

IN THE HIGH COURT OF FIJI
AT LAUTOKA
COMPANIES JURISDICTION

Companies Action No. HBE 18 of 2022

AND

IN THE MATTER of NANDS PRATAPS
JOINT VENTURE PTE LIMITED

BETWEEN : **SURESH PRATAP** of Waqadra, Nadi, Company Director and
Businessman.

PLAINTIFF

AND : **RAJESHWAR NAND** of Votualevu, Nadi, Company Director and
Businessman.

1ST DEFENDANT

AND : **PRATAPS CIVIL & ASPHALT QUARRIES PTE LIMITED** a
limited liability company having its registered office at HLB Crosbie
& Associates, 3 Cruickshank Road, Nadi, Viti Levu.

2ND DEFENDANT

AND : **NAND'S CIVIL CONTRACTING PTE LIMITED** a limited
liability having its registered office at Lot 2, Nasomo, Votualevu, Nadi,
Viti Levu.

3RD DEFENDANT

AND : **FIJI REVENUE & CUSTOMS SERVICE** a body corporate duly
constituted under the provisions of the Fiji Revenue & Customs
Service At 1998, having its registered office at Revenue & Customs
Service Complex, Corner of Queen Elizabeth Drive & Ratu Sukuna
Road, Nasese, Suva.

4TH DEFENDANT

Appearances : Mr. R. Charan for the Plaintiff & 2nd Defendant

: Mr. R. Singh for the 1st and 3rd Defendants.

No Appearance for the 4th Defendant.

Trial Dates : 27 February 2025; 31 February 2025 and 02 June 2025.

Date of Judgement : 27 October 2025.

JUDGMENT

1. At the trial of this case, the following witnesses gave evidence:

| | | |
|-----------------------|---|----------------|
| Mr. Jawahar Lal | Chartered Accountant/Auditor | Mr. Lal |
| Mr. Sanjay Ram Saxena | Director, Consultant, HLB Crosbie Accountants | PW1 |
| Mr. Vijay Pandey | Engineer, Manager at Prataps Civil & Asphalt Quarries Pte Ltd | PW2 |
| Mr. Yusuf Ali | Works Manager, Fiji Roads Authority | DW1 |

INTRODUCTION

2. Mr. Suresh Pratap (“**Pratap**”) and Mr. Rajeshwar Nand (“**Nand**”) are the sole directors and shareholders of a joint venture company called Nands Prataps Joint Venture Pte Limited (“**NPJV**”).
3. Pratap has filed the application which is before this Court under sections 176 and 177 of the Companies Act 2015. He seeks an Order of this Court to wind up NPJV and liquidate its assets on the ground of shareholder-oppression.
4. At the first call-over in 2022, Mr. Singh informed the Court that Nand too wanted NPJV to be wound up. He saw no reason to continue the joint-venture. From that point onwards, the parties began to focus primarily on resolving NPJV’s liabilities and the distribution of the remaining assets, if any.
5. Nand’s counsel asserts that the issue of oppression is now moot as both parties have expressed a mutual desire to wind up the company.
6. Notably, NPJV has largely discharged its preferential liabilities. Despite its efforts in resolving these, there are two particular claims which remain entangled in ongoing disputes arising from alleged oppressive conduct.
7. The verification and settlement of these two claims is what is at the heart of this case.

The Two Claims

8. The claims in question are of two companies which had provided key supply and subcontracting services to NPJV.
9. Their claims are more complicated than those of other unsecured creditors. This is because one of the companies is owned by Pratap while the other is owned by Nand.

10. While Pratap and Nand are both seeking to recover debts owed by NPJV to their respective companies, the process is complicated by allegations by Pratap that Nand has continuously engaged in oppressive conduct and self-dealing within NPJV.
11. Having said that, Pratap and Nand are not concerned with dividing NPJV's remaining assets after creditor payments. Instead, each is focused on securing the highest possible recovery from NPJV for his own company.

NPJV's Remaining Asset

12. The company's only remaining asset is a cash balance of \$4,615,000.00 (four million, six hundred and fifteen thousand dollars).
13. Based on the value claimed by Pratap's and Nand's companies, this sum may be fully applied toward satisfying those claims.

Auditor's Report

14. The main issue between the parties has been the quantification and verification of the claims of their respective companies.
15. To resolve their dispute, an order was granted on 25 November 2022 and varied on 29 March, 2023 for an Auditor to be appointed to determine the amount of money owed by NPJV to the two companies respectively on account of services and supplies rendered.
16. The Audit Report was completed on 08 June 2024, and bears that date. However, Pratap continues to question the accuracy and reliability of the Auditor's Report.

Issues

17. Against that background, the main questions for the Court to determine at this time are as follows:
 - (i) whether or not the Auditor's Report ought to be accepted? If so, then payments to the two companies ought to be made as recommended in the Report.
 - (ii) if the Court decides not to accept the Auditor's Report, then how are the claims of the two companies to be resolved?
18. The first question to be asked is whether or not the Auditor's Report can be challenged.
19. It must be emphasised that the role of the Auditor was simply to determine what amount is owed by NPJV to each of its two main suppliers/sub-contractors.

20. These are Pratap’s Civil & Asphalt Quarries Pte Ltd (“**PCAQPL**”) and Nand’s Civil Contracting Pte Limited (“**NCCPL**”). PCAQPL is beneficially owned by Pratap. NCCL is owned by Nand.

NATURE OF THE JOINT-VENTURE

21. For years, Pratap and Nand have worked in Fiji’s road construction and maintenance sector through their own companies, frequently competing for contract awards. In or around 2018 or 2019, they decided to collaborate to strengthen their competitive position within the sector. They then incorporated **NPJV** to be the vehicle for their joint-venture and for the sole purpose of securing a *standing offer contract* from the Fiji Roads Authority (“**FRA**”). In 2019, the company secured such a contract from FRA. The contract expired in October 2022.

Standing Offer

22. What NPJV had with FRA was a standing-offer within the Western Division. This meant that FRA will allocate to NPJV specific road maintenance jobs (called “**job-dispatches**”) within the Sigatoka - Lautoka corridor as and when needed¹.
23. For its part, NPJV was to remain on standby to receive and execute to completion any job-dispatch from FRA.

FRA Job-Dispatch

24. A job-dispatch from FRA to NPJV would set out the (i) the location or where the work was to be done (ii) the kind of road maintenance required including the quantities and the total number of hours required to complete the job, and (iii) when NPJV should attend to the job.

NPJV’s Main Suppliers (& Subcontractors)

25. Pratap and Nand structured their joint-venture operation as follows²:
- (i) NPJV was not to undertake any road maintenance work.
 - (ii) rather, NPJV was merely to receive job-dispatches from FRA and then allocate the work to either PCAQPL or NCCL.
 - (iii) in allocating work, NPJV was to follow a certain scheme to ensure equitable distribution between PCAQPL and NCCL.

¹ as per the evidence of **PW2** and **DW1** which I accept.

² **PW2** said so in cross-examination.

- (iv) in executing a job dispatch, PCAQPL and NCCL were to adhere to FRA specifications and timeline and were to be responsible for:
 - (a) supplying all the materials & machineries (asphalt, aggregates, excavators, graders, pavers etc)
 - (b) mobilizing their own resources; and
 - (c) reporting progress and completion to NPJV for onward communication to FRA.

How NPJV Was Supposed to Allocate Work!

- 26. What NPJV did was to divide the Sigatoka to Lautoka corridor into two smaller sub-zones³. It then assigned one sub-zone to PCAQPL and the other to NCCL, based on how close the company's operational depot was, to ensure efficient response times and logistical coordination⁴.
- 27. If a particular FRA-job dispatch fell outside either of the two sub-zones, NPJV must allocate the work to whichever contractor was nearest to the site and was ready in terms of resource-availability, capacity, and ability to mobilise immediately.
- 28. Although PCAQPL and NCCL worked within NPJV's structure, they were independent companies engaged by NPJV to carry out work in their assigned sub-zones.

Job Sheets

- 29. For each job, NPJV issued a Job Sheet to PCAQPL or NCCL. This document would contain⁵:
 - (i) the **dispatch order number** for the particular job;
 - (ii) the **location** of the specific section of the road to be attended to;
 - (iii) the **scope of work** to be performed;
 - (iv) the **quantities required** (e.g. the volume of aggregates to be supplied to the job etc).

What PCAQPL/ NCCL must do Before, During & Upon Completion of a Job?

- 30. PCAQPL and NCCL must carry out all assigned works in line with FRA specifications. Before starting any job, they must take photos of the site. They must also take photos while the work is in progress, and again when the job is completed. Once the work is

³ PW2 said so in cross-examination.

⁴ PW2 said so in cross-examination.

⁵ PW2 said so in cross-examination.

completed, they must fill out a Job Sheet. This must include a brief description of the task completed and the total hours spent on the job

31. A completed Job Sheet is part of the “supportive documentation” which will accompany PCAQPL’s and NCCL’s invoice-claim for payment. As **PW2** said, no invoice goes in without it.

Joint-Audits & Site Inspections

32. Joint-audits by an FRA officer and an NPJV representative are carried out before work commences, whilst work is in progress, and at completion⁶. During an audit, the FRA officer would record on a **Measurement Sheet** updated information relating to (i) the actual quantities on-site (ii) the contractor’s compliance with FRA-specifications and timelines and (iii) the monetary value of the works as assessed to date. In cross-examination, **DW1** said PCAQPL and NCCL were hardly ever involved in the joint-audits.

Invoicing

33. At the completion of every job, PCAQPL or NCCL must submit to NPJV an invoice together with the relevant Job Sheet and all supportive documentation which will include any photos taken by their own officers. Upon receiving these, NPJV would then “process” the claim and then forward it to FRA for payment.
34. The handling of claims at NPJV remains a major source of friction between Pratap and Nand. Pratap asserts that Nand personally handpicked and recruited NPJV staff who are loyal to him. These staff have consistently filtered and manipulated the claims process to serve Nand’s interests.
35. Pratap says that his access to NPJV premises, records and the RAMMS system has always been restricted by NPJV staff on Nand’s strict instructions.
36. Pratap’s concerns about the lack of procedural integrity was what led him to initiate these proceedings. He says that Nand’s control and manipulation of NPJV’s internal processes continued even after the filing of these proceedings. NPJV staff even altered documents sent to the Auditor (see discussion below).

The Road Asset Maintenance Management Software (“RAMMS”).

37. RAMMS is FRA’s computer system⁷ to manage roads. Data fed and stored in the system enables FRA to maintain a maintenance schedule, the expected hours, the material quantities, and the resource needs. Thus, every job-dispatch to NPJV sets out

⁶ **DW1** said so in chief.

⁷ **DW1** and **PW2** explained this in their evidence.

FRA's specifications based on the RAMMS data (see paragraph 25 above). The same data enables FRA to track work and, later, verify invoices.

38. Notably, the RAMMS is loaded onto a tablet⁸ which FRA officers take with them on their joint site-audits with NPJV. The tablets are used to take pictures on site. All proforma forms are pre-programmed into the system including the rate schedules.

How FRA Processes the Invoice?

39. Each payment approved by FRA is traced back to the Measurement Sheet⁹. This document is embedded within the RAMMS system and is preprogrammed to receive data inputs from joint site audits¹⁰.
40. Once the site-audit findings are loaded, RAMMS then aligns them with predefined quantities and rates. This then allows FRA to validate and approve payments.
41. **DW1** stresses that FRA uses RAMMS, not the invoice, to calculate payments. If work meets the relevant job-dispatch specifications, FRA will pay the full invoice. If the work is below specification, FRA reduces the recorded hours or value and pays the adjusted amount.

Held Claims!

42. Based on what **PW2** and **DW1** said, the following picture can be put together:

e.g. FRA issues a job dispatch to NPJV to re-sheet a 40-meter stretch of road with 150 mm thickness. NPJV gives the job to PCAQPL. PCAQPL only re-sheets 30 meters and applies 100 mm thickness. PCAQPL then invoices NPJV for \$100,000.

NPJV and FRA then carry out a joint site audit. On site, they measure the actual work done (length and thickness), calculate the adjusted value and hours, and record the findings directly into RAMMS.

If, for example, FRA quantifies the value of work done is worth only \$80,000, FRA will only approve that amount for payment to NPJV.

43. The \$20,000 difference between PCAQPL's invoice and FRA's approved payment is called the **Held Claim**. This amount is withheld, pending rectification. Once work is rectified to FRA's satisfaction, FRA will then release the Held Claim to NPJV. NPJV must then pay the supplier or sub-contractor involved (i.e. PCAQPL or NCCL).

⁸ **DW1** said so in evidence.

⁹ according to **DW1**.

¹⁰ the Measurement Sheet would record the actual quantities of work completed, and based on that, an estimate of the hours clocked.

The Relationship between Pratap & Nand!

44. From the outset, it was clear that the parties' relationship was beyond repair. At trial, a question arose about NPJV's role in handling claims. Was NPJV only passing claims from PCAQPL and NCCL on to FRA, or was NPJV checking and editing those claims before forwarding them? This then prompts the following questions.
- Q: did Nand control the recruitment of staff at NPJV?
- Q: did he influence the distribution of job-despatches unfairly to favour NCCL?
- Q: did he influence which claims to fast-track and which ones to hold back?
- Q: did he manipulate how transactions were recorded and how financial reports were prepared?
- Q: did he use his position to make NPJV's finances look different from reality?
- Q: did he decide on his own which accountant to hire, or fire?
- Q: did Nand use staff to filter FRA remittances received at NPJV to short pay PCAQPL?
- Q: if so, did NPJV staff alter documents to make every short-payment to PCAQPL appear as if it was the result of an FRA-Held Claim?
- Q: if so, where and how was the withheld monies being applied by NPJV?
- Q: were they applied to net off or zero off an advance previously paid to NCCL? Were they diverted to NCCL through fabricated or inflated invoices? Were they applied to other inter-company charges without Pratap's or PCAQPL's consent? How are these accounted for in NPJV's books?

WHETHER OR NOT THE AUDITOR'S REPORT OUGHT TO BE ACCEPTED?

45. Generally, an auditor's report may be challenged if it contains material errors or if there has been a flaw, bias or a lack of independence in the audit procedure. Mr. Lal readily admits that his Report is lacking in several respects because NPJV did not provide him all the documents and materials needed.
46. It is to be noted that Pratap did consent to the engagement of Mr. Lal as auditor, and did agree prior to the audit to be bound by the Report.
47. However, I am persuaded by the reasoning of the Delhi High Court in **Uday J Desai & Ors v Union of India & Ors**¹¹ - that a report which contains material errors, lacks independence, or is procedurally flawed, may still be challenged, regardless of the fact that the party challenging the report may have participated in the appointment of the auditor.

¹¹ (High Court Of Delhi) LPA 564/2019, CM APPL. 39454/2019, CM APPL. 5264/2020 & CM APPL. 5307/2020 | 25-05-2023.

The Audit Process!

48. The purpose of the audit was to see how much money NPJV owes PCAQPL and NCCL. Mr. Lal said he took the following steps in carrying out the audit:
1. **Suppliers' Statements** - the first thing he required were these of PCAQPL and NCCL. These statements are typically sent by a supplier to a client to show how much money is owed to the supplier.
 2. **Checking the Invoices** - the next thing he did was to check the invoices to see if the invoice-figures match the figures in the Supplier Statement. Note the difference, if any.
 3. **Checking the Invoice-Remittance Slips** – this is to see if NPJV has paid the supplier the amount raised in each invoice.
 4. **Closing Balance** - he then arrived at a closing balance, which shows how much money NPJV owes to PCAQPL and NCCL, respectively.

Verification

49. Mr. Lal stated that after the audit was completed, NPJV staff members¹² informed him that the invoices they had provided were unverified. They then gave him a different set of “verified” invoices.
50. He then took the Supplier Statements and the original invoices and compared them with the newly provided “verified” invoices to see if they differ. His findings are recorded in Appendices A, B, C, and D of the Audit Report.
51. Although Mr. Lal has, in the Report, referred to the second set of invoices as “verified”, he did not personally verify them himself. He said he relied on NPJV’s representation and accepted them at face value.
52. Generally, an auditor who accepts invoices as “verified” as such without further inquiry may lack professional skepticism and risks accepting misleading information at face value. Needless to say, this can compromise the integrity of an audit or financial reporting.
53. Mr. Lal was clearly constrained by the conduct of NPJV staff. To mitigate the situation, he recommended that NPJV, PCAQPL, and NCCL jointly undertake a proper verification process after the Report.
54. This would entail reviewing the relevant invoices, remittance records, and advances so they could confirm and agree on the final figures¹³.

¹² Gopal Sami and Shilpa Reddy.

¹³ He said that, where NPJV asserts that it has paid PCAQPL or NCCL a specific amount, each supplier should cross-check its records to verify whether such payment was in fact received.

55. Officers from NPJV, PCAQPL, and NCCL actually began the recommended verification process at his office. However, it ended soon after it started. **PW2**, who attended on behalf of PCAQPL, said that Mr. Nand stopped the process by instructing his staff to withdraw.
56. In response to a question by Mr. Singh, Mr. Lal said that, in a normal auditing process, PCAQPL and NCCL would be given the verified invoices to check. However, this could still be done at the end of an audit.
57. Mr. Lal said that normally, invoices are checked and verified before they are sent for audit. Mr. Lal said he has never come across a case as this. He said the verification ought to be done by the respective accountants of NPJV, PCAQPL and NCCL before the invoices are sent to him.
58. Mr. Charan states that Mr. Lal's evidence shows two key points: first, that Mr. Lal is only aware of the documents he personally received; and second, that his testimony suggests possible withholding of information or overstatement of invoice amounts.
59. While I cannot presently conclude that information was withheld as a matter of fact, the available evidence strongly suggests that this may have occurred.

Advances

60. Mr. Lal said that during the audit, he treated any remittance as an advance if he could not link the relevant remittance slip to any invoice.

e.g. if there is NPJV record (remittance slip) that it had paid PCAQPL \$100,000 – but that payment is not linked to a PCAQPL invoice. Then the payment is treated as an advance to PCAQPL.

61. Mr. Lal said he was also asked to offset any advance against the amount payable in respect to certain invoices.

e.g. NPJV paid an advance to NCCL in the sum of \$100,000. Later, NCCL performs work to the value of \$105,000 and invoices NPJV accordingly. After offsetting, NPJV pays NCCL \$5,000 only.

62. Mr. Charan said that his client has a problem with the offsetting of some invoices against certain advances. These invoices need to be re-checked to see if they actually relate to a particular FRA job-dispatch, and if they do, to see whether FRA has already paid for these invoices.
63. **PW1** gave evidence that there are five instances of advances totalling \$900,000 by NPJV to NCCL. He went to great lengths to explain how he had requested for

intercompany balances from NPJV, PCAQL and NCCL through a Management Letter following a query from the Fiji Revenue & Customs Service.

64. He stated that FRCS is particularly wary of intercompany transactions as they are often used to shift profits, hide liabilities, or manipulate performance. Hence, there is a need for Accountants and Auditors to access these documents in order to properly assess whether the intercompany balances are genuine, properly documented, and free from bias or distortion.
65. **PW1** said that while PCAQPL cooperated with his request, NCCL did not cooperate and instead sent some misleading information.
66. Also, he needed to clarify this in the 2020 NPJV financials which he was then trying to complete. He said that in accordance with HLB's analysis of the deposits and cheque repayments, and as noted in HLB's draft 2021 financials for NPJV, NCCL had not repaid the \$900,000.
67. Notably, the Audit Report does not appear to have shone light on these. As Mr. Lal said, he was not provided any documentation either.

Auditor was not Provided RAMMS Access! Auditor was not explained "Dispatch Numbers"

68. In response to a question by Mr. Charan, Mr. Lal said he does not know if the so-called "verified invoices" supplied to him by NPJV staff have been checked against RAMMS. He was not provided RAMMS access by NPJV. He reiterates that he has only taken the invoices supplied by NPJV at face value.
69. Mr. Singh noted that there there is a column in the Report containing references to "dispatch numbers". Asked what dispatch numbers meant, Mr. Lal said:

"That was what was given to us, but we didn't do anything with that even with the description as well. So the last two columns are basically the information that was provided to us. We just kept it there"

"I think it has to do with the execution of the order, job order or something like that, you know."

70. Asked if he was given RAMMS, Mr. Lal said:

"No, they showed me an example of how the RAMMS operates and all that but that's it. But we didn't go through each and every invoice".

"But they did demonstrate how it works because just for my understanding purposes but it is too complicated and I'm not like I don't have the expertise to do that verification or understand that so I accepted the verified invoices on the face of it".

Audit Report would not have detected any manipulation of Invoices!

71. Mr. Lal agrees the Report has a collum for the amounts in Suppliers Statements. There is also a column which lists out the amount in each verified invoice. However, he did not include a collum for the amount in the original invoices. He agrees that he would not have known if the invoices had been manipulated by Nand or anyone else for that matter!

Apparent Bias?

72. In response to a question from Mr. Charan, Mr. Lal said he received the Supplier Statement and invoices of NCCL directly from NCCL. However, the Supplier Statement for PCAQPL was provided to him through NPJV.
73. **PW2** said in his evidence that he did try initially to email PCAQPL documents directly to Mr. Lal. However, the Auditor told him to “follow the proper channel” and submit them through NPJV. He said this was not fair, given that the same Auditors had accepted documents directly from NCCL without raising issue.
74. It is clear that the Auditor received invoices and other documents from PCAQPL and NCCL, respectively, through separate channels. This alone would invite speculation of selective disclosure, alteration, or substitution of the documents at NPJV. If the difference in treatment is not addressed or explained, one would be justified in speculating that there was a lack of professional skepticism and a bias in the audit procedure.

Misalignment between Invoice Numbering and Issuance Dates!

75. Mr. Charan drew attention in Court to some specific instances where the invoice numbering was misaligned *vis a vis* the issuance dates. I will not reproduce these here.
76. Suffice it to say that sequential numbering supports traceability. When invoice numbers do not follow the order of their dates, it can be a sign of poor bookkeeping. It may also suggest strongly that the records are being manipulated. If I may add, it may also evince a breach of tax rules which require proper tracking of financial documents.

Comments

77. For the reasons I have stated above, I am of the view that the Audit Report dated 08 June 2024 falls short of addressing some critical points which are relevant in the determination of the amounts owed by NPJV to PCAQPL and NCCL. Having said that, I commend Mr. Lal in highlighting the key problems he faced in the exercise, namely, the lack of support from NPJV staff.

IF THE COURT DECIDES NOT TO ACCEPT THE AUDITOR'S REPORT, THEN HOW ARE THE CLAIMS OF THE TWO COMPANIES TO BE RESOLVED?

78. The recommendation in the Audit Report that officers of NPJV, PCAQPL and NCCL meet to carry out a proper verification is highly desirable. In my view, this process must, *inter alia*, entail full access to all parties to:
- (i) RAMMS
 - (ii) FRA remittance records cross-referenced against FRA job-dispatch numbers
 - (iii) NPJV books.
 - (iv) NPJV remittance records cross-referenced against FRA job-dispatch orders/FRA remittance records and supplier invoices.
79. Ideally, PCAQPL, NCCL and NPJV must complete the process at J. Lal's Auditors since they still have the invoices in their custody. Also they already have a fair idea of what the issues are. This means that NPJV may have to re-engage J. Lal & Company. If so, they too must be able to view the RAMMS records.
80. I also need parties to clarify their position on the oppression issue. Is this really now a non-issue as Mr. Singh submitted?
81. Does this court have power to adjust payment on account of the alleged oppression, in the event that oppression is established?
82. If so, would this entail be piercing the corporate veil of NCCL in the circumstances of this case?
83. I ask these questions in light of a submission that a heavy penalty of around half a million dollars imposed by FRCS on account of certain NPJV breaches and as a result of irregularities in the NPJV financials for the year 2021 - was the direct result of Nand's mis-control and manipulation of internal NPJV processes. Nand allegedly directed NPJV staff to prepare the financials:
- (i) after refusing to heed HLB Crosbie's/PW1's call for intercompany balances; and
 - (ii) after terminating the services of HLB Crosbie.
- (iii) Speaking of intercompany balances, I am of the view that this must be facilitated by NPJV, PCAQPL and NCCL. These balances are to be made available at the verification process.

- (iv) I will adjourn this matter to **Monday 10 November 2025 at 10.30 a.m.** to hear the parties on how they wish to take the matter forward.



A handwritten signature in blue ink, consisting of stylized, overlapping letters, positioned above a dotted line.

Anare Tuilevuka
JUDGE
27 October 2025