

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

Companies Action No. HBE 43 of 2023

IN THE MATTER of an Application by the Liquidators of **SATORI HOLDINGS LIMITED (IN LIQUIDATION)** a company duly incorporated under the laws of New Zealand having its registered office at Level 4, Grant Thornton House, 152 Fanshawe Street, Auckland, New Zealand under Section 543 the Companies Act 2015.

AND

IN THE MATTER of an application by Applicants under Section 543 of the Companies Act 2015.

BETWEEN: **MARK TERRENCE McDONALD** and **DAVID RUSCOE** both of Grant Thornton, Chartered Accountants and Professional Consultants of Level 4, Grant Thornton House, 152 Fanshawe Street, Auckland, New Zealand, Appointed Liquidators.

APPLICANTS

AND: **SATORI HOLDINGS PTE LIMITED** a foreign company registered under Section 367 of the Companies Act 2015 having the registered name and address of its Local Agent, Steven Pickering, Pacific House, Level 7, 1 Butt Street, Suva, Fiji

RESPONDENT

Representation:

Mr T. Sharma for the Applicants. (Tirath Sharma Lawyers).

Date of Hearing: 22nd May 2025.

RULING

A. Introduction

- [1] Summons has been filed pursuant to Section 543 of the Companies Act 2015 to make compromises in relation to debts (including contingent debts) owed to, and by, Satori with the sanction of the court. The application is filed with an affidavit of Mohit Kumar Raj, a registered liquidator. Mr Raj is the Fijian liquidator of Satori Holdings Limited (in liquidation).

B. Background

- [2] Satori Holdings Limited (**Satori**) was incorporated in New Zealand on 15th September 2015. On 14th December 2016 following Investment Fiji's approval, Satori Holdings PTE Limited (**Satori Fiji**) was registered as a foreign company as a branch of Satori under the Companies Act 2015 (Part 6 Section 56 to 72). Satori, the New Zealand Company was placed into interim liquidation on 17th June 2022 by the High Court of New Zealand and Mark McDonald and Raymond Cox were appointed interim liquidators.
- [3] On 1st July 2022 as a consequence of liquidation of Satori, McDonald and Cox appointed Zarin Khan of PFK Aliz Pacific as agents of the interim liquidators in Fiji, for the protection of Satori Fiji's assets in Fiji. On 20th July 2022 PKF Aliz Pacific caused a notification of appointment on Interim Liquidators of Satori to be served upon the Official Receivers. On 31st August 2022 the Official Receiver acknowledged and accepted the appointment of interim liquidators of Satori and their local agents. On 17th February 2023, following the Judgment of Associate Judge Andrew, Satori was placed into final liquidation and Mark McDonald and Raymond Cox were appointed as Liquidators. On or about 28th April 2023, David Ruscoe was appointed as a Liquidator in place of Raymond Cox, following his resignation.
- [4] On 29th September 2023, William Crosbie of HLB Mann Judd was appointed the Fijian liquidator of Satori (in liquidation). Later on 18th November 2024, leave was granted to Mr. Raj to replace Mr. Crosbie as the Fijian liquidator of satori (in liquidation).

C. The Law

- [5] Section 543 (1) of the Companies Act 2015 sets out the powers of liquidator. It is comprehensive provision. It gives the liquidator the following powers with the sanction either of the Court or of the committee of inspection :

“..

(e) to make any compromise, or arrangement with creditors, or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the Company, or whereby the Company may be rendered liable;

(f) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist

between the Company and contributory or alleged contributory or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets or the winding up of the Company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge."

D. Discussion

- [6] The orders sought by the Liquidator of Satori is to sanction the compromise and arrangements in the Deed of Settlement and Release dated 18th March 2025. The parties to the Deed are Satori Holdings Limited (in liquidation), Mark McDonald and David Ruscoe, Mohit Raj, Island Grace (Fiji) Limited (in receivership and in liquidation), Vaughan Strawbridge and David McGrath, Sequitur Capital PTY Limited, Sequitur Hotels PTY Limited, Sequitur resorts PTE Limited, Gordon Edward Christopher Fell and Philippa Anne Fell.
- [7] The Liquidators and the Fijian Liquidators position is that it is in the best interest of Satori (in liquidation) and its creditors for there to be a full and final settlement of proceedings in Fiji to which satori (in liquidation) is a party. With that in mind they have executed a Deed of Settlement and Release on 18th March 2025. The Liquidators have obtained legal advice in Fiji and in New Zealand prior to entering into the Deed.
- [8] Our Companies Act is developing as it came into effect in 2015. I have not noted any cases dealing with a similar application. Our Companies Act is largely based on the Australian Corporations Law. We have for this reason used Australian case laws on issues on Company Law.
- [9] In *Re BCI Finances Pty Ltd (in liq)* [2018] FCA 1499, at [16], White J said that the principles relating to approval by the Court under s 477(2A) are the same as those in relation to s 477(2B) (*similar provision to Section 543 of the Fijian Companies Act 2015 – requiring sanction of Court*) (citing Gordon J in *Re Newtronics Pty Ltd* [2007] FCA 1375 at [26]). The relevant principles are as follows:

“(a) While the court does not simply “rubber stamp” what is put forward by a liquidator, it will generally not interfere unless there can be seen to be some lack of good faith, some error in law or principle, or real and substantial grounds for doubting the prudence of the liquidator’s conduct;

(b) A liquidator will be expected to have obtained legal advice regarding the agreement and compromise of the debt, as a prudent person would in the conduct of their affairs;

(c) The court will not approve an agreement if its terms are unclear;

(d) The role of the court is to grant or deny approval to the liquidator’s proposal, not to develop an alternative proposal that the court may consider preferable. The task of the court is accordingly not to exercise its own determination de novo but to pay due regard to the commercial judgment and knowledge of the liquidator. The court’s approval is thus not an endorsement of the proposed agreement but merely a permission for the liquidator to exercise his or her own commercial judgment in the matter;

(e) The agreement should facilitate the proper realisation of the assets of the company and assist in the winding up of the company.”

[10] The Australian cases have also set out the relevant factors which the court needs to be cognizant in sanctioning a Deed of Settlement and Release include that:

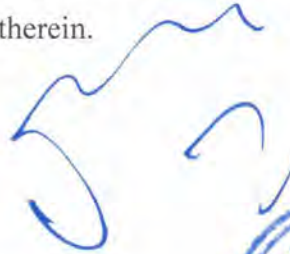
- (a) The liquidators considered that the settlement was in the best interest of the company and its creditors, (**Stone, in the matter of M Group Property Pty Ltd (in liq) [2024] FCA 1022 at [20]**)
- (b) Elimination of the costs, uncertainty and delay of litigation and the possible adverse consequences to creditors depending on the outcome of the litigation, enabling the completion of the liquidation to occur sooner than would otherwise have been the case if the proceedings are not resolved, (**Boné, in the matter of ACN 002 864 002 Pty Ltd (in liq) formerly known as Petrolink Pty Ltd v Smith [2015] FCA 870 at [35]**)
- (c) Liquidators had obtained legal advice to which they had regard in deciding to enter the deed of settlement, (**Bone (supra) at [30]**)
- (d) Settlement was the result of a process of negotiation between commercially astute and informed parties, (**David Mark Hodgson as joint and several liquidators of Diploma Construction (WA) PTY LTD (In Liquidation) (Receivers & Managers Appointed) ACN 113 950 100 -v- Wield Holdings PTY LTD [No 3] [2024] WASC 213 (11 June 2024) at [30]**)
- (e) The rationale for the settlement was clearly set out by the liquidators, (**Hodgson (supra) at [33]**)
- (f) Settlement sum – with reference to valuation of damages claim, (**Mansfield v Thousand Angeles Island Pty Ltd (in liq), in the matter of Thousand Angeles Island Pty Ltd (in liq) (No 2) [2021] FCA 283, at [41]**)
- (g) Liquidators were experienced, (**Sheahan, in the matter of BCI Finances Pty Limited (in liq) [2018] FCA 1499 at [23]**)
- (h) Keeping proceedings on foot would lead to no better (and potentially worse) outcome for creditors, (**Bone (supra) at [33]**)
- (i) No basis for concluding that the settlement involves any bad faith, impropriety, bad error of law or real imprudence on the part of the liquidators. (**Sheahan (supra) at [25]; (Bone (supra) at [35]**)

- 11. I would like to thank Mr. Sharma for the comprehensive and helpful legal submissions.
- 12. Having perused the Deed of Settlement and Release between the parties I find that the principles and the relevant factors I have outlined above have been followed and satisfied.
- 13. The Liquidator have explained the commercial rationale, sought legal advice on the settlement contained in the Deed, set out the considerations that were taken into account and given the reasons for the decision to enter into the Deed. It all is in good faith.

14. I therefore sanction the compromises and arrangements in the Deed of Settlement and Release.

Court Orders

The Deed of Settlement and Release (attached in Schedule 1 of the Summons is sanctioned by the Court on the terms therein.



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Chaitanya S.C. A. Lakshman

Puisne Judge



23rd May 2025