IN THE HIGH COURT OF FIJI AT LAUTOKA
COMPANIES JURISDICTION

Companies Action No. HBE 05 of 2024

IN THE MATTER of sections 176 and 177 of the Companies Act 2015

AND

IN THE MATTER of **FAIRDEAL EARTHMOVING CONSTRACTORS PTE LIMITED & WAILOALOA SEASCAPE HOTEL PTE LIMITED**

BETWEEN : **SANJAY KUMAR** of Vuda, Lautoka, Company Director and Businessman.

PLAINTIFF

AND : **PRAMOD KUMAR** of Namaka, Nadi, Company Director and Businessman.

FIRST DEFENDANT

AND : **SHEILENDRA KUMAR** of Votualevu, Nadi, Company Director and Businessman.

SECOND DEFENDANT

AND : **LANEWAY CONSTRUCTION PTE LIMITED** a limited liability company having its registered office at Top Floor, HLB House, 3 Cruickshank Road, Nadi Airport, Nadi, Viti Levu.

THIRD DEFENDANT

Appearances : Mr. Roopesh Singh and Ms. A. B Swamy for the Plaintiff

Mr. M. Naivalu for the First Defendant

Mr. Chandra S. for the Second Defendant

Mr. Narayan & Ms. S. Kumar for the Third Defendant

Date of Hearing : 01 September 2025

Date of Ruling : 22 January 2026

R U L I N G

1 The background to this case is set out in my Ruling (**Kumar v Kumar** [2025] FJHC 137; HBE05.2024 (19 March 2025)).

2 Mr. Sanjay Kumar (**"Sanjay"**), who is the plaintiff, and the two defendants, Mr. Pramod Kumar (**"Pramod"**) and Mr. Sheilendra Kumar (**"Sheilendra"**) are brothers. They are directors and shareholders of two companies namely Fairdeal Earthmoving Contractors Pte Limited (**"FEMPCL"**) and Wailoaloa Seascape Hotel Pte Limited (**"WSHPL"**).

3 On 11 March 2024, Sanjay filed an Originating Summons under sections 176 and 177 of the Companies Act 2015, seeking an Order to wind up FEMPCL and WSHPL on account of oppression.

4 Sanjay has long alleged that Pramod and Shailendra have, over a long period of time, banded together to manipulate the affairs of FEMPCL and WSHPL and make business decisions which have prejudiced him.

5 Among the allegations advanced by Sanjay, is an assertion that Pramod has, on occasion, utilized assets of FEMPCL either for his personal benefit or, alternatively, for the benefit of Laneway Construction Pte Limited (**"LCPL"**), a company in which he is said to hold a beneficial interest.

6 By an Order of the Court dated 29 July 2024, LCPL was joined as a party (now 3rd defendant).

7 At the present time, there are some interlocutory orders in force which restrain Pramod and Sheilendra from dealing with or disposing of or encumbering FEMPCL and WSHPL assets. There is also an Order which allows Pramod unhindered access to the companies' books.

8 There are several interlocutory proceedings pending before this Court (e.g. application to dissolve or set aside the injunction; committal proceedings instituted by Sanjay on account of an alleged breach of the injunctive orders; an application that Sheilendra be suspended as Director of FEMPCL until the substantive matter is finally determined, a Motion to vary the injunctive orders to allow the sale of a certain company asset at a certain price offered by a prospective buyer and the net proceeds to be applied towards servicing a company bank loan).

9 Notably, an application by the first defendant filed on **04 November 2024** also seeks to wind up the two companies. This application was also filed pursuant to sections 176 and 177 of the Companies Act.

10 The matters set out above provide the background to the issues presently under consideration. These are:

(i) whether Sanjay, Pramod and Sheilendra ever agreed in Court that the two companies should be wound up?

(ii) whether or not the winding up application filed by the first defendant on 04 November 2024 is still extant?

11 As to the first question, I note following:

(i) contrary to AK Lawyers submission, my recollection, corroborated by my notes, is that all three counsel did inform the Court on 20 March 2025 that, but for a few matters yet to be ironed out between them, the matter was almost settled.

(ii) in addition to (i) above, that was how I understood the situation.

(iii) in fact, the matter was adjourned thereafter to allow the parties an opportunity to complete settlement – which – as it turned out – they could not bring to fruition.

(iv) the parties have not filed a Terms of Settlement.

12 In the written submissions filed by AK Lawyers for and on behalf of Sheilendra, they rely on the following two cases (**Green v Rozen & Ors** [1955] 2 ALL ER 797; **Official Receiver v Tompkins & Ors** Civil Action No. 0052d of 1994S).

13 However, I agree with Mr. Singh's submissions that **Rozen** is of little precedent value in the case before me.

14 In **Rozen**, both counsel informed the court that they had settled on terms which were recorded in their respective briefs. However, they chose not to present their terms of settlement in Court. As a result, the terms on which they settled were not endorsed as a Court Order.

15 One of the parties later defaulted in remitting the final installment and the costs as per their settlement. The claimant then applied to Court, in the original action, seeking judgment on the unpaid sum. Slade J declined to deal with the application. He reasoned that, since the parties had settled, the court had no further jurisdiction in respect of the original claim (*functus*). The claimant could only recover through a fresh action.

16 I also agree with Mr. Singh's observation that **Tompkins** is irrelevant to the situation before me. In that case, Fatiaki J (as he then was) refused to strike out a claim on account of an argument that the plaintiff had failed to disclose that the parties had executed a Terms of Settlement in an earlier case.

17 I cannot agree with Mr. Narayan's submission. In the circumstances of this case, for the Court to make a finding that the parties had settled, is to encroach upon their freedom to contract on terms of their own choosing.

18 Having said that, I gather that the real motive underlying Mr. Narayan's pursuit of these issues is to maneuver and steer the Court, as well as the other parties, towards the realization that in the circumstances of this case, a winding up order is inevitable and that, in any event, the Court retains the power to make such an order, – if it is just and equitable - notwithstanding the absence of agreement between the parties.

19 Mr. Narayan submits that:

> *..personal and professional conflicts have resulted in significant challenges for both companies.*
> *..these personal differences have caused an irreparable breakdown in trust and cooperation, making effective decision-making impossible. Despite attempts to address these issues, there has been a failure to engage constructively in efforts to reach a resolution. Consequently, the 1st defendant previously proposed a voluntary winding-up to ensure the fair distribution of assets which was initially supported by the Plaintiff and the 2nd Defendant who now appear to be resiling from that position.*

20 Section 177 (1) of the Companies Act allows the Court to order that a company be wound up if the conduct of its affairs have been oppressive to, or unfairly prejudicial to, or unfairly discriminatory against a member or members, whether in that capacity or in any other capacity. However, there are other remedies available:

> *The Court can make any order under this section that it considers appropriate in relation to the Company, including an order—*
>
> *(a) that the Company be wound up;*

(b) that the Company's existing Articles of Association be amended or repealed;

(c) to regulate the conduct of the Company's Affairs in the future;

(d) for the purchase of any Shares by any Member or person to whom a Share in the Company has been transmitted by will or by operation of law;

(e) for the purchase of Shares with an appropriate reduction of the Company's share capital;

(f) for the Company to institute, prosecute, defend or discontinue specified proceedings;

(g) authorising a Member, or a person to whom a Share in the Company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the Company;

(h) appointing a Receiver or Manager of any or all of the Company's Property;

(i) restraining a person from engaging in specified conduct or from doing a specified act; or

(j) requiring a person to do a specified act.

21 Section 513 (d) of the Companies Act provides:

A Company … may be wound up by the Court, if the Court is of opinion that it is just and equitable that the Company should be wound up.

22 When is it *just and equitable* to wind up a company?

23 I am mindful that there is ample case law authority around the common law world that an order for winding up in a shareholder's petition is a remedy of last resort, granted only where it is just and equitable to do so.

24 In Fiji, this position is reflected in the range of remedies set out in section 177 (1), although I note that in **In re a Company (No. 002567 of 1982)** [1983] 1 WLR 927, other remedies outside those set out in the English statute may be considered. It is also refelcted in section 523 (2) which I set out below:

Where the application is presented by Members of the Company as contributories on the ground that it is just and equitable that the Company should be wound up, the Court, if it is of the opinion—

(a) that the applicants are entitled to relief, either by winding up the Company or by some other means; and

(b) that, in the absence of any other remedy, it would be just and equitable that the Company should be wound up,

must make a winding up order, unless it is also of the opinion both that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the Company wound up instead of pursuing that other remedy.

(my emphasis)

25 There are myriads of cases which establish that it would be *just and equitable* to wind up a company where the members are not able to co-operate in the management of the company's affairs and which has led to an inability of the company to function at the board or shareholder level ((see **Dosanjh v Balendran (In re Webb Estate Developments Ltd)** [2025] EWHC 507 Ch)), the English High Court Chancery Division; **Fulham Football Club (1987) Ltd v Richards** [2012] Ch. 333, per Patten LJ at paragraph 56; **In re Sailing Ship Kentmere Co** [1897] WN 58);.

26 Likewise, in a *quasi*-partnership, it would be considered *just and equitable* to wind up a company where there is a "functional deadlock or an irretrievable breakdown of trust" (**Chu v Lau** [2020] UKPC 24, per Lord Briggs JSC; **Harrison v Tennant** (1856) 21 Beav 482)).

27 In **Dosanjh v Balendran (In re Webb Estate Developments Ltd)** [2025] EWHC 507 Ch)), the English High Court Chancery Division cited with approval various cases which establish the following:

(i) a petitioner is required to show that a tangible benefit will be derived from the winding up, usually that there is a surplus of assets over liabilities so that there will be a distribution to members (**Taylor v Whitehall Partnership Ltd** [2023] EWHC 596 (Ch), per His Honour Judge Mithani KC)

(ii) the member (applicant) retains a significant element of choice in the remedy to be sought, even though the court has the last word.

(iii) a three-stage analysis is required of the court:

(a) is the applicant entitled to some relief?

(b) if so, would a winding-up be just and equitable if there were no other remedy available?

(c) if so, has the applicant unreasonably failed to pursue some other available remedy instead of seeking winding-up?

(iv) the legal burden is on the applicant on (a) and (b) above. It shifts to the respondent at stage (c).

(v) a petitioner who relies on the 'just and equitable' clause must come to court with clean hands, and if the breakdown in confidence between him and the other parties to the dispute appears to have been due to his mis-conduct he

cannot insist on the company being wound up if they wish it to continue (as per Lord Cross noted in **Ebrahimi v Westbourne Galleries Ltd** [1973] AC 360 at 387).

28 The three-stage analysis stated in paragraph 27 (iii) above would appear to be in line with Fiji's section 523 (2) (see above).

29 Now, turning to the second question – whether or not the winding up application filed by the first defendant on 04 November 2024 is extant, I would rather not answer this. I say this given that, as I have just set out above, it is open to the Court in any event to consider an Order to wind-up the two companies on just and equitable grounds.

30 Guided by the cases cited in **Dosanjh v Balendran (In re Webb Estate Developments Ltd)** [2025] EWHC 507 Ch) and the provisions of the Companies Act 2015 cited above, the real questions which the parties need to confront now are:

(i) do they agree that there is a "functional deadlock and/or an irretrievable breakdown of trust" in the way the two companies have been and are being run?

(ii) is Sanjay entitled to relief, either by winding up the two companies or by some other means? (section 523 (2)(a))

(iii) in the absence of any other remedy, would it be just and equitable that the two companies be wound up? (section 523 (2)(b))

(iv) if so, has Sanjay unreasonably failed to pursue some other available remedy instead of seeking winding-up? (section 523 (2))

31 In other words, there is no reason for this Court not to make an Order to wind up the two companies on just and equitable grounds if the parties can agree that:

(i) there is a "functional deadlock and/or an irretrievable breakdown of trust" in their relationship.

(ii) there is no other relief available in the circumstances.

32 The parties should seriously consider the above. The matter is now adjourned to 26 January 2026 for trial, unless settled. Parties to bear their own costs.

....
Anare Tuilevuka
JUDGE