

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CENTRAL DIVISION**  
**CIVIL (COMPANIES) JURISDICTION**

**HBE No. 21 of 2024**

**IN THE MATTER** of **NANDS PHARMACY PTE LTD**  
having its registered office at Level 2 Nands Shopping  
Mall, 550 Ratu Mara Road, Nabua, in the Republic of  
Fiji.

**AND**

**IN THE MATTER** of **THE COMPANIES ACT 2015**

**For the Applicant** : **Mr. Sharma D. and Ms. Gul F.**

**For the Respondent** : **Ms. Prasad L.**

**Date of Hearing** : **29 September 2025**

**Before** : **Waqainabete-Levaci, S.L.T.T, Puisne Judge**

**Date of Judgment** : **28 November 2025**

**J U D G M E N T**

*(APPLICATION TO DISMISS AS WINDINGUP PROCEEDINGS EXPIRED)*

**PART A - APPLICATION**

1. The Applicant Creditor (referred to as the Applicant Creditor – Hyperchem Pharmacy Pte Limited t/a Ray Pharmaceuticals is seeking winding up provisions against Nands Pharmacy Pte Limited (Debtor Company).

2. After having dismissed an interlocutory application by the Debtor Company for stay against the Winding Up proceedings, the court proceeded to hearing the Winding Up application.
3. A preliminary application was then made by the Debtor Company arguing that the Winding Up hearing was invalid as the proceedings had continued after the validity period of 6 months.

## **PART B - LAW, SUBMISSIONS AND ANALYSIS**

4. Section 528 of the Companies Act 2015 states as follows:

‘(1) An application for a company to be wound up in insolvency is to be determined within 6 months after it is made.

(2) The court may by order (or such conditions as it considers fit) extend the period within which an application must be determined, but only if –

(a) The court is satisfied that special circumstances justify the extension; and

(b) The order is made within the period prescribed by subsection (1), or as past extended under this sub-section, as the case requires.

(3) An application is, because of this subsection, dismissed if it is not determined as required by this section.

5. In Pacific Building Solutions; In Re [2022] FJHC 704; HBE 34 of 2021 (31 October 2022) held that any matters, hearings and directions held after the expiry period of 6 months was held void ab initio and hence was not enforceable because of the statutory bar period provided for in section 528 of the Companies Act 2015.
6. Similarly, in Officetech (Fiji) Pte Fiji Limited -v- Impressive Prints Ltd [2022] FJHC; HBE 008.2021 it was also held that any application for leave to extend the period of winding up which was made after the expiry of the winding up period under section 528 of the Companies Act 2015 and did not justify special circumstances to grant the extension was dismissed.
7. A similar provision is provided for in section 459R of the Corporation Act 2001 (Commonwealth Consolidated Acts). Under these Australian laws, the six month period for winding Up proceedings is strictly complied with, with extensions granted when leave is sort, during the validity period. There are exceptional circumstances

to grant extension of time for applications made after the expiration of the winding up proceedings period.

8. In Expile Pty Ltd -v- Jabbs Excavation Pty Ltd [2002] NSWHC 851 (1 September 2002) para 6, section 459R (1) and subsection (2) was referred to. There were three applications, the first being an extension of time for a short period to enable the hearing of the winding up application to be heard and determined, an application to transfer back to Registrar and vacate the hearing affixed before another judge. Hamilton J stated, when considering whether there were special circumstances:

'(6).....The discretion is a discretion to be exercised by the Judge on the view that he or she takes of all the circumstances of each case. Having said that, I should emphasize that one feature of s 459R(2) is that an order may only be made under the subsection if the Court is satisfied that special circumstances exist and justify the extension. If no special circumstances exist, then that is an end of the matter. If there is nothing that can be characterized as special circumstances, the discretion cannot be exercised. If, however, special circumstances are found to exist, that does not compel or even necessarily authorize the exercise of the discretion. Those special circumstances must be found to justify the extension and whether or not an extension is granted is still within the general discretion of the Court, as emphasized by the word "may", which is the third word in s 459R(2).

(9) What the Court must bear in mind in exercising its discretion is not simply the interests of the parties, but the public interest in what is established as the policy of this portion of the Act of ensuring that winding up proceedings are speedily disposed of. There are various good reasons for this policy and I do not purport to be exhaustive. They include winding up applications not being dealt with on material which is stale. They include situations where a company may be trading or engaging in transactions whilst it is insolvent, which should not be protracted. And they include companies, which are not insolvent, not having the commercial cloud caused by the existence of winding up proceedings hanging over their heads for a long time. This is particularly so when, under the policy of the Act, the circumstances in which applications may be made to set aside notices of demand are stringently controlled."

9. In considering whether or not to grant an extension, Hamilton J in Expile Pty Ltd -v- Jabbs Excavation Pty Ltd (Supra) had stated that the fact that the timelines for the proceedings had expired just a few days short of hearing and that the cause of delay

was caused by the Defendant who had filed an application to set aside the Statutory Demand, but 2 days prior to that hearing sort to withdraw the application, the Court found there were special circumstances to grant a short extension. The Court thereafter used the 'slip rule' in order to allow for an extension of the Winding Up period.

10. The Respondent Debtor Company argued that no formal leave application was sort to extend the 6 month period prior to the expiration of the date in October 2024. Secondly, given that there was no application filed prior to the lapse of the statutory period, the Court, pursuant to section 528 (2) of the Companies Act 2015 does not have the jurisdiction to determine the extension of the time period. Finally the Court has no authority to retrospectively grant an extension Case precedence have established that directions or rulings determined after the 6 month period was void ab initio and should be set aside. Reference was made to New India Assurance Company Pte Ltd -v-Westbus (Nadi) Pte Ltd HBE 30 of 2021 Mckie J held that the matter stood dismissed at the end of the 6 month period of the proceedings in accordance with section 528 (3) of the Companies Act 2015 and failure to comply was fatal to the application for Winding Up. If the matter was made known to the Court prior to the expiry of the 6 month statutory requirement, the Court could have moved to extend the Winding Up period. Justice Seneviratne in Western Wreckers: jRe [2018] FJHC 406; HBE 24 f 2016 (22 May 2018) observed this was a harsh provision as the Applicant was automatically penalized with no fault of their own.
11. Section 4 of the Companies Act 2015 prescribes the objective of the legislation as providing for the regulation of companies carrying on business in Fiji.
12. The Applicant Creditor Company had filed their application on 19 April 2024 for Winding Up proceedings, to be examined before the Deputy Registrar on 5<sup>th</sup> of June 2024. Therefore in compliance upon section 528 of the Companies Act 2015, the six month requirement would have lapsed on 19<sup>th</sup> October 2024.

13. The Applicant Creditor Company has also made submissions to the Court arguing that their application for Winding Up had complied with all requirements under the Companies Act 2015, its Rules and Regulations and by virtue of the Compliance certification by the Deputy Registrar and the Affidavit verifying Compliance, they were ready to proceed to Hearing in June of 2024. The application to Stay the Winding Up proceedings by the Respondent Debtor Company, was by their action, acquiescence of their part to extend the Winding Up Proceedings.
14. The Applicant Creditor Company argued that having stood over the Application to Stay the proceedings outside of the Statutory timelines for Winding Up proceedings without any objections by the Respondent Debtor Company, was inter alia, an acquiescence of the Respondent Debtor Company, and ultimately the Court to extend the statutory time period for Winding Up proceedings.
15. 'The Applicant Creditor Company thereafter relied upon Rule 115 of the Companies (Winding Up) Rules 2015, seeking the Court to abridge time in accordance with the said Rules which states that:
  115. The Court may, in any case in which it sees fit, extend or abridge the time appointed by these Rules or fixed by an order of the Court for doing any act or taking any proceeding.
16. In its ruling, the Court found that from 19<sup>th</sup> of April 2024 until 30<sup>th</sup> of October 2024, the Court had released two Rulings after conducting hearings dismissing the Stay application. Therefore when the matter was to have lapsed prior to 19 October 2024, there was no formal application before the Court to make mention of the expiry of the 6 month statutory period for Winding Up. The Applicant Creditor Company was present solely on the 17<sup>th</sup> of September 2024 and failed to bring to Courts attention the expiry of the Statutory period for Winding Up proceedings.

17. Despite the arguments of the Applicant Creditor Company regarding Rule 115, the Court is of the view that the provisions under section 528 of the Companies Act 2015 are statutory in nature and cannot be overridden by any provisions in the Rules.
18. Having considered the wordings of section 528 of the Companies Act 2015 and the lack of formal or verbal applications to extend the statutory time period prior to it having been expired, section 528 (2) and Sub-section (3) cannot be exercised by this Court.
19. Therefore the Court finds that the Application for Winding Up proceedings lapsed on the 19<sup>th</sup> of October 2024 and hence was automatically deemed to have been dismissed because it was not finally determined.
20. Furthermore, there was no formal application made prior to the statutory timelines having lapsed, to enable the Court to consider whether or not to extend the Winding up Proceedings.
21. Finally, even if the timeline had lapsed, there was no basis for the Applicant Creditor Company to seek for an Extension of time retrospectively as there was no special circumstances, given that the matter came to the notice of the Court by the Respondent Debtor Company in September 2025, 11 months after the timelines had lapsed.
22. Despite the argument by the Counsel for the Applicant Creditor Company that they were ready for Hearing of Winding Up, they did not anticipate and make the necessary oral or formal application for Extension of statutory time limitations for Winding Up proceedings.
23. Their assumption was that in proceeding to affix hearing dates for the Stay Application sufficed as acquiescence by the Respondent Debtor Company that the statutory time limitations had been extended.

24. The Court finds that this argument is misconceived. Section 528 of the Companies Act of 2015 is not a newly created hybrid provision within Company laws. Statutory time limitations for company laws in Australia in regards to Winding Up is similar to that of Fiji. Hence the reasons for imposing laws generally for statutory times limitations is to ensure finality in the proceedings within an effective timeline, enables the liquidator to effectively control and administer assets, facilitate effective administration of the process of Winding Up, ensure predictability in litigation processes by Creditors and finally providing some windows of opportunities for the Debtor Company to settle their debts.
25. Although the Court is empowered to retrospectively extend the statutory timelines for Winding Up proceedings, this Court finds that there are no special circumstances to do so.
26. There was lack of any form of formal or verbal application by the Applicant Creditor Company. There was also a time lapse of 11 months from when the proceedings had lapsed, with no proper explanation for special circumstances for delays to justify the retrospective extension of time. An interlocutory application for Stay is not of itself a proper justification warranting special circumstances.
27. Given the provisions under section 528 of the Companies Act 2015, the Winding Up proceedings is deemed to have been dismissed from 19 October 2024.

### **PART C - COSTS**

28. Costs awarded for \$2,500 summary assessed for the Respondent Debtor Company.

### **COURT ORDERS**

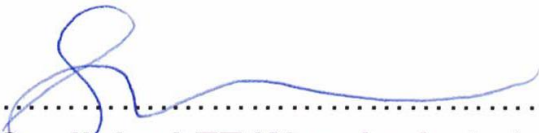
29. **The Court Orders as follows:**

*(a) The Winding Up Application is hereby dismissed;*

*(b) All Rulings and directions after 19 October 2024 are void ab initio;*

*(c) That costs be awarded to the Debtor Company for \$2500.*



  
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**Ms Senileba LTT Waqainabete-Levaci**  
**Puisne Judge of the High Court of Fiji**