

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) IN LAUTOKA
COMPANIES JURISDICTION**

WINDING UP ACTION HBE 04 of 2024

IN THE MATTER of R ACCESSORIES INVESTMENTS PTE LTD T/A M. RECHT ACCESSORIES, a Private Company having its registered office at lot B Bountiful Sub-Division, Waqadra , Nadi in the Republic of Fiji.

AND

IN THE MATTER of the Companies Act 2015.

BETWEEN : **M IQBAL INVESTMENTS LTD**, a Limited Liability company, having its registered office at Meigunyah, Nadi Back Road, Nadi in the Republic of Fiji
APPLICANT

AND : **R ACCESSORIES INVESTMENTS PTE LTD T/A M. RECHT ASSESSORIES**, a Private Company having its registered office at lot B Bountiful Subdivision, Waqadra, Nadi in the Republic of Fiji.
RESPONDENT

BEFORE : A. M. Mohamed Mackie- J.

COUNSEL : Ms. M. Raga - for the Applicant,
Ms. Swamy. A. – For the Respondent

DATE OF HEARING : 21st February 2025.

WRITTEN SUBMISSIONS: Filed by both Parties on 21st February 2025.

DECIDED ON : 5th September 2025.

DELIVERED ON : 12th September 2025

JUDGMENT

A. INTRODUCTION:

1. The Applicant company (“the applicant”) on 11th March 2024, filed the Application in hand seeking an order to wind up the Respondent Company (“the respondent”) and to have a liquidator appointed, upon the failure of the respondent to comply with the Statutory Demand (SD) dated 26th January 2024, issued by the applicant and, reportedly, served on it on the same date as per the endorsement on it and affidavit of service filed of record.

2. The application is verified by an affidavit sworn on 6th March 2024 by, **Mohammed Imthiyaz**, the Company Director, and filed together with annexures marked as "M-11" to "M-18". The application was undisputedly served at the respondent's registered office on 14th March 2024 by handing over the same unto the receptionist thereof.
3. The applicant complied with all the procedural requirements as required by the Companies Act 2015 and Winding Up Rules 2015, and on 26th March 2024 filed the affidavit of compliance sworn by one LUISA BAKANI on 25th March 2024, together with annexures marked as "LB-1" to "LB-6". The compliance report being filed by the registrar on 27th March 2024, the application was to come up for hearing on 22nd April 2024 as per the Notice published. No supporting creditors had filed the Notice of Intention to Support the Winding up applications pursuant to Rules 12 (3) to (7) of the Winding up Rules 2015.
4. In the meantime, the respondent on 15th April 2024 (7 days prior to the scheduled hearing on 22nd April 2024) filed an affidavit in response sworn by, **Mohammed Gulab Khan**, the Managing Director cum Shareholder of the respondent, with annexures marked as "A" to "N". This affidavit in response was replied by the affidavit of **Mohammed Imthiyaz**, the Director of the applicant, which was sworn and filed on 17th April 2024 together with further annexures.
5. When the matter had come up for hearing on 22nd April 2024 (being the first call date) before Hon. Lyone Seneviratne- J (as he was then) a verbal application being made by the respondent's counsel to file an application (Summons) to oppose the winding up application under section 529 of the Companies Act 2015, Hon. Seneviratne -J, by granting leave to do so, adjourned the matter for 9th May 2024.
6. Accordingly, the Summons under Section 529 (1) (b) of the Companies Act, seeking leave to oppose the winding up application, was filed by the respondent on 6th May 2024. As Seneviratne -J had left the bench by then, when the matter had come up on 5th June 2024 before the then Acting Judge Hon. Mohamed Azhar, to fix the hearing date, matter was adjourned for 30th August 2024 on the ground that there was no suitable early date to fix for hearing.
7. Thereafter, as Azhar -J, did not sit on 30th August 2024, when the matter was mentioned before him on 10th September 2024, same was referred to the registry for allocation before another judge as he had no suitable dates for hearing. However, Azhar -J extended the time for the determination of the application by further six month's period from 11th September 2024 to 11th March 2025.
8. Thereafter, the matter being reallocated, when it was mentioned before me on 30th September 2024, with consent of both parties, the hearing into the respondent's Summons under section 529 and the applicant's substantive application were fixed for 21st of February 2025.
9. Accordingly, the hearing was taken up on 21st February 2025 wherein both the learned counsels, in addition to their oral submissions, filed their respective written submissions as aforesaid. Though, the Judgment was fixed for 23rd April 2025, as this Court did not sit on that date due to my being away from Fiji, the matter being mentioned on 15th May 2025, the judgment was refixed for 24th July 2025. However, since the same could not be determined due to the high volume of work before me, the parties were notified for the judgment to be delivered on 5th September 2025. However, despite the matter had been determined and the judgment was ready by that date, due to

unavoidable circumstances, as this Court did not sit on 5th September 2025, the judgment is delivered only on this 12th September 2025. I tender my apologies for the delay occurred.

10. Though, this Court was supposed to and had in fact intended to extend the validity period for the determination of this matter prior to its expiry on 11th March 2025, due to inadvertency, same has not been put on record.
11. The applicant company opposed the summons filed by the respondent pursuant to section 529 (1) of the Companies Act 2015. Affidavit in reply by **Mohammed Imthiyaz** on behalf of the applicant is filed of record with annexures marked as "M-11" to "M-15".

B. BACKGROUND:

12. The respondent had, admittedly, between 15th February 2017 and 29th August 2017, obtained a loan facility from the applicant in a sum of \$132,000.00, out of which the respondent claims that it had repaid a sum of \$56,849.36 leaving a balance sum of \$75,150.64 yet to be paid.
13. The applicant, who initially maintained that the amount due from the respondent as at 1st December 2023 was only \$93,301.13, subsequently had claimed the said sum as \$100,150.63.
14. The applicant, accordingly, caused its Solicitors to issue the Statutory Demand Letter dated 26th January 2024 on the Respondent for the said sum of \$ 100,150.63, together with legal costs. The said Statutory Demand Letter, according to the endorsement on it and the subsequent Affidavit of service, was served on the respondent on 26th January 2024. The service is disputed by the Respondent.
15. The respondent did not file an application to have the statutory demand set aside. Thus, the applicant proceeded to file the winding up proceedings on 11th March 2024 as stated above.

C. THE APPLICANT'S VERIFYING AFFIDAVIT:

16. The applicant, in paragraph 6 of its affidavit verifying the application for winding up, has averred that it granted a loan facility of \$132,000.00 unto the respondent between the period from 15th February 2017 to 29th August 2019. Though, **the deponent conceded that certain repayments out of it were made by the respondent**, he states that part of it was paid to third parties without the authority of the applicant. However, the applicant has finally taken up the position that the outstanding sum now is \$100,150.63, while the respondent maintains the same as \$75,150.64.
17. The applicant states further that it was for the said sum of \$100,150.63, it issued the Statutory Demand letter unto the respondent, it was initially served on the Director of the respondent - debtor, namely, **Mohammed Gulab Khan** on 26th January 2024 at the registered office of the Company at Lot 8, Bountiful Subdivision, Waqadra, Nadi and he refused to acknowledge the service.
18. The applicant averred further that the respondent neither paid the sum of \$ 100,150.63 nor made an application for setting aside the statutory demand within 21 days from the date of service as required by section 516 of the Companies Act 2015.
19. Accordingly, the applicant averred that the respondent is unable to pay its debts, there is no genuine dispute as to the existence or amount of the debt, which is in a sum of \$100,150.63.

D. THE RESPONDENT'S AFFIDAVIT (in Response)

20. The respondent in its affidavit in response filed on 15th April 2024 has, inter alia, averred **THAT**:
- a. It is solvent and it is able to pay its just debts. Annexed the purported financial report of the company for the year 2023 marked as exhibit "C".
 - b. It is a manufacturer and wholesaler of Garment Accessories and owner of a Garment factory located in Namaka, Nadi.
 - c. It has 3 vehicles registered under its name and it employs 52 full-time employees.
 - d. It is the registered owner of the lands comprised in Crown Lease No- 16078, Crown Lease No- 16079 and Crown Lease No- 13858, copies of which are annexed as exhibit "E", and the total value of Crown Lease Nos- 16078 and 16079 is \$ 1,880,000.00.
 - e. The company is solvent and it is able to pay its debts.
21. In paragraphs 13 to 15 thereof, it averred further that the statutory Demand Notice was not served on it, the company does not have outstanding loan repayment due and owing as claimed by the applicant.
22. In paragraph 19 of the affidavit, the respondent, having denied the claim of \$100,150.63, admits that it owes the applicant only a sum of \$75,150.63, after paying a sum of \$56,849.37 against the said amount as stated in paragraphs 20.1 to 20.9.
23. In paragraph 27 thereof, by admitting that it owes the applicant only \$ 75,150.64, the declarant offers to pay the said sum in the monthly installment of \$2,500.00 to clear the whole debt since the applicant by its email dated 6th December 2023 had acknowledged the fact that the respondent owes only \$75,150.64. It is also stated that the balance debt is disputed.
24. In February 2024, he visited the Applicant's office and the Director of the applicant also visited the respondent's office few times between January to March 2024 to discuss the payment arrangements.
25. The respondent finally alleges that the applicant being aware of the arrangement for payments, proceeded to winding up process and thereby has abused the process of the court.

E. THE APPLICANT'S AFFIDAVIT IN REPLY:

26. The Director of the applicant Company, **Mohammed Imthiyaz**, in his affidavit in reply sworn and filed on 17th April 2024 on his own volition and on legal advice has averred the followings.
- a. **That** the financial report filed by the respondent marked as "C" along with its affidavit, which is required to be prepared by an Accountant and confirmed by the respondent, does not indicate as to who prepared it, the same is not an audited one to prove its solvency and it is only a self-serving document.
 - b. That the Exhibit marked as "E", which consist of 3 Crown Leases, particularly, the Lease Nos- 16078 and 13858 should not be considered by the Court as any indication of the Respondent's solvency as those two leases are registered in the name of **Mohammed Gulab Khan** (the Director). The Lease No- CL 16078 has an active mortgage dealing number 728066 and Fiji revenue and Customs charge dealing number 9000961 on it. No valuation reports annexed and these are not company's properties.

- c. That the Company has not annexed its trading bank account statements along with its affidavit and thus there is no evidence of funds in trading account, which is an indication that there is no money at the disposal of the respondent company.
- d. That the respondent is indebted in the sum of \$100,150.63, if it is solvent, the admitted debt of \$75,150.64 would have been fully paid and the respondent would not require time to pay in installment of \$ 2,500.00 per month as admitted in paragraph 27 of its affidavit in response.

F. ANALYSIS:

27. I shall first deal with the preliminary issue raised by the learned Counsel for the Respondent in his submissions, that since the Applicant is not a money lender it cannot demand extra payment more than \$132,000.00 as the respondent has already repaid \$56,848.87 out of it.

28. The Applicant’s position with regard to the alleged repayment, as per its affidavit in support, is that a sum of **\$10,000.00** had been paid to **one Selfroze Ali** (by two cheques at \$5,000.00 each) without the applicant’s authority. That a further sum of **\$15,000.00** which is claimed to have been paid to **Mohamed Imthiyaz’s** mother is also disputed as she has denied the receipt of the same and signing an acknowledgment for it. Apart from the above, the Applicant in paragraph 7 of its verifying affidavit has conceded that the debtor company had been making small sums of repayments, but no details are given on it.

29. The Respondent in paragraphs 20-1 to 20.9 of its affidavit in opposition has given the following details as to how the calculation of the said repayment of \$56,848.87 is arrived at.

| | |
|--|---------------------|
| a. Paid to one Hazurat on 28 th Feb 2018 by way of a cheque No- 7624 - | \$ 5,000.00 |
| b. Paid to one Selfroze Ali (Hazurat’s son) on 2 nd March 2018 by cheque No-7641 | \$ 5,000.00 |
| c. Paid to Selfroze Ali (Huzruts’s son) on 22 nd March 2018 by cheque No-7690 | \$ 5,000.00 |
| d. Paid to Imthiyaz on 9 th August 2018 by way of cash as per exhibit “J” | \$ 7,000.00 |
| e. Paid to Mother of Imthiyaz on 10 th April 2019 by way of cash as per exhibit “K” | \$ 15,000.00 |
| f. Paid to the applicant on 10 th September 2021 by way of cash vide Exhibit “L” | \$ 5,000.00 |
| g. Contra payment for the work done by the respondent Vide Exhibit “M” | \$ 7,698.87 |
| h. Contra payment “ “ “ “ “ “ “N” | <u>\$ 7,150.50</u> |
| TOTAL | \$ 56,849.37 |

30. Thus, it is clear that the Respondent is validly disputing the debt on the basis that the aforesaid sum has been paid back out of the total debt of **\$132,000.00** and it does not owe anything more than **\$75,150.63**. Accordingly, I find that the argument advanced by the Respondent’s counsel relying on the Money Laundering Act holds water. I am mindful that the Respondent cannot raise this dispute at this stage as it has failed to have the statutory demand letter set aside at the given stage.

31. However, I find that the emails dated 6th December 2023 from and to the Respondent marked as “O” and annexed to the Respondent’s affidavit in opposition throws some light as to what are the disputed and undisputed amounts of debt, according to which the undisputed amount remains as \$75,150.63. **Mr. Mohammed Imthiyaz** (the applicant’s Director) in his reply mail dated 6th December 2023 has clearly admitted that there is a conflicting amount of **\$10,000.00** in his claim and requested the Respondent to clear off the loan amount of **\$75,150.63**. This shows the tacit admission on the part of the Applicant that the total of the remaining loan amount, prior to the deduction of said conflicting amount of \$10,000.00, was **\$85,150.63** and not **\$100,150.63** as claimed

in the statutory demand letter. Thus, with the deduction of the said disputed sum of \$10,000.00, the net undisputed sum comes down to \$75,150.63.

32. Therefore, in the light of the Respondent's said email dated 6th December 2023, the undisputed amount of loan has now boiled down to **\$75,150.63**. Accordingly, I stand convinced that the only task before this court now is to examine whether the Respondent is solvent to honor this undisputed sum of **\$75,150.63** which has fallen due for a long time.
33. Another issue raised by the Counsel for the Respondent was the alleged non-service of the Statutory demand. The indorsement on the upper left-hand corner of the copy of the Statutory demand letter marked as "M-18" and annexed to the verifying Affidavit states that the acknowledgment of it was refused when it was served on 26th January 2024. The verifying affidavit states further that it was served on the director of the respondent company. Apart from this, the affidavit of service in this regard filed on 21st March 2024 states that it was served on Mr. Gulab Khan, who refused to acknowledge the same.
34. The pertinent question that arises here is, if it was not served on the respondent as averred by the applicant, how was it possible for the respondent to annex a copy of the Statutory Demand marked as "G" to its affidavit in opposition filed on 15th April 2024? Further, in paragraph 29 of the respondent's affidavit in opposition, the deponent states that in February 2024, he visited the applicant's office for discussions on payment with the applicant's director and the applicant's Director also visited the respondent's office few times from January to March 2024. In my view, if no statutory demand was served on 26th January 2024 as averred by the applicant, there would not have been such visits in the said period as averred by the respondent's director. I do not have any cogent reason to disregard the affidavit of service sworn by MARIKA NAITINI and filed of record on 21st March 2024 with regard to the service. Thus, I decide to overrule the objection raised by the respondent's counsel in this regard.
35. The public policy requires that, insolvent companies should not be allowed to operate, incurring more and more debts involving the public who transacts with such insolvent companies. It is on this basis, the court held in **Re Mascot Home Furnishers Pty Ltd. (In liquidation), Re Space line Industries (Australia) Pty Ltd (In liquidation [1970] VicRp 78; (1970) VR 593)** that, court's initial approach should be that hopelessly insolvent companies should be wound up.
36. The liquidation process under the Companies Act 2015 commences with the issue of statutory demand to the debtor company. The company is given an opportunity to dispute the debt and apply to the court to have the statutory demand set aside. If the company fails to satisfy the statutory demand or to have it set aside within the time specified by the Companies Act 2015, a statutory presumption is created that the company is insolvent. The creditor is then allowed to commence the process for liquidation.
37. Once the statutory presumption of insolvency is created and the proceedings for liquidation is commenced, the debtor company is not allowed to oppose it on the ground that the debt is disputed unless the court grants leave to the company. The court should be satisfied that the company is solvent in order to grant leave to oppose the application for liquidation. This is provided in section 529 of the Companies Act 2015 under which the current application is made by the respondent company. The section states as follows:

Company may not oppose application on certain grounds

529. (1) *In so far as an application for a Company to be wound up in Insolvency relies on a failure by the Company to comply with a Statutory Demand, the Company may not, without the leave of the Court, oppose the application on a ground—*

(a) *that the Company relied on for the purposes of an application by it for the demand to be set aside; or*

(b) *that the Company could have so relied on, but did not so rely on (whether it made such an application or not).*

(2) *The Court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the Company is Solvent.*

38. The solvency of the company is the only consideration to be taken into account by the courts in either granting or refusing the leave to oppose the proceedings for liquidation commenced on the ground that the company failed to satisfy the statutory demand. The court should be satisfied that the company is solvent. The burden to satisfy the court that the company is solvent is on the company throughout the proceedings. The burden does not shift to the applicant. The applicant in the liquidation proceedings is not under obligation to prove that the company is insolvent, because the statutory presumption of insolvency operates in favour of it, unless and until the company satisfies the court otherwise. The applicant and the supporting creditors, if any, are required only to discredit the evidence adduced by the respondent, if they (applicant / supporting creditors) wish to succeed in their proceedings for liquidation.
39. In this case, the respondent company filed summons pursuant to section 529 of the Companies Act 2015 belatedly, not 7 days prior to the hearing. They filed it only on 6th June 2024 after around 7 weeks of delay. However, since they had filed their affidavit in response on 15th April 2024, seven days prior to the hearing on 22nd April 2024, and the grounds of opposition had been made known to the applicant by filing it within the prescribed time period, in fairness to the respondent, I decided to consider the merits of the application made by the respondent seeking for leave. However, the onus is still on the respondent company to satisfy the court that, it is solvent.
40. The solvency, in the context of company's law, signifies the company's financial health and refers to its ability and capacity to meet its financial obligations as and when they become due, i.e. that it has enough assets to cover its debts and liabilities. Generally, there are two tests to assess the solvency of a company. One is "balance sheet test" and other is "cash flow or liquidity test". The balance sheet test focuses on static financial position of the company at a specific point in time by looking at the assets and liabilities of the company. If the assets of the company exceed its liabilities, the company is 'balance sheet solvent'. On the other hand, cash flow or liquidity test examines whether the company has sufficient liquid and or realizable assets to meet its debts and operating expenses. It assesses the company's ability to meet its financial obligations as and when they become due. If the company is able to pay all its debts as and when they become due and payable, the company is solvent in terms of cash flow or liquidity. A wealthy company, which is 'balance sheet solvent' may be commercially insolvent if it is unable to pay its debts even though it has more investments and fixed assets, which are not realizable as and when the debt becomes due and payable.
41. The Companies Act 2015 provide as to when a company or foreign company is considered solvent or insolvent. It provides in section 514 as follows:

Solvency and Insolvency

514.—(1) A Company or Foreign Company is Solvent if, and only if, it is able to pay all its debts, as and when they become due and payable.

(2) A Company or Foreign Company which is not Solvent is Insolvent. (Emphasis is added).

42. It is evident from this section 514 that, the Company's Act 2015 requires that, a company should be solvent in terms of liquidity, i.e. it should be able to pay all its debts as and when they become due and payable. As per this section, it is the ability of a company to pay all its debts, as and when it becomes due and payable, that matters at this point in time and not its wealth in terms of its balance sheet. Accordingly, a company, against which statutory presumption of insolvency is formed, should provide material to prove that, the company is solvent. In other words, the company must prove to the satisfaction of the court that, it has sufficient cash flow, and liquid assets which can be quickly and easily convertible into cash in order to pay all its debts as and when they become due and payable. If the company fails to prove so, the leave to oppose the winding up under the section 529 of the Companies Act 2015 will be refused.

Is the Respondent solvent?

43. As the undisputed debt hereof has now been found to be in a sum of \$75,150.63 on the own admission of the parties, the court need not engage in the exercise of examining any grounds for disputation. The only task before the Court, as alluded to above, is to examine whether the respondent company is solvent in terms of the evidence adduced by it as far as the aforesaid undisputed debt is concerned.
44. The respondent has unreservedly admitted that it is liable to pay the applicant the undisputed sum of \$75,150.63. This amount arises from the loan provided by the applicant and, admittedly, received by the respondent in 3 stages; i.e., on 15th February 2017, 18th July 2019 and 29th August 2019. This amount remains unpaid for more than 6 years now, with no justifiable reason whatsoever being adduced not to repay it. Though, the respondent claims that it has 52 permanent employees, owns 3 Vehicles and 3 different State Leases as its assets, it has failed to repay the said sum. This clearly demonstrates nothing but the insolvency of the respondent Company.
45. The following issues raised by the applicant in its reply affidavit on advice, in relation to the evidence adduced by the respondent in its affidavit in response to establish its, purported, solvency, cannot be disregarded or lightly taken.
- a. *The financial report submitted marked as "C" clearly indicates that the respondent has significant liabilities. The respondent's retained earnings at 30th June 2023 is showing a deficit of \$151,681.00, which is in excess of the debt sum and owing to the applicant. This report is self-serving as it does not disclose whether it was prepared by a registered accountant in Fiji.*
 - b. *The properties on Lease titles annexed as "E" and submitted, particularly CL 16078 and CL 13858 are not legally owned by the respondent Company, but the director of it.*
 - c. *The Lease titles annexed by the respondent has registered mortgage interests over those properties. The property on title No-CL 16078 has a charge by the Fiji Revenue and Custom Service.*

- d. *The LTA searches in respect of the Vehicle Registrations Certificates marked as "D" and annexed do not disclose whether those vehicles are under the bill of sales.*
 - e. *The property on CL 16708, for which market valuation has been submitted, is not owned by the respondent. The market valuation of the property on CL 16709, which is owned by the respondent, does not reflect the exact valuation.*
 - f. *The respondent does not disclose any existing legal proceedings against it that would potentially expose the Respondent to further liabilities.*
46. If the Respondent was / is in fact solvent, the admitted debt in a sum of \$75,150.63 (Seventy-Five thousand One hundred Fifty and Sixty-Three Cents) would have been fully paid long ago and it need not have moved for time to settle it in the monthly installments of \$2,500.00, which, if allowed, would take further two and half (2 ½) years. This clearly demonstrates the insolvency of the Respondent Company.
47. I don't find any material averments in the Respondent's Affidavit and annexures to prove the Respondent's solvency. The Respondent, having admitted the undisputed debt in a sum of \$75,150.63, is now in an attempt to prolong the repayment due to its inability to pay as a result of its insolvency.
48. The Respondent, who admitted the major part of the debt, which was above the statutory threshold limit, did not pay and settle it or applied to set aside the Statutory Demand Letter, for which obviously it was devoid of any valid ground due to its admission of the debt. The evidence establishes that Company is clearly insolvent and unable to pay its undisputed debt.
49. The court will grant leave only if it is proved to its satisfaction that, the company is solvent. There is a purpose behind this limitation imposed on the debtor company.
50. The liquidation takes place in several stages within the time frame set by the Companies Act 2015. This time frame and the stages are not insignificant. The position of the company changes and its ability to challenge the liquidation process differs depending on the stages. The first stage starts from issue of statutory demand and ends with the expiry of 21 days given to settle the amount or to apply to the court to set aside the statutory demand. At this stage, the company is permitted to dispute the amount on two grounds set out in section 516 and the company is also at liberty to settle the amount. No presumption of insolvency of the company arises at this stage, because, at this stage the dispute between the company and its creditors is merely a private issue.
51. If the company fails to settle the amount within these 21 days period and also fails to apply to the court to set aside the statutory demand, the liquidation process goes to the second stage at expiry of the said 21 days. At this stage, the rebuttable presumption of insolvency is formed. The position of the company changes from "solvent" to "insolvent". The amount in demand becomes undisputed and it paves way to the creditors to apply to the court to wind up the company on the ground of insolvency, i.e., the company is unable to pay its debts as and when they become due and payable.
52. Accordingly, if the debtor company wishes to oppose the winding up application, it should first rebut the statutory presumption of insolvency. If the company succeeds in it, the court would grant leave.

It means, the company's position is reverted back to its initial position i.e. "solvent" and then the company would be allowed to dispute the amount and rely on those grounds mentioned in section 529.

53. Thus, the hearing at the second stage of winding up takes places in two phases if an application for leave is filed by a debtor company. First hearing focuses only on the issue of solvency of the company. If the company fails to prove the solvency, the application for leave fails. As the result, the order for winding up will be granted, because the presumption of insolvency is not rebutted. Conversely, if it is proved that, the company is solvent, the court will then grant leave and allow the company to file the affidavit to oppose the winding up. The company can raise all the issues to challenge the demand.
54. When the statute presumes a company insolvent on the basis that, it is unable to pay all its debts and requires it to prove otherwise to the satisfaction of the court, such debtor company cannot be simply allowed to just tender a document and merely assert that it is solvent. Each and every piece of evidence adduced by such company, in the course of proving solvency, should strictly be subjected to the judicial scrutiny, and the court should be satisfied that the company is solvent.
55. The above discussion concludes that, the respondent company failed to prove to the satisfaction of the court that it is solvent. The statutory presumption of insolvency of the respondent company remains unrebutted. Even though the respondent company proposed to settle the undisputed debt before the end of 2023 and thereafter promised and undertook to pay it in installment of \$2,500.00 that promise has not been fulfilled.
56. The courts established the doctrine that, if a creditor cannot get paid without winding up the debtor company, it is *ex debito justitiae* that he should have a winding up order. Irvine CJ in *Re Concrete Pipes and Cement Products Ltd [1925] ArgusLawRp 95; [1926] VLR 34* explained the development of this doctrine at page 38 as follows:
57. The section 513 (c) Companies Act 2015 provides that, company may be wound up by court if it is insolvent.

Time Period for Determination of the Application:

58. I am mindful of the statutory requirement under section 528 of the Companies Act that winding up Applications are to be determined within six months from the date of filing. The winding up application hereof was filed on 11th March 2024. The matter was initially allocated to Hon. Seneviratne -J before whom it was called for first hearing on 22nd April 2024, on which date the respondent was allowed to file the Summons under section 529 of the Act and the matter was adjourned to 9th May 2024.
59. As Seneviratne- j had left the bench by the next date, the matter had come up before Hon. Acting judge Azhar on 9th May 2024 and after few mention dates before his lordship for around 5 months, on 10th of September 2024 the matter was referred to the registry for reallocation as his lordship had no available dates to fix for hearing. However, Hon. Azhar-J on 10th September 2024 extended the time period for further 6 months, which was to expire on 11th March 2025. Then, the matter being reallocated, was mentioned before me on 30th September 2024 and the hearing into both

applications was taken up on 21st February 2025, which date was still within the validity period that was to expire on 11th March 2025.

60. I must put on record that due to the changes occurred on the bench during the said period as aforesaid, and due to the sudden increase in the volume of work before me, particularly, owing to my being away from Fiji during the time material on account of my sudden ill-health, the delay hereof became inevitable in determining this matter. As a result, the validity period had expired with no fault on the part of the parties, as it had escaped the attention of the parties and the court.
61. Section 528 provides that an Application “is to be determined within six months”. However, the Court may by order, pursuant to section 528(2), extend that time if special circumstances justify the extension provided the order for extension is made within the six months period. If not for the unforeseen circumstances stated above, the delay would not have occurred.
62. The Section, in my view, does not impose any hard and fast rule. Learned Counsel for the respondent did not take this as an issue. This need not have caused any serious prejudice to the respondent.
63. It is observed that the applicant’s Solicitors had taken all the required steps in timely manner and no delays were caused by them. But, due to the circumstances mentioned above, an unavoidable delay has been caused. I am of the view that the applicant should not be punished for no fault on its part.
64. I would like to be guided by the decision of Justice A. Tuilevuka, in ***Dominion Wire & Cables Pte Ltd v AJYNK Electrical Pte Ltd [2022] FJHC 181; HBE26.2021 (12 April 2022)*** where his Lordship stated as follows;
- “In the circumstances, I am of the view that this Court has a discretion to step in to preserve the integrity of the processes, which the applicant has set in motion in these proceedings. In saying that, I take into account that the ruling date had been set by the court inadvertently with oversight of the fact that the date set would take this judgment to barely a week out of the six months provision. Considering that, I rely on the principle of nunc pro tunc (“an act done retrospectively so as not to prejudice a party- what should have been done then could be done now by court”) – with all the necessary time adjustments (Southwick v State [1997] FJCA 5; Aau0020u.96s (14 February 1997). Accordingly, I extend the time for determination of this matter from 04 April 2022 to 12 April 2022”.*
65. Accordingly, by acting now for then, I decide to extend time period for the determination of this matter for a further six months. Though, this matter had been determined, the judgment was ready to be delivered on 5th September 2025 and the parties were notified accordingly, again due to unforeseen circumstances, this court did not sit on 5th September 2025. Hence, the decision arrived at on 5th September 2025 is delivered on this 12th September 2025.
66. For the reasons stated above, I grant orders that the application seeking leave to oppose the winding up is dismissed, the respondent Company be wound up and a liquidator be appointed. Considering the circumstances, the respondent is ordered to pay the applicant a sum of \$3,000.00 (Three Thousand Dollars) being the summarily assessed costs.

G. FINAL ORDERS:

For the reasons discussed above, this Court makes the following orders:

1. The time period for the determination of this Application stands extended.
2. The leave to oppose the application to wind up the Respondent company is refused.
3. The Summons filed by the Respondent on 06th May 2024, pursuant to Section 529 of the Companies Act 2015, is dismissed.
4. The Application for winding up is allowed.
5. A Liquidator be appointed to take all steps for the conduct of winding up of the Respondent company.
6. The Applicant is entitled to recover costs in a sum of \$3,000.00, being the summarily assessed costs in relation to both the Applications.



A.M. Mohamed Mackie
A.M. Mohamed Mackie
Judge.

At the High Court of Lautoka on this 12th day of September, 2025.

SOLICITORS:

For the Applicant Company:

Messrs. LAL | PATEL | BALE LAWYERS- Barristers & Solicitors.

For the Respondent Company:

Messrs. PATEL & SHARMA – Barristers & Solicitors.