

IN THE HIGH COURT OF FIJI
CIVIL JURISDICTION

CIVIL ACTION NO. HBE 26 of 2024

IN THE MATTER of the Winding Up Order dated the 4th of July 2024 taken out against **RAGHWAN CONSTRUCTION COMPANY PTE LTD**, a limited liability company having its registered office at 211 Ratu Sukuna Road, Suva

AND

IN THE MATTER of the Companies Act 2015

BETWEEN: **PIONEER SUPPLIES PTE LTD**, a limited liability company with its registered office at 161 Toorak Road, Suva.

Applicant

AND: **RAGHWAN CONSTRUCTION COMPANY PTE LTD**, a limited liability company with its registered office at 211 Ratu Sukuna Road, Suva

First Respondent

AND: **OFFICIAL RECEIVER**, a statutory body created by Part IV of the Bankruptcy Act 1944 and section 533 of the Companies Act 2015

Second Respondent

RULING

(ON SETTING ASIDE THE STAY ORDER GRANTED ON 7TH NOVEMBER 2024)

Counsels:

Applicant: Mr. N. Sharma
First Respondent: Mr. A. Khan & Mr. M. Khalim
Second Respondent: Mr. V. Ram
Date of Hearing: 14th July 2025
Date of Ruling: 1st September 2025

Introduction

1. This is an application by way of a summons by Pioneer Supplies Limited to set aside an order permanently staying the Winding Up order granted by my predecessor, Justice D. Amaratunga on 18th November 2024 to wind up Raghwan Construction Company Pte Ltd (the Company).

Background

2. On 21st of May 2024, the applicant filed an application for the Court to wind up the Company pursuant to the Companies Act 2015. On 4th July 2024, the court granted the winding up order.
3. On 12th August 2024, the Company filed an application for stay of the winding up Order. The application was made pursuant to sections 531 and 553 of the Companies Act 2015. The Affidavit in Support was sworn by Ronica Malini Raghwan, as a contributory to the Company as defined in section 3 of the Act. In the affidavit, she stated that she only became aware of the winding up order when it was advertised in the Fiji Sun; that she thereafter contacted her solicitors, Patel Sharma Lawyers who advised her to contact the Official Receiver who had been appointed Provisional Liquidator; that she contacted the Official Receiver and paid the debt of \$30,912.78 plus \$4,646.90 in administration fees; that the Official Receiver had issued a receipt which stated that the received amount was in full and final settlement of the account; that the Company solicitors had written to the Official Receiver on 25th July 2024 who replied on 26th July 2024 to confirm payment of the debt in full and that they had no objections to her application to stay the winding up order and that Pioneer Supplies were the only creditor of the Company.
4. On 4th November, Amaratunga J granted the stay application in the presence only of Counsel for the Company. Unfortunately, he didn't give the reasons for his order in the file notes nor did he issue a written ruling. I have searched the file and there is no affidavit of service for the application and supporting affidavit on the Applicant. The order which was sealed on 18th November 2024 stated that he had read the affidavit in support of Ronica Malini Raghwan referred to above and heard from Counsel for the Company before he made the orders. The order was therefore an ex-parte order.

The Application.

5. The application before this court now seeks the following orders:
 - a. That the order made on 7th November 2024 permanently staying the Winding Up Order dated the 4th July 2024 be set aside;
 - b. That the Applicant be allowed to Oppose the Respondent's application for stay;
 - c. Any other orders that the Honourable Court deems just; and

- d. The costs of and occasioned by this application be in the cause.
6. The application is filed pursuant to Order 32 rule 1, Order 32 of the High Court Rules 1988; Companies (Winding Up) Rules 2015, High Court Rules 1988 and the inherent jurisdiction of the High Court.
7. The application was supported by the affidavit of **HITESH LAL** sworn on 5th February 2025. The second Respondent filed an affidavit response sworn by **SANAILA NUKUTUMAKI** and filed on 17th June 2025. **HITESH LAL** then filed a second affidavit on 1st July 2025.

Submissions

8. I thank counsel for their submission which have been very helpful.

ANALYSIS

The fist issue—does this court have the jurisdiction to deal with this matter?

9. The application to set aside the Winding Up order was encapsulated inter-partes but there was no affidavit of service filed. The minute on the file for 7th November 2024 and sealed order of 18th November 2024 states that only the Company solicitor was present.
10. Order 32, r 5 (1) of the High Court Rules states that if one of the parties fails to attend, the court may proceed to hear the matter if it thinks it expedient to do so. However, Order 32 r. 5(2) requires that the court must be satisfied that the application was duly served on that party. Order 32 r.5 (3) then provides:

Where the Court hearing the summons proceeded to hear the matter in the absence of a party, then, provided that any order made has not been perfected, the court if it is satisfied to do so, may re-hear the summons.

11. Order 32 r. 5 does not apply to this case because there is no affidavit of service on the First Respondent in that application. The relevant rule is Order 32 r. 3 of the High Court Rules which states:

Service of summons (O.32, r.3 and Order 32, r 6

3. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than [2] clear days before the day so specified.

Order 32, r 6: The court may set aside an order made ex-parte.

12. Natural justice requires that the Applicant herein should have been served with the application to set aside the winding up order. This was not done.

13. In *Trade Air Engineering (West)Limited, Nitendra Singh, Peni Lesuma & Jagdishwar Singh v Laisa Taga, Robert Keith-Reid & Samisoni*¹, Ward, P, Barker & Scott JJA said this rule provides an exception to an appeal.
14. In *Janardhan v Mohammed Nasir Khan, Chen Bun Young, Director of Lands Surveyor-General, Registrar of Titles, Khan Buses Limited, Director of Town and Country Planning & Attorney General* ² Connors J said that the rule is appropriate where the guillotine provisions of ex-parte orders cannot be read as applying to certain clauses.
15. In *Pio Nakasau v Waise Lakoiniusiladi and Meliki Ciba [2012] HBC 113/09, 27 January 2012*, Calachini J said that an application to enlarge time for filing and serving a notice of appeal against a Master’s ruling approximately 10 months after Ruling on Land Transfer Act section 169 ejection is refused where the proper cause is for an absent party to apply to the Master to have an ex-parte order set aside in Chambers.
16. In *WEA Records Ltd vs Visions Channel 4 Ltd and Others [1983] 2 All ER 589 at 593* Sir Donaldson J said:-
- Equally there is no doubt that the High Court has power to review and discharge or vary any order which has been made ex-parte. This jurisdiction is inherent in the provisional nature of any order made ex parte and it is reflected in RSC Order 32 Rule 6*
- As I have said, ex parte orders are essentially provisional in nature. They are made by the judge on the basis of evidence and submissions emanating from one side only. Despite the fact that the applicant is under duty to make full disclose of all relevant information in his possession; whether or not it assists his application; this is no basis for making definitive orders and every judge knows this. He expects at a late stage to be given an opportunity to review his provisional order in the light of evidence and argument adduced by the other side; and, in so doing he is not he **not hearing an appeal from himself and in no way feels inhibited from discharging or varying his original order**". (emphasis mine)*
17. The statement of the law given by Sir Donaldson above when applied to the permanent stay order of Amaratunga J on 7th November 2024 means I can set aside the order and re-hear the application to stay the winding up order of 4th July 2024.
18. I have applied the rules stated above and the statement of the law in *Trade Engineering (supra)* and *WEA Records Ltd vs Visions Channel 4 Ltd and Others (supra)*, the other cases referred to above and the facts of this case and conclude that I have the power to set aside the order of Amaratunga J delivered on 7th November 2024 because the application was not served on Pioneer Supplies Pte Limited and the order was made in their absence and therefore made ex-parte.

¹ [2007] ABU 62/06 (appeal from HBC 299/02S)

² [2006] HBC 358/04L, 8 September 2006,

Second issue – Whether I should exercise the power to set aside the Order of Amaratunga J on 7th November 2024?

19. I have read all the affidavits in this case and I note that in the affidavit of **RONICA MALINI RAGWAN** in support of the Application to set aside the Winding Up order sworn on 8th August 2024, there is no mention of the “debt” alleged by the Applicant in the original winding up application. In the winding up application, the Affidavit Verifying the application for winding up, the debt is said to be **\$157,103.34** whereas in the affidavit of Ronica Malini Ragwan, she states that the debt of \$30,912.78 plus administrative costs of \$4,646.90 had been paid to the Official Receiver who issued a receipt stating that the received amount was a full and final settlement of the account. This was the affidavit relied on by Amaratunga J on 7th November to stay the winding order issued on 4th July 2024.
20. The affidavit by **RONICA MALINI RAGWAN** shows that the Court had been misled as to the amount of debt allegedly owing. The balance of the sum owing, according to the Applicant is about \$126,191.34. This is a substantial amount and natural justice demands that I set aside the order permanently staying the winding up order of 7th November 2024 and rehear the matter pursuant to Order 32 r.5 (3) of the High Court Rules.
21. The Company is trading again and to re-instate the Winding up order would do considerable damage to its reputation and put at risk the livelihoods of its employees and their dependants. The facts are fully set out in the affidavit verifying the debt and the affidavit of Hitesh Lal, the Manger for Pioneer Supplies sworn on 5th of February 2025 and the attachments thereto.
22. I have examined the submissions of the parties filed in support of and in response to this application to stay the order of 7th November 2024. I have examined the relevant provisions of the Companies Act and the Company (Winding Up) Rules and I conclude that I have all the facts and relevant submissions to re-hear the application whether to set aside the Winding Up order granted on 4th of July 2024.
23. The issues to be determined revolve around the interest claimed by the Applicant to be part of the debt, taking it to **\$157,103.34** whilst the Company and the Official Receiver assert it to be **\$30,912.78**. To adjourn the matter again would be a waste of valuable court time and incur further costs to the parties.

Conclusion on 2nd Issue

24. For the reasons given, I will set aside the order of Amaratunga J of 4th July 2024 and re=hear the matter pursuant to Order 32 r. 5 (3) of the High Court Rules will now re-hear the matter. The evidence is by affidavits already filed and the submissions have been filed on each of the issues raised.

The 3rd Issue – What was the proved debt in the Winding Up application?

25. The Affidavit verifying the application for winding up was sworn by **MAHESH CHANDRA**, the Director for Pioneer Supplies Pte Limited on 2nd May 2024. At paragraph 6 he stated that as at 1 February 2024, the Company owed the Applicant \$157,103.34 inclusive of interest at a rate of 3% per month. The Statutory demand notice served on 25th March 2024 showed the same amount. Attached as Annexure “A” to the affidavit was a statement of the Applicant, and billed to the Company showing the original debt as the first item dated **07/08/2019**, being order # 139651 in the amount of **\$30,912.78**. I will refer to this as the Invoice. This is the amount said by the Company and the Official Receiver as the Debt.
26. The next 4 items on the table shows:
- a. 8/01/ 2019, interest 3%, \$927. 38; balance owed = \$31,840.16;
 - b. 9/01/ 2019, interest 3%, \$935.20—balance owed= \$32,793.37;
 - c. 10/01/2019; interest 3%, \$983.86-balance owed=\$33,779.23;
 - d. 11/01/2019; interest 3%, \$1013.38—balance owed= \$34,792.61; and
 - e. 12/01/2019; interest 3%, \$1043.78—balance owed = \$35,636.38.
27. It is clear from this that the interest is compounded and that interest for the dates shown above were charged **BEFORE** the debt was incurred on 7th August 2019. This issue of interest before the debt was incurred is one that could have been sorted out in pleadings and oral evidence thereafter if a writ had been issued to recover the debts. When there are disputes of fact or possible disputed facts, a writ should have been filed and not an application to wind up the company. The winding up application is a summary process which requires the applicant to be sure of the proof of debt and any interest that the creditor requires. The purpose behind the process is to protect the public by removing from the marketplace any company that cannot pay its debts. It should not be used to coerce a debtor into paying his or her debts. Those who abuse its process put their client’s interest at risk.
28. In his affidavit in opposition to the Application to set aside the permanent stay of the winding up order, sworn on 31st March 2025, RONICA MALINI RAGHWAN said at paragraph 6 that the interest amount had always been in dispute as it was unreasonable and an unsubstantiated amount.
29. At paragraph 9 of her affidavit, RONICA MALINI RAGHWAN said that the invoice which I referred to in paragraphs 23 and 24 above, is clearly not signed off by any representative of Raghwan Construction Company Pte Ltd which means that there was/is no agreement in terms of the interest term/condition mentioned in the invoice.
30. In *Re Rolls Royce Ltd [1974] 3 All ER 646 at 654*, Pennyquick V-C said about the difference between an invoice and a contract:

I should not myself have thought, in the absence of any authority to the contrary that a tradesman's invoice could properly be described as an instrument. However that may be, the debts comprised in these invoices are to my mind clearly not payable by virtue of the invoices. The debts are payable by virtue of the contract between the company and Kynoch created by an order given orally or in writing by the company and accepted by Kynoch either orally or in writing or by conduct in delivering the goods. The invoices are simply the seller's statement of account. (emphasis mine)

Discussion

31. Applying what Pennyquick V-C said in *Re Rolls Royce Ltd [1974 (supra)]* the invoice of 1st February 2024 sent by the Applicant to the Company does not create a contract for the parties. The debt was made by an oral or a written contract between the parties or by conduct around the 7th of August 2019.
32. At paragraph 28 and 29 of the same affidavit, Ronica said that at 3% compounded, the total interest would be \$127,190.56 but according to her calculations, if the interest rate was 3% simple, the total interest would have been \$51,005.90, therefore leaving a difference of \$75,184.66.

Interest in the Winding Up Rules & Proof thereof

33. Order 48 of the Winding Up Rules deals with interest and states:

Interest

48. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding 6 percent per annum to that date from the time when the debt or sum was payable, if the debt or sum is —

(a) payable by virtue of a written instrument at a certain time; and

(b) payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment.

34. Rule 9(1) of the Companies (Winding up) Rule requires the Applicant to file an affidavit verifying the application. Rule 10(1) states:

Contents of statutory affidavit

10.—(1) A statutory affidavit filed in support of an application for winding up must set out the facts that are material to, and justify the making of, a winding up order.

35. Orders 39-42 provide for Proof of Debt. Order 42 specifically states how the debt is to be proved:

Contents of proof

42.—(1) An affidavit proving a debt must contain or refer to a statement of account showing the particulars of the debt, and must specify the vouchers, if any, by which the same can be substantiated.

(2) The Official Receiver or liquidator to whom the proof is sent may, at any time, call for the production of the vouchers.

36. The Affidavit verifying the application for winding up was sworn by **MAHESH CHANDRA** on 2nd May 2024. Attached to that affidavit was the Statutory Demand as required by section 515 of the Act. Attached to the Statutory Demand was the invoice of 1st February 2024. That affidavit showed that the debt of **\$30,912.78 was incurred on 7th of August 2019. There is no other entry for goods or services provided by the Applicant in the invoice, so this was the only debt that has been proved.**

37. **The statutory demand, the Invoice of 1st February 2024 and the Affidavit Verifying the Application do not have any reference to any agreement either oral or written between the Company and the Applicant as to the interest to be charged. There was no evidence, in writing or as a statement in the affidavits that stated when the agreement was reached as to the interest, who represented each party at this agreement (to determine if they are authorised by law to bind their company), the terms of the agreement regarding the rate of interest, from what date or event it was to commence, whether its annual, monthly or otherwise, and whether its compound or simple interest.**

38. In the absence of proof of such an agreement, the interest claimed by the Applicant is arbitrary and disputed and amounts to a debt incurred on the Company behind its back. Resolving the issue cannot be done in a Winding up action.

39. Order 10 rule 1 of the Winding Up Rules makes it the duty of the Applicant to *set out the facts that are material to, and justify the making of, a winding up order.* In the absence of the matters highlighted in the paragraph 37 above, the Applicant has failed to prove the interest it claims at 3% compounded per month to justify the continuation of the winding up order once the proved debt of **\$30,912.78** has been paid off.

40. In his affidavit in reply sworn on 14th April 2025, **HITESH LAL** said at paragraph 12 that on 11th July 2024, Rodney Raghwan, one of the Directors of the Company had sent an email proposing to make payments in relation to the amount due but he replied on the 15th of July that they do not accept the offer and want the full payment. This fact that an offer was made as to payment of the demanded amount in full is not an express admission that the interest charged in the invoice of 1st February 2024 was agreed to on 7th August 2019 when the debt of **\$30,912.78 was incurred.** It can be inferred that there was an agreement but it can also be inferred that the Company was trying to make an offer just to get out of insolvency as quickly as possible. There could also be an

inference that it was coerced into making that offer to buy time for the Company to trade itself out of the debt. For the inference to be reached that the interest charged by the Applicant had been agreed to at or about the time the original debt was incurred, it must be the only inference open to the Court. **Clearly several inferences can be drawn and so the Court does not accept the offer to pay the demanded amount as proof that the parties agreed to the interest to be paid at 3% per month compounded.**

Conclusions on the Third Issue

41. From the discussion above, I conclude the following:

- a. The only debt that was proved was **\$30,912.78** that was incurred on 7th August 2019;
- b. There were no other goods or services provided to the Applicant by the company after 7th August 2019;
- c. There was no proof of an agreement, whether oral or written for the interest charged on the proved debt of **\$30,912.78**;
- d. It follows from a-c above that once the proved debt of **\$30,912.78** had been paid off on 23rd July 2024 together with the administrative costs, there was no longer any debt proved and therefore the winding up order issued on 4th of July 2024 should have been revoked.


Decision

42. For the reasons given, the court finds the following:

- a. The Court has the power to set aside Order of Amaratunga J of 7th November 2024 staying the Winding up of the Company and to re-hear the application;
- b. The consequences of not re-hearing the application immediately would seriously affect the reputation of the Company and its employees and their dependants.
- c. The debt proved by the Applicant is for the sum of **\$30,912.78**;
- d. There was no evidence and therefore no proof of any agreement between the Applicant and the Company about the interest of 3% per month compounded;
- e. Once the company paid its debt to the Official Receiver on 23rd July 2024 together with the associated administrative fees, it was no longer insolvent and the Winding Up order of 4th of July 2024 should be set aside permanently.

Orders

43. The order winding up the Company, Raghwan Construction Company Pte Ltd issued by Amaratunga J on 4th July 2024 is hereby set aside permanently.
44. Costs, summarily assessed at \$2,000 to be paid by the Applicant to the Company.


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Penijamini R Lomaloma
Acting Puisne Judge

