

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA, FIJI
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBM 18 OF 2023

IN THE MATTER of a Statutory Demand dated 28th February 2023 taken out by **GREENSCAPE PTE LIMITED** a limited liability company having its registered office at Lot 1, Denarau Road, Nadi, Fiji Islands ("the Respondent") against **KESHWARAN MARKETING PTE LIMITED** ("The Applicant") and served on the Applicant on 2nd March 2023 by hand delivery.

AND

IN THE MATTER of an application by the Applicant for an Order setting aside the Statutory Demand pursuant to Section 515 of the Companies Act.

BETWEEN : **KESHWARAN MARKETING PTE LIMITED** a limited liability company having its registered office at Lot 2, Lovoni Road, Samabula, Suva, Fiji.

APPLICANT

AND : **GREENSCAPE PTE LIMITED** a limited liability company, having its registered office at Lot 1, Denarau Road, Nadi, Fiji.

RESPONDENT

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

COUNSEL : Mr. Heritage Snr O/I of K.S. Law – For the Applicant.
Mr. Pillai W. for the Respondent

HEARING : On 26th February 2025 (Agreed to be disposed by way of written submissions)

WRITEN SUBMISSIONS: Filed by the Respondent 15th July 2025.
Filed by the Applicant on 3rd July 2025.

DATE OF RULING : 14th November 2025.

RULING

A. Introduction

1. Before me is an Application preferred by the Applicant Company, KESHWARAN MARKETTING PTE LTD ("the Applicant") on 23rd March 2023 pursuant to section 516 of the Companies Act 2015 ("the Act") seeking the following reliefs;

A. That the Statutory Demand dated 28th February 2023 and taken out by the Respondent against the Applicant be set aside.

B. That the Respondent pay the costs and incidental to this application.

2. This Application is supported by the Affidavit sworn on 22nd day of March 2022 by RISHIKESHWARAN GOUNDAR, the Director of the Applicant Company, and filed on 23rd March 2023, together with annexures marked as "A" to "E".
3. The Application is resisted by the Respondent. The Affidavit in response, sworn on 5th December 2023 by CASSANDRA LEANNI ANONNA MAR, the Administrative Manager of the Respondent Company, was filed on 06th December 2023, together with annexures marked as "A" to "E".
4. The Applicant on 18th March 2024 filed its Affidavit in reply sworn by the said RISHIKESHWARAN GOUNDAR on 6th February 2024, which accompanied series of emails collectively marked as "A".

B. Hearing:

5. When the matter came up on 26th February 2025, Counsel for both parties agreed to have the hearing disposed by way of written submissions, and accordingly, have filed their respective written submissions as stated above.

C. Background.

6. The material averments, that give the background of this dispute, as per the Applicant's **Affidavit in Support**, are reproduced here for the sake of lucidity easy reference;

"7. THAT the Respondent Company hired our companies' services to procure wood mulch and the Respondent paid the sum of \$31,432.86 for 400 cubic meters of mulch. The Order was placed in the Month of November 2020.

.....

.....

10. 400 cubic meters of mulch was equivalent to 400 bulker bags were ready to be collected as ordered, and from 400 bags, 277 bags were collected.

.....

.....

.....

15. The Respondent Company has been claiming partial refund of monies for the Mulch not taken possession of. The Applicant had informed that the company could not refund the monies, but was willing to provide the balance of mulch, which was destroyed by the fire.Attached hereto marked as annexure E is a copy of the Email correspondences.

....

17. Further, the claim as per the Statutory Demand Notice is for full sum paid for 400m3 of mulch. The Respondent has taken 277 m3 of mulch, which equates to 277 bags. He is willing to supply the mulch pending.

.....

19. That we have good arguments for opposing the Statutory Demand notice and these arguments are summarized as follows.

a. Under the contract to supply Mulch to the Respondent, **the Respondent has taken 277m3 of mulch, which equates to 277 bags. The Respondent is claiming refund of \$31,432.86 which is for 400m3.**

b.

(All emphasis mine)

7. The **Affidavit in Response** of the Respondent Company, sworn by its Administrative Manager, in relation to the Applicant's above averments, states, *inter alia*, as follows;

4.I was in charge and had personal knowledge of the dealings between Greens cape Pte Limited and the Applicant Company **for the Order and supply of 400 cubic meters mulch equivalent to 400 bags, the genesis of the Statutory Demand dated 28th February 2023.**

12. I admit paragraph 4 of Gondar's affidavit and further said that the Statutory Demand dated 28th February 2023 was taken out against the Applicant company **for refund of the sum of \$31,432.86 paid to the Applicant company for the supply of 400 cubic meters mulch, when in fact only 277 cubic meters was collected.** The details are as follows;

a. The **applicant** was contracted to do landscaping service on Vomo Island .400 cubic meters of mulch was required. (the word "**the applicant**" hereof should be read as "**the Respondent**").

b. The order was made to the Applicant Company for the supply of **400 cubic meters mulch equivalent to 400 bulker bags.**

c. At 1.41 pm, the Respondent Company emailed the invoice for the ordered mulch in the **sum of \$31,432.86** and request confirmation of payment of the same. Attached marked "C" is a copy of the invoice bearing number 803.

d. ..

e. The applicant paid the respondent. Confirmation of payment is attached marked "D" herein (the **phrase "the applicant paid the respondent" should be read as "the respondent paid the applicant"**).

oo.....We then recently found out from an outside source that the stock was lost in a fire, This was not communicated to us by Goundar, **nor has he confirmed if the full 123 remaining bags can be collected till to date.**

13. I deny paragraph 5 of Gondar's affidavit and response as follows.

a. **The Applicant is indebted to the Respondent Company for the refund of 123 cubic meters mulch equivalent to 123 bulker bags the sum of which is above the statutory minimum or threshold under the Companies Act 2015.**

14. I deny paragraph 6 of Gondar's affidavit and its subparagraphs subjoined thereto and reply as follows;

a. ...

- b. Given the non-action of the **Applicant Company in not processing the return of the sum \$10,019.43 for the 123 bags yet to be supplied**, which is admitted by the Applicant in its own affidavit.

(All emphasis above mine)

D. Legal framework

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. Analysis & Determination:

8. In view of the direct and tacit admissions found in the averments of the Respondent's Affidavit in opposition referred to above, the contents of the annexures thereto, and those of the written submissions filed, I don't find any necessity for this Court to delve deep into the matter involving any serious argument.
9. The actual position, as to where both the parties now stand, is Chrystal clear from the pleadings in their respective affidavits.
10. Both parties are not at variance on the following facts;
 - a. The quantity of the "Wood Mulch" ordered by the Respondent from the Applicant was 400 cubic meters, which was equivalent to 400 bulker bags.
 - b. The total consideration agreed was \$31,432.86 for the said quantity of 400 bags to be collected by the Respondent from the yard of the "Topic Wood", who were the contracted supplier to the Applicant.
 - c. Total sum of consideration was paid and settled to the Applicant by the Respondent in advance and the Applicant received it.
 - d. Only 277 bags of Wood- Mulch were collected by the Respondent and 123 bags were yet to be made available by the Applicant for the Respondent to collect the same. Thus, 123 bags remained unsupplied or short supplied.
 - e. The value of the balance number of 123 bags was the actual amount payable.


What is the exact Amount in Due?

11. The Respondent, in its, purported, Statutory Demand Notice, claims a sum of **\$31,432.86**, which is the total sum agreed for the supply of total number of 400 bags of wood Mulch. The question arises here is as to on what basis the Respondent claims the said total amount of \$31,436.82, while it had admitted the supply and receipt of 277 bags and only 123 bags left to be supplied?
12. However, the Respondent, in paragraph 14 (b) of its Affidavit in opposition, has boiled down the claim to a sum of **\$ 10,019 .43** , which is just FIJI \$19.43 above the threshold limit stipulated under the Act 2015 in order to qualify for seeking a winding up order.
13. The next question arises here is as to how the Respondent arrived at the said sum of **\$10,019.43**. No evidence whatsoever is adduced by the Respondent in this regard. In order to fill this gap, what the Respondent's Counsel has done is engaging in some form of calculation, as shown in paragraphs 58 to 66 of the Respondent's written submissions.

14. The above calculation, as I see, is not based on any evidence, but only an attempt to balloon and bolster the Respondent's claim to meet the statutory requirement, so that they can proceed for the recovery of it through this winding up mechanism.
15. A simple calculation, if engaged objectively, will reveal that the actual amount in debt is lesser than the statutory threshold amount of \$10,000.00. Because, the total price agreed for 400 Bags of Mulch was **\$31,432.86**, which means the agreed price for 1 Bag of Mulch was only a sum of \$78.58 approximately. (**\$31,432.86 divided by 400= \$78.58**)
16. Accordingly, the total sum for the 277 bags supplied will be $277 \times \$78.58 = \$21,766.66$ and the amount for the unsupplied Mulch of **123 bags will be $123 \times 78.58 = \$9,665.34$.**
17. Thus, the actual sum due from the Applicant from the Applicant as per the Respondent's own admissions is only **around \$9,665.34**, which does not reach the statutory threshold amount of \$10,000.00.
18. Accordingly, without any further analysis, which is not warranted beyond this point, I decide that the, purported, Statutory Demand letter for a sum of **FJD 31,432.86** cannot stand as a valid one for the Respondent to proceed with its intended Winding up Proceedings, and it has to be set aside and dismissed.
19. Considering the circumstances, I order the Respondent to pay \$750.00 unto the Applicant as summarily assessed Costs of this Application.

F. Orders:

- a. The Application for setting aside Statutory Demand succeeds.
- b. The Statutory Demand dated and issued by the Respondent on 28th February 2023, and served on the Applicant on 2nd March 2023, for a sum of **\$31,432.86**, is hereby set aside.
- c. The Respondent shall pay the Applicant **\$750.00** (Seven Hundred and Fifty Fijian Dollars) being the summarily assessed Costs.


A.M. Mohamed Mackie
Judge



At the High Court of Lautoka on this 14th day of November 2025.

SOLICITORS:

For the Applicant: KS Law

For the Respondent: Gordon & Co, Barristers & Solicitors