

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

Civil Action No. **HBE 27** of **2024**

**IN THE MATTER** of a Statutory Demand dated 6 May 2024 taken out by **YANJIAN GROUP (FIJI) COMPANY PTE LIMITED** (“the Respondent”) against **GREAT HAN INTERNATIONAL COMPANY PTE LIMITED** (“the Applicant”) and served on 6 May 2024.

**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** : **GREAT HAN INTERNATIONAL COMPANY PTE LIMITED** a limited liability company having its registered office at 69 Princess Road, Suva

**APPLICANT**

**AND** : **YANJIAN GROUP (FIJI) COMPANY PTE LTD** a limited liability company having its registered office at 76 Navurevure Road, Tamavua, Suva.

**RESPONDENT**

**Coram** : **Banuve, J**

**Counsels** : **Hanif Tuitoga for the Applicant**  
**Neel Shivam Lawyers for the Respondent**

**Date of Hearing** : **8 April 2025**

**Date of Ruling** : **1 September 2025**

## **RULING**

### **A. INTRODUCTION**

1. On 6 May 2024, the Respondent issued a statutory demand notice against the Applicant in the sum of \$1,497,213.21 (One Million Four Hundred and Ninety Seven Thousand Dollars, Two Hundred and Thirteen Dollars and Twenty One Cents) being the total amount due and owing by the Applicant to the Respondent.
2. On 24 May 2024, the Applicant filed an Originating Summons with a supporting affidavit deposed by Roneel Amit Prasad in support of an Application for Setting Aside Statutory Demand. It was served on the Respondent on the same day. Relief sought in the Summons include;
  - (i) The Statutory Demand issued by the Respondent against the Applicant dated 6 May 2024 be set aside; and
  - (ii) There be a stay of all winding up proceedings until the hearing and determination of this application to set aside the Statutory Demand Notice dated 6 May 2024
  - (iii) Costs of this application be paid by the Respondent to the Applicant.
  - (iv) Any other relief this Honorable Court deems just.
3. On 18<sup>th</sup> June 2024, the Respondent filed an Affidavit deposed by Yuewen Han opposing the Setting Aside Application, seeking the following orders;

- (i) The Originating Summons for Setting Aside Statutory Demand filed on 24 May 2024 be struck out with costs on an indemnity basis;
- (ii) Further and/or other relief as the Honorable Court deems fit.

## **B. THE LAW**

4. Sections 515(a), 516 and 517 of the Companies Act 2015, state;

### *Definition of inability to pay debt*

515. *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 \$10,000.00 or such other Prescribed Amount then due notice has been 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 it to the reasonable satisfaction of the Creditor within 3 weeks of the date or the notice; or*

### *Division 3-Application to Set Aside a Statutory Demand Company may apply*

- 516 (1) *A Company may apply to the Court for an order setting aside a Statutory Demand served by the Company.*
- (2) *An application may only be made within 21days after the demand is so served.*
- (3) *An application is made in accordance with this section only if within 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 of the 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 demand 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) verifying 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 was satisfied that-*

- (1) because of defect in the demand, substantial injustice will be caused unless the demand is set aside; or*
- (2) there is some other reason why the demand should be set aside*

5. The Parties have both filed written submissions which the Court acknowledges and found useful in formulating its decision.

6. The pertinent issues which the parties have identified from the statutory provisions cited are;

- (i) Whether the debt in the Respondent's Statutory Demand is a genuine debt?*
- (ii) Whether the Applicant has an offsetting claim?*
- (iii) Whether there is some other reason why the demand should be set aside?*

## C. THE PARTIES

### 7. The Applicant's Position

- (i) There is a genuine dispute about the existence of a debt and the Applicant has an offsetting claim against the Respondent. The Respondent is claiming \$1,487,213.21 for Claims 3-8. The Applicant submits that the debt has been settled by Yanjian accepting two property titles comprised in Lease No. 6/11/41231, known as Sabata (part of ), in the Tikina of Conua in the Province of Nadroga/Navosa, containing an area of 3.0558 ha, in full and final settlement of money that was owing under Claims 3-8.
- (ii) As evidence of the Agreement, Mr Guo, Yanjian's Business Manager uplifted the titles in Lease No. 6/11/41231 on 19 February 2024, and acknowledged receiving the said titles. (see Annexure RP 4 in the Affidavit of Roneel Amit Prasad filed on 24 May 2024)
- (iii) Yanjian, through the affidavit of Yuen Han makes no mention of Mr Guo who acknowledged receiving the titles from Great Han, although not denying the latter being its Business Manager.
- (iv) Han states that Yanjian was not privy to any arrangement of Claims 3-8 being compromised in exchange for the 2 titles comprised in Lease No. 6/11/41231., despite not denying that Mr Guo is its Business Manager .
- (v) Clearly, there is a genuine dispute about the existence of a debt and/or, there is an offsetting claim.

### 8. The Respondent's Position

- (i) The parties entered into a Construction Management Contract for the purpose of engineering and construction projects. The construction contract was signed on 31<sup>st</sup> May 2023, submitted by the Respondent in its Affidavit in Opposition. The Respondent began with the construction works on time as stipulated in the contract.

- (ii) The contract involved several stages of work with eight (8) corresponding progress claims raised by the Respondent to the Applicant. The Applicant settled only two of these progress claims and failed to make payments for the remaining works covered by claims 3-8.
- (iii) The Respondent made several requests to the Applicant for these payments however, the Applicant, refused, neglected, and/or failed to pay the Respondent the monies owed.
- (iv) There is no genuine debt as to the amount on which the Statutory Demand was issued to the Applicant. The Applicant is clearly insolvent, and unable to pay its debts.

#### **D. ANALYSIS**

9. The issue of a statutory demand is the first step to commencing a creditor's proceeding to have the debtor company wound up. A successful setting aside application denies the creditor the ability to rely on non-compliance, to create a rebuttable presumption that the debtor company is insolvent. A company is solvent "if, and only if", it is able to pay all its debts, as and when, they become due and payable.<sup>1</sup>
10. A Creditor may issue a winding up petition in respect of a debt for which it has not yet obtained a judgment. All that it needs to do is to satisfy the court that it is owed more than the prescribed amount \$10,000. It is open to the debtor company to oppose a winding up application. If the debtor company can adduce evidence to rebut the presumption, no winding up order will be made. Solvency is established by asking whether the debtor is "able" to pay its debts as and when they fall due; not whether it is "willing" to do so. A creditor met by an unwilling but solvent debtor must exercise remedies of execution, to enforce payment of its debt.<sup>2</sup>
11. The task faced by the company challenging a statutory demand on a genuine dispute ground is not difficult or demanding. A company will fail in that task only

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<sup>1</sup> *Biju investment Pte Ltd v Transfield Building Solutions (Fiji) Ltd* –Civil Appeal No ABU 014 OF 2021 (per Heath JA)

<sup>2</sup> *Ibid*

if it is found, upon the hearing of its application, that the challenge is so devoid of substance that no further investigation is warranted. *Once the company shows even one issue has a sufficient degree of cogency to be arguable a finding of genuine dispute must follow. The Court does not engage in any form of balancing exercise between the strengths of competing contentions. If it sees any factor that on rational grounds indicates an arguable case on the part of the company, it must find that a genuine dispute exists, even where any case apparently available to be advanced against the company seems stronger.-CGI Information Systems and Management Consultants Pty Ltd v APRA Consulting Pty Ltd [2003] NSW 728; (2003) 47 ACSR 100.*

12. The issue that has been raised by the Applicant to challenge the statutory demand issued by the Respondent on 6 May 2024 is;

(i) that it has an *offsetting* claim against the demand for the non-payment of \$1,487,213.21 for Claims 3-8, in that the debt has been settled by the Respondent company accepting two property titles comprised in Lease No. 6/11/41231 known as Sabata (part of ) in the Tikina of Conua in the province of Nadroga/Navosa, containing an area of 3.0558 ha, in full and final settlement of money that was owing under Claims 3-8.

(ii) as evidence of the off-setting agreement, Mr Guo, Yanjian's Business Manager uplifted the titles in Lease No. 6/11/41231 on 19 February 2024, and acknowledged receiving the said titles.

13. The Respondent denies any knowledge of the offsetting agreement and states that it is a "hypothetical story" (the payment of the progress claim 3-8.) It asserts that the acknowledgement is a handwritten receipt for a piece of land (Agreement for Lease) ,which the Respondent is not privy to, with respect to the matters relevant to this case.

14. The Court has reviewed the material and submissions filed by the parties and find that the Application to Set Aside succeeds, for the following reasons;

(i) The assertion that the Respondent has accepted 2 property titles owned by the Applicant, comprising 3.0558 ha on 19 February 2024, as full and final settlement of the debt of \$1,487, 213.21 for Claim 3-8, based on the *minimal* approach affirmed at common law is sufficiently cogent, to be arguable, and

a finding of genuine dispute must follow-*CGI Information Systems and Management Consultants Pty Ltd v APRA Consulting Pty Ltd* [2003] NSW 728; (2003) 47 ACSR 100.

(ii) The Applicant has plead the ‘*offsetting agreement*,’ as the basis for asserting that a genuine dispute subsists that warrants the setting aside of the Application for Statutory Demand of 6 May 2024. The Court of Appeal in *D Meghji Pte Ltd v Fijian Holdings Ltd* –Civil Appeal No. ABU 058 of 2022 helpfully, extracted the scope of an “offsetting claim” as described by the Federal Court of Australia,<sup>3</sup>

33. *The meaning of “offsetting claim” is defined in s 495H(5); **offsetting claim** means a genuine claim that the company has against the respondent by way of counterclaim, set-off or cross-demand, (even if it does not arise out of the same transaction or circumstances as a debt to which the demand relates).*

34. *The test for determining whether there is a genuine offsetting claim is whether the Court is satisfied that there is a serious question to be tried or “issue deserving of a hearing as to whether a company has such a claim against the creditor.*

35. *The offsetting claim must be bona fide and based on truly existing facts and not a claim that is spurious, hypothetical, illusory or misconceived*

(iii) If the debt is doubtful, the procedure should not be used, rather, the Petitioner should first prove his claim by obtaining judgment and then based on that court order present a statutory demand-*In re Aggressor Fiji Ltd* [2008] FJHC 48.

(iv) The threshold issue to be determined on this application is whether there is a genuine dispute on the subsistence of the debt in the sum of \$1,497, 213.21 as alleged by the Respondent or has it been offset by the acceptance of 2 leasehold property titles owned by a Director of the Applicant company in

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<sup>3</sup> *CBS Commercial Canberra Pty Ltd v Axis Commercial (ACT) Pty Ltd* [2022] FCA 544, 12 May 2022

Lease No. 6/11/41231. This is not a matter which the Court can safely conclude without benefit of full evidence at a substantive hearing<sup>4</sup>.

All that the court is required to do, in this instance, is to consider the evidence adduced in support of the application by the debtor, and in opposition from the creditor, and assess on a summary basis whether a genuine claim on substantial grounds (counter-claim, set-off or cross demand) exists

15. The Court considers the outcome on the setting aside application as follows;
- a. There is certified debt of \$1,1497,213.21 (One Million Four Hundred and Ninety Seven Thousand Dollars, Two Hundred and Thirteen Dollars and Twenty One Cents), payable by the Applicant to the Respondent for progress claims 3-8.
  - b. There is an off-setting claim made by the Applicant against the demand for non-payment of \$1,487,213.23 for Claims 3-8, in that the debt has been settled by the Respondent company accepting two property titles comprised in Lease No. 6/11/41231 known as Sabata, (part of), in the Tikina of Conua, in the Province of Nadroga/Navosa, containing an area of 3.0558 hectares, in “full and final settlement” of money owing under Claim 3-8.
  - c. If, the offsetting Claim were in due course justified, the Applicant would not be obliged to pay anything to the Respondent for Claims 3-8.
  - d. As the evidence was sufficient on a summary assessment to establish a genuine claim the statutory demand ought to be set aside.

#### **ORDERS:**

**Orders sought in the Originating Summons to Set Aside Statutory Demand filed by the Applicant on 24 May 2024 are granted as follows.**

- (i) The Statutory Demand issued by the Respondent dated 6 May 2024 be set aside;**

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<sup>4</sup> *D. Meghji Pte Ltd v Fijian Holdings Ltd* –Civil Appeal No. ABU 058 of 2022 (per Dobson JA paragraph [24])

- (ii) Stay of all winding up proceedings until the hearing and determination of this application to set aside the Statutory Demand Notice dated 6 May 2024
- (iii) Costs to the Respondent summarily assessed at \$1,500.00 to be paid within 7 days of this Ruling.

Dated at Suva this 1<sup>st</sup> day of September, 2025.



*Savenaca Banuve*  
Savenaca Banuve  
Judge