IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) IN LAUTOKA
COMPANIES JURISDICTION

WINDING UP ACTION NO. HBE 09 OF 2025

IN THE MATTER OF MARINE CONSTRUCTION (FIJI) PTE LIMTIED a limited liability company having its registered office at Level 10, BSP Suva Central, Ranwick Road, Suva, Fiji Islands

AND

IN THE MATTER of the Companies Act No. 3 of 2015

BETWEEN	:	**FINELINE HOLDINGS (PTE) LTD**
		APPLICANT
AND	:	**MARINE CONSTRUCTION (FIJI) PTE LTD**
		RESPONDENT
BEFORE	:	A. M. Mohamed Mackie, J
COUNSEL		Ms. Fa U. with Ms. Tione M. - for the Applicant Company Mr. Low T - for the Respondent Company Ms. A. Goundar O/I of Messrs. Haniff Tuitoga for the Supporting Creditor
DATE OF HEARING	:	14th July 2025
WRITTEN SUBMISSION	:	Filed by the Respondent on 14th July 2025 No written submissions filed by the Applicant
DATE OF RULING	:	21st August 2025

RULING

A. INTRODUCTION:

1. An application was filed on 09th May 2025 by the Applicant Company, namely, **FINELINE HOLDING (PTE)** Limited to wind up the Respondent Company, namely, **MARINE CONSTRUCTION (FIJI) PTE LTD** ("Company") on the ground that the Company is unable to pay its debts. An affidavit verifying the application for winding up was sworn on 5th May 2025 by Mr. **BRENDAN HANNON**, ("Hannon") the Director of **FINELINE HOLDINGS LTD** and filed along with the application. The Applicant is a creditor of the Respondent Company, as per the application.

2. In his affidavit in support, Hannon averred, *inter alia:*

> 5. *On or about 19th March 2024, the Respondent Company was indebted to the Applicant company in a sum of $* ***411,277.53*** *for monies paid to the company by the Applicant for the supply and installment of a Jetty, together with the cost of removal of jetty and berthing fees of (Applicant's) boats from 19th of April 2024 to 31st March 2025 on the Naisoso Marina.*
>
> 6. *On 18th March ,2025 the Applicant through its Solicitors, Law Solutions, served on the Company a Statutory Demand signed by the Applicant requiring the company to pay the amount in a sum of $411,277.53.*
>
> 7. *The Company failed for three weeks after the service of the Statutory Demand to pay the amount or to secure or compound for it to the reasonable satisfaction of the Applicant.*
>
> 8. *The Company is unable to pay its debt.*
>
> 9. *I believe there is no genuine dispute as to the existence or amount of the debt referred to in paragraph 5.*

3. The Applicant's purported Notice of Demand dated 18th March 2025 stated, *inter alia,* that pursuant to Section 515 of the Companies Act 2015, **Hannon**, as a Creditor, is entitled to present a petition for winding up of MARINE CONSTRUCTION (fiji) PTE LTD to the High Court upon the grounds that the Company is unable to pay the Debt and that is just and equitable that the MARINE CONSTRUCTION (Fiji) PTE LTD ("the Company") to be wound up.

4. The Company was served with the application for Winding Up on 3rd June 2025, and the matter being taken up for compliance hearing before the Deputy Registrar in Suva on 2nd July 2025 in the absence of any appearance for the Applicant Company, having recorded the compliance of the Rules by the Applicant Company and the objection raised by the Respondent's Counsel, the Deputy Registrar referred the matter to the Court by his report dated 2nd July 2025.

5. Though, the compliance report states that the application was advertised in the Newspaper and the Gazette, I don't find any proof of publication thereof filed of record. Thus, it is difficult to ascertain as to whether the application was in fact published and the exact date of such publication, if any.

6. Prior to the hearing of the application, which stood fixed for 14th July 2025, the Solicitors for the Respondent Company, having filed their "Notice of Appointment of Solicitors" on 11th June 2025, subsequently on 07th July 2025 filed their "Notice of Intention to Appear" together with the "Summons for Leave to Oppose Winding Up Application" seeking the following orders.

> 1. *The Respondent (i.e., Marine Construction (Fiji) pte (Ltd) be given leave to oppose the winding up application against the Respondent on certain grounds;*

2. *The Court extends the time for the Respondent to file a supplementary affidavit in opposition to 14 days after this application is determined by the Court;*

3. *The Applicant (i.e., Fineline Holdings Pte Limited) pays the costs of this application on an indemnity basis; and*

4. *Any further orders the court deems just.*

7. The Respondent's said Summons is supported by the affidavit sworn by **Mr. Matthew James Blackburn Browning, ("Matthew")** the Director of the Respondent Company on **4th July 2025** and filed together with annexures comprising the following documents;

   a. The Agreement (contract) entered into on 18th March 2024 by and between the Respondent Company and Hannon, for the Respondent to install a "pontoon" at the Anchorage Resort in Vuda. **(MB-1).**

   b. The Demand Notice dated 10th March 2025 sent by 'Law Solutions' on behalf of. Hannon, addressed to the Respondent Company demanding a sum of **$383,730.07** on the ground that the work had **not** been commenced. **(MB-2)**

   c. The Notice of Demand dated 18th March 2025 sent by the "Legal Solutions" on behalf of Hannon addressed to the Respondent Company demanding a sum of **$411,277.53**, together with the legal costs of $750.00, within 3 weeks (21 days). **(MB-3)**

   d. The letter dated 30th May 2025 sent by the Respondent Company addressed to Legal Solutions, the Lawyers for Hannon. **(MB-4)**

   e. A letter dated 5th June 2025 sent by the Respondent's Solicitors (Messrs. Munro Leys) addressed to 'Law Solutions' informing that the Application for Winding up is defective and requesting the same to be withdrawn. **(MB-5)**

8. When the matter was taken up for substantive hearing on 14th July 2025, Counsel for the Respondent supported the Summons for leave to oppose the winding up, and it being objected by the Counsel for the Applicant, after hearing both Counsel, this Court reserved the Ruling by leaving the Counsel for the Applicant at liberty to file her written submissions in 21 days, and for the Respondentl to file reply submissions, if any, in 14 days thereafter. However, Counsel for the Applicant did not opt to file any Affidavit in opposition.

9. Counsel for the Respondent readily tendered his written submissions, together with the cited authorities therein, and served a copy of it on the Counsel for the Applicant in the well of the Court. Further, on a request made by the Counsel for the Respondent, the Applicant's Counsel agreed to maintain the status quo till the delivery of this Ruling. However, I find that no written submissions has been filed on behalf of the Applicant till this morning.

10. The task before this Court, for the time being, is an in-depth analysis on the principles in relation to the Section 529 of the Companies Act 2015.

11. Undisputedly, the Respondent had not taken any steps to have the Statutory Demand letter dated 18th March 2025 set aside pursuant to section 516 of the Act. Instead, the Respondent

resolved to make this Application to oppose the winding up Application in terms of section 529 of the Companies Act 2015.

12. Section 529 of the Companies Act 2015 states:

> *(1) In so far as an application for a company to be wound up in insolvency relies on a failure by the company to comply with a statutory demand, the company may not, without the leave of thecourt, oppose the application on a ground –*
>
> *(a) That the company relied on for the purposes of an application by it for the demand to be set aside; or*
> *(b) That the company could have so relied on, but did not so rely on (whether it made such an application or not)*
>
> *(2) The court is not to grant leave under subsection (1) unless it is satisfied that the ground is material to proving that the company is solvent.*

13. In **RAP Group (Fiji) Ltd, In re [2020] FJHC 325; HBE 52. 2019** reference was made to the decision in the matter of **Touchwood Pacific Pte Limited Winding Up Action No- HBE 32 of 2018,** wherein it had been stated that leave to oppose the winding up is necessary, if the company had failed to take steps under section 516 of the Companies Act to set aside the demand. That is plain from a reading of section 529 of the Act.

14. The Respondent filed the Summons in hand to oppose the Application for winding up on 7th July 2025, exactly 7 days prior to the first date of call on 14th July 2025, which is generally known and referred to as the date of **"hearing"** of the winding up Application. Thus, I find that the Respondent has made this Application within the time period prescribed by the Rule 15(1) of the Companies (Winding Up) Rules. Parties are not at variance in this regard.

15. The hurdle that the Respondent has to pass at this stage is created by the Section 529 of the Companies Act 2015, which stipulates that the company may not, without the leave of the court, oppose the application on the ground;

(a) that the company relied on for the purposes of an application by it for the demand to be set aside; - or

(b) that the company could have so relied on, but did not so rely on (whether it made such an application or not)

16. Careful reading of the above section shows that leave is **not** to be granted under subsection 1 of the section 529, unless the court is satisfied that the ground is material to prove that the company is solvent.

17. The Counsel for the Respondent made forceful submissions to the effect that the Applicant Company's (MCPL'S) Application for leave to oppose should be allowed and the winding up Application should be dismissed for the reasons;

a. The Winding Up Application is defective, unmeritorious and an abuse of the court process; and

b. MCPL is a solvent company.

18. Counsel for the Respondent also insisted that there was no debt to be paid by the Company to the Applicant; that the Company was clearly solvent and that in the circumstances this was a proper case in which leave should be granted in terms of section 529 of the Act.

B. BACKGROUND:

19. The Respondent Marine Construction (Fiji) Pte Ltd (MCPL) is in the business of designing, constructing and installing marinas. On 18th March 2024 MCPL entered into a supply & install Agreement (Contract) with Hannon to install a Pontoon at the Anchorage Resort in Vuda. The contract price was $448,500.00 out of which 50% was paid as deposit, followed by a 40% progress payment to be made on pontoons being manufactured, and the final payment 10% to be paid upon the goods being substantially installed.

20. The contract provides that any disputes between the parties will be resolved pursuant to the ***"Building and Construction Industry Payments Act 2004 of Australia";*** and the contract has no provision for a practical completion date or allowance for berthing fees for Hannon's vessels.

21. The Respondent commenced the work under the contract. Unfortunately, due to delays in respect of its piling equipment and that of the subcontractors, the contract is yet to be completed. Despite the delay, the Respondent continued to progress the work under the contract.

22. On 10th March 2025, "Law Solutions", on behalf of **Hannon**, issued a Demand Notice on the Respondent Company demanding a sum of **$383,730.07** together with 10% interest as per the annexure marked as "MB-2" to the Respondent's Affidavit.

23. Subsequently, on 18th March 2025, the Law Solutions, on behalf of **Hannon**, issued a Notice of Demand on the Respondent Company under section 515 of the Companies Act, seeking a sum of **$411,277.53** as per the annexure **"MB-3"** to the Respondent's Affidavit.

24. On 30th May 2025, the Respondent replied to the aforesaid **"MB-3"** Demand letter stating **that;**

    a. *The Demand letter failed to acknowledge the ongoing contract between the Respondent and Hannon.*
    b. *The contract has no provision for a practical completion date.*
    c. *Hannon has no contractual entitlement to the demanded sum so if he chose to terminate or repudiate the contract, the Respondent would calculate the costs of works and materials to date against any potential refund (if any), as stated in annexure "**MB-4**" to the Respondents Affidavit.*

25. When a copy of the Winding Up Application was served on the Respondent Company on 3rd June 2025, the Respondent's Solicitors through their letter dated 5th June 2025 marked as **"MB-5"** promptly wrote to the Applicant's Solicitors requesting that the Winding Up action to be withdrawn in order to save costs for the parties and the Court, and putting the Applicant Company and its

Lawyers on notice as to the costs on an indemnity basis, if the winding up Application is not withdrawn. The Applicant neither responded to this letter nor indicated that it would withdraw the winding up Application.

26. It is important to bear in mind that the winding up process is not a debt recovery mechanism. It is a process employed to keep the insolvent Companies away from the commercial and business arena, not only to protect individual businesses, but also for the protection of the business community at large, in public interest. The Court in this proceeding will have to consider whether the Company is solvent, which is a fact within the exclusive knowledge of the Respondent. Therefore, it is important to take care not to allow a financially healthy or a solvent company to suffer or die when it is not so warranted.

THE DEBT AND ITS DISPUTE

27. The claim of debt hereof, by the Applicant Company, arises from a Contract entered into by and between the Respondent Company and Hannon on 18th March 2024 for the Respondent to supply and install a **Pontoon** at the Anchorage, Vuda. The agreed contract price was **$448,500.00** out of which **$ 224,250.00**, being the 50% of total sum, was paid by Hannon unto the Respondent Company. The contract is yet to be completed, admittedly, due to delays related to Respondent's piling equipment and on the part of its sub-contractors. However, the Respondent claims to have continued to progress with the work under the contract and intends to complete the project in coming months. As per the Contract, there was no specific date for the completion of the work, but there was a clause in it for any dispute to be solved pursuant to the ***Building and Construction Industry Payment Act 2004*** of Australia as alluded to above.

28. The Respondent's claim that they have already commenced the works is not disputed by the Applicant. The Respondent categorically states that there was no any agreement for the Respondent to pay for the berthing charges of the Applicant's vessels elsewhere. Hence, the Respondent asserted, no debt was owed by it to the Applicant.

DEMAND NOTICE:

29. The Respondent admitted to have received the Demand Notice dated 18th March 2025 for a sum of **$411, 277.53.** Prior to sending the said Demand Notice, the Applicant Company through its Solicitors had sent another Demand Letter dated 10th March 2025 for a sum of **$383,730.07** for which the Respondent Company by its letter dated 30th May 2025 replied and reminded that the contract is between the Respondent Company and Hannon, it is still ongoing and the contract has no practical completion date. The Respondent also refuted the assertion of the Applicant that the work has not yet been commenced.

30. The Respondent, admittedly, did not move to have the statutory Demand Notice dated 18th March 2025 set aside. But through it's said letters dated 30th May 2025 marked as "MB-4" and its Solicitor's Letter dated 5th June 2025 marked as "MB-5" had given explanation as to why they did not do so, which is reflected in the Respondent's Affidavit in support as well. The contents of the said letters and the averments in the affidavit show that there were justifications for the Company not to have acted under Sections 516 and 517 of the Act.

31. Section 529(2) provides that leave should not be granted unless the Court is satisfied that the ground/s urged by the company is material in proving that it is solvent. The Respondent argued that the non-existence of the debt was material in proving the solvency of the company. A company is solvent if and only if, it is able to pay all its debts, as and when they become due and payable. Unless

the contrary can be proven to the satisfaction of the court, a Company is deemed to be unable to pay its debts in the situations provided by section 515 (a) & (b) of the Act.

THE QUESTION OF LEAVE:

32. A convincing submission made by the Counsel for the Respondent is that the Winding Up application is defective, as they had pointed out in their letter dated 5th June 2025 marked as "MB-5" addressed to Hannon's Solicitors.

33. The main ground adduced was that the Winding Up application purports to rely on the Demand dated 18th March 2025, which was not issued by the Applicant Company (FHL). The Affidavit supporting the Winding up Application contains false information, because the Demand Notice was issued by the Law Solutions acting for Hannon and not for the Applicant Company (FHL). Also, it is not signed by FHL as claimed at page 6 of the Affidavit in support of the Applicant Company (FHL). It is also observed that the Money was paid to the Respondent Company (MCPL) by Hannon and not by the Applicant Company (FHL).

34. As decided in ***Salomon v Salomon & Company Ltd [1897] AC 22*** "*a Company is a legal entity separate from the natural persons, who became associated for its formation or who are now its members and directors*". It was held in page 51 that;

> *"The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them."*

35. In the recent decision of **Amy Street Pharmacy pte Limited v Suva Private Hospital Pte Limited & Or-Civil Action No- 11 of 2021** delivered on 27th March 2025 Hon. V. SD. Sharma-J held at paragraph 22 as follows;

> *".... Companies are separate entities and the plaintiff is not entitled to receive any documents from companies that are not party to the proceedings."*

36. The Counsel for the Respondent has also drawn my attention to a recent in ***Biju Investments Pte Ltd v Transfield Building Solutions (Fiji) Ltd [2024***] wherein the Court of Appeal in paragraphs 35 and 38 stated as follows.

> *"35.... The issue of a statutory demand (failure with which to comply creates a rebuttable presumption of insolvency on the part of the debtor) is the first step in initiating a collective insolvency proceeding. It is more than a contest between parties to secure payment of a debt payable by one to the other. That means that a decision on the application has a public interest dimension. In the vast majority of cases, winding up petitions are brought on the basis of non-compliance with a statutory demand. The collective insolvency process provides a public character to the dispute that justifies consideration of the issues notwithstanding that, otherwise, the dispute is moot.*
>
> ....
>
> *38.As I have said, the issue of a statutory demand is (generally) the first step to commence a creditor's proceeding to have the debtor company wound up, with all the consequences that flow from that".*

37. Thus, as submitted by the Respondent's Counsel, it is clear that the Demand Notice hereof was issued by. Hannon and not by the Applicant Company (FHL) as required under the Fiji Law. Therefore the Winding Up Application cannot proceed , which I see as a wrong foundation laid for Winding Up proceedings.

38. As the false statements in the Applicant's Affidavit in support were brought to the Notice of the Respondent Company's (MCPL's) attention only when it was served on 3rd June 2025, Counsel argues that the leave to rely on this ground is not required under Section 529 of the Companies Act.

39. The pivotal question that arises here is, how can the Respondent Company be called upon to prove that it is not insolvent when it has had no contract or dealing with the Applicant Company in this matter. Another question that arises is on what capacity the Applicant is before this Court seeking to wind up the Respondent Company. When it is obvious that the Company did not have any contract or dealing with the Applicant company (which is an undisputed) how the presumption of insolvency can come in and stand against the Respondent? These questions need plausible answers.

40. Hon. Javid Mansoor-J (as he then was), has analyzed this Section 529 in the case of **RAP Group (Fiji) Ltd (Supra)** , on which the Counsel for the Respondent heavily relies. Mansoor -J had made various references to cases from Australia, since Fiji's provisions under Section 529 of the Companies Act is similar to section 459S of the Corporation Act 2001(Australia). At paragraphs 19, 22 and 27 Mansoor-J referred to number of decisions from Australia to provide insight on how section 529 of the CA to be interpreted and applied.

> *"19. In Chief Commissioner Stamp Duties v Paliflex, the Supreme Court of New South Wales considered the question of leave to oppose the winding up of the company, and deliberated upon the genuineness of the debt. The court laid down three considerations in exercising its discretion under section 459 (1)(4):*
>
> *(a) A preliminary consideration of the defendant's basis for disputing the debt which was the subject of the demand;*
>
> *(b) An examination of the reason why the issue of indebtedness was not raised in an application to set aside the demand, and the reasonableness of the party's conduct at that time; and,*
>
> *(c) An investigation of whether the dispute about the debt is material to proving that the company is solvent.*
>
> *22. In Tony Innaimo Transport Pty Ltd v Skyroad Logistics Pty Ltd [10], the Federal Court of Australia considered the approach taken in several decisions and summarized the legal principles in this way:*
>
> *(a) The discretion conferred by section 459S is to be exercised cautiously and sparingly and with regard to the purpose of Part 5.4, which is to provide for determination of objections to a statutorydemand by an application made timeously under section 459G, rather than at the time of the winding up application;*
>
> *(b) Nevertheless, it is to be acknowledged that section 459S is the only "safety net"*
>
> *(c) A company seeking leave under section 459S must show that the debt in respect of which it isseeking leave is pivotal to the question of solvency in the sense that it must demonstrate that if the debt exists then the company will be insolvent and, if the debt does not exist, the company will be solvent (see further below);*
>
> *(d) As to the degree of proof on the issue of materiality it is unlikely that the requirement can be satisfied by mere assertions of solvency or as to what*

might happen in the future; rather, the court must be satisfied on the evidence placed before it that the dispute as to the debt is material to the company's solvency; and,

(e) Another issue for consideration is whether there is a serious question to be tried on the ground sought now to be raised.

....

27. This leads to the question of proof. The respondent insisted that the threshold to proving solvency is low, and, therefore, very little evidence was required. For this, it relied on the reasoning in Ewen Stewart & Associates Pty Ltd v Blue Mountains Virtual Air Helitours Pty Ltd [13]. Even with the liberal approach in that case, it seems that the court would want some evidence to show that the company would be solvent if the debt did not exist".

41. In the New South Wales Court of Appeal decision in ***Britten Norman Pty Ltd v Analysis & Technology Australia Pty Ltd,*** a genuine dispute was considered to have been established if there was "a plausible contention requiring investigation".

42. In the ***David Grant & Co Pty Ltd v Westpac Banking Corporation [1995] HCA 43; (1995) 18 ACSR 225, (at 229)*** Gummow J acknowledged the Court's statutory discretion under this provision (459S), but in a context which implied that the discretion under s.459S should be used cautiously and even sparingly given the overall policy of Part 5.4.

43. Hayne J observed in ***Texel Pty Ltd v Commonwealth Bank of Australia [1994] VicRp 62; (1993) 11 ACSR 535, 537,*** the discretion under s.459S is there as a 'safety net' in the sense that there are special cases in which a dispute as to the existence of the debt may be litigated at the time of the application for winding up in insolvency, even if there has been no application under s.459G.

44. It is very clear that, exercising the Court's discretion under section 529 will not have same effect of setting aside the Statutory Demand. Therefore, the presumption of inability to pay debts under section 515 (a) will remain on the debtor. Which can be considered detrimental for a company in the commercial world. The duty of the Court in an application under section 529 is to provide the **'safety net'** as stated in **Texel Pty Ltd** (supra) to the company seeking leave to oppose without defeating the intention of the statute. I am inclined to follow the stance taken by Justice Javid Masoor in ***RAP Group (Fiji) Ltd (Supra),***

45. I have also noted the contents of clause 18 of the Contract, which states that ***"At the Contractors sole discretion, if there are any disputes or claims for unpaid goods and/ or services then the provisions of the Building and Construction Industry Payment Act 2004 may apply"***. This shows that, in the event of any disputes, the parties prior to resorting to any other action or forum, have to attempt to settle the dispute by resorting to the mechanism agreed up on in the Contract. But the Applicant instead of resorting to the said mechanism, issued the Demand Notice and proceeded to file the Winding Up action. The Respondent may have thought that a dispute would be referred to the mechanism referred to in the contract before going in to litigation. This could be a ground for an argument on abuse of process. However, at this point, it is sufficient for me to take the view that the stance of the Respondent was justifiable in their failure to apply for setting aside the Statutory Demand Notice.

46. A noteworthy aspect hereof is that the Applicant did not opt to file any Affidavit refuting the positions taken up by the Respondent in its Affidavit in support seeking for leave to oppose. There was no evidence to contradict the Respondent's position of the non-existence of the debt, that it has commenced the work, it is in progress and the contract is not with the Respondent Company, but with Hannon.

47. The Respondent's alleged indebtedness is in relation to the money paid by Hannon to the Respondent Company, and not by the Applicant Company. The Respondent company apparently did not have any contract or dealing with the Applicant Company. The Applicant and Hannon are two different persons. The Applicant in this matter is the FINELINE HOLDINGS (PTE) LTD, and not Hannon. The burden squarely sits upon the Respondent as imposed by section 529 (2) of the Act. The absence of the countering affidavit, however, allows the Respondent to set up its case that there is no debt so far arisen and it is Solvent. The Respondent has reserved its right to file a Supplementary affidavit in proof of solvency.

48. Another point that drew my attention was in the purported Statutory Demand letter dated 18th March 2025. In calculation of the final amount therein, I find that the interest at 8%, as per the 2nd item therein, has been added for the **future as well (ie till 31st March 2025)**, which cannot be a part of the alleged debt as at the date of the Statutory Demand. It is in blatant violation of the law that governs the winding up and it is conspicuously offensive. I am mindful that this is an issue that should have been raised in the Application for setting aside the statutory demand. However, on the face of the statutory demand itself, it is obvious that the alleged debt, tainted as above, cannot stand as a subject matter of a Winding up Application. The Respondent hereof cannot be punished for its inaction in not moving to have such a Statutory Demand with a bloated claim set aside. The Respondent had all good reasons for not doing so as per its letter dated 5th June 2025 marked as **"MB-5"**

49. The circumstances hereof convince me that it is unreasonable to label the Respondent Company as insolvent at this stage and to call upon it to prove the contrary. The matters discussed above, in my view, are material in proving that the Company is solvent.

50. I have formed the view, after much deliberation, that the Respondent has established, albeit marginally, a question to be tried; that there is a plausible contention requiring investigation. There are matters, in my view, that are in suspense which must be thrashed out at a fuller inquiry so that an unjust outcome may be avoided.

51. I am of the view that the preliminary objection raised by the Respondent's Counsel in his written submissions, that the application is defective on account of the locus of the Applicant Company to commence these proceedings, may have been sufficient for this Court to terminate the proceedings in favor of the Respondent. However, I consider that the Court has to be fair by the Applicant by allowing it to have its say on the Respondent's position on this point.

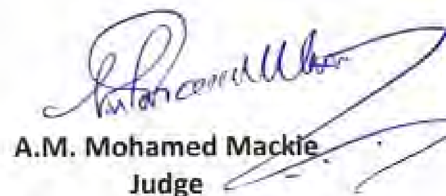
52. Considering overall circumstances, I conclude that the dispute hereof relating to the debt may be material in proving the solvency of the Respondent. The Respondent is granted leave in terms of section 529 of the Companies Act to oppose the application for winding up. Thus, I decide to allow the Respondent to file the supplementary Affidavit in opposition against which the Applicant will be at liberty to file response.

ORDERS:

a. The Leave is granted to the Respondent Company, in terms of section 529 of the Companies Act, to oppose the Application for winding up.

b. The Leave is also granted to the Respondent Company to file a supplementary Affidavit within 14 days from today.

c. The Order on costs reserved.



A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 21st day of August, 2025.

SOLICITORS:
For the Applicant: **Messrs. Law Solutions –Barristers & Solicitors**
For the Respondent: **Messrs. Munro Leys- Barristers & Solicitors**
For the Supporting Creditor: **Messrs. Haniff Tiutoga - Barristers & Solicitors**