

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION -AT LAUTOKA
EXERCISING COMPANIES JURISDICTION**

CIVIL ACTION NO: HBM 19 of 2024.

IN THE MATTER OF DAYAL STEELS PTE LTD, a Limited Liability Company having its Registered Office at Main Street, Ba.

IN THE MATTER OF AN Application for an Order to set aside the Statutory Demand dated 17th June 2024, taken out by **KALGIN GLOBAL LOGISTICS (FIJI) PTE LTD** a limited Liability Company having its registered Office at 1 Kings Road, Yalalevu, Ba, and served on the Applicant DAYAL STEELS PTE LTD on 19th June 2025, pursuant to Section 516 of the Companies Act 2015.

BETWEEN : **DAYAL STEELS PTE LTD**, a limited liability Company having its registered office at Main Street, Ba Town, Ba.

APPLICANT

AND : **KALGIN GLOBAL LOGISTICS (FIJI) PTE LTD**, a limited liability Company having its registered office at 1 Kings Road, Yalalevu, Ba.

RESPONDENT

BEFORE : Hon. Mr. A.M. Mohamed Mackie-J.

APPEARANCES : Mr. K. Patel- for the Applicant
Ms. Pranjivan for the Respondent.

HEARING : On 4th July 2025

WRITTEN SUBMISSIONS: Filed by the Applicant on 29th Sep 2025(belatedly)
Filed by the Respondent on 4th July 2025

DATE OF RULING : 7th November 2025.

RULING

[On Setting Aside, a Statutory Demand]

A. INTRODUCTION:

1. Before me is an Application by the Applicant Company, DAYAL STEELS PTE LTD, ("the Applicant") by way of its Summons filed on 10th July 2024 pursuant to Section 516 of the Companies Act 2015 ("the Act") seeking, *inter alia*, for the following reliefs;

1. *That the Statutory Demand dated 17th June 2024 taken out by KALGIN GLOBAL LOGISTICS (FIJI) PTE LTD (the "Respondent") against DAYALS STEELS PTE LTD ("the Applicant") and served on the Applicant on 19th June 2024 be set-aside unconditionally.*
 2. *There be a stay of all winding up proceedings until the hearing and determination of this Application to Set Aside Statutory Demand Notice.*
 3. *That the costs be in the cause. That costs of this Application be paid by the Respondent to the Applicant.*
2. This Application is supported by the Affidavit sworn on 10th July 2024 by **Mr. JAY PRAKASH DAYAAL**, the Director of the Applicant and filed with annexures thereto marked as "**JPD-1**" & "**JPD-2**".
 3. The amount demanded by the Respondent Company KALGIN GLOBAL LOGISTICS (FIJI) PTE LTD ("the Respondent") from the Applicant, as per the Statutory Demand, is **\$323,741.38 (Three Hundred Twenty-Three Thousand Seven Hundred and Forty-One Dollars and Thirty-Eight Cents only)**.
 4. The Application is vehemently resisted by the Respondent. At the expense of verbosity, for the purpose of lucidity and easy comprehension, I shall give below the sequence of events that unfolded before this Court

B. SEQUENCE OF EVENTS:

5. Pursuant to the filing of Summons by the Applicant as aforesaid, the Affidavit in Response sworn on 18th December 2024 by **Mr. KRISHNIL SINGH**, General Manager of the Respondent, was filed on 08th January 2025, together with annexures marked from "**KS-1**" to "**KS-29**".
6. The Affidavit in Reply thereto by the Applicant, sworn by **JAY PRAKASH DAYAL** on 6th June 2025, was filed on 09th June 2025 with no annexures thereto.
7. When the matter came up on 13th September 2024, being the first call date, Counsel for the Applicant moved to file a Supplementary Affidavit, for which the Court granted 14 days to the Applicant to file and serve, by leaving the Respondent at liberty to file the Affidavit in opposition in 14 days thereafter and for the reply thereto, if needed, to be filed by the Applicant in 14 days. The matter was fixed to be mentioned on 12th November 2024 in order to fix a date for the hearing.
8. Accordingly, when the matter came up on 12th November 2024, Counsel for the Applicant moved further time to file Supplementary Affidavit. Though, the Counsel for the Respondent objected for time being granted, the Court granted the Applicant further 14 days finally to file and serve the Supplementary Affidavit, 14 days for the Affidavit in opposition by the Respondent and 7 days for the Reply Affidavit by the Applicant. Then, the Court fixed the matter to be mentioned on 3rd February 2025 to fix a date for the hearing.

9. When the matter came up on 03rd February 2025, Counsel for the Applicant informed that they will not be filing Supplementary Affidavit, instead they will include any additional evidence in their Reply Affidavit, for which the Court granted 28 days. However, the Court left the Respondent at liberty to respond to such additional evidence, if any, in 14 days thereafter. This direction was given subject to the objection of the Respondent's Counsel and the matter was accordingly fixed for hearing on 4th July 2025.
10. In the meantime, the Respondent on 14th April 2025 filed a Summons seeking to Strike Out the Applicant's Summons for Setting Aside and to dismiss the action, which was issued for 25th April 2025, on which date Counsel for the Applicant moved to fix this Striking Out Summons for hearing, with liberty for him to file Affidavit in opposition thereto, if the Respondent is not withdrawing the Summons for Striking out. Accordingly, having given directions for Affidavits on this Summons, the matter was fixed to be mentioned on 28th May 2025 for further directions on this Summons.
11. As the Applicant filed its Affidavit in opposition on 16th May 2025 for the Respondent's Striking out Application, when the matter came up on 28th May 2025, direction was given for the Respondent to file Reply Affidavit in relation to their Strike Out Application, and for the Applicant to file Reply Affidavit in relation to their Substantive Application for Setting Aside, while directing the hearing date thereof, which was 4th July 2025, to remain intact.
12. The Respondent and the Applicant filed their Affidavits in reply on 04th June 2025 and on 09th June 2025 respectively, as per the directions given on 28th May 2025. Accordingly, when the matter came up for hearing on 4th July 2025, Counsel for the Respondent withdrew their Application for Strike Out and the same was dismissed with no costs. Eventually, the Substantive Application for Setting Aside was taken up for hearing, wherein both the Counsels were heard Orally.
13. In addition to the Oral Submissions made, Counsel for the Respondent also filed her written submissions. Counsel for the Applicant was granted 14 days to file and serve their written submissions and the matter was fixed for Ruling on 11th September 2025.
14. As the Ruling was not ready, it was refixed for 15th October 2025, however leaving the Applicant at liberty to file and serve their Written submissions in 7 days for the Respondent to file Reply thereto, if needed. The Applicant's written submissions has been filed belatedly only on 26th September 2025. As it was belatedly filed and no proof of service is before me, I have decided to disregard the same.

C. BACKGROUND:

15. The Applicant's (Dayals's) Affidavit in **Support** gives the background as follows;

- a. THAT the Respondent served a Statutory Demand Winding Up Notice ("Notice") on the Applicant on 19th June 2024 marked as "JDP-1", which has led to the filing of this Setting Aside Application.
- b. THAT the Applicant operates a Steel mill manufacturing, wholesaling and retailing steel products situated in Ba.
- c. THAT the Applicant engaged the Respondent, a freight forwarding and logistics company operating internationally and in Fiji, for its services in arranging logistics for the importation of raw materials and goods.
- d. THAT the logistics involved pick up of materials from supplier, container arrangement, freight and cartage to a yard or warehouse from where the Applicant took delivery for cartage to the steel mill.
- e. THAT Prior to and even after arrangement, the Respondent had assured the Applicant that no storage charges will apply for the containers held in its custody.
- f. THAT the Applicant took comfort and relied on the expressed assurance of the Respondent to continue doing business with the Respondent.
- g. THAT upon receiving the invoices for payment from the Respondent, the Applicant noted that despite confirming that no storage charges will apply, the Respondent had unilaterally imposed storage charges without agreement. Also, there were discrepancies in the exchange rate applied on the invoices. This sowed the seeds for the ensuing disputes.
- h. THAT the Applicant was ready to pay invoices excluding the storage charges, however the Respondent with the applicant's consignment in its custody saw this as an opportunity to hold the Applicant ransom and demand payment of the disputed storage charges before release of the consignment.
- i. THAT under duress, the Applicant wrote a cheque for the invoices containing the storage charges for release of its consignment to avoid closure of its business operations and then stopped clearance of the cheque to get the Respondent to cancel those storage charges.
- j. THAT the Applicant is ready, willing and able to pay all legitimate charges owed to the Respondent, but not the storage charges.
- k. THAT there is a clear dispute on the imposition of storage charges and discrepancies on the exchange rate applied to the invoices.
- l. THAT it produces the documents i: e Invoices and Statements, Chain of emails and the prevailing exchange rate from ANZ Bank & BSP annexed as "JPD-2", "JPD-3" and "JPD-4" respectively.

AFFIDAVIT IN RESPONSE (By Kalgin):

16. Respondent's Affidavit in Response, under several sub-headings, filed on 08th January 2025, together with annexures marked from "KS-1" to "KS-28", states, *inter alia*, as follows;

- **Kalgin and Importation process**

- a. *THAT "Kalgin" is an international freight company that provides logistics services by air, land and sea and has two branches in Fiji, one in Suva and other in Lautoka.*
- b. *THAT all of their services, irrespective of whether they relate to the carriage, movement, transport or storage of goods or performance of any other services, are subject to their standard terms and conditions. A copy of "Kalgin's" standard terms and conditions are attached marked as "KS-1".*
- c. *THAT their engagement with the customer commences once the customer makes the inquiry for consignment details, upon which it provides the quote that covers routing, estimated time of delivery and the estimated time of arrival. Once the quotation is accepted by the customer, Kalgin proceeds to book the shipment by coordinating with its network partner in the country. The sailing schedule is provided to the customer and upon arrival of the consignment, the custom clearance is processed.*
- d. *THAT once a consignment arrives, the customer (consignee) usually has 3 days of free delivery from the vessel discharge to facilitate the clearance of goods, and 10 days free time to return the empty containers to the depot to avoid detention charges.*
- e. *THAT the consignee is obliged to provide Kalgin with a commercial invoice including evidence of payment to the supplier so that they are satisfied that title to the consignment has passed to the consignee. As part of their Brokerage services, Kalgin also attend the custom formalities including the payment of custom duty and tax for the clearance of the consignment on behalf of the consignee, which sums will be added to the monies due to Kalgin.*
- f. *If clearance occurs outside of 3 days of free delivery and 21 days of free time to return the empty containers Inland Freight Station Charges (IFS), storage and detention charges are incurred on daily basis. If there is further delay in payment by the consignee to the consignor or supplier but the consignment is cleared for release by port authorities, Kalgin will hold on to the consignment and store the same at the storage facility for which additional charges are incurred. Storage and detention charges must be paid by the consignee and the detention charges are usually billed to the consignee after the return of the empty containers to the depot. This is well understood by all importers of goods, particularly those in business who import goods on a regular basis and payment for storage or detention is a standard practice across the industry.*
- g. *THAT Kalgin is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and insurance brokers.*
- h. *THAT Kalgin also endeavors to keep the customer informed and updated throughout the entire process of facilitating the shipment of the consignment by providing email updates to the customer, which include the weekly Consignment Management Report (CMR's) confirming the location of the consignment. The purpose of this reporting and updating is to help ensure the customer (the Applicant in this case) is given adequate notice and time to prepare for the oncoming shipment and be ready to pay for them. This process*

also ensures that the necessary documents were submitted and payments made on time to avoid excess storage costs from arising.

- i. THAT the arrival notices also provide clear remarks to ensure that the empty containers are returned within 10 days from the vessel discharge date to avoid detention charges.
- **Kalgin's engagement by Dayal (The Applicant's Director).**

j. THAT during the period between October 2023 and January 2024, Kalgin was engaged by Dayal to provide freight and brokerage services for a total number of 6 consignments from Kolkata and Mundra in India, Tiangin Xingang Pt in China and Ningbo. Dayals confirmed Kalgin's engagement by email instructions to proceed with the booking. Copies of Dayal's emails confirming to proceed with bookings are annexed as "KS-2".

k. THAT as per the standard practice, Kalgin provided Dayals with weekly consignment Management Reports (CMR's) for all the consignments from 24th October 2023 until the shipments arrived at Fiji so that the shipments could be tacked, and to notify Dayals of any changes in estimated time of arrival. Attached and marked as "KS-3" are copies of all weekly CMR's provided to Dayals on 23rd & 31 October 2023, 8th 16th 20th & 28th November 2023, 5th 12th & 21st December 2023, 2nd 8th 15th 22nd & 29th January 2024, 5th 12th 19th & 4th 11th & 18th March 2024 26th February 2024.
 - **1st Consignment:**

l. THAT Consignment 1 was shipped from Mundra, India on 11th November 2023. Arrival Notice was sent on 22nd January 2024 to Dayals by Kalgin, together with House Bill of Lading, which confirmed the arrival on 28th January 2024. After the arrival notice was sent to Dayals requesting documentation to assist the clearance, it did not respond or provide documentation in timely manner and also had not paid the shipper.

m. THAT Between 25th January 2024 and 6th February 2024 Kalgin corresponded with Dayals and provided reminders about the incurring of storage charges if there is a delay. Consignment was discharged on 1st February 2024 by Kalgin; the free days for clearance ended on 6th February 2024. As a result of Dayal's failure to comply with the obligations to enable the release of the goods, Kalgin held the consignment 1 at a storage facility from 7th February 2024 until 12th February 2024. Email correspondences are attached as "KS-5" out of which email dated 6th February 2024 by Ashley Ashika Devi from Kalgin, for the attention of Nirmal Trivedi at Dayals Steel giving the details of storage charges.

n. THAT on 1st March 2024 Kalgin issued Tax Invoice S00359450 for a sum of \$28,600.26, which included freight and destination charges / Duty and VAT / Custom Clearance and Delivery charges. Destination charges included storage charges from 7th to 19th February 2024. Payment on this was due on 1st March 2024. This monies remain outstanding. The relevant invoice bearing No- S00359450 dated 1st March 2024 by Kalgin for a sum of \$28,600.26 is marked and attached as "KS-6". (This invoice and amount are not disputed)

- **2nd Consignment:**

- o. This consignment 2 was shipped from Kolkata, India on 4th December 2023. Arrival Notice to Dayals was given by Kalgin on 2nd January 2024 together with HBL copy. This arrived on 28th January 2024. Copies of the email sent to Dayals, together with the arrival notice are marked and attached as "KS-7"*
 - p. The arrival notice was sent out to Dayals requesting for documents to assist the clearance upon which Dayals provided all requested documents. Consignment 2 landed on 12th February 2024 and delivered to Dayal on 21st February 2024 and, the empty container was returned to the depot on 1st March 2024. No storage or detention charges were applicable to this consignment.*
 - q. Subsequently, Kalgin issued Tax Invoice No- S00 365892 on 1st March 2024 for the amount of **\$16,318.04**, which included freight and destination / Duty & VAT /custom clearance and delivery charges. Payment on this was due on 1st March 2024. The Monies owed on this invoice remain outstanding. A copy of the TAX invoice bearing No- S 00365892 and the reminders sent to Dayals by Kalgin are annexed as "KS -8". (This invoice and amount are also not disputed)*
- 3rd Consignment:*
- r. This consignment was shipped from Kolkata in India on 24th November 2023. Arrival notice was given on 22nd January 2024 together with HBL copy received from the agent, and it arrived at 28th January 2024. Dayals did not provide the documentation required to assist the clearance. Consignment landed on 13th February 2024. On 5th March 2024, Kalgin was also informed that the shipper had not been paid by Dayals. Consignment was already at a storage facility since 25th February 2024. Kalgin had to keep the consignment in storage until the shipper confirmed the payment on 14th March 2024. This storage period incurred charges. "KS-9" contains the email with the arrival notice and the tax invoice no **S00359453** dated 15th March 2024 for a sum of **\$31,512.46** being the freight and destination / Duty& VAT/ Custom Clearance & Delivery charges. Destination charges included **storage and warehousing** charges because of Dayals' delays.*
 - s. This consignment was delivered to Dayals on 15th March 2024 and they did not return the container to the depot until 20th March 2024, thus incurring detention charges. Vide "KS 10" Mails dated 5th march 2024 and 15th march 2024 from Ashika Devi warns about the accumulating storage charges.*
 - t. Kalgin also issued invoice No- **S00359453/A** on 22nd March 2024 for the container detention charges in a sum of **\$414.00**. "KS -11" contains the copies of the said Tax Invoices No- **S00359453** and **S00359453/A** issued by Kalgin to Dayals.*
- 4th Consignment.*
- u. Consignment 4 was shipped from Mundra in India on 26th January 2024. Arrival notice was given on 8th February 2024 and confirmed the arrival on 13th February 2024. Arrival notice and invoice bearing no- **S00365693** dated 1st March 2024 for a sum of **\$27,467.70** and invoice no- **S00365693/A** dated 25th March 2024 for a sum of **\$465.75** (being the*

delivered the WBC cheque which was given fraudulently for the sole purpose of securing the release of consignment 5 with no intention to pay. The Cheque was dishonored as it had been cancelled by Dayals.

- **Statutory Demand:**

- Given the fact that the payment for all 6 consignments had been pending for over 5 months, with no option, Kalgin sent statutory demand against Dayals claiming the sum of FJ \$ 323, 741.38, being monies due and owing for shipment, storage and delivery of steel coil sheets and the additional detention charges for empty containers from the date of delivery on 7th June 2024 till the return of those containers. The statutory Demand together with the breakdown of retention charges was served on 19th June 2024. (Vide paragraphs 61, 62,63 & 64).

- **Response to Applicant Dayals's 's Affidavit in Support:**

17. The Respondent "Kalgin" in its Affidavit in opposition to "Dayals" Supporting Affidavit states, *inter alia*, as follows;

- That there was no written or verbal communication with Dayals indicating that **storage charges would not be applicable** and no issue was ever raised at that point. Due to non-payment of shipper from Dayals, non-payment of Kalgin's invoices, the containers were retained and stored at different storage yards. Despite several follow-ups and reminders, Dayal made no effort to clear the overdue invoices, resulting in the accumulation of storage charges on a daily basis.
- That Dayal does not dispute invoices No- S00365693, S00367489, S00371574, S00371574/A, in the total sum of \$184,238.69. To date Dayal had not made any attempt to pay off this amount which was due for payment for Kalgin's services.
- That Kalgin team sent multiple reminders, following up on payment, and an updated statement of account was provided to Dayals clearly outlining the outstanding invoices that were supposed to be paid. There were clear communications from Kalgin informing Dayals that future shipment deliveries would be placed on hold due to non-payment of outstanding invoices. That Kalgin even paid for relevant tax and duty clearances for all the consignments in a sum of \$78,000.00 for just consignment 5 and none of these payments have been reimbursed by Dayals even though it has enjoyed the benefit of the payments.
- That it never agreed that the storage charges **would not be applicable**, no evidence has been provided to substantiate the allegation, there are multiple communications showing that Kalgin has consistently reminded Dayals regarding the storage charges applicable due to non-payment, and the slightly higher exchange rate in the invoice No- S00367489, as a result of a system glitch, was subsequently revised.
- That Dayals took more than 6 months to dispute the storage and other charges, raised issue and disputed only after taking delivery of all 6 consignments on 7th June 2024, while the invoices clearly state that any discrepancies should be communicated within 7 days. Dayals has filed this action against Kalgin as a delaying tactic to avoid settling the payment for services Kalgin has already provided.

- *That there are no correspondences or communications from Dayals that justify and substantiate the reasons for non-payment of the outstanding amount. Storage and detention charges were legitimately incurred due to the delay on the part of Dayals in providing documentation, non-payment of shipper and for the late return of the empty containers to the depot and the tariffs imposed was shared with Dayals ahead of time.*
- *That Dayal has no reasonable basis to expect release of its consignment without payment for services already provided for it. If Dayal was ready to pay the invoice, it could have paid for the invoices and charges promptly and thus avoided the storage and detention charges. To date, Dayal has not made any effort to pay for any of the monies. There were legitimate storage and detention charges applicable for the delay in payment by Dayal for the release of the consignment.*
- *That there are no discrepancies in relation to storage charges, and discrepancies in relation to the exchange rate have been addressed in the statement of account dated 5th June 2024.*

Reply Affidavit of Dayals:

18. On behalf of the Applicant, its Director, **Mr. Jay Prakash Dayal**, in his Reply Affidavit sworn on 6th June 2025 and filed on 7th June 2025 took up the position, *inter alia*, as follows;
- *As to paragraphs 14 and 15 of Krishnil's Affidavit in opposition, confirms that the Applicant engaged the services of the Respondent, but at all material times there was no agreement or contract in place for the levy of storage and detention charges or the rate at which it would be charged.*
 - *As to paragraphs 17 to 52 of Krishnil's Affidavit in Opposition, states that the Applicant was not advised prior to the transaction or at the time of engagement that storage and detention charges will be levied, and it disputes the invoices for storage and detention charges and is reconciling the records to check for discrepancies in the exchange rate applied in all the invoices issued.*
 - *As to paragraphs 53 to 60 of Respondent's (Krishnil's) Affidavit in opposition, the Applicant while relying on the averments in his Affidavit in support, in relation to paragraphs 61 to 64 thereof states that the storage and detention charges are disputed as the Respondent had no legal basis to impose the same and same have been unlawfully levied against the Applicant.*
 - *As to paragraph 71 of Respondent's (Krishnil's) Affidavit in opposition, the Applicant states that it is able and willing to pay legitimate charges for the services procured, which the Respondent should prove at the proper trial.*
 - *As to paragraphs 72 to 80 of the Respondent's (Krishnil's) Affidavit in opposition, the Applicant states that it has a legitimate dispute, and it has been unlawfully penalized by the Respondent. As to paragraph 74 of the Affidavit in opposition, the applicant states that it was advised that the storage and detention charges were not applicable, and the invoices were the first notice that the Applicant received of these charges.*

D. LEGAL FRAMEWORK:

19. **Section 516 of the Companies Act 2015 ("Com Act") provides:**

- "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.

Section 517 of the Com Act states:

"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."

E. IS THERE A GENUINE DISPUTE ABOUT THE DEBT?

20. Hon. Justice Jude Nanayakarra (as he then was) in his ruling in ***Searoad Shipping Pte Ltd v On Call Cranes (Fiji) Ltd [2020] FJHC 1025; HBM 36.2020 (11 December 2020)*** provided an excellent discussion of the various tests applied. The key points which I extract from the above to determine whether a genuine dispute is established for the purposes of section 517(1) (a) of the Companies Act, 2015 are as follows:

- (a) the threshold criteria for establishing the existence of a genuine dispute is a low one.*
*(b) the court does not determine the merits of any dispute. Rather, the Court is only concerned with the question - whether there is such a dispute? (In *Edge Technology Pty Ltd v Lite-on Technology Corporation [2000] NSWSC 471; (2000) 34 ACSR 301, Barrett J at [45]*); *Fitness First Australia Pty Ltd v Dubow; Mibor Investments Pty Ltd v Commonwealth Bank of Australia [1994] Vic Rp 61; [1994] 2 VR 290**

- (c) the threshold for that is not high (see *In Edge Technology*). The Court need not engage in a rigorous and in-depth examination of the evidence relating to the plaintiff's claim, dispute or off-setting claim (*Mibor Investments Pty Ltd v Commonwealth Bank of Australia*).
- (d) the threshold rather is similar to the "serious question to be tried" criterion which arises on an application for an introductory injunction or for the extension or removal of a caveat (*Eyota Pty Ltd v Hanave Pty Ltd*), or that there are reasonable grounds indicating an arguable case (see *In Fitness First (supra)* at 127, Ward J cited *Panel Tech Industries (Australia) Pty Ltd v Australian Skyreach Equipment Pty Ltd (N.2)*)
- (e) as McLelland CJ said in *Eyota*:

This does not mean that the court must accept uncritically ...every statement in an affidavit "however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself, it may be not having "sufficient prima facie plausibility to merit further investigation as to its [truth]" (cf Eng Me Young v Letchumanan [1980] AC 331 at 341), or "a patently feeble legal argument or an assertion of fact unsupported by evidence": cf South Australia v Wall (1980) 24 SASR 189 at 194.
- (f) the task is simply to identify the genuine level of a claim (*In Re Morris Catering Australia*). As McLelland CJ said in *Eyota*:

... except in such an extreme case [i.e. where evidence is so lacking in plausibility], a court ... should not embark upon an enquiry as to the credit of a witness or a deponent whose evidence is relied on as giving rise to the dispute. There is a clear difference between, on the one hand, determining whether there is a genuine dispute and, on the other hand, determining the merits of, or resolving, such a dispute.....
- (g) hence, if a company's claim is so "devoid of substance that no further investigation is warranted" (see *In Fitness First (supra) Panel Tech Industries (Australia) Pty Ltd v Australian Skyreach Equipment Pty Ltd (N.2)*), or is "plainly vexatious or frivolous", it will fail in establishing that there is genuine dispute .
- (h) the court does not engage in any form of balancing exercise between the strengths of competing contentions. Hence, where the company has advanced an arguable case, and even where the case against the company seems stronger, the court must find that there is a genuine dispute ((see *In Fitness First (supra)*; *CGI Information Systems & Management Consultants Pty Ltd v APRA Consulting Pty Ltd*); *Roadships Logistics Ltd v Tree*)
- (i) A genuine dispute is therefore one which is bona fide and truly exists in fact and that is not spurious, hypothetical, illusory or misconceived. It exists where there is a plausible contention which places the debt in dispute and which requires further investigation. The debt in dispute must be in existence at the time at which the statutory demand is served on the debtor (*Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd [1997] FCA 681; [1997] 76 FCR 452; Eyota*).

F. COMMENTS:

21. By its summons for setting aside filed on 10th July 2024, the Applicant DAYALS STEELS PTE LTD ("DAYALS") seeks to set aside the Statutory Demand ("the demand") dated 17th June 2024 issued by KALGIN GLOBAL LOGISTICS (FIJI) PTE LTD ("KALGIN"). The demand stated that DAYALS owed KALGIN a sum of FJ\$323,741.38. This amount is claimed in respect of

the logistic services, admittedly, provided by the Respondent KALGIN to the Applicant DAYALS as per the Invoices issued from 1st March 2024 till 17th June 2024,

22. The Applicant DAYALS contends that there is a genuine dispute as to the amount of the debt for the purposes of Section 517(1)(a) of the Companies Act, 2015 on the grounds adduced below.
23. In addition to the clear admission by DAYALS in paragraphs 5 & 6 of its Affidavit in support, It is clear to me from the contents of the correspondences via series of emails and the submissions made orally and in writing that there was an engagement of the Respondent Company (KALGIN) by the Applicant company (DAYALS) for services in arranging logistics for the importation of raw materials and goods. This engagement, admittedly, involved pick up of materials from supplier, Container arrangement, Freight and Cartage to a yard or warehouse from where the Applicant took delivery of cartage to the Applicant's steel mill in Ba.
24. It terms of the said engagement; the Applicant has made use of the services rendered by the Respondent and benefitted out of it at no costs or consideration on its part and at the expense of the Respondent. Thus, the argument advanced by the Applicant that there was no contract or agreement for the services by KALGIN between them holds no water.
25. The Applicant's main dispute is based on its claim that prior to and even after engagement, the Respondent had assured the Applicant that no storage charges will apply for the shipments held in its custody. The Applicant also raises the dispute in relation to exchange rate applied in the invoice/s. (Reference is made to paragraphs (5), (6), (7), (8) & (9) of the Affidavit in support of Mr. DAYAL, the Director of the Applicant company sworn on 10th July 2024).
26. In paragraph 11 of the Affidavit in support, Mr. Dayal states that under duress, the Applicant wrote a cheque for the invoices containing the storage charges for release of the consignment in order to avoid closure of its business operations and then stopped clearance of the cheque to get the Respondent to cancel those storage charges. The pertinent question that arises is, as to why it disputed the whole sum while the purported dispute was limited only in relation to the Storage, Empty container detention charges and on the Exchange rate, which were not in respect of all consignments?
27. Dishonoring the cheque for the total sum of \$321,567.88 by the Applicant, soon after obtaining the delivery of consignments, in my view, was an unwarranted act, particularly, while the Applicant had already admitted the liability for a major portion of the Debt in a sum of **\$248,140.88**, and in the absence of any genuine dispute for the balance sum of the Debt (**\$75,600.50**).
28. The reason for me to hold the view that there is **no genuine dispute** in respect of the balance debt in a sum of **\$75,600.50** is the failure on the part of the Applicant to adduce clear evidence in that regard in its Affidavits filed. Applicant's position in paragraph 7 of its Affidavit in support is that the Respondent had assured the Applicant that **no storage**

charges will apply for the consignments held in custody. No evidence whatsoever in this regard shown to be existing with the Applicant. Further, not even a word is spoken in its Affidavits about the charges for the detention of Empty containers , which is also disputed by the Applicant. Under these circumstances, I do not see the existence any issue to be adjudicated at a trial proper.

29. As I have said, under section 517 of the Companies Act, a statutory demand may be set aside, if there is a genuine dispute about (i) the existence of the debt (ii) the amount of debt or (iii) if the Company has an offsetting claim. (There is no offsetting claim made in this matter).
30. While I am mindful that the threshold is not high and that I need not engage in a rigorous and in-depth examination of the evidence relating to DAYALS'S claim. However, this does not absolve Dayals from the onus of having to adduce evidence that there is a serious issue to be tried or that there is an arguable case.
31. The authorities are clear. A statutory demand should be set aside where there appears to be factual evidence that may require further inquiry to establish the truth of the matter. A mere disagreement with a statutory demand without particulars, or a mere assertion of a legal argument unsupported by evidence, will not constitute a genuine dispute.
32. In this case, I have taken into account the email correspondences between the parties prior to the service of the impugned statutory demand. A payment plan was submitted by the Respondent for the sum of **\$248, 140.88**. This was not responded to by the Applicant. In turn, the Applicant also by its **email dated 24th May 2024 and marked as "KS-21"** made a proposal to pay the said amount in installments, but this did not materialize. This has now become as an unambiguous admission of liability on the part of the Applicant as I observed above.
33. Careful perusal of the invoices issued and the correspondences between the parties also reveal the scope of the services rendered by the Respondent KALGIN to the Applicant DAYALS during the process. I note that the invoices were not questioned by DAYALS as and when those were issued and served at the time of arrival of respective consignments and made available to the Applicant DAYALS.
34. On further perusal of the annexures tendered by the Respondent KALGIN, along with its Affidavit in Response, I have found that the Applicant by its **email dated 24th May 2024 sent at 5.30 pm** and addressed to Mr. Krishnil Singh at KALGIN, with copy to Mr. DAYAL, which is marked as "KS-21", has unreservedly admitted the liability for a sum of **\$248, 140.88**. This sum involved 10 invoices issued by the Respondent KALGIN.
35. The aforesaid said 10 invoices are as follows;
 1. Invoice No- S00359450 dated 1st March 2024 for a sum of \$ 28,600.26
 2. Invoice No- S00365693 dated 1st March 2024 for a sum of \$ 27,467.70
 3. Invoice No-S00365892 dated 1st March 2024 for a sum of \$ 16,318.04

2. Invoice No- S00 371574/D dated 5th June 2024 for a sum of \$ 753.25

On 5th Consignment

3. Invoice No- S00367489/A dated 31st May 2024 for a sum of \$ 39,882.00

4. Invoice No- S00367489/B dated 5th June 2024 for a sum of \$ 30,313.50

5. Invoice No- S00367489/C dated 17th June 2024 for a sum of \$ 2,173.50

Total \$75,600.50

42. This being the amount disputed by the Applicant under the guise of "Genuine Dispute", the argument advanced by the Counsel for the Applicant in his written submissions is that there was no agreement between the parties for imposition of Storage and Container Detention Charges. No evidence whatsoever was shown to be existing to be adduced at a trial proper in support of its claim that the Respondent had agreed **not to impose** Storage and Container Detention Charges.
43. Stern position of the Respondent, as per its Affidavit, that they never agreed for Storage and Container Detention charges to be waived or not to be applicable has not been rebutted by the Applicant. Storage and Detention charges are part and parcel in the arena of shipping and commerce inextricably attached thereto and applied if and when situation demands, unless it is waived, adjusted or reduced on a specific agreement, if the circumstances demand.
44. Had the consignments been cleared and removed by the Applicant in timely manner as and when they were ready, and the empty Containers were returned within the given grace period, no necessity would have arisen for the Respondent to impose such charges. The Applicant does not deny the allegation by the Respondent that there was a delay on the part of the Applicant in furnishing documents for clearance purposes and in making payment to the shipper.
45. In the light of the above, there need not be a specific agreement between the parties for the Applicant to be charged for the Storage and Container detention as argued by the Applicant's Counsel since it is a standard practice in the industry. However, a formal agreement and/ or evidence may be required if the parties had in fact agreed **not to** have such charges imposed. There is no even a semblance of evidence in proof of such an agreement between the parties for same to be gone into at a trial for same to be substantiated.
46. No legitimate grounds have been adduced by the Applicant to challenge the Statutory Demand. In the absence of such legitimate grounds, the Creditor with valid claims should not be hindered by tactical or frivolous disputes exhibited by the Debtor.
47. If there was any genuine dispute on the charges imposed, the Applicant could very well have raised it as and when the invoices were raised and served. The Respondent KALGIN repeatedly reminded about the outstanding payments as and when those payments became due and also reminded of the soaring storage and detention charges on daily basis and the accumulation of total debts. The reminders sent are found in annexures

53. For all these reasons discussed above, it is hard for me to accept that a genuine dispute exists as to the amount claimed by the Respondent KALGIN.
54. Thus, it is clear that the total sum of **\$321, 567.88**, together with a further sum of **\$2,173.50** totaling to **\$323,740.88**, as claimed in the Statutory Demand, cannot be disputed as the major part of it has been admitted and the rest of it in a sum of **\$75,600.50** is not genuinely disputed. Thus, this Court has no alternative but to dismiss the Application with a reasonable amount of summarily assessed Costs on indemnity basis being imposed on the Applicant for the clear abuse of process.
55. For the purpose of this Ruling, I have relied on the sums stated in the Affidavits and not those found in the written submissions.

G. FINAL ORDERS:

- a. The relief sought by the Applicant for setting aside of the Statutory Demand dated 17th June 2024, issued by the Respondent and served on the Applicant on 19th June 2024, is declined.
- b. The Summons filed by the Applicant on 10th July 2024, for setting aside the Statutory Demand, is hereby dismissed.
- c. The Applicant shall pay the Respondent, in 14 days from today, a sum of FJ\$ 6,000.00 (Six Thousand Fijian Dollars) being the summarily assessed indemnity costs.



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

At the High Court of Lautoka on this 7th day of November 2025.

SOLICITORS:

For the Applicant Messrs. Krishnil Patel Lawyers

For the Respondent Messrs. Howards Lawyers