

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

**Winding Up Action No. 23 of 2024**

**IN THE MATTER** of **AMIRA FURNISHINGS**  
**PTE LIMITED** (Entity No. 9813) a limited  
liability company having its registered office at Lot  
2, Kerebula, Nadi Back Road, Nadi

**AND**

**IN THE MATTER** of the Companies Act 2015.

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**BETWEEN** : **FASHION IMPORT & EXPORT DEVELOPMENT**  
**(GUANGZHOU) CO. LTD** a company incorporated in China and having  
its registered office at 2/F. Atrium, Guangdong International Building,  
339 Huan Shi Dong Road, Guangzhou, China..

**APPLICANT**

**AND** : **AMIRA FURNISHINGS PTE LIMITED** a limited liability company  
having its registered office at Lot 2, Kerebula, Nadi Back Road, Nadi.

**RESPONDENT**

Before : Mr. Justice. U.L. Mohamed Azhar,

Counsels : Mr. Mr. V. Swamy for the Applicant,  
Mr. A. J. Singh for the Respondent

Written Submission of the Applicant filed on : 02.05.2025

Written Submission of the Respondent filed on : 27.05.2025

Date of Judgment : 07.10.2025

**JUDGMENT**

01. The applicant company presented its application to wind up the respondent company on the ground it is insolvent, as it failed to satisfy the statutory demand and to apply to set it aside within 21 days. The applicant company is a foreign company, incorporated in China

as it is stated in the application for winding up. The applicant company completed all procedural steps as required by the Companies Act 2015 and Winding Up Rules 2015, and also complied with all pre-hearing requirements. Accordingly, the Deputy Registrar has issued the Compliance Certificate pursuant to Winding Up Rules 19 (2) (a).

02. In the meantime, the respondent company filed a summons pursuant to Section 529 of the Companies Act 2015 seeking leave to oppose the winding up proceedings. The summons is supported by an affidavit sworn by Mr. Mourtada Moussa Makki – the director of the respondent company (Mr. Makki). The applicant company opposed the application. The affidavit is sworn by Ms. Aiping Wen known as Holy (Ms. Holy). Ms. Holy asserted that, she was authorized by the applicant company to depose the affidavit, for the purpose of this proceedings. Thereafter, the counsels agreed to dispose the application for leave by way written submission and filed the same. The time to determine this application was extended pursuant to section 528 (2) of the Companies Act 2015.
03. The section 529 of the Companies Act 2015 provides that, a company against which the application for winding up is presented may not oppose such application on certain grounds without the leave of the court. The section also provides as to when the leave should be granted by the court. The said section is as follows:

*Company may not oppose application on certain grounds*

**529.—(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 the Court, 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. (Emphasis is added).

04. The above section is unambiguous that, a company may not be permitted to rely on the grounds mentioned above to oppose the application for winding up, without the leave of the court, and the court should not grant leave unless it is satisfied that, those grounds are material to prove that the company is solvent. Thus, the duty of the company is to provide

such grounds that are material to prove its solvency in order to obtain the leave to oppose an application for winding up.

05. The winding up proceedings may commence, as it is commenced by the petitioner in this case, only if the company is insolvent. The Companies Act 2015 provides as to when a company or foreign company is considered solvent or insolvent. It provides in section 514 as follows:

*Solvency and Insolvency*

**514.—**(1) A Company or Foreign Company is Solvent **if, and only if**, it is able to pay all its debts, as and when they become due and payable.

(2) A Company or Foreign Company which is not Solvent is Insolvent.  
(Emphasis is added).

06. The ability to pay debts as and when they become due and payable is the only consideration to determine the solvency or insolvency of a company under the above section. That is why the legislature in its wisdom emphasized it by adding the phrase “**and only if**” as highlighted in the above section 514. The Companies Act 2015 also provides definition of inability to pay debts in section 515. The sub-section (a) is relevant to the application before the court. It is below:

*Definition of inability to pay debts*

**515.** Unless the contrary can be proven to the satisfaction of the Court, a Company must be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding \$10,000 or such other Prescribed Amount then due, has served on the Company, by leaving it at the Registered Office of the Company, a demand requiring the Company to pay the sum so due ("Statutory Demand") and the Company has, not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice;

07. In the meantime, the section 516 of the Companies Act 2015 permits a company which is served with the statutory demand to apply to the court within 21 days as provided in that section. The corollary is that, if a company which is served with a statutory demand fails to apply to the court to set aside it and also fails to pay the amount so demanded within 21 days, it is considered to be unable to pay its debts and therefore, is deemed insolvent. This ‘deemed insolvency’ gives rise to the creditors to commence proceedings for winding up.

It is a deeming provision by operation of section 514 that gives rise to commence winding up proceedings.

08. In other word, the insolvency, as provided in above section, is the basis for an application for winding up proceedings and it is founded on the public policy. The public policy requires that, insolvent companies should not be allowed to operate, incurring more and more debts involving the public who may transact with such insolvent companies. It is on this basis, the court held in **Re Mascot Home Furnishers Pty Ltd. (In liquidation), Re Spaceline Industries (Australia) Pty Ltd (In liquidation)** (1970) VR 593) that, court's initial approach should be that hopelessly insolvent companies should be wound up.
09. The winding up proceedings is not the short-circuited method to recover the debts against the companies in the absence of insolvency. Instead, the proceedings is founded on insolvency, i.e. the inability pay the debts as and when they become due and payable. If the insolvency is rebutted or does not exist, the winding up proceedings cannot stand. Accordingly, employing winding up proceedings to recover the debts in the absence of insolvency would not only be contrary to the very intention of the legislature, but also be inconsistent with concept of solvency and insolvency provided in section 514 of the Companies Act. It could also be an abuse of the process of the court, if any creditor attempts to employ the winding up proceeding against any company when the insolvency of such company is not the reason at all for its failure to either satisfy or set aside the statutory demand within the stipulated time.
10. One of the grounds relied on by the respondent company to oppose the winding up is that, the applicant company is a foreign company which does not have permission to trade in Fiji. The section 56 of the Companies Act requires a foreign company to obtain foreign investment registration certificate under the Foreign Investment Act 1999 and to be registered under the Companies Act to carry on business in Fiji. However, neither the Companies Act, nor the subordinate legislation requires registration of foreign company to commence winding up proceedings against any local company. Therefore, this ground is meritless.
11. However, several facts, in relation to the business activities between Ms. Holy and Mr. Makki), have been revealed from all the affidavits filed on behalf of the parties. Mr. Makki mentioned about the relationship, both business and personal, between him and Ms. Holy in several paragraphs of his affidavit filed in support of the summons for leave. Mr. Makki specifically stated in paragraphs 13 to 24 that, Ms. Holy became a family friend to him. She started cooking for him and even had access to his computers too, as she was assisting in administration of the respondent company. The relatives of Ms. Holy too arrived Fiji from China. Ms. Holy suggested to have retail business specializing curtains and

accessories on the land belongs to the respondent company. Ms. Holy and her relatives commenced the business, however they could not continue due the robbery that took place in their house situated in Sabeto, Nadi. Ms. Holy and Mr, Makki tried to sell the remaining materials belong to them. However, they could not sell all the materials and some are stored at respondent company's premises without even paying for storage.

12. On the other hand, Ms. Holy rejected the claim that, the materials were imported for the business of the applicant company. However, Ms. Holy asserted in paragraph 14 of her affidavit that, she became a friend of Mr. Makki though another friend of her. Ms. Holy shared her family problems with Mr. Makki. Her brother and sister in law arrived Fiji from China. Ms. Holy also stated that, she was cooking for Mr. Makki, free of charge and she was not even paid for it. Ms. Holy admitted using the computer of the respondent company, though she stated that, it was only for the purpose of transferring files of the respondent company (the catalogues). Ms. Holy also shared information about her brother and sister in law who came from China with Mr. Makki.
13. Ms. Holy, as asserted in her affidavit, is the authorized person of the applicant company in this matter. The applicant company was exporting materials to the respondent company. The debt involved in this matter was the purchase price of the materials purportedly exported by the applicant company to the respondent company. Several questions arises from the facts asserted by both parties. Why an authorized person of an exporting company was cooking, whether it was free of charge or not, for Mr. Makki – the director of importing company? Why a cook/chef was authorized by the exporting company to depose the affidavit? Why this cook was allowed to access the computers of importing company? She even had annexed the front page of the loan agreement between the respondent company and Fiji Development Bank. Ms. Holy stated in paragraph 21 of her affidavit in opposition that, it was sent by Mr. Makki and his wife. However, Mr. Makki stated in paragraph 10 of his affidavit in reply that, Ms. Holy surreptitiously accessed all his information and attempted to set up her family business on his property; however, their attempt came to an end with the robbery at their place. This was again denied by Ms. Holy. However, the question is how a person, who was cooking for a director for free of charge, was able to access the loan agreement between the company and the bank?
14. Mr. Makki stated in various paragraphs of his affidavit that, Ms. Holy suggested to use the vacant building on the respondent company's land for retail business specializing in curtains and accessories and also suggested that she could obtain materials from China at a reasonable rate. Mr. Makki also stated that, all the materials were imported for Ms. Holy and her family to start their business at his premises. However, Ms. Holy in her affidavit denied it and stated that, it was Mr. Makki's suggestion. She further stated that, the material belonged to Mr. Makki and not to her.

15. All these admitted and disputed facts, revealed in the affidavits of the parties, undoubtedly indicate that, there was some kind of arrangement between the Ms. Holy and her family members on one part, and Mr, Makki on the other part, to enter into a joint venture to do retail business specializing in curtains and accessories. However, for some reasons best known to them all, the business did not proceed, but left the dispute between them on recovery of the some money due to them from each other. They negotiated to dissolve the dispute between them, however they failed. It appears that, Ms. Holy acted on legal advice when she negotiated the matter with Mr. Makki.
16. In fact, the facts revealed by the affidavit clearly shows that, the insolvency of the respondent company was not the issue at all for its failure to either set aside the statutory demand and or satisfy it within the stipulated time. It is evident from the affidavits of the parties that, they could not agree on the terms to wind up their joint-venture. However, Ms. Holy attempted to weaponize the winding up proceedings to compel Mr. Makki to pay the amount that she claimed to have been due to her from Mr. Makki and or the respondent company. From the facts revealed in the affidavit of both parties, I am satisfied that, the grounds relied on by the respondent company are material to prove that, the company is solvent. Therefore, I decide that, the leave should be granted to the respondent company to oppose this winding up proceedings.
17. As the result, I make the following orders:
- a. The leave to oppose the application to wind up the respondent company is granted, and
  - b. The parties to bear the costs.



**U.L. Mohamed Azhar  
Acting Judge**

**At Lautoka  
07.10.2025**