IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Winding Up Action No HBE 03 of 2021

IN THE MATTER of **WAIQELE SAWMILLS PTE LIMITED** a body corporate having its registered office at Waiqele Sawmills Limited Building at Qalewaqa, Labasa in Fiji.

AND

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

IN THE MATTER of application for a Winding Up Order pursuant to Section 176, 177 and 513 (d) of the Companies Act

BETWEEN: **ABDUL AZIZ BEG, FEROZ BEG** and **FAIAZ BEGG** of Sarwan Singh Street, Labasa, Businessman and Shareholders.

PETITIONERS

AND: **AHMED BEG** of Delailabasa, Labasa in the Republic of Fiji Businessman.

1ST RESPONDENT

AND: **MAQSUM BEGG** of Solove, Waiqele, Labasa, in the Republic of Fiji Islands, Company Director.

2ND RESPONDENT

AND: **HAZRA KHATOON** aka HAZARA KHATOON as an Administratrix in the Estate of Jafar Begg aka Nasib Begg of Solove, Waiqele, Labasa in the Republic of Fiji Islands, Retired, holding approximately 50% shares on Trust for the Estate of Jafar Begg aka Nasib Begg.

3RD RESPONDENT

Counsel : **Applicant: Mr. S. Sharma**

: **Respondent: Mr. A. Kholi**

Date of Hearing : **17.12.2021**

Date of Judgment : **20.06.2022**

Catch Words

Companies Act Sections 176,177- Oppression- unfairly prejudice- unfairly discriminatory- legitimate expectation-Board Room Tactics- Companies (Winding Up) Rules 2015 Rules 3, 18

JUDGMENT

INTRODUCTION

1. This is an action seeking winding up of Waiqele Saw Mills Pte (the Company), in terms of Sections 176 and 177 of Companies Act 2015. Petitioners as well as Respondents hold equal, 50% share. It is axiomatic that when both parties are holding 50% of shares, without consensus, there will be deadlock or disruption of activities of the Company. Petitioners are alleging serious misconduct on the part of first Respondent, including and not limited to some criminal investigations, which had affected the affairs of the Company and also complete breakdown of relationship between the close relatives. It had affected the affairs of the Company. There are clear evidence that, the Company cannot be managed in this manner due to first Respondent's oppressive, prejudicial and or discriminatory behaviour. Due to estranged relationship between the parties first Respondents is blocking the appointment of first named Petitioner's (Aziz) son or a suitable replacement , in terms of the Articles of Association of the Company. This issue had resulted impasse between Petitioners and Respondents and first Respondent is taking undue advantage from the situation, which itself is an oppressive act. He is alleged to have used Board Room tactics as well as 50% shareholding of his family to prevent calling of extraordinary meeting of the Company and or suitable replacement being made to the Board, in place of Aziz, who had voluntarily retired. This was a matter that could have solved, at the time of retirement of Aziz, instead dragged to deprive Aziz of his remuneration of $120,000 on the basis that he had retired. By the same token, had acted in discriminatory manner not to allow Aziz's son Faiaz being replaced and being paid Aziz's entitlement. Articles 46, 47 and 48 of Articles of Association contains provisions of calling extraordinary meeting. There is oppressive, prejudicial and discriminatory behavior by the Respondents, and if continues there will not be an option, other than to wind up the Company. I am not exercising this option, for the reasons given. At the moment company financials are not up to date this is a priority. Once financials are up to date company can be valued and either party will have an option to buy the other 50% or less in order to prevent this stalemate situation and ending

each party having 50% stake. Parties are free to sell the company to third party if they cannot purchase. At the same time directions are given to appoint a suitable nominee for retired Aziz, to the Board of the Company. First respondent is restrained from preventing legitimate expectations of Aziz, who had retired for good reasons.

FACTS

2. Both parties relied on the affidavits they had filed and also submissions made by each party.

3. Petitioners in the affidavit in support stated that

   a. The Company was incorporated by two brothers namely first named Petitioner and his late brother Jafar Begg, who owned equal shareholding and conducted business successfully.
   b. Even after the demise of late Jafar Begg, the estate of late Jafar Begg was represented by his wife and she had assigned three shares each to his three children and conduct to the Company was not hindered.
   c. First Respondent who owns one share, was appointed to the Company Board of directors in 1991.
   d. First Respondent and first Petitioner together managed the Company till about 2019 when a civil action was filed against first named Petitioner but this was later settled.
   e. Petitioner called an extraordinary meeting of the Company to remove first Respondent as Director and an employee of the Company.
   f. On 21.8.2019 first respondent was informed that removal of him as director was due to
      a. Police investigation regarding criminal charge.
      b. Existence of obscene video that involved him.
      c. Reputation of the Company was at stake
      d. Business relationships were strained due to above.
      e. Ability to discharge duties of the Company and fiduciary duties of Director.
      f. Business operations needs to be unaffected.
   g. Frist named Petitioner did not want to be part of an organization where integrity is being questioned.
   h. Due to a settlement reached between parties two Petitioners and two Respondents are represented in the Board. Both first and second named Petitioners are Directors of the Company. First and first and second Respondents are also Directors.
   i. First named Petitioner had appointed third named Petitioner (Faiaz) in place of him, on 30.11.2020 but this was objected by Respondents and they do not recognize that appointment.

j. Frist named Petitioner had tried to appoint a fresh accounting firm instead of existing accounting firm which had been the accountants of the Company for last 30 years. Again this was also objected.
k. First Respondent had entered leasing agreement with his daughter for leasing a property belonging to the Company for a mere $200 when such a property could be leased between 1,400 -2,000. This fact was not denied by Respondents.
l. The Company is neither paying him nor his replacement Faiaz Begg, due to alleged illegal appointment of Faiaz Begg as Director in place of first named Petitioner.
m. Second named Petitioner who is one of the two signatories to the bank cheques had refused to sign, unless payment to first Petitioner is done as done previously.
n. On 7.12.2020 key workers of the Company had written conflicting instructions that they received from directors since July, 2020.
o. When Faiaz Begg was taken to saw mill to familiarize himself of the industry, first Respondent had instructed workers to not co-operate with him and workers walked out.
p. Key workers have refrained from work due to this conflicting instructions they received and had written collectively of their "Disadvantaged at workplace".
q. The workers were requested to come and four out of eight of the workers that refrained from work previously were terminated.
r. First Respondent had delivered timber to Begg's Timber amounting $13,671.40 without documentation, for the benefit of first Respondent.
s. After death of first Petitioner there is a fear that his shareholding will not be adequately recognized by Respondents.
t. First Respondent is not talking with first Petitioner and abusive and provoking him for a fight.
u. First named Petitioner fear for his life due to circumstances and had not been to his office due to fear as he was unable to work with first Respondent.
v. First Respondent had instructed senior Accounts Clerk not to give financials to first named Petitioner.
w. First Respondent is using the Company account with Bred Bank for his personal use.
x. First Respondent had removed a 20 foot container with some tools and hardware belonging to the Company.
y. First Respondent had requested for an expensive mobile phone.
z. First Respondent had requested second named Petitioner to sign bank cheques and used them.
aa. Conduct of the company was oppressive.
bb. The Company cannot operate with disagreements between the two fractions have escalated beyond repair.

4. Most of the allegations and specially allegations of oppression, discrimination and or unfairly prejudicial treatments were against first Respondent. Hence some of the averments contained in the affidavit in opposition are hearsay.

5. Second Respondent had sworn an affidavit in opposition to winding up and stated inter alia,

   a. Both parties had entered terms of settlement regarding Labasa High Court, Civil Action 42 of 2019, hence unable to comment on alleged criminal action investigations regarding first Respondent.
   b. In terms of the said settlement Directors of the Company were named hence appointment of Faiaz Begg was illegal.
   c. Apart from that, appointment of Director needs to be done in compliance with the Articles of Association and also relevant law and this had not been followed hence appointment of Faiaz Begg was unlawful.
   d. The Company operated smoothly after settlement reached in regard to Labasa High Court Civil Action No 42 of 2019 on 12.3.2020.
   e. Parties have settled all the issues and first named Petitioner had hugged first Respondent and all parties to this action had agreed to work together.
   f. First Respondent was removed from Directorship unlawfully and it was done by first named Petitioner with the help of third named Petitioner, who was unlawfully appointed as Director.
   g. Removal of accountants who had been with the Company for nearly three decades by first named Petitioner was not approved by other shareholders hence unlawful and Respondents consider them as independent accounting firm.
   h. Second Respondent, at paragraph 30, had remained silent about leasing a property at Nasinu, belonging to the Company at a mere $200, despite lease agreement being annexed as N to the affidavit in support.
   i. The Company meeting called by first named Petitioner, on 7.10.2020 could not reach any conclusive resolution due to no majority was achieved.
   j. New Director can only be appointed after seven day notice in special general meeting or annual general meeting in terms of Articles 72, 73 and 74. This was not denied in the affidavit in reply, but state there was no strict compliance earlier.
   k. Since appointment of third named Petitioner as a Director was unlawful no payment were made to him and he was not considered as alternate Director to first named Petitioner.
   l. Third named Petitioner had tried to set up an office in the Company premises and this was objected. This resulted some employees leaving office on 7.12.2020 after giving in writing the dilemma they encounter due to Directors' conflict.
   m. First Respondent had requested all employees who left on 7.12.2020 to report to work and some were terminated as they remained absent.

n. When the Company made sales to Begg's Timber, its IT system was not operational hence manual invoices were raised.
o. Second named Petitioner is given all relevant information such as annual reports. Annexed is an annual report of 2017.
p. Company resolution was passed to first Respondent to purchase a new mobile phone from Company funds. No such resolution was annexed.
q. Bred Bank account was used to reimburse first Respondent's payments to the Company.
r. Any missing items in the container at Prime Plaza, happened during his unlawful termination as Director.
s. Payment to first named Petitioner frozen as he declared retirement from the board of the Company.
t. Salaries of Directors were determined through a board resolution.
u. The company is solvent hence should not be wound up.
v. Respondents are willing to purchase shares of Petitioners at a reasonable price.
w. Respondents are not financially stable hence need funding for this purpose.

LAW AND ANALYSIS

Preliminary Objections

6. At the outset Respondent had raised preliminary objections regarding time period relating to filing of affidavit in Reply, in terms of Companies (Winding Up) Rules 2015. Petitioner had exceeded time by two days, with the consent of Respondent's counsel.

7. Despite consenting again counsel for Respondent had raised this as an objection stating that even with consent such time period cannot be exceeded in terms of Companies (Winding Up) Rules 2015.

8. In the written submissions, Respondent had sited some judgments that are irrelevant to the issue of noncompliance of the Companies (Winding Up) Rules 2015, as those judgments relate to mandatory provisions under Companies Act 2015. These are two different statutory regimes, which are mutually exclusive.

9. Unlike Companies Act 2015, Companies (Winding Up) Rules 2015, contains Rule 3, which allows court to dispense from compliance with these Rules. This is considering highly technical nature or the Rules compared with, not so technical provisions contained in Companies Act 2015. This distinction should be understood before application of Rule 3 of Companies (Winding Up) Rules 2015, for a non compliance of Companies Act, 2015.

10. When a strict compliance of Companies (Winding Up) Rules 2015 is imposed it may defeat the purpose of the Companies Act 2015, due to exhaustive and technical nature of the said

Rules as opposed to sections contained in Companies Act 2015. Hence, the court is granted discretion to dispense with requirements in terms of Rule 3 of Companies (Winding Up) Rules 2015.

11. This does not mean a party can violate the said Rules as they please and, the party that violated, can get away with such a violation. There is a discretion given to court to dispense with a Rule considering circumstances of the case, including conduct of the parties and prejudice to parties and or time of raising such an objection or any other relevant factors.

12. The formalities of the Companies (Winding Up) Rules 2015 are exhaustive and plays an important part in regulating process of winding up of a company, but at the same time technicalities of such forms and procedure should not forget the ultimate purpose of the said Rules. Too much attention being made to technicalities of Companies (Winding Up) Rules 2015, may not achieve the ultimate purpose of the legislation and this is the underlying reason to allow the court to dispense for a fit and proper case, but these this is an exception than the normal.

13. For example Sections 176 and 177 of Companies Act 2015, protects minority interests and prevent oppression, unfair prejudice and or unfair discrimination. When one see such a deplorable, misconduct such as oppression, discrimination or acting unfairly prejudicial manner it will be injustice not to consider merits of the application and dismiss the application on mere technical noncompliance.

14. Technicalities of Companies (Winding Up) Rules 2015 should not be used to prevent meritorious application based on oppression, discrimination or prejudicial conduct. Dismissal of an action on technical objection without considering merits may be path of least resistance, but such a path of least resistance, may be an incentive to oppressor or discriminator to continue such actions. This would be unjust, to say the least.

15. Respondents had also raised an issue that Petitioners had not added a person who holds one share in the Company. He is not represented in the Board or management of the Company and obvious 'inactive shareholder'. He is a child of Aziz's deceased brother and sibling of both first and second Respondents.

16. I can't see any prejudice to unnamed party considering circumstances of this case. If he desired he could have intervened and there was no evidence that he wanted to do so. In an application under Section 176 of Companies Act 2015, there is no mandatory requirement that all shareholders be made parties to such an action. It may be impossible in a public company for obvious reasons. Why should there be an exception for Private Company? It is desirable to add all shareholders, when the numbers are less, such as this case, but

again for the reasons given above, I am reluctant to dismiss this action for failure to add such a party.

17. Respondents had ample opportunity to raise such issues before hearing if they wanted him to be added and that could have done without difficulty. It seemed that Respondents are resorting to same tactic, by capitalizing some mistakes of opposing side, to deprive the other side their day in court or considering merits of the matter being heard.

18. This should not be allowed. Without prejudice to above, an error or failure is not always fatal and in sine instances curable if no prejudice to parties, if raised in time. Failure to raise such a thing early can also be considered as waiver, too.

19. In this case there are unresolved issues between Petitioners and Respondents, this had even resulted some employees being caught in the middle of conflicting instructions from two parties and some had to pay dearly by termination of their employment at the hands of first Respondent. So, the issues raised through oppression and discriminatory action has an effect on the Company and its employees and even on third parties such as creditors. Consideration of merits, in this action, than kick in to long grass, through preliminary objections, is the need of the hour.

20. So considering the circumstances of this case, it would be wholly unjustified if I dismiss this action on technicalities without considering merits. So I reject preliminary objections raised by the Respondent's counsel.

21. The overwhelmed allegations and plight of the Company, that had even escalated complaints to Ministry of Labour and termination of some employees, outweigh the need to go beyond, preliminary objections and this is an additional ground to reject those.

22. At least one non compliance was not only consented by the counsel for the Respondent and the other was waived by conduct. There was no prejudice from the both failures. So, in my opinion this is a matter where Rule 3 of Companies (Winding UP) Rules 2015 applies, hence the preliminary objections are overruled, and proceed to consider merits of the application.

Oppressive Discriminatory and Prejudicial Conduct

23. The Petitioners are seeking winding up of the company and state that the affairs of the company are conducted by the first Respondent in oppressive manner. Companies Act 2015 defines oppression of minority shareholders in Section 176 and remedies are contained in Section 177.

24. Sections 176 of the Companies Act, 2015 state as follows.

> "Grounds for Court order
>
> 176.—(1)The Court may make an order under section 177 if—
>
> (a) the **conduct of a Company's Affairs**;
>
> (b) an **actual or proposed act or omission** by or on behalf of a Company; or
>
> (c) a resolution, or a proposed resolution, of Members or a Class of Members of a Company,
>
> is either-
>
> (i) **contrary to the interests** of the Members as a whole; or
>
> (ii) **oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member** or Members whether in that capacity or in any other capacity.
>
> (2)For the purposes of this Part, a person to whom a Share in the Company has been transmitted by will or by operation of law is taken to be a Member of the Company." (emphasis added)

25. Accordingly, the Petitioner who is seeking winding up is required to establish either the conduct of the Company affairs, the actual or proposed act/ omission of the Company, or a resolution or proposed resolution of Members or a class of Members of the Company are either,

    a. Contrary to the interest of the members as a whole or
    b. **Oppressive to, unfairly prejudicial, or unfairly discriminatory against a member** or members.

26. So an action for 'oppression' which is a 'generic' term, can be instituted by one member irrespective of shareholding in terms of Section 176(1)(ii) of Companies Act 2015. It is not confined to oppression and may be discrimination or unfairly prejudiced. These are terms that can cover most of the situations where 'shareholder squeeze out', deadlocks and disputes in private companies, through some objectionable conduct of members of a company.

27. Petitioners together hold 50% of issued shares, in the Company hence they have a *locus* to bring this action seeking oppression, in terms of Section 178 of the Companies Act 2015.

28. Petitioners' seek orders either Respondents to purchase the shares of the Petitioner or to wound up the company. These are alternate remedies. Petitioner had not included them as alternate remedies and commonsense should prevail. This may also be non compliance

considering Schedule 2 form D2, which can easily adopted and corrected as alternate remedies.

29. It should also be noted a special application for winding up 'must' be made in the for D2 in Schedule 2. The format given in D2 is clear that order to compel a party to purchase of share is alternate to order for winding up. So if one is granted other is rejected.

30. The orders that court can make is not confined to winding up or for order to purchase shares, but remains diverse depending on the circumstances . Such orders may be complimentary and or can be specific directions to prevent discriminatory or oppressive or prejudicial, conduct complained.

31. In terms of Section 177 of Companies Act 2015, court can give orders to regulate the Company Affairs in future. These broad range of orders are necessary to eliminate the oppression and or unfairly discriminatory or prejudicial acts complained of. The Courts are not the best to manage a company, but if oppression or discriminatory actions are found orders may be given to the remedy situation.

32. In some instances Articles of Association may not give a clear answer as in this case and court is granted a fairly wide discretion to resolve any 'oppressive' situation, with necessary orders to eliminate 'oppression'.

33. Section 176 did not make an exclusive definition of what forms oppressive acts of a majority shareholder, and or the management of the affairs of the company. The definition is broad and if the conduct is 'contrary to the interests of the Members as a whole' (Section 176(1)(i) or 'oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member or Members whether in that capacity or in any other capacity' (Section 176(1)(ii)), an order can be made in terms of Section 177 of the Companies Act, 2015.

34. So the Petitioner needs to establish requirements contained in Section 176(1)(i) or Section 176(1)(ii) of Companies Act 2015, in order to obtain an orders contains in Section 177 of Companies Act 2015.

35. In this instance Petitioners allegations are under Section 176(1)(ii) of Companies Act 2015.There is no requirement of having 50% shareholding, or more to seek an order under Section 176 of Companies Act 201. This can be a derivate action by minority shareholder, and this provision is aimed to prevent oppressive, discriminatory or prejudicial behaviour of majority shareholders or management of the company.

36. It can also be applied to a situation similar to this action, where each party is having equal shareholding, but due to nature of management and or operations of the Company one party is having an edge other the others.

37. First Respondent was engaged in the Company even prior to his father's death. He had taken over the Directorship his father held subsequently. So first Respondent is virtually in charge of staff and had even sacked employees who had clearly informed of dilemma that they face due to conflicting instructions from Aziz and his son Faiaz as opposed to first Respondent.

38. First Respondent had managed the Company even prior to his appointment as a Director of the Company in or around 1991. His late father was a Director of the Company along with Aziz. They were initial two directors and after demise of first Respondent's father he was appointed as a Director and he continued the management of the Company. So, apart from being a Director first Respondent was in charge of management of office of the Company and with the retirement Aziz as Director, he had gained upper hand of the management of the Company and now preventing Aziz's son being named as a Director of the Company.

39. First Respondent does not want Aziz's son Faiaz to take over Directorship that Aziz held and also he does not want him to allow orientation in the functions of the Company. This shows the mindset of first Respondent which is oppressive and discriminatory and unfairly prejudicial to Aziz.

40. The Company had remained a closed family entity and if first Respondent is transparent in his work there should not be any fear of Aziz's son succeeding Aziz in the Board of the Company. This is obviously legitimate expectation of Aziz, and expected reciprocal response from Respondents as he had done the same when his brother died.

41. In *Wayde v New South Wales Rugby League Ltd* [1985] HCA 68; (1985) 180 CLR 459; 10 ACLR 87 at 95 held (Per Brennan J)

> "Nevertheless , if directors exercise a power-albeit in good faith and for a purpose within the power-so as to impose a disadvantage, disability or burden on a member that, according to ordinary standards of reasonableness and fair dealing is unfair, the court may intervene under s 320... The operation of s 320 may be attracted to a decision made by directors which is made in good faith for a purpose within the directors' powers but which reasonable directors would think to be unfair.'

42. It is clear that blocking Faiaz being appointed to the Board of the Company was unfair, in the circumstances. Due to shareholding of 50% Respondents were able to block Faiaz's appointment.

43. In *Kokotovich Constructions Pty Ltd v Wallington* (1995) 17 ACSR 478 and Re Back 2 Bay 6 Pty Ltd (1994) 12 ACSR 614 and *Shum Yip Properties Development Ltd v Chatswood Investment & Development Co Pty Ltd* (2002) 40 ACSR 619 courts have granted winding up orders against the companies , when there are acts of oppression. This is not the only option available, and court can exercise variety of orders including an order to wind up in suitable instance.

44. In my mind though winding up is an option in a case of oppression that should be exercised carefully. Most of the very successful companies are highly leveraged, hence in a winding up no one benefits and everybody will loose. For this one needs latest Annual Reports of the Company, but unfortunately the Annual Report submitted by the first Respondent is five year old, historic annual report of 2017. There are some financial statements for 2019 but these may have been prepared for Tax purposes and different accounting principles applies.

45. The human ingenuity has no boundaries and oppression, discrimination, and or prejudicial conduct, cannot be defined. One can identify such actions from facts but no definition is possible. This is the reason for legislating Section 176(1)(i) and (ii) which can cover a wide range of unsatisfactory conducts of a company. Some of the examples of such conducts are as follows;

a. Improper diversion of the business
This can be where a competitor or a supplier is given special treatment eg. Larger mark-up than usual or buying at a higher price than usual where the decision maker has a stake, or interest. See *Scottish Co- operative Wholesale Society Ltd v Meyer* [1950] AC324; Re *Bright Pine Mills Pty Ltd Ltd* [169] VR 1002; *Webb v Stanfield* (1990) 2 ACSR 283.

b. **Payments of close associates or relatives (immediate family members)** which cannot be justified or above market rate without specific job description. Here the performance of the company and the contribution of the person who was granted payment should be unproportionate. (See *Sanford v Sanford Courier Service Pty Ltd* (1987) 10 ACLR 540 at 557)
c. **Denial, refusal or delaying to the vital information such as annual financial statements** or other books of accounts (see Re Back 2 Bay 6 Pty Ltd (1994) 12 ACSR 614
d. **Not banking money daily to the bank account**. This allows the person who is in operation of the company to misappropriate money and lead to lack of transparency in financial affairs of the company.

e. **Board Room tactics** by the majority shareholder or the chief operating personnel which are carried out due to majority rule though itself not oppressive if done repeatedly to undermine the minority interests (see *John J Starr (Real Estate) Pty Ltd v Robert R Andrew*(A' asia) Pty Ltd(1991)6 ACSR 63

f. **Failure to hold board meetings regularly** that amounts to one-man-rule, which is detriment to the other shareholders.(See *Shum Yip Properties Development Ltd v Chatswood Investment & Development Co Pty Ltd* (2002) 40 ACSR 619 at 659)

g. **Decisions that favour related companies or relatives or entities** or persons who are directly connected to a person who is operating the company, which are detrimental to the company as a whole (see Re Spargos Mining NL (1990) 3 ACSR
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h. Loss making of a company repeatedly during a favourable market condition in order to suppress the share value is an oppression. This can happen when the majority shareholder or the person who operate the company wants or desires to purchase the company at a lower price. So the profits are suppressed through various means to show that company is not profitable. The members do not have much choice in such a situation. This can happen in a small company where there are only 2-3 shareholders or in a large corporation. In a small company when one member is operating the company, due to the lack of financial transparency such oppressive behaviour can occur. In large corporation this can happen due to various accounting methods and valuation methods. Such oppression is possible due to lack of transparent management decision making, where actual profits are hidden or diverted to another.

i. Using company funds to defend an action for oppressive actions can amount to oppression. (See *Re DG Brims and Sons Pty Ltd* (1995) 16 ALSR 559).

46. "Unfairly prejudicial", can take many forms and cover a larger area than discrimination. There are obvious overlap in oppressive, and discriminatory behaviour. In UK following instances were held unfairly prejudicial[1]

a. **one member prevents another from participating in the management of the company** *Re Haden Bill Electrical Ltd.* [1995] 2 BCLC 280 (Ch.) a party who was removed as chairman and as director of a private company had a legitimate expectation that he would continue to participate in the management of the company

[1] Miller, Sandra K. (1997) "Minority Shareholder Oppression in the Private Company in the European Community: A Comparative Analysis of the German, United Kingdom, and French Close Corporation Problem," Cornell International Law Journal: Vol. 30: Iss. 2,Article 4.Available at: http://scholarship.law.cornell.edu/cilj/vol30/iss2/4

Re Bird Precision Bellows, Ltd. [1985] 3 All E.R. 523 (C.A.) held, unfair prejudice existed where the petitioner were minority shareholders and the majority removed them from the board of directors.[2]

b. **one member has seriously mismanaged a business** *Re Macro (Ipswich) Ltd* [1994] 2 BCLC 354 (Ch.) held, mismanagement of the real estate business occurred where the defendant failed to get competitive bids on construction work, failed to refurbish properties, failed to properly supervise ,repair work, obtained poor terms for leases, mismanaged litigation, and overpaid insurance.[3]

c. **member improperly uses corporate assets** *Re Elgindata Ltd.* [1993] 1 All E.R. 232 (C.A.) held, that serious mismanagement occurred where majority shareholders bought an expensive car, had company pay for construction costs of a home, and used corporate assets for personal purposes
In re Sam Weller & Sons Ltd. [1990] Ch. 682, [19891 3 W.L.R. 923 [1990],B.C.L.C. 80 held, that a director who had the company purchase a holiday home for his sons, and refused to pay dividends was prejudicial conduct.

d. Misappropriate company funds or diverts substantial profits from the company to himself. *Lowe v. Fahey and others* [1996] 1 BCLC 262 (Ch.) held, substantial profits from two development projects were diverted from the company
In Re London School of Electronics Ltd. [1986] 1 Ch 211, [1985] 3 WLR 474, [1985], BCLC 273, [1983-85] BCC, 394 (Ch.) held, diversion of the company's students from the company's program to a different program.

47. At the outset, it is observed that, the most of the allegations contained in the affidavit in support this action are directly related only to first Respondent. For the reasons best known to him, he had remained silent and the affidavit in opposition was filed by his brother second Respondent.

48. So when it relates to the facts that he had no personal knowledge such facts are hearsay.

49. This affidavit in opposition by second Respondent show that first Respondent's actions are condoned by second Respondent who is also a Director and shareholder of the Company.

Decision to favour daughter of first Respondent

50. Aziz in his affidavit had annexed the lease agreement between the Company and Zefraana Zkiya Begg who is the daughter of first Respondent according to paragraph 30 of the affidavit in support. Second Respondent, had conveniently neither admitted nor denied in paragraph 31 of the affidavit in opposition. This clearly shows that he is avoiding the

[2] ibid
[33] Ibid.

inevitable. This lease was granted in 2019 when parties have already estranged relationship. The rental of commercial property in Prime Plaza in Nasinu at ground floor. According to Petitioners such a property should fetch a price of $1,400- $2000. This shows that first Respondent had used his position in the management of the company to override the best interest of the Company and also Petitioners. This clearly show that despite having equal shareholding, in the Company, first Respondent has an upper hand over and above his shareholding and he is using it in oppressive and or discriminatory and or unfairly prejudicial manner.

51. There were no reasons given why first Respondent elected not to swear an affidavit in opposition when he claims himself as the Managing Director and also Chief Executive Officer of the Company (See Annexed AA to affidavit in support).

Lack of Annual Reports for 5 years and failure to provide financial information when requested

52. The Company had functioned without any dispute till about 2019. So, even by then annual reports were one year behind as the latest annual report of the Company submitted was 2017 and it was prepared in or around September, 2017. This was financial statements for the year ended 30.6.2017, and annual report was prepared three months after financial year ended, which was a very healthy financial position of a private company.

53. Since then, things have gone well, not only regarding financial reporting, but also the affairs of the company and relationship between the parties. This shows a close correlation between the affairs of the company and failure to submit annual reports. There are allegations against the present accountants too. I do not wish to state more on that for obvious reasons, but suffice to state that delaying annual reports for five years in a company, is the first red flag on financial affairs of the Company. This can create more distrust and disputes.

54. It is clear from the evidence that absence of annual reports for 2018, 2019, 2020, and 2021 area long overdue. There are allegations of first Respondent not providing details of the financials to Aziz who had been with the Company since its inception as a Director and also holding 9,999 shares or 49.99% of the Company.

55. Paragraph 47 of Aziz's affidavit in support stated that first Respondent had ordered Senior Accounts clerk on 23.11.2020 not to give the Company financials or relevant documents, being a Director prior to his retirement in following month. This allegation can only be disputed by first Respondent not his brother who is second Respondent, and to that extent his affidavit in opposition, is hearsay.

56. If first Respondent was genuine and transparent in his work he could have asked what was required by Aziz and provided all that information to him or to his lawyer. Absence of such conduct including not offering desire to provide financial information to Aziz who it the only remaining founder can also be unfairly prejudicial considering circumstances.

57. First Respondent had defended failure to provide financial information to Aziz when he is the only remaining founder and largest shareholder holding 49.99% shareholding of the Company. First Respondent is not only oppressive, but also immoral and unethical by any standard. Aziz has wealth of experience in the Company he formed in 1976 and had worked hard for it to declare a dividend of over $4 million in 2020. He can be a mentor to all present day employees and Board members due to his wealth of knowledge in the Company and exclusion of him from financial information on mere technical ground that he had already retired, is discriminatory.

58. When the Company lacked Annual Reports for more than 5 years, as the largest shareholder and the only one of surviving founder of the Company, Aziz should be concerned about the Company should have been supplied financials requested. In a company of this nature human connections are more visible than legal fiction of the entity. In any event if the affairs of the Company are transparent what prevents the financials information being provided to Aziz?

59. Without prejudice to above in the paragraph 48 of the affidavit in opposition had replied that Aziz was given information before he sign any cheque. This is misleading to say the least. This was relating to an incident that happened, after settlement reached on 12.3.2020, and accordingly "the signatories of all bank accounts of the Company shall be Ahmed Begg and Feroz Begg both of whom shall be required to sign cheques in order for the same to be honored by the banks."

60. So Aziz's signature was not required for the Company cheques by 23.11.2020. So by that time though Aziz had 49.99% shareholding he neither had current, annual reports nor, any other financial information relating to payments of the Company. He was deprived of financial information when requested from Senior Accounts Clerk. Aziz is the only person who had been associated with the Company since inception and his wealth of experience and hard work had resulted in the Company being very successful to declare a dividend of $4 million. So depriving him of any information relating to the Company is not only oppressive but also unethical and immoral.

Regular Board Meetings

61. There is no evidence of regular board meetings despite one Director retiring and desired his son Faiaz to take over his reins. Irrespective of irregularity in the manner it was done, if regular Board meetings were held such issues could be solved.

62. There are provisions contained in the Articles of Association relating to extraordinary meeting being called and why such a meeting was not held was beyond comprehension. There was no evidence first Respondent and or other Respondents taking steps to resolve the issue of appointment of suitable replacement for Aziz.

63. To call an extraordinary meeting the requirement was 10% shareholding in terms of Article 46 of the Articles of Association. The Directors can call extraordinary meeting or if a request is made in writing by shareholders having 10% or more it is mandatory to call extraordinary meeting. Blocking Aziz's son being appointed in such a meeting using 50% shareholding is oppressive, discriminatory and also unfairly prejudicial and should be prevented by orders of the court.

64. First Respondent does not want to resolve the issue relating retirement and appointment a suitable person in place of Aziz. He is taking advantage of the situation, and most of the issues would have prevented if first Respondent held regular meetings to discuss issues.

65. By avoiding the issues and taking advantage of the situation first Respondent had clearly acted in a prejudicial manner to Aziz. He knew that after the settlement reach on 12.3.2020, Aziz and first Respondent's remuneration were agreed $120,000. Aziz had retired to let his son Faiaz to obtain said remuneration hence it was discriminatory to block the appointment of Faiaz, as a Director when first Respondent and second Respondent were appointed as Directors on the same basis. This is a private company and so far it had been successful.

66. There was no evidence of regular board meetings even after the issue had arisen, relating to retirement of Aziz. At paragraph 32 of the affidavit in Reply of Aziz clearly laments not having meetings and stated how a thing such as alleged appointment of Faiaz as Director could be discussed when first Respondent had had requested the Secretary of the Company not to call meetings.

67. It is clear from the shareholding, structure of the board appointment of a Director in place of retired Aziz through a board resolution, through a vote, is a non-starter. Aziz had already decided to retire and informed that to the Company, in terms of the Articles of Association, irrespective of any consent orders made on 12.3.2020.

68. When one consider the events preceding, his retirement he cannot be without good reason. In paragraph 44 of the affidavit in support, Aziz had alleged abusive conduct on the part of first Respondent towards him. He being an elderly person being treated like what had been alleged, shows lack of respect for elderly closely related person by first Respondent. This was about a month before Aziz's decision to retire. This is again an allegation that required first Respondent's response and he had failed to reply.

69. Alleged behaviour of first Respondent can be considered as 'constructive exit' of Aziz from the Board of the Company. In the circumstances, relying on settlement of the court reached on 12.3.2020 and blocking a suitable replacement as a Director is discriminatory and also prejudicial towards Aziz.

70. Aziz had allowed first Respondent to enter to the Board of the Company, after demise of first Respondent's brother, and reciprocity of that gesture, is a legitimate expectation.

71. First Respondent is able to block the appointment of a suitable replacement for the retired director using boardroom tactics.

Board Room Tactics

72. According to paragraph 44 of the affidavit in support, after settlement was reached by parties on 12.3.2020, on or around 20.10.2020, Aziz had gone to first Respondent and he was treated in deplorable manner, considering his age and also his contribution towards the Company.

73. These allegations were not denied by first Respondent and avoided the issue by second Respondent stating that it was neither admitted nor denied as to the facts.

74. First Respondent is not accepting appointment Faiaz who is a son of Aziz on the basis that his appointment was contrary to Articles of Association.

75. Article 77(c) of the Articles of Association of the Company allows a 'by notice in writing to the company' a director can resign from the post, and it was never expected that Board Room Tactics will be resorted to block a legitimate replacement for retired Aziz.

76. Article 84 of Articles of Association , states 'any casual vacancy occurring in the board of directors may be filled by the directors, but the person so chosen shall be subject to retirement at the same time as if had become a director on the day on which the director in whose place he is appointed was last elected director'. This Article is under heading 'Rotation of Directors' and not a situation such as retirement of Aziz.

77. First Respondent cannot use his vote in the board, to block a suitable replacement for Aziz. Since the Company had been a close family company it is discriminatory on the part of Respondents, not to allow Aziz's son to succeed him. First and second Respondents, have also become Directors of the Company on the basis that they were sons of Aziz's deceased father. So it is discriminatory for Respondents to use Board Room tactic to prevent retired Aziz's son as Director of the Company.

78. If so what prevents calling an extraordinary meeting to resolve the issue. Article 77 allows a person to resign by 'writing a letter to the Company.' Since Aziz had done so by his letter to Company Secretary annexed 'o' to the affidavit in support , he can be considered as already retired. It is to be noted that he had not used the word 'retire' in the said letter, but his intentions were clear and there was no denial of that.

79. Aziz's intention to retire was on the assumption that his son Faiaz be appointed for his place. This was not an unreasonable request as already his deceased brother's two children are represented in the Board of the Company as two Directors. The method he selected for appointment of Faiaz, was admittedly not in line with the Articles of Association. This fact is not denied by Aziz, too, but this was a matter that could have been resolved, using the doctrine of *nonc pro tunc*. Articles of Association is silent on a situation such as this.

80. What is the need of the hour is to resolve the differences between the parties and allow the Company to function, without further disruptions or deadlocks.

81. In simple the error on the part of Aziz could have been, easily resolved if not for the first Respondent's tactic to deprive Petitioners a remuneration of $120,000 which is substantial. The appointment of Faiaz to the Board of the Company, was an issue that had resulted actions of both parties that resulted even termination of some employees.

Adverse effect on affairs of the Company

82. Employees of a company is an asset to any organization. They should not be dragged in to disputes of the Directors. Employees should have a clear line of command and they should not be subjected to situation that had occurred on 7.12.2020.

83. From the allegations contained in the affidavit in support above acts of oppression or discrimination or actions that are unfairly prejudicial are found.

84. From the above, it can safely deduce that acts of oppression are not taken lightly by the court and Section 176 of the Companies Act, 2015 is the basis of derivative action against any oppression. Winding up of a company is also a remedy that can be exercised at the discretion of the court considering the circumstances of the case.

85. From the evidence presented by both parties the Company, which had started in 1979 would have accrued Good Will. In terms of the settlement reached before my brother judge on 12.3.2020, the Company declared a dividend of $4 million, which shows the strength of the Company.

86. Petitioners had requested an order for winding up or for order to sell shares. Respondents had shown desire to purchase too.

87. In my opinion, the Company should first be valued once financials are updated and the option for either party to purchase the others' shares should be explored first before making an order for winding up.

88. Human ingenuity and creativity has no boundaries and when it comes to oppression and treatment or discriminatory conduct can take various forms. In my mind oppression or discrimination and or prejudice to a member of a Company will not always result in winding up of the company or compelling purchase of shares of oppressed party, though such actions are more preferred outcomes.

89. *Re Saul D. Harrison & Sons* [1995] 1 BCLC 14, 17 (C.A.)[4] it was held 'unfairly prejudicial' can be 'an commercially unfair' act. So in my opinion having consider the judicial pronouncements, Section 176 of Companies Act 2015 can be utilized to prevent 'unfair action' of a director and or shareholder towards another similar shareholder as in this case.

90. *Re Postgate & Derby (Agencies) Ltd.* [1987] BCLC 8, [1986] BCC 99, 353 (Ch) UK it was held that unfairly prejudice can be even legitimate expectation.[5] It is evident that more than four decades the Company had remained a close family entity with its success story. From the evidence before me after demise of Aziz's brother he had not blocked first Respondent being appointed as a Director. If the appointment of first Respondent was blocked (as what is being done by first Defendant to block Aziz's son while he is alive!), as the only remaining founder of the Company first Respondent would not have become a Director of the Company due to shareholding structure. Subsequently second Respondent also became a Director of the Company.

91. Aziz's belief that there will not be fair treatment of his shareholding by Respondents when he dies is no without a base. When he and his son Faiaz is treated while he is alive what could happen in his absence is any body's guess.

92. By the same token, Aziz while he is living desired his son Faiaz to succeed him and this is a legitimate expectation of any reasonable parent such as Aziz. There is no moral or ethical grounds to object to such an appointment, too. So in my mind depriving of Aziz's son being succeeded in the Director board while he is living is a legitimate expectation of 49.99% shareholder and the only remaining founder of the Company and prevention of that by

[4] ibid
[5] ibid

Respondents were treating Aziz , unfairly prejudicial manner and courts intervention through necessary orders are needed.

93. It was held in *Re Postgate & Derby (Agencies) Ltd.* [1987] BCLC 8, [1986] BCC 99, 353 (Ch.) interpretation of word 'unfairly prejudiced' found in UK legislation that,

> "The concept of unfair prejudice which forms the basis of the jurisdiction under S 459 enables the court to take into account **not only the rights of members under the company's constitution, but also their legitimate expectations arising from the agreements or understandings of the members inter se.**"[6] (emphasis is mine)

94. First Respondent is preventing Aziz's son being considered as Director, using 50% shareholding owned by Respondents collectively, and also Articles of Association.

95. The court needs to assess the conduct of the Respondents and then consider the tools or options available to court to prevent such oppression, discrimination and or prejudicial conduct. The type of orders that can be made are found in Section 177 of Companies Act 2015. It states,

> "Orders the Court can make
>
> 177.—(1)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;

[6] ibid

(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**.

(2)If an order that a Company be wound up is made under this section, the provisions of this Act relating to the winding up of Companies apply—

a) as if the order were made under Part 39; and

(b) with such changes as are necessary.

(3) If an order made under this section repeals or modifies a Company's Articles of Association, or requires the Company to adopt Articles of Association, the Company does not have the power under section 46(6) to change or repeal the Articles of Association if that change or repeal would be inconsistent with the provisions of the order, unless-

(a) the order states that the Company does have the power to make such a change or repeal; or

(b) the Company first obtains the leave of the Court."(emphasis added)

96. The orders that a court can make under Section 177 of Companies Act 2015 are not confined to the list given as they were inclusive as opposed to exclusive. So a wide discretion is given to court when there is an oppressive, discriminatory or prejudicial behaviour of a company is established.

97. The Company is liquid and had declared a substantial dividend pursuant to a consent judgment of 12.3.2020, entered by a brother judge for substantial amount. Respondents are opposing winding up, at the same time they had shown desire to purchase the shares of Petitioners at a reasonable price. In my mind this is an option that is explored considering the liquidity and goodwill and also other circumstances.

98. Petitioners had not provided a valuation of shares and this may be difficult due to lack of Annual Reports since 2017. So the company accountants are given six months to complete Annual Reports for the financial years ended 2018, 2019, 2020 and 2021. Considering the fact that by that time financial year ended in 2022 will also be due that should be completed without undue delay too.

99. After annual reports were completed parties are at liberty to appoint a suitable accounting/auditing firm for the valuation of the shares and parties are at liberty to purchase other party's shareholding at the valued price. If neither party is able to purchase the shares of the opposing side, the Company shares to be auctioned, through competitive bidding.

100. An order is made to call an extraordinary meeting for the appointment of suitable replacement to the Board of the Company. In the said meeting Respondents are restrained from blocking a nominee of Aziz including his son Faiaz.

Failure to obtain Liquidator's Consent in terms Rule 18 of Companies (Winding Up) Rules 2015.

101. Even if I am wrong on the above, Petitioners had not complies with Rule 18 of Companies (Winding Up) Rules 2015, this was an additional reason not to allow winding up. In terms of the said Rule the Petitioner is obliged to file a consent of a 'Registered Liquidator' and appointment of a liquidator is a judicial act that needs separate factors to be considered, if objected by other side to the nominated liquidator. As Petitioner had not nominated or obtained consent from a liquidator such appointment cannot be done.

102. Section 415 of Companies Act 2015 required a register to be maintained with specific details stated in Section 415(1) (a) from (i) to (v) of the said Act, and this includes particulars as to any suspension of registration of liquidators.

103. Section 415(1) (iv) of Companies Act 2015.also required that such register should also contain the 'name and address of that firm, Company or other name under which he or she so practices'.

104. Companies (Winding up) Rules 2015, Rule 32 (2) requires that judicial notice can be taken as regards to the registered liquidators, but consent of one or more cannot be presumed due to conflicts with the Company and or its main shareholders.

105. The appointment of liquidator in an oppressive, discriminatory and or unfairly prejudicial environment should be done with due consideration of many factors including possible conflicts, efficiency, expertise, fees and any other factor relevant.

106. Section 410(1) of Companies Act 2015, applies to both, Liquidators and Auditors. It does not preclude either courts or any other person from appointing a firm for auditing or liquidation, depending on circumstances and this provision provides appointment of suitable liquidator other than official receiver considering above factors and circumstances.

Factors to be considered in the appointment.

107. Justice Hansen, in *Jacobsen Creative Surfaces Ltd v Smiths City Ltd* [1994] 1 NZLR 128 (which was followed in *Fisher International Trustees Ltd v Waterloo Buildings Ltd* [2009] Civil 2009-404- 006640), listed the following factors as relevant to the exercise of discretion:

"1. Independence. There must be on the part of the liquidator the ability to make informed and unbiased decisions in the interest of all groups;

The resources of the liquidator;

The wishes of the creditors and contributories. This may include the indications given at the hearing where there has been a change in heart since the creditors' meeting. It is not a matter that of necessity requires adherence to the strict arithmetic calculation.

The competence and experience of the liquidator. This will be his ability to carry out the task required in an efficient manner, and in complex cases will include consideration of his commercial experience.

The speed with which the liquidator can be carried out.

On occasions, the liquidator's familiarity with the company will be of relevance."

108. The above factors are not comprehensive but depending on the type of company and other circumstances, the weight given for each factor may vary and additional factors such as difficulties faced by liquidator appointed by court, reason for resignation, the reason for removal of liquidator, may be relevant in appointment of liquidator.

109. All the liquidators appointed by the court are 'officers of the court' in terms of Rule 32 of Companies (Winding Up) Rules 2015. So their primary obligation in the liquidation process is towards the court. They are all subjected to the statutory obligations under Companies Act 2015 and Companies (Winding Up) Rules 2015.

110. Section 433 of Companies Act 2015 states persons who are disqualified to act as liquidators. So the appointment of suitable liquidator is a judicial act, considering many factors.

111. From the above it is clear that appointment of liquidator when parties are already objecting to winding up , is a judicial act , hence at least one liquidator should be named and any party who is opposing the winding up should also given the opportunity either to consent or object to such a liquidator.

112. So, in the absence of consent of liquidator in my opinion in this instance prevents winding up as an option in this case considering circumstances of the case.

CONCLUSION

113. It is clear from the admitted facts that Petitioners and Respondents cannot continue as shareholders of the Company and also in the Board, unless they resolve the current issues

immediately. This is unlikely, considering that consent orders granted on 12.3.2020 had no or little effect as regards to the affairs of the Company. Since consent orders, disputes between the parties had escalated to a situation where even some employees have complained of conflicting directions that they received from two parties to this action. The issues between the parties cannot be solved democratically as each party is having equal shareholding and voting was in line with blood line. Though the main allegations were against first Respondent, other Respondents had also supported or condoned his oppressive or discriminatory or prejudicial behaviour, as opposed to the best interest of the Company and also to move ahead. It is clear that first Respondent had acted in oppressive, and unfairly discriminatory and unfairly prejudicial manner towards Aziz, and his son Faiaz. The Company is solvent and making profits according to annual reports of 2017 and had declared substantial dividend in 2020 without an Annual Report, by some consent orders granted by a brother judge. Considering circumstances in my mind I would not grant an order for winding up at this moment. Petitioner had failed to comply with Rule 18 of Companies (Winding Up) Rules 2015 and that is an additional reason for said decision. In the circumstances I make an order for valuation of company shares by a reputed Accounting Company other than the accountants of the Company. Prelude to this is completion of annual reports of previous years within six months. Valuation of shares can be engaged through consensus of the parties and if not may make a request to the court with necessary information as to the competency, past experience, potential conflicts, fees etc. Once appointed, and such a valuation is given Respondents as well as Petitioners are given the option to purchase the shares at the valued price. If neither party purchase shares at the valued price, then it should be auctioned to highest bidder through competitive tender process through a suitable body. In the meantime the Company secretary is directed to call an extraordinary meeting for the appointment of suitable replacement for retired Aziz and priority should be given to his nominee. First Respondent is restrained, from blocking such an appointment which is clearly oppressive and discriminatory.

FINAL ORDERS

a. Present Accountants are given six months to complete annual reports for years 2018, 2019, 2020, and 2021.
b. The company shares to be valued by a reputed accounting firm and the option is given to Respondents or Petitioners to buy whole or part of the shareholding from the other if the other party consent to sell, at valued price of share.
c. If the parties are unable to purchase the shares of the Company is to be sold to highest bidder through competitive bidding process and minimum price is the value of the price determined.
d. Parties are at liberty to appoint a reputed accounting firm other than accountants of the company for the valuation of shares.

e. If the parties cannot reach an agreement on (d) above an application can be to the court for appointment.
f. Company Secretary is directed to call an extraordinary meeting for the appointment of a Director. All parties are directed to appoint a suitable person for the retired Director (Aziz) in terms of the Articles of Association. As it is a family company priority should be given to family members of the retired Director or his nominee, provided such nominee is otherwise not disqualified.
g. Respondents are restrained from blocking appointment of a Director in terms of (f) above,
h. Liberty to apply.
i. No order as to costs considering circumstances of the case.

Dated at Suva this 20th day of June, 2022.

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Justice Deepthi Amaratunga
High Court, Suva