so due (“Statutory Demand”) and the Company has, not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice; or ...”

- [7] The other relevant sections of the Companies Act are 516 and 517. The respectively provide as follows:

“516.— (1) A Company may apply to the Court for an order setting aside a Statutory Demand served on the Company. (2) An application may only be made within 21 days after the demand is so served. (3) An application is made in accordance with this section only if, within those 21 days— (a) an affidavit supporting the application is filed with the Court; and (b) a copy of the application, and a copy of the supporting affidavit, are served on the person who served the demand on the Company. Determination of application where there is a dispute or offsetting claim.”

“517.—(1) This section 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.

(2) The Court must calculate the substantiated amount of the demand.

(3) If the substantiated amount is less than the statutory minimum amount for a Statutory Demand, the Court must, by order, set aside the demand.

(4) If the substantiated amount is at least as great as the statutory minimum amount for a Statutory Demand, the Court may make an order—

(a) varying the demand as specified in the order; and

(b) declaring the demand to have had effect, as so varied, as from when the demand was served on the Company.

(5) 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.”

C. Determination

- [8] One of the issues being raised in this matter is service on the Respondent (Debtor/company). The requirement of the Companies Act is service at the registered office of the Company. The affidavit evidence of Ms. Rimal is that they served the business address of the company to make them aware of the proceedings as the company had abandoned its registered address. They found that they were being avoided by the debtor. In response, the Director of the Respondent (Debtor/company) did not deny being served the demand.
- [9] Section 517 (5) (a) of the Companies Act 2015 provides that a defect can amount to setting aside of statutory demand only if the Applicant is able to show that "*substantial injustice will be caused unless the demand is set aside*". In simple terms, every defect is not fatal. It is fatal if the Respondent (Debtor/company) can show substantial injustice will be caused. A technical defect will not cause substantial injustice, hence cannot be fatal. In this matter upon receipt of the demand the debtor moved court to set the demand aside. The debtor has failed to show any injustice due to the demand not being served to its registered address. In fact, there is none as they were informed in time by the demand and moved court seeking to set aside the demand. I reject that the statutory demand was defective even if it was not served at the registered office. There is no evidence before me of substantial injustice to the Respondent (debtor/company) for that defect.
- [10] The other issue in this matter is the standing of the applicant. The position of the Director of the Respondent (Debtor/Company) denies dealing with the Applicant, but Mohammed Sakim. He further claimed that no invoice or delivery dockets were issued to the Company by the Applicant.
- [11] The applicant in the statutory demand claimed \$41,181.50 being the sums due and owing under invoice nos. 44852, 44865 and 44866 for the supply of HIAB Truck registration No. DI 127. She relied on signed and acknowledge delivery dockets.
- [12] The applicant in this matter is the registered owner of the HIAB truck DI 127. Mohammed Sakim is her husband. He is the driver of that truck. The applicant is a sole trader. She registered her business following her dealing with the Respondent (Debtor/company). I accept all this. I find from the material before me that the debtor company dealt with and were provided HIAB truck service through the Applicant. there is no doubt about this. The monies owing is to the Applicant. She is the rightful claimant of the monies. It is up to her how she operates her business and where she puts her money.
- [13] I note that no application was made to set aside the statutory demand within the relevant 21-day period, and relying on presumed insolvency, the Applicant (creditor) commenced the winding up application. The statutory demand is on foot. The Respondent (Debtor/company) does not have an offsetting claim against the Applicant. Neither is there a genuine dispute between them to set aside the demand.
- [14] As the statutory demand is in order and was neither set aside nor complied with, the Respondent (Debtor/Company) is presumed to be insolvent pursuant to Section 515 (b) of the Companies Act 2015. I have taken into account a contingent or prospective

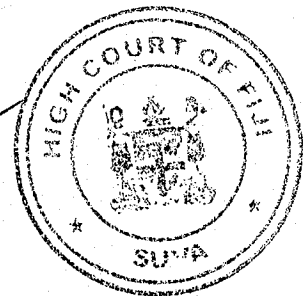
liability in determining whether or not the company is solvent. It is open to the Respondent (Debtor/company) to prove solvency without obtaining leave under Section 529 of the Companies Act 2015, because solvency is not a ground on which it could have relied in an application to set aside the statutory demand.

- [15] The Respondent (debtor/company) is presumed insolvent due to non-compliance with the statutory demand and failing to rebut the presumption of insolvency by proving to the requisite civil standard that it was able to pay all its debts as and when they became due and payable. Three other creditors (through their lawyers) have attended the hearing and disclosed that the debtor company in total owes them \$82,268.95.
- [16] For the reasons given I order that Structural Steelworks Engineering (Fiji) PTE Ltd be wound up under the provisions of the Companies Act 2015. The Official Receiver is to act as the provisional liquidator for Structural Steelworks Engineering (Fiji) PTE Ltd. Costs in favour of the Applicant in the sum of \$2000.00 to be paid by the Respondent (Debtor/Company) within 21 days. The costs have been summarily assessed.

D. Orders

- (a) **Structural Steelworks Engineering (Fiji) PTE Ltd be wound up under the provisions of the Companies Act 2015.**
- (b) **The Official Receiver is to act as the provisional liquidator for Structural Steelworks Engineering (Fiji) PTE Ltd.**
- (c) **Costs in favour of the Applicant in the sum of \$2000.00 to be paid by the Respondent (Debtor/Company) within 21 days. The costs have been summarily assessed.**

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Chaitanya S.C. A Lakshman
Puisne Judge



31st March 2025