27/29

IN THE PRIVY COUNCIL NO. 12 of 1977

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

and

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 216

B E T W E E N :

BALI HAI RESTAURANT LIMITED — APPELLANT

and

RAVENDRA KUMAR AND JAFFAR ALI — RESPONDENTS

RECORD OF PROCEEDINGS

Philip Conway Thomas & Co.
61 Catherine Place
London,
SW1E 6HB

Solicitors for the Appellant

IN THE PRIVY COUNCIL — No. 12 of 1977

ON APPEAL

FROM THE FIJI COURT OF APPEAL

B E T W E E N :

IN THE MATTER OF
BALI HAI RESTAURANT LIMITED — Appellant

- and -

IN THE MATTER OF THE COMPANIES
ORDINANCE CAP. 216 and RAVENDRA
KUMAR AND JAFFAR ALI — Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED

Description of Document	Date
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Notice of adjourned hearing of Summons	9th July 1975
Acknowledgments of service of documents by J.G.B. Crawford	15th July 1975
Acknowledgment of service of documents by J.G.B. Crawford	16th July 1975
Acknowledgment of service of documents by A. Qumi	16th July 1975
Memorandum	28th July 1975

IN THE PRIVY COUNCIL — No. 12 of 1977

ON APPEAL

FROM THE FIJI COURT OF APPEAL

B E T W E E N :

IN THE MATTER OF
BALI HAI RESTAURANT LIMITED — Appellant

- and -

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 216 and RAVENDRA KUMAR AND JAFFAR ALI — Respondent

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RECORD OF PROCEEDINGS

No. 1

Winding Up Petition

In the Supreme Court

No.1

Winding Up Petition

6th June 1975

IN THE SUPREME COURT OF FIJI

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

A N D

IN THE MATTER of the Companies Ordinance Cap. 216 &
10 RAVENDRA KUMAR & JAFFAR ALI

The Humble Petition of FRANCIS RAVENDRA KUMAR (son of George Raj Kumar) of Raiwaqa, Suva, Bartender and JAFFAR ALI (son of Cheddi) of 18 Batiki Street, Suva, Merchant sheweth as follows:-

(1) BALI HAI RESTAURANT LIMITED was registered on the 13th day of March 1972 under the Companies Ordinance Cap.216 as a private Company Limited by shares.

In the Supreme Court

No. 1

Winding Up Petition

6th June 1975 (continued)

(2) The registered office of the Company is situated Care of Messrs. Cromptons, Solicitors, Prouds Building, the Triangle, 66 Renwick Road, Suva.

(3) The nominal Capital of the Company is $50,000.00 (Fifty thousand dollars) divided into 50,000 shares of $1.00 each.

(4) The objects for which the Company was established, inter alia, are as follows:-

"To carry on the business of restaurant, night club, cafe, hotel, motel, tavern, apartment house, lodging house, saloon, cottage colony, guest house keepers, take away food suppliers, caterers, licensed victuallers, wine, beer and spirit merchants, brewers, maltsters, distillers, manufacturers of aerated mineral and artificial waters and other drinks, theatre, music hall, concert hall, dance hall, ball-room, cinema, picture palace, circus, hippodrome theatrical box Office and musical proprietors and agents, entrepreneurs, showmen, exhibitors and general agents, song, music, play, programme and general publishers and printers, scene, procenium and general painters and decorators, producers, directors, promoters and caterers for public and private amusement and entertainment of every description, ice merchants, importers, exporters and brokers of food, live and dead stock and foreign produce of all descriptions and with power to acquire, buy, purchase, lease, bargain, exchange or otherwise deal with any real and personal property to hold the same as an investment with power to develop, improve, manage, sell, exchange, lease, mortgage, let or otherwise deal with the same as the company may from time to time determine."

(5) On or about the 7th day of March, 1973 the Company created a debenture in favour of FIRST NATIONAL CITY BANK to secure advances and charging the whole of the Company's undertakings and assets. Your Petitioners have been recently advised that all moneys due under the said Debenture have been paid in full.

(6) The company is at present carrying on the business of restaurant and night club at Redwell Road (next to Phoenix Theatre) Suva.

(7) The Company's assets according to the unaudited and uncertified statement supplied to your Petitioners by the Auditors of the Company as at the 31st December 1974 was $93,614.53.

(8) The Company's liabilities according to the unaudited and uncertified statement supplied to your Petitioners by the Auditors of the Company as at the 31st December 1974 was $90,415.33.

(9) Your Petitioners desire that the Company be wound up upon the grounds first that the Company is unable to pay its debts and secondly to say that it would be just equitable that such an Order be made by this Honourable Court having regard to all the circumstances. Particulars of the said grounds are set forth in the succeeding paragraphs of the Petition.

(10) The Company commenced its business on or about the 2nd day of August, 1973.

(11) Between the inception of the Company and 31st December 1973 all the shares therein had been held by the four shareholders of the Company. The names and particulars of the Shareholders are as follows:-

(a) Your first Petitioner who resides at 3 Tivitive Lane, Raiwaqa, Suva and is a Bartender,

(b) Your second Petitioner, who resides at 18 Batiki Street, Vatuwaqa and is a Merchant,

(c) Mr. James Gibbon Barron Crawford who resides at Gomati Street, Tamavua, Suva, is a Theatrical Agent,

(d) Mr. Akuila Qumi who resides at 6 Soqeloa Lane, Raiwaqa, Suva and is a Taxi Proprietor.

(12) After the inception of the Company the said Shareholders were appointed as Direcors of the

In the Supreme Court

No. 1

Winding Up Petition

6th June 1975 (continued)

Company. However, your first Petitioner resigned from his Office as a Director on the 14th November 1974 and your second Petitioner resigned from his Office as a Director on the 23rd May, 1975.

(13) By the 31st day of December, 1973 the whole of the authorised capital was issued to the four (4) Shareholders as follows:-

(a) Your first Petitioner	$10,000.00
(b) Your second Petitioner	15,000.00
(c) Mr. J.G.B.Crawford	15,000.00
(d) Mr. A. Qumi.	10,000.00
	$50,000.00

(14) At the beginning of 1974 it transpired that the Company was in financial difficulties and that it was unable to meet its monthly and other credit commitments in order to assist the Company and the following steps were taken:

(a) Your first Petitioner lent the sum of $3000.00 to the Company,

(b) Your second Petitioner between 1st February 1974 and 5th March 1974 agreed to convert the sum of $2,580.27 due to him by the Company as salary to capital and provide a further sum of $2419.73 in cash to the Company in return for the issue of 5,000 shares in his name and thus making his capital contribution to the Company in the sum of $20,000. This was done with the knowledge and consent of all the four (4) Directors and shareholders.

(c) The Company reduced the staff of the Company.

(d) Reduced the salaries payable to the Directors.

(15) With regard to the issue of 5,000 shares of $1 each to your second Petitioner as referred to in paragraph (14)(b) hereof, your Petitioners say that the same were issued in good faith but concede that the issue of such shares was in breach of law and Article (38) and (39) of the Articles of the Company aforesaid.

(16) Notwithstanding the efforts made by the Directors and shareholders to improve the

Company's position, the Company continued to face financial difficulties. Since the beginning of April 1974 it failed to pay on the due date:

(a) The sum of $3,000.00 due to your first Petitioner until the 22nd day of August 1974 and only after your Petitioner served on the Company the Notice of Intention to wound up the Company.

(b) The monthly instalments of $1250.00 due to the National City Bank at the end of each month in reduction of Company's overdraft.

(c) Sundry creditors whose accounts were to be paid at the end of each calendar month in respect of purchase made during the preceeding month.

(d) Salaries due to Directors.

(17) Since the 17th day of May, 1974 your first Petitioner withdrew from active participation from the Board of Directors of the Company and on the 14th day of November, 1974 he resigned from the said Office.

(18) That since the month of July 1974 your second Petitioner has withdrawn from participation on the Board of Directors of the Company. Since then the entire affairs of the Company have been and are being managed and controlled by Mr. J.G.B.Crawford and Mr. A. Qumi. Your second Petitioner resigned from the said Office on the 23rd day of May, 1975.

(19) That on the 29th November, 1974 your Petitioner submitted a Requisition under Section 114 of the Companies Ordinance Cap. 216 and Clause 49 of the Articles of the Company calling upon the Directors to convene an extra ordinary general meeting. The object of the said Extra-ordinary General Meeting were to consider passing resolutions in relation to the following matters:-

(a) To remove present holder of the office of the Managing Director of the said Company and Appoint in his place, another shareholder.

In the Supreme Court

No. 1

Winding Up Petition

6th June 1975 (continued)

(b) To re-arrange the management of the affairs of the said Company.

(c) To take steps to complete the said Company's accounts and have the same duly audited forthwith.

(d) To fix date and place for the General Meeting of the said Company.

(20) By a Notice dated 6th day of December 1974 an Extraordinary General Meeting was convened. The same was held at the Company's premises at Rodwell Road, Suva on Tuesday the 17th day of December 1974.

(21) At the said Extraordinary General Meeting your Petitioners attempted to move the necessary resolutions outlined in the said Requisition but they were unsuccessful in the light of the opposition from the other two shareholders and the said meeting was then adjourned.

(22) That as at the 17th day of December, 1974 your Petitioners honestly and verily believed that as the 31st day of December 1973 the whole of the authorised capital of 50,000.00 shares of $1 each was issued and by the 5th day of March 1974 a further capital of 5,000 shares of $1 each was issued. At the Extra Ordinary General Meeting held on that day your Petitioners were not advised by Messrs. J.G.B. Crawford and A. Qumi that during your Petitioners absence and without their knowledge any further shares were issued although at one stage of the said meeting the question of voting on poll was raised.

(23) That on the 14th day of January 1975 the adjourned Extra-ordinary General Meeting was held at the Company's premises aforesaid when a question voting on poll was raised again, the said Messrs. J.G.B. Crawford and A.Qumi claimed that they were the majority shareholders and advised your Petitioners (for the first time) that on the 3rd day of December 1974 they held a meeting of the Board of Directors and issued the following shares:

(a) To Mr. J.G.B. Crawford by converting his outstanding salary due to him as Director of the Company any 4000 shares of $1 each $4000.00

(b) To Mr. A. Qumi by converting his outstanding salary due to him as a Director of the Company 3000 shares of $1 each 3000.00

$7000.00

(24) With regard to the purported issue of 7,000 shares as aforesaid, your Petitioner say:-

(a) They were issued without your Petitioner knowledge or consent.

(b) They were issued after your Petitioners lodged the Requisition to convene an Extra-Ordinary General Meeting.

(c) They were issued with the intention of defeating your Petitioners' voting rights on poll and in particular their voting rights on poll at the Extra-Ordinary General Meeting which was in fact held on the 17th day of December, 1974.

(d) They were not issued with the prior approval or authority of the General Meeting as required by Section 51 of the Companies Ordinance Cap 216 and therefore Messrs. J.G.B. Crawford and A. Qumi as Directors usurped the powers of the General Meeting and acted in breach of law.

(e) If there was any resolution authorising the issue of the said shares, no notice has been given to the Registrar of the Companies within thirty (30) days of the passing of such resolution as required by Section 53(1) of the Companies Ordinance Cap.216.

(f) The purported issue of the said shares is in breach of Articles 38 and 39 of the Articles of the Company.

In the Supreme Court

No. 1

Winding Up Petition

6th June 1975 (continued)

(25) In support of your Petitioners allegations that the Company is unable to pay its debts your Petitioners further say:-

(a) Mr. Raymond Yam a Creditor of the company has advised your Petitioners on 4th June 1975 that a sum of $1,808.26 was due and owing to him as at 31st May, 1975 and that requests have been made on several occasions to liquidate the said debt but the same is still outstanding. This account has been outstanding since October 1974.

(b) Cains Janiff Limited a Creditor of the Company has advised your Petitioners on 4th June 1975 that a sum of $330.77 was due and owing to that Company as at 31st May, 1975, that this debt has been due and owing since October 1974.

(c) Fiji Times and Herald Limited a Creditor of the Company has advised Petitioners on the 4th June 1975, that a sum of $2,242.30 was due and owing to that Company as at the 31st day of May 1975, that this debt has been due and owing for over 20 months and that because of Mr. J.G.B.Crawford's assurance, the Company postponed handing the collection of this debt to its Solicitors.

(d) Mr. Karan Singh has informed your Petitioners' Solicitor (Mr. S.M.Koya) on the 4th June 1975 that over $11,000.00 is due and owing to him and that this amount has been outstanding since the company commenced its operations.

(e) Mr. Karan Singh has informed your Petitioners' Solicitor (Mr. S.M. Koya) that the Company owes him approximately three (3) months' rent amounting to $4,500.00.

(f) Your Petitioner Jaffar Ali has already instituted Civil Action No.130 of 1975 against the Company on the 1st day of May, 1975, to recover the sum of $5,000.00 (being amount due for wages and for moneys had and received) which action is being defended by the Company.

(26) In support of your Petitioners' ground that the Company should be wound up because it is just and equitable that it should be done, your Petitioners further say:-

(a) that there is now a deadlock in so far as the question whether your Petitioners are the majority shareholders or not.

(b) that the Extra-ordinary General Meeting held on the 17th day of December 1974 and on the 14th day of January 1975 became abortive and no decision was reached on the subject mentioned in the Requisition dated the 29th day of November 1974 and referred to paragraph (19) hereof.

(c) that Messrs. J.G.B.Crawford and A. Qumi have refused to produce to your Petitioners all the minutes of the meetings held by the shareholders and or Directors of the Company. Only some of such minutes were handed to your Petitioners Solicitors on or about 11th February 1975 after repeated requests.

(d) that Messrs. J.G.B. Crawford and A.Qumi have refused to produce to your Petitioners or allow them to inspect the books of accounts kept by the Company by its Officer, agents or servants. So far unaudited and uncertified Statement of Assets and Liabilities in respect of the years 1973 and 1974 together with the accompanying particulars as to depreciation and lise of creditors were handed to your Petitioners Solicitors on Saturday the 22nd February 1975 by the Company's Accountants and Auditors Messrs. Coopers and Lybrand.

(e) Messrs. J.G.B.Crawford and A. Qumi have refused to hold a General Meeting of the Company despite the fact no General Meeting was held in 1973 and

(f) Messrs. J.G.B. Crawford and A. Qumi as Directors of the Company have refused to co-operate with your Petitioners to find alternative means to reduce running expenses of the Company and the alternative means to increase the Company's income by

In the Supreme Court

No. 1

Winding Up Petition

6th June 1975 (continued)

adopting other business techniques appropriate and relevant to the management and control of a restaurant and night club in Fiji and in the context of the inflation which exists in Fiji.

(g) Messrs. J.G.B. Crawford and A.Qumi, as Directors have acted fraudulently in increasing their shares to equate their voting rights with the Petitioners.

(h) The Company has not kept proper books of accounts since its inception and in particular for the years 1973 and 1974 and is now in breach of Section 122(1) of the Companies Ordinance Cap.216.

(i) The Company has not kept at its registered office its books of accounts for the inspection by its Directors as required by Section 122(2) of the Companies Ordinance Cap.216.

(j) The Company has not caused profit and loss account and balance sheet to be prepared and laid before its General Meeting as required by Section 123(2) of the Companies Ordinance Cap.216.

(k) The Company has failed to keep Register of its members as required by Section 96 of the Companies Ordinance Cap.216

(l) The Company has not made or filed with the Registrar of the Companies Annual Return as required by Section 108 and 110 of the Companies Ordinance Cap. 216.

(m) The Company has not held any General Meeting as required by Section 112 of the Companies Ordinance.

(n) Your Petitioners by letter dated the 9th April 1975 addressed to the Company 1975 made several allegations against the handling of the affairs of the Company warned the said Messrs. J.G.B.Crawford and A. Qumi not to dispose of the Company's assets and declared their intention to wind-up the Company.

(o) Your Petitioners by a Notice dated the 23rd May 1975 notified the Company that they intended to present a Petition in this Honourable Court to wind-up the Company upon the two (2) principal grounds referred to in paragraph (9) hereof.

In the premises, your Petitioners humbly pray as follows:-

(a) THAT BALI HARI RESTAURANT LIMITED may be wound up by the Court under the provisions of the Companies Ordinance Cap.216;

(b) THAT such other Order may be made in the premises as shall be just.

(c) THAT your Petitioners' costs be paid out of the Companies assets or funds in priority to all other claims.

DATED at Suva this 6th day of June, 1975

(Signed) FRANCIS R. KUMAR .....

(Signed) JAFFAR ALI .....

NOTE: It is intended to serve this Petition on BALI HAI RESTAURANT LIMITED its registered Office at the Office of Messrs. Cromptons, Solicitors, Prouds Building, the Triangle, 66 Renwick Road, Suva.

In the Supreme Court

No. 2

Affidavit verifying Winding Up Petition

6th June 1975

No. 2

Affidavit verifying Winding-Up Petition

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

And

IN THE MATTER of the Companies Ordinance Cap.216 & RAVENDRA KUMAR & JAFFAR ALI

AFFIDAVIT VERIFYING PETITION

WE, FRANCIS RAVENDRA KUMAR (son of George Raj Kumar) of Raiwaqa, Suva, Bartender and JAFFAR ALI (son of Cheddi) of 18 Batiki Street, Suva, Merchant make oath and say that such of the statements in the petition now produced and shown to us, and marked with the letter "A" as relate to our own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons we believe to be true.

SWORN and SIGNED by the said FRANCIS RAVENDRA KUMAR at Suva, Fiji before me this 6th day of June 1975 and I certify that I read over, explained and interpreted the contents hereof to the deponent in the Hindustani language and the deponent seemed perfectly to understand the meaning and effect thereof before making his signature thereto in my presence

(Sgd.)Francis R.Kumar

(Sgd.) Illegible
.....
A COMMISSIONER FOR OATHS

SWORN and SIGNED by the said JAFFAR ALI at Suva, Fiji before me this 6th day of June 1975 and I certify that I read over, explained and interpreted the contents hereof to the deponent in the Hindustani language and the deponent seemed perfectly to understand the meaning and effect thereof before making his signature thereto in my presence.

(Sgd.) JAFFAR ALI

(Sgd.) Illegible
.....
A COMMISSIONER FOR OATHS

No. 3

Notice of Petition

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

A N D

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

NOTICE is hereby given that a Petition for the Winding up of the above-named Company by the Supreme Court of Fiji was on the 6th day of June, 1975, presented to the said court by FRANCIS RAVENDRA KUMAR (son of George Raj Kumar) of Raiwaqa, Suva, Bartender, and JAFFAR ALI (son of Cheddi) of 18 Batiki Street, Vatuwaqa, Suva, Merchant AND that the said Petition is directed to be heard before the Court sitting at Suva, on Friday the 1st day of August, 1975, at 9.30 o'clock in the forenoon; and any creditor or contributory of the said Company desirous to support or to oppose the making of an order on the said Petition may appear at the time of hearing in person or by his Counsel for that purpose; and a copy of the Petition will be furnished to any creditor or contributory of the said Company requiring the same by the undersigned on payment of the regulated charge for the same.

In the Supreme Court

No. 3

Notice of Petition

6th June 1975 (continued)

Dated this 6th day of June, 1975.

KOYA & CO.

Per: S. M. Koya

Solicitors for the Petitioners
23 Cumming Street, Suva.

NOTE: Any person who intends to appear on the hearing of the Petition must serve on or send by post to the above-named notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor, (if any), and must be served or if posted, must be sent by post in sufficient time to reach the above-named not later than 6 o'clock in the afternoon of the day of , 1975.

No. 4

Summons for Appointment of Provisional Liquidator

6th June 1975

No. 4

Summons for Appointment of Provisional Liquidator

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

EX-PARTE

LET ALL PARTIES concerned attend a Judge of this Honourable Court at the Supreme Court Building, Suva on the 1st day of July, 1975 at 2.15 o'clock in the afternoon on the hearing of an application of FRANCIS RAVENDRA KUMAR and JAFFAR ALI the Petitioners herein for an Order that the Official Receiver or some other fit and proper person be APPOINTED as a Provisional Liquidator of the above-named Company until the hearing of the Wind-up Petition presented herein.

This Application is being made under Section

183 of the Companies Ordinance Cap.216.

DATED this 6th day of June, 1975.

This Summons for the APPOINTMENT of a Provisional Liquidator was taken out by Koya & Co., Solicitors for the Petitioners whose address for service is at their Chambers at 23 Cumming Street, Suva.

In the Supreme Court

No. 4

Summons for Appointment of Provisional Liquidator

6th June 1975 (continued)

No. 5

Affidavit in support of No. 4

No. 5

Affidavit in support of No. 4

6th June 1975

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

AFFIDAVIT IN SUPPORT OF A PROVISIONAL LIQUIDATOR BEFORE WINDING-UP ORDER

WE, FRANCIS RAVENDRA KUMAR (son of George Raj Kumar) of 3 Tivitivi Lane, Raiwaqa, Suva, Fiji Bartender and JAFFAR ALI (son of Cheddi) of Batiki Street, Vatuwaqa, Suva, Businessman make oath and say as follows:

1. We crave leave to refer to the Petition and the Affidavit in support filed herein.

2. The Night Club business carried on by the above-named Company (hereinafter called "the Company") at Rodwell Road, Suva, Fiji, is widely known in Fiji. It has numerous patrons. It is located near the Phoenix Theatre and is very close to the Customs and Wharf area in the City of Suva.

3. The Company is operating the Night Club under a Restaurant Licence issued in the

In the Supreme Court

No. 5

Affidavit in support of No. 4

6th June 1975 (continued)

year 1973 under the Liquor Ordinance Cap.167. The issue of such Licence is restricted by the provisions of Section 63(2) of the Liquor Ordinance. At the present time the restricted quota is 35 of which about 22 have been issued by the Tribunal. There is a substantial goodwill attached to the sale of such licences in Fiji.

4. The Company possesses all necessary equipments, musical instruments, furniture, fittings and other accessories to a Night Club. The value of such assets as at 31st December, 1974 was over $90,000.

5. The Company employed more than 17 persons when it first commenced its business.

6. The Company has no liquid assets upon or from which it can raise funds.

7. That we verily believe that the Company is indebted to several persons and over $30,000 is now due and outstanding. This includes the indebtedness to the following persons:

a. Mr. Raymond Yam in the sum of $1,808.26

b. Cains Janiff Limited in the sum of $330.77

c. Fiji Times & Herald Limited in the sum of $2,242.30

d. Mr. Karan Singh in the sum of $11,000.00 (approx.)

e. Mr. Karan Singh in the sum of $4,500.00

f. Mr. Jaffar Ali in the sum of $5,000.00

8. Since July 1974 only two Directors have been Managing the affairs of the Company and they:

a. have been directly responsible for the Company's failure to comply with Sections 96, 108, 110, 112, 122(1), 122(2), 123(2), of the Companies Ordinance Cap.216;

b. have failed to pay the Company's creditors the amount due to them when they become payable;

c. have closed the Restaurant side of the Night Club business;

d. have reduced a number of staff in the business;

e. have declared that the furnitures and equipments which were used for the restaurant side of the Night Club business, should be sold very soon;

f. have been responsible for the down turn in the business and creating fear in the minds of creditors and ourselves that the assets and the general interest of the company are now in jeopardy.

9. That on the 9th April, 1975 our Solicitors Messrs. Koya and Co wrote to the Managing Director of the Company. No reply has been received to that letter. A copy of the said letter is annexed hereto and marked "A".

10. That by Notice dated the 23rd May, 1975 we notified the Company that it was our intention to present a Winding-up Petition in this Honourable Court to wind up the Company. A copy of the said Notice is annexed hereto and marked "B".

11. That pending the determination of the Winding-up Petition the business and assets of the Company should be placed in the hands of a Provisional Liquidator as it is essential that the Company's business and undertaking be maintained and protected from jeopardy so that its valuable goodwill be preserved and the possible sale of the undertaking as a whole be not prejudiced.

12. In these circumstances it is in our submission, necessary that a Provisional Liquidator should be appointed to protect the Company's business pending the hearing of the said Petition with all the powers conferred upon a Provisional Liquidator under the Companies Ordinance Cap.216.

13. We are informed by our Solicitor Mr. S.M.Koya that on inquiry the Official Receiver (Mr. Raman Kurup) has advised him on the 4th June 1975 that the Official Receiver is prepared to accept the appointment of the office of Provisional Liquidator if this Honourable Courts grants this application.

In the Supreme Court

No. 5

Affidavit in support of No. 4

6th June 1975 (continued)

SWORN and SIGNED by the said FRANCIS RAVENDRA KUMAR (son of George Raj Kumar) at Suva, Fiji before me this 6th day of June, 1975 and I certify that I read over, explained and interpreted the contents hereof to the deponent seemed perfectly to understand the meaning and effect thereof before making his signature thereto in my presence.

(Sgd.) Francis R. Kumar

(Sgd.) Illegible

.....

A COMMISSIONER FOR OATHS

SWORN and SIGNED by the said JAFFAR ALI (son of Cheddi) at Suva, Fiji before me this 6th day of June 1975, and I certify that I read over, explained and interpreted the contents hereof to the deponent in the Hindustani language and the deponent seemed perfectly to understand the meaning and effect thereof before making his signature thereto in my presence.

(Sgd.) JAFFAR ALI

(Sgd.) Illegible

.....

A COMMISSIONER FOR OATHS

"A"

"A"

KOYA & CO.
BARRISTERS & SOLICITORS SUVA

9th April, 1975

The Managing Director,
Bali Hai Restaurant Limited,
Registered Office, Messrs. Cromptons,
66 Renwick Road,
SUVA.

Dear Sir,

We are instructed by Messrs. Jaffar Ali and Francis Ravendra Kumar to ask you not to sell or dispose of any of the assets belonging to Bali Hai Restaurant Limited.

Our clients visited the premises of the Company at Rodwell Road, Suva, last night and after investigations they found:

(a) that Mr. Akuila Qumi a paid Director of the Company was absent.

(b) that Mr. J.G.B. Crawford a paid Director of the Company was asleep on the premises (close to the kitchen).

(c) that restaurant side of the business had been closed.

(d) that you and your colleague Mr. Akuila have intimated to the staff that the business has gone down considerably and that very soon you sould sell all the kitchen equipment.

(e) that the actual takings are not banked in the customary way.

(f) that Creditors are paid in cash and later a cash cheques are issued payable "Cash" and such cheques are deposited with First National City Bank.

You have been already notified (vide our letter dated the 21st January, 1975) that our clients intend to present a Winding-up Petition against your Company. There are various grounds on which the Petition can be justifiably presented and acted upon.

We must state categorically that the Board of Directors have been managing the affairs of the Company in contravention of the Company's Articles of Association and the Companies Ordinance. In addition it has not thought fit to invite Mr.Jaffar Ali, a Director of the Company to any of its meeting since the month of July, 1974. No general meeting has been held and having regard to the fact that you and your colleague Mr. Qumi hold no more than 50 percent shares in the Company and

In the Supreme Court

No. 5

Affidavit in support of No. 4

6th June 1975

Annexure "A" (continued)

duties and responsibilities that our laws have imposed on Directors of a registered Company, we must urge you not to sell or dispose of Company's assets without the sanction of the General Meeting and secured Creditors. We must emphasise that any sale or disposal of the assets without the consent of the First National City Bank, the Debenture Holder may well amount to a criminal offence.

We look forward by return mail a firm undertaking that:-

(a) you and your colleague would not sell or dispose of the assets and

(b) you and your colleague's views to wind up the affairs of the Company either voluntarily (by holding of a lawful general meeting and passing an appropriate resolution) or compulsorely by obtaining an Order of Court.

We request you to give us a reply without delay.

Yours faithfully,
KOYA & CO.

Per S. M. Koya

Distributions:

1) R.W. Mitchell, Esq.
2) FIRST NATIONAL CITY BANK.
3) Messrs. Cooper & Leybrand.

Annexure "B"

"B"

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap. 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that we intend to present a WINDING-UP Petition to the Supreme Court of Fiji for an Order that Bali Hai Restaurant Limited be wound

up by the Court under the provisionsof Companies Ordinance Cap.216, inter alia on the following grounds:-

1. THAT the Company is unable to pay its debts within the meaning of the words in Section 167(e) of the Companies Ordinance Cap.216. (The present Directors Messrs. J.G.B.Crawford and A.Qumi who alone have been controlling the affair of the Company since July 1974 and in particular the running of the restaurant are well aware of the true state of the company's financial affairs including the fact that about $25,427.02 was due and owing as at the 31st December 1974 to various creditors (including a sum of $11,127.04 to Mr. K. Singh) of which a substantial part is still due and owing). Further the Creditors have demanded payment.

2. THAT it would be just and equitable that an Winding-Up Order be made having regard to all the circumstances of the case and in particular that:

(a) Messrs. J.G.B.Crawford and A.Qumi as Directors have acted fraudulently in increasing their shares to equate their voting rights with us;

(b) There exists a serious dispute between the said J.G.B.Crawford and A.Qumi and ourselves as to policy and other matters relating to the Management of the Company's Affairs and there is a complete dead-lock on these issues:

(c) That Messrs. J.G.B.Crawford and A.Qumi as Directors are directly responsible for the offences now committed by the Company in not complying with Sections: 122(1), 122(2), 123(2), 96, 108, 110 and 112 of the Companies Ordinance Cap.216.

DATED this 23rd day of May, 1975.

(Sgd.) Francis R. Kumar

(Sgd.) Jaffar Ali.

TO: Bali Hai Restaurant Limited,
Registered Office, SUVA.

This is the annexure marked "B" referred to in the Affidavit of FRANCIS RAVENDRA KUMAR and JAFFAR ALI sworn before me this 6th day of June, 1975

(Sgd.)
A Commissioner for Oaths.

In the Supreme Court

No. 6

Consent to act as Provisional Liquidator

25th June 1975

No. 6

Consent to act as Provisional Liquidator

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

I, RAMAN KURUP of Suva, Fiji the Administrator-General and the Official Receiver do hereby consent to act as the Provisional Liquidator of the above-named Company in this matter if such appointment is made by this Honourable Court.

DATED this 25th day of June, 1975.

(Sgd.)

Official Receiver

No. 7

Proceedings

1st July 1975

No. 7

Proceedings

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No. 173 of 1975

IN CHAMBERS

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

Before the Hon. Mr. Justice Tuivaga
Tuesday the 1st day of July, 1975 at 2.15 p.m.

APPOINTMENT OF PROVISIONAL LIQUIDATOR

Mr. S.M. Koya for the Applicants

Mr. Koya:

This is an ex parte application under section 183 of Companies Ordinance (Cap.216).

Court:

Mr. Mitchell has no locus standi om this application. Not wrong in coming ex parte to Court.

Para.206 Vol.6A (1953 Edn.) Similar to ex parte application for injunction. Ask for appointment of provisional liquidator for a limited time.

Consent of Mr. Kurup obtained. Security may be required. Undertaking could be given (that we give our undertaking of petition).

Appointment of provisional liquidator does not cause business to close. In re Dry Docks Corp. of London (1888) 39 Ch.D.R. p.340 per Fry L.J. Third parties interests not affected. No harm will be done. "Only takes charge of business."

Petition and order of appointment of provisional liquidator could be advertised.

On the merits

Refer to petition itself - filed but not released for

(1) service

(2) advertisement in F.R.G. and in newspaper circulating in Company.

Refer to allegations in Petition. Divided into 3 parts.

(1) Non-compliance with law of land.

(2) Inability to pay - several creditors.

(3) Refusal to co-operate.
- para.26(c). No reply - not banking money. The affidavit of petitioner in support of this application.

In the Supreme Court

No. 7

Proceedings

1st July 1975 (continued)

Need for appointment of Official Receiver as provisional liquidator - allegations not contradicted.

Position very grave - possibility of business and assets deteriorating further and placed in jeopardy. Refer to section 183 of Cap.216.

Powers of provisional liquidator should be as wide as possible - matter of discretion for the Court.

Refer Halsbury's Statutes of England (3rd Edn.) Vol.5 p.302. Halsbury's (4th Edn.) paras.1045 to 1049 (photocopies handed to Court.) Restriction of powers by provisional liquidator (the applicants are contributories). Nothing new in the law in new editions of Halsbury's Laws ofEngland. Halsbury's (3rd Edn.) Vol.6 para.1128.

Running of business should not be placed in jeopardy. Balance is struck between conflicting interests.

If Court not minded to make decision and adjourn for decision - result is one would be supervising business in the meantime.

Ask for Official Receiver be appointed now as provisional liquidator subject to terms indicated above.

Court:

In view of the nature of application which is somewhat complex, this Court would like to take time to consider its decision. I therefore feel constrained to adjourn this application to next Tuesday, 8th July, 1975 at 2.15 p.m. for my decision on the application.

(Sgd.) T.U. Tuivaga

JUDGE

No. 8
Decision

In the Supreme Court

No. 8

Decision

8th July 1975

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

No.173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

Mr. S.M. Koya for Applicants

DECISION

This is an ex parte application on behalf of two of the four shareholders of a private company known as Bali Hai Restaurant Limited for the appointment of a provisional liquidator under section 183 of the Companies Ordinance (Cap.216) and for this purpose the consent of the Official Receiver to act as provisional liquidator has been duly obtained. The applicants are Francis Ravendra Kumar (s/o George Ram Kumar) and Jaffar Ali (s/o Cheddi). A petition has also been presented by the applicants for an order that the company be wound up by the Court under the provisions of the Companies Ordinance (Cap.216).

The application is supported by an affidavit sworn jointly by the applicants in which a number of allegations have been made against the company and the other two shareholders, namely Mr. J.G.B. Crawford and Mr. Qumi. In view of the nature of the allegations made against the company and the other shareholders therein the Court's duty is clear and, that is, it cannot and must not adjudicate on the present application without first giving the company and the other shareholders an opportunity to be heard on the application. From the nature of the application and the allegations made therein this is clearly a matter that should have been heard inter partes from the outset.

Under the circumstances I am constrained to adjourn this summons further, namely to Tuesday, 22nd July, 1975 at 2.15 p.m. and order that the

In the Supreme Court

No. 8

Decision

8th July 1975 (continued)

application be heard interpartes and further order that copies of the summons and supporting affidavits and notices of the adjourned hearing of the summons be served as soon as possible on the company and the shareholders, Messrs. Crawford and Qumi, all of whom to be at liberty to file affidavits in reply and serve copies thereof on the applicants.

(Sgd.) T.U. Tuivaga

(T.U. Tuivaga)

JUDGE

Suva,
8th July, 1975.

No. 9

Extract from Fiji Royal Gazette 18th July 1975

No. 9

Extract from Fiji Royal Gazette

IN THE SUPREME COURT OF FIJI

CIVIL JURISDICTION
(No. 173 of 1975)

In the matter of Bali Hai Restaurant Limited
And in the matter of the Companies Ordinance, Cap. 216.

NOTICE is hereby given that a Petition for the Winding up of the above-named Company by the Supreme Court of Fiji was on the 6th day of June, 1975, presented to the said Court by Francis Ravendra Kumar (s/o George Raj Kumar) of Raiwaqa, Suva, Bartender and Jaffar Ali (s/o Cheddi) of 18 Batiki Street, Vatuwaqa, Suva, Merchant.
And that the said Petition is directed to be heard before the Court sitting at Suva, on Friday the 1st day of August, 1975, at 9.30 o'clock in the forenoon; and any creditor or contributory of the said Company desirous to support or to oppose the making of an order on the said Petition may appear at the time of hearing in person or by his Counsel for that purpose; and a copy of the Petition will be furnished to any creditor or contributory of the said Company requiring the same by the undersigned on payment of the Regulated charge for the same.

Dated this 6th day of June, 1975.

KOYA & CO., Solicitors for the Petitioners,
23 Cumming Street, Suva.

In the Supreme Court

No. 9

Extract from Fiji Royal Gazette 18th July 1975 (continued)

NOTE: Any person who intends to appear on the hearing of the Petition must serve on or send by post to the above-named notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor, (if any), and must be served or if posted, must be sent by post in sufficient time to reach the abovenamed not later than 6 o'clock in the afternoon of the 31st day of July, 1975.
R.R.521328.

No. 10

Extract from The Fiji Times

No.10

Extract from The Fiji Times 21st July 1975

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216

NOTICE is hereby given that a Petition for the winding-up of the above-named company by the Supreme Court of Fiji was on the 6th day of June, 1975, presented to the said Court by FRANCIS RAVENDRA KUMAR (son of George Raj Kumar) of Raiwaqa, Suva, Bartender and JAFFAR ALI (son of Cheddi) of 18 Batiki Street, Vatuwaqa, Suva, Merchant AND that the said Petition is directed to be heard before the Court sitting at Suva, on Friday, the 1st day of August, 1975, at 9.30 o'clock in the forenoon; and any creditor or contributory of the said Company desirous to SUPPORT or to OPPOSE the making of an order on the said Petition may appear at the time of hearing in person or by his Counsel for that purpose; and a copy of the Petition will be furnished to any creditor or contributory of the said Company requiring the same by the undersigned on payment of the regulated charge for the same.

In the Supreme Court

No.10

Extract from The Fiji Times 21st July 1975 (continued)

DATED this 6th day of June, 1975.

KOYA & CO.,
Solicitors for the Petitioners,
23 Cumming Street,
Suva.

NOTE: Any person who intends to appear on the hearing of the Petition must serve on or send by post to the above-named notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor, (if any), and must be served or if posted, must be sent by post in sufficient time to reach the abovenamed not later than 6 o'clock in the afternoon of the 31st day of July, 1975.

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

22nd July 1975

No. 11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

and

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

AFFIDAVIT IN OPPOSITION OF APPOINTMENT OF PROVISIONAL LIQUIDATOR AND IN OPPOSITION TO PETITION FOR LIQUIDATION

I. JAMES GIBBON BARRON CRAWFORD of Gomati Street, Tamavua Suva Fiji, Theatrical Agent make oath and say as follows:-

1. THAT I crave leave to refer to the Petition filed herein and the Affidavit of Francis Ravendra Kumar (f/n George Raj Kumar) and Jaffar Ali (f/n Cheddi) filed herein.

2. THAT I confirm the particulars set out in

paragraphs 1, 2, 3 and 4 of the Petition filed herein.

3. THAT I confirm the particulars set out in paragraph 5 of the Petition filed herein and state that the Company has a credit balance with the First National City Bank at Suva and that during the calendar year of 1974 the Company paid the sum of $15,000 (Fifteen Thousand Dollars) to the said First National City Bank in satisfaction of the said Debenture.

4. THAT I confirm the particulars set out in paragraph 6 of the Petition filed herein.

5. THAT I confirm the particulars set out in paragraphs 7 & 8 of the Petition filed herein and attached hereto and marked with the letter "A" is a copy of the unaudited and uncertified statement of assets and liabilities prepared by Messrs. Coopers & Lybrand the auditors of the Company which shows that the Company made an unappropriated profit in the year 1974 of $3,199.20 and which statement also shows the share capital of the Company as a liability for accounting purposes only. Such statement also shows that the Company made a loss for the year 1973 of $10,248-08.

6. THAT the company is in a good financial position and that it would be unjust and inequitable to wind up the company.

7. THAT between the date of actual commencement of business namely the 2nd day of August 1973 and the date of the unaudited balance sheet the company has made a nett profit.

8. THAT I confirm the particulars set out in paragraphs 10, 11, 12 and 13 of the Petition filed herein.

9. THAT with respect to paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 I state that the matters are too complex, detailed and involved to be set out herein and state that the facts therein stated are either not correct or not a true version of the facts therein stated.

10. THAT with respect to paragraph 25 of the

In the Supreme Court

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

22nd July 1975 (continued)

Petition filed herein I state that the company is able to meet its financial commitments and state further that:

a) the amount owing to Raymond Yam as at the date hereof is now $1,429.11

b) the amount owing to Cainnes Jannif Limited as at the date hereof is $46.60

c) that the amount owing to Fiji Times & Herald Limited is a floating amount and has not exceeded the sum of $2,242.30 even though the Company has continued using the advertising services of the Fiji Times & Herald Limited since the 31st day of May 1975

d) that the amount owing to Mr. Karan Singh of approximately $11,000 is represented by assets of the company including inter alia, cool room, bar and other structural improvements and that the unaudited balance sheet hereinbefore referred to states that the value of fixed assets as at the 31st December 1974 was $88,025.59

e) that the amount owing to Mr. Karan Singh by way of rent is being repaid by the Company at the rate of $2,000 per month.

11. THAT attached hereto and marked with the letter B is a true copy of the minutes of a meeting of the Company held on the 17th day of December, 1974 at which Jaffar Ali, Francis Kumar, Akuila Qumi and myself were present. At this meeting Mr. Francis Kumar stated that on the question of the sale of his shares he would ask $15,000 for his $10,000 fully paid up shares and Mr. Jaffar Ali said that he would ask the sum of $30,000 for his $20,000 fully paid up shares. That a sale at such price would have suggested that the Company had increased its nett asset value by fifty per centum.

12. THAT attached hereto and marked with the letter "C" is a true copy of the Minutes of a Meeting of the Company which took place on the 14th day of January 1975 at which were present Jaffar Ali, Francis Kumar, Akuila Qumi and myself. That at this meeting, Mr. Akuila Qumi and myself were advised by the representative of Mr. Jaffar Ali and Mr.Francis

Kumar that they wished to purchase my $19,000 fully paid shares in the Company for $22,500 and Mr. Akuila Qumi's $13,000 fully paid shares for the sum of $15,000. That such offer would again suggest that the company was in a sound financial position.

13. THAT I honestly and sincerely believe that the Petition filed herein is an attempt by the said Jaffar Ali (f/n Cheddi) and Francis Ravendra Kumar (f/n George Raj Kumar) to recover the amount paid by them by way of purchase of shares in the company or in the alternative to take over the company to the detriment of myself and the said Akuila Qumi.

14. THAT I honestly and sincerely believe that there is no valid reason to wind-up the Company nor is there any reason for the appointment of a Provisional Liquidator or any liquidator.

SWORN by the said JAMES BARRON GIBSON CRAWFORD at Suva this 22nd day of July 1975) (Sgd.) J. Crawford

Before me:

(Sgd.) G.M.G. Johnson
Commissioner for Oaths.

"A" Annexure "A"

23rd February 1975

The Honourable Mr. S.M.Koya,
SUVA.

Dear Sir,

BALI HAI RESTAURANT LIMITED

Further to your telephone conversation with our Mr. Jeraj, we enclose the following in respect of the above company:

1. Statement of assets and liabilities at 31st December, 1973.

In the Supreme Court

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

Annexure "A" (continued)

2. Schedule of fixed assets at 31st December, 1973.

3. Statement of assets and liabilities at 31st December, 1974.

4. A list of creditors at 31st December, 1974.

Would you please note that the above have been prepared from the books and records of the company and from information supplied to us by Mr. Crawford. We have not audited the accounting records of the company. Accordingly, we express no opinion on whether the statements mentioned above present a true and fair view of the position of the company, and no warranty of accuracy or reliability is given. Neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any person in respect of these statements, including any errors or omissions therein however caused.

Yours faithfully,

(Sgd.) Coopers & Lybrand

This is a copy of the exhibit marked "A" referred to in the Affidavit of James Gibson Barron Crawford sworn before me this 22nd day of July 1975.

(Sgd.) G.M.G. JOHNSON
.....
Commissioner for Oaths

BALI HAI RESTAURANT LIMITED

STATEMENT OF ASSETS AND LIABILITIES
31st December 1973

CAPITAL		$50,000.00
BANK OVERDRAFT		258.90
BANK LOAN		15,000.00
CREDITORS -		
Frank Ah Tong	$11,237.50	
National Cash Register	1,070.00	
Golden Dragon	2,027.00	
K. Singh	8,824.00	
Sundry	17,808.66	40,967.16
		$106,226.06

FIXED ASSETS AT COST Less Depreciation	$89,758.20
CASH ON HAND	101.32
STOCK ON HAND	3,851.14
FORMATION EXPENSES	246.50
PRE-OPERATING EXPENSES	2,020.82
LOSS FOR THE PERIOD	10,248.08
	$106,226.06

In the Supreme Court

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

22nd July 1975

Annexure "A" (continued)

BALI HAI RESTAURANTS LIMITED

DEPRECIATION SCHEDULE

PLANT, EQUIPMENT, FIXTURES & FITTINGS		Cost 31/12/75	Depreciation 31/12/73	31/12/73
Air Conditioner	5%	1450.00	927.50	17,522.50
Cool Room	5%	3200.00	158.00	3,042.00
Adding Machine	5%	50.00	2.50	47.50
Cash Register - NCK 24	5%	736.20	36.56	699.64
Cash Register - NCK 72-3	5%	634.50	31.72	602.78
Water Heater Tank	5%	333.00	16.65	316.35
Electric Sign	5%	724.03	36.20	687.93
Fan	5%	160.37	8.02	152.35
Stoves	5%	194.93	9.75	185.18
Crockery & Cutlery	5%	5523.01	276.15	5,246.86
Fixtures & Fittings - Kitchen & Bar	5%	22702.21	1135.11	21,567.10
Furniture & Fittings - General	5%	9973.12	498.66	9.474.46
Band Instrument	5%	4367.77	218.39	4,149.38
Linen	5%	143.24	7.16	136.08
Curtains	5%	1002.04	50.10	951.94
Uniforms	5%	784.60	39.20	745.40
Spotlights	3⅓%	1630.91	61.16	1,569.75
Pool Cues & Bins		166.10	-	166.10
		70776.03	3512.83	67,263.20
		70776.03		

In the Supreme Court

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

22nd July 1975

Annexure "A" (continued)

BALI HAI RESTAURANT LIMITED
DEPRECIATION SCHEDULE
31/12/73

		Cost	Depreciation 31/12/73	31/12/73
LEASEHOLD INVESTMENT	10%	19,794.55	1,979.55	17,815.00
POOL TABLE	12½%	4,800.00	120.00	4,680.00
				89,758.20

BALI HAI RESTAURANT
ASSETS AND LIABILITIES - 31st DECEMBER 1974

	DR.	CR.
CAPITAL		$62,000.00
K. SINGH		11,127.04
AH TONG		2,837.50
SUNDRY CREDITORS		11,450.79
CASH AT BANK	287.85	
STOCK ON HAND 31/12/74	2,933.77	
CASH ON HAND	100.00	
FORMATION EXPENSES	246.50	
PRE-OPERATING EXPENSES	2,020.82	
FIXED ASSETS		
Written Down Value 31/12/73 $89,758.20		
Additions - 1974 8,048.01		
97,806.21		
Depreciation (Estimated) 9,780.62		
	88,025.59	
LOAN - FRANCIS		3,000.00
UNAPPROPRIATED PROFITS		3,199.20
	$93,614.53	$93,614.53

In the Supreme Court

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition 22nd July 1975

Annexure "A" (continued)

BALI HAI RESTAURANT LIMITED

SUNDRY CREDITORS - 31/12/74

	CHOYS FOOD STORES	$ 1,169.00
	FIJI GA CO. LTD.	163.36
	FIJI TIMES	485.67
	MEANGOR & CO.	186.50
	K. SINGH - Document stamp	1,500.00
	WROUGIM CHOW	163.19
	RAYMOND YAM	1,189.32
10	EMPLOYERS ASSOCIATION	323.00
	PRASAD CHOUVAN	304.25
	RAMRAKANS	427.00
	COOPERS & LYBRAND	800.00
	FIJI TIMES	2,304.55
	CAINS JANNIFF	1,050.00
	SUVA CITY COUNCIL (December electricity estimates)	800.00
	TELEPHONES	30.00
	SALARY DEDUCTIONS (December)	280.00
	HOP SINGH	30.00
20	BURE ADVERTISING	63.00
	CONSOLIDATED AGENCIES	54.70
	LEOTRIC LTD	72.15
	PHILIPS	26.70
	SUVA RUBBER STAMP CO.	58.40
		$11,450.79

In the Supreme Court

No.11

Affidavit in opposition of appointment of Provisional Liquidator and Petition

22nd July 1975

Annexure "B"

"B"

MINUTES OF THE EXTRA-ORDINARY GENERAL MEETING OF THE BALI HAI RESTAURANT LIMITED

Held on Tuesday, 17th December, 1974 at the Bali Hai Restaurant at 9.00 a.m.

PRESENT: Mr. Jaffar Ali
Mr. Francis Kumar
Mr. Akuila Qumi
Mr. James Crawford

Also present were Mr. Vijai Chand, Barrister and Solicitor, appointed by Mr. Kumar as his proxy and Mr. Robert Mitchell, Barrister and Solicitor representing Mr. Qumi and Mr. Crawford.

PROCEEDINGS:

Mr. Qumi, as Chairman of Directors opened the meeting and read the objects of the meeting contained in the Requisition by Shareholders, Mr. Jaffar Ali and Mr. Francis Kumar convening the extra-ordinary meeting.

Mr. Mitchell invited the two shareholders Mr. Ali and Mr. Kumar if they wished to speak on the resolutions contained in the requisition. Mr. Ali said they wished to remove the present Managing Director and appoint another shareholder in his place and he moved a motion that the present Managing Director be removed and that he Mr. Ali be appointed in his place.

Mr. Mitchell said that the appointment of a Managing Director is entirely a matter for the Directors only and he quoted page 13 of the Articles of Agreement of the Company and he pointed out that there being now only three Directors in the Company the position was a stalemate.

The question of sale of shares was raised and Mr. Kumar said he would ask $15000.00 for his $10000.00 fully paid up $1.00 shares held by him and Mr. Ali said he would require $30000.00 for his $20000.00 fully paid up $1.00 shares held by him.

At this stage the two lawyers retired for a

private discussion and after this it was decided that the meeting be adjourned for 30 days to Tuesday, 14th January, 1975 at 9.00 a.m. and that, meantime, if the shareholders desire they could negotiate for the buying or selling of shares through their respective lawyers.

Confirmed as correct.

(Sgd.) A. Qumi

(A Qumi)
Chairman of Directors.

This is the exhibit marked "B" referred to in the Affidavit of James Barron Gibson Crawford sworn before me this 22nd day of July 1975

(Sgd.) G.M.G. Johnson
.....
Commissioner for Oaths

No. 12

Notice of intention of Mr. J.G.B. Crawford to appear

IN THE SUPREME COURT OF FIJI

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Chapter 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that JAMES GIBSON BARRON CRAWFORD of Gomati Street, Suva, Fiji, Theatrical Agent a contributory holding 19,000 Ordinary $1.00 shares in the above company intend to appear on the hearing of the Petition to be heard on the 1st day of August, 1975 and to OPPOSE such petition.

DATED at Suva this 22nd day of July 1975

In the Supreme Court

No.12

Notice of intention of Mr. J.G.B. Crawford to appear 22nd July 1975 (continued)

(Sgd.) Robert W. Mitchell
.....
ROBERT W. MITCHELL
Solicitor for the said
JAMES GIBSON BARRON CRAWFORD
whose address for service is at
Third Floor, Dominion House, SUVA

TO: Messrs. Koya & Co.,
23 Cumming Street,
SUVA

No.13

Notice of intention of Mr. A. Qumi to appear 22nd July 1975

No. 13

Notice of intention of Mr. A.Qumi to appear

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No.173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance, Chapter 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that AKUILA QUMI of 6 Soqeloa Lane Raiwaqa, Suva, Fiji Tani Proprietor a contributary holding 13,000 $1.00 Ordinary Shares in the above company intend to appear on the hearing of the Petition to be heard on the 1st day of August, 1975 and to OPPOSE such petition.

DATED at Suva this 22nd day of July 1975.

(Sgd.) Robert W. Mitchell
.....
ROBERT W. MITCHELL
Solicitor for the said AKUILA QUMI whose address for service is at Third Floor, Dominion House, SUVA.

TO: Messrs. Koya & Co.,
23 Cumming Street,
SUVA.

No.14

Notice of intention of Bali Hai Restaurant to appear

In the Supreme Court

No.14

Notice of intention of Bali Hai Restaurant to appear

22nd July 1975

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance, Chapter 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that BALI HAI RESTAURANT LIMITED a limited liability company having its registered office situate at Suva, Fiji intends to appear on the hearing of the Petition to be heard on the 1st day of August, 1975 and to OPPOSE such petition.

DATED at Suva this 22nd day of July 1975.

(Sgd.) Robert W. Mitchell
.....
ROBERT W. MITCHELL
Solicitor for the said BALI HAI RESTAURANT LIMITED whose address for service is at Third Floor, Dominion House, SUVA.

TO: Messrs. Koya & Co.,
23 Cumming Street,
SUVA.

No.15

Proceedings

No.15

Proceedings

23rd July 1975

IN CHAMBERS

Wednesday the 23rd day of July, 1975 at 9.30 a.m.

Mr. S.M. Koya for the Applicants
Mr. R.W. Mitchell for the Respondent and other two shareholders.

In the Supreme Court

No.15

Proceedings

23rd July 1975 (continued)

Mr. Koya:

Papers now filed for inter partes hearing.

Winding up petition in the Registry's hand since June.

1st July, 1975 -

Application came on ex parte application. Winding up petition was fixed to be heard on 1st August, 1975 after consultation with a Judge. Necessary to hear both matters on that date.

Thus, told Mr. Mitchell matter coming up for mention only.

Am now told after having issued petition and advertisement published - much dissatisfaction caused - one of applicants proceeding overseas soon.

Mr. Mitchell:

I would in any case be asking for adjournment of hearing of petition to wind up on 1st August, 1975. Not normal to proceed to hearing on day of first call.

Mr. Koya:

Prefer to hear this application with winding-up petition before same Judge.

By consent adjourned before Mishra J. at 10.30 a.m.

(Sgd.) T.U. Tuivaga

JUDGE

No. 16

Notice of intention of Sealark Hill Ltd. to appear

In the Supreme Court

No.16

Notice of intention of Sealark Hill Ltd. to appear

28th July 1975

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance, Chapter 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that SEALARK HILL LTD. of Suva, Fiji a Creditor for $6500.00 intends to appear on the hearing of the Petition to be heard on the 1st day of August, 1975 and to OPPOSE such petition.

DATED at Suva this 28th day of July, 1975.

G.P.LALA & COMPANY

Per: Illegible
.....
Solicitors for the said SEALARK HILL LTD. whose address for the service is at 94 Waimanu Road, Suva.

TO: Messrs. Koya & Co.,
23 Cumming Street,
SUVA.

No. 17

Notice of intention of K. Singh & Co. Ltd. to appear

No.17

Notice of intention of K.Singh & Co. Ltd. to appear

28th July 1975

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

In the Supreme Court

No.17

Notice of intention of K.Singh & Co. Ltd.to appear

28th July 1975 (continued)

IN THE MATTER of the Companies Ordinance, Chapter 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that K. SINGH & CO. LTD. of Suva, Fiji a Creditor for $11,170.54 intends to appear on the hearing of the petition, to be heard on the 1st day of August, 1975 and to OPPOSE such petition.

DATED at Suva this 28th day of July, 1975.

G.P.LALA & COMPANY

Per: (Sgd.) Illegible
.....
Solicitors for the said K.SINGH & CO. LTD. whose address for the service is at 94 Waimanu Road, Suva.

TO: Messrs. Koya & Co.,
23 Cumming Street,
SUVA.

No.18

Notice of intention of Morris Hedstrom Ltd. to appear

28thnJuly 1975

No. 18

Notice of intention of Morris Hedstrom Ltd. to appear

IN THE SUPREME COURT OF FIJI

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT a limited liability company having its registered office at Suva in the Dominion of Fiji AND
IN THE MATTER of the Companies Ordinance (Cap.216) & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that MORRIS HEDSTROM LIMITED a company of Suva a Creditor for $1,444:28 (ONE THOUSAND FOUR HUNDRED AND FORTY FOUR DOLLARS AND TWENTY EIGHT CENTS) of the above Company, intends to appear on the hearing of the Petition advertized to be heard on Friday the 1st day of August, 1975 and to support such Petition.

DATED this 28th day of July, 1975.

LATEEF & LATEEF

Per: (Sgd.) Illegible
.....
Solicitors for the abovenamed Creditor whose address for Service is at 55 Renwick Road, Honson Building, Suva.

In the Supreme Court

No.18

Notice of intention of Morris Hedstrom Ltd. to appear

28th July 1975 (continued)

No. 19

Notice of intention of Raymond Yam to appear

No.19

Notice of intention of Raymond Yam to appear

30th July 1975

IN THE SUPREME COURT OF FIJI
CIVIL JURISDICTION

No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of COMPANIES ORDINANCE CHAPTER 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that RAYMOND YAM vegetable supplier of Tamavua 5 Miles, Suva a Creditor for $1429.11 intends to appear on the hearing of the Petition to be heard on 1st day of August, 1975.

DATED at Suva this 30th day of JULY, 1975.

WM.SCOTT & COMPANY,

Per: (Sgd.) Illegible
.....
Solicitors for the said RAYMOND YAM whose address for service is at ELDON CHAMBERS, NARSEY'S BUILDING, SUVA.

TO: KOYA AND CO., SOLICITORS, 23 CUMMING STREET, SUVA.

In the Supreme Court

No.20

Proceedings

1st August 1975

No. 20

Proceedings

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No.173 of 1975

IN COURT

Before the Hon. Mr. Justice Mishra
Friday the 1st day of August, 1975 at 9.30 a.m.

Between:

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

and

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

Mr. S.M. Koya for the Petitioners
Mr. R.W. Mitchell for the Directors and Company.

Mr. Mitchell:

I appear for Crawford and Qumi - contributories to oppose the petition. I also appear for Mr.G.P. Lala on behalf of a creditor Sealark Hill Ltd. to oppose the petition; also on behalf of K. Singh a creditor also to oppose the petition.

Mr. Lateef:

I appear for Morris Hedstrom Ltd. a creditor in support of the petition. Also on instructions from William Scott & Co. on behalf of Raymond Yam a creditor who supports the petition.

Mr. Koya:

Rules have been complied with. I take it that a suitable date for a full hearing is still to be decided upon which will suit all parties. May one petitioner's evidence be taken as early as possible. He is leaving the country on a trip. I suggest 15th August, 1975.

Mr. Mitchell:

No objection.

Court:

Very well. 15th August 1975 11.30 a.m. only for hearing one petitioner's evidence.

Mr. Koya:

I would like to have the rest heard as soon as possible.

Mr. Mitchell:

I will need at least 6 weeks to get the accounts before the Court. Certified and audited accounts.

Court:

I think it is desirable that Court should know the state of the Company's finances at the hearing. Petition adjourned for full hearing 12th September 1975 at 9.30 a.m.

(Sgd.) G. Mishra
JUDGE.

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No. 173 of 1975

IN CHAMBERS

Before the Hon. Mr. Justice Mishra
Friday the 1st day of August, 1975 at 10.45 a.m.

Between:

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

and

IN THE MATTER of the Companies Ordinance Cap. 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

Mr. S.M. Koya for the Petitioners
Mr. R.W. Mitchell for the Directors and Company.

Mr. Koya:

Section 183 of Company Ordinance. Official Receiver has consented. Affidavits filed. Francis Kumar's affidavit. Downturn of business.

In the Supreme Court

No.20
Proceedings
1st August 1975
(Continued)

We do not want to interfere with business but we are not heard at all. 2 Grounds:
(1) inability to pay
(2) just and equitable.

We will not press for appointment of a provisional liquidator if the assets of the Company other than expendable stock remains intact. If the items listed in the exhibit to Mr. Crawford's affidavit and normal taking done. We do not wish thebusiness to be interfered with.

Mr. Mitchell:

May I have a few minutes to contact my clients?

Courts:

Very well. Adjourned for 20 minutes.

(Sgd.) G. Mishra
JUDGE.

Mr. Mitchell:

I cannot contact my clients but I should have an answer before 3 p.m.

Mr. Koya:

No objection.

Court:

Adjourned to 3 p.m.

On resumption at 3.00 p.m.

Mr. Mitchell:

I have a written undertaking here from, Mr. Crawford. For filing.

Mr. Koya:

I am happy with it. It should be filed. I would like to discontinue with liberty to restore.

Mr. Mitchell:

No objection.

Court:

Application discontinued with liberty to restore. Costs in cause.

(Sgd.) G. Mishra
JUDGE

No. 21

In the Supreme Court

No.21

Notice of intention of Charles S.C. Wong to appear

6th August 1975

Notice of intention of Charles S.C.Wong to appear

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

No.173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

- and -

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that CHARLES SAI CHOY WONG of 5 Rewa Street, Flagstaff, Suva, Director trading as Choy's Food Stores a Creditor for $1169.00 intends to appear on the hearing of the Petition advertised to be heard on Friday the 1st day of August 1975 and to support such Petition.

DATED at Suva this 6th day of August 1975.

MUNRO, LEYS, KERMODE & CO.

Per: J.G.Singh

Solicitors for the said CHARLES SAI CHOY WONG whose address for service is at their Chambers, Air Pacific House, Butt Street, Suva.

TO: Francis Ravendra Kumar (s/o George Raj Kumar) of Raiwaqa, Suva Bar Tender and JAFFAR ALI (s/o Cheddi) of 18 Batiki Street, Suva, Merchant and/or Messrs. Koya & Co., Solicitors, Suva.

In the Supreme Court

No.22

Proceedings

15th August 1975

No. 22

Proceedings

Mr. S.M. Koya for the Petitioners

Mr. R.W. Mitchell for the Directors Qumi and Crawford. Also for K. Singh & Co. and Sealark Hill Ltd., creditors on instructions for G.P.Lala & Co.

Mr. Lateef for Morris Hedstrom Ltd., a creditor Also for Raymond Yam, another creditor on instructions for Scott & Co.

Mr. Koya:

The object of sitting today is to take one petitioner's evidence only.

Petitioners' Evidence

No.23

Francis Ravendra Kumar

Examination

15th August 1975

No. 23

Francis Ravindra Kumar

FRANCIS RAVINDRA KUMAR s/o GEORGE RAJ KUMAR OF TIVI TIVI, RAIWAQA, BARTENDER. SWORN ON BIBLE:

I would like by way of evidence to put in paragraph 1-13 with the exception of paragraph 9.

Mr. Mitchell:

We admit these paragraphs and they may be treated as evidence by consent. There is no need to adduce that from the witness.

Court:

Very well. Paragraphs 1-13 (with the exception of 9) to be treated as agreed by consent.

Witness:

I am one for the shareholders in the Company Bali Hai. Share value $10,000. Worked for the Company since inception until May 1974. I am a director. Resigned in November, 1974.

Jaffar Ali and I petition for winding up.

At the beginning of 1974 the financial condition of Company was bad. I mortgaged my house and lent $3,000 to the Company. I had to sue the Company for its recovery. The Company then paid it. That was last year. Between February - March 1974 the directors met and decided to issue $5,000 in shares to Jaffar Ali. This was done by converting arrears of his salary $2,500 and $2,500 cash paid by Jaffar Ali. All directors were present. Jaffar Ali paid $2,500 to Mr. Crawford. Company needed money at that time. Company could not pay all the creditors at that time. Company reduced its staff to reduce the salary bill.

From the beginning Company agreed to pay salaries to all directors. Mine, I received $400 per month. Mr. Crawford's salary was reduced from $500 to $400. Jaffar Alis' $400 to $300, Akiula $400 to $300 . This happened in 1974 before I stopped working for the Company.

Before I left work, the money owing to the City Bank could not be paid on time. I did not get my salary for May. I do not know if other directors were paid regularly. When I left the Company owed money to Raymond Yam, Choy's Food Supplies, Karan Singh, Caines Janif, Wailekutu Meats, the Fiji Times. There were other small debts which I cannot recall.

In about November 1974 Jaffar Ali and I put in a written request for an extra-ordinary general meeting.

Mr. Koya:

Sir, paragraphs 19 and 20 of the petition are admitted.

Mr. Mitchell:

Yes Sir, that can be treated as evidence by consent, we admit them as facts.

Witness:

The meeting was held on 17th December, 1974. All four directors attended. It was adjourned to 14th January 1975. On 17th we were not successful in changing the management, which we wished. On 17th December 1974 we were not told that Mr. Qumi's and Mr. Crawford's shares had been increased. We

In the Supreme Court

Petitioners' Evidence

No.23

Francis Ravendra Kumar

Examination

15th August 1975 (continued)

found this out on 14th January 1975. Mr. Crawford's share had been increased by $4,000 and Mr. Qumi's by $3,000. This was done by converting arrears of their salaries. We were surprised. We did not know this had been done. No general meeting had been held. I complain about these increases, because Jaffar Ali's share was increased with every director's consent but these two directors' shares were increased without our knowledge. Apart from the four of us there are no other shareholders. When Jaffar Ali's share was increased I did not know what the legal position was.

Meeting on 14th January 1975 failed because we started talking about their purchasing our shares or our purchasing theirs. We left this to our lawyer. No change of management was effected either. We wanted Jaffar Ali to replace Crawford but could not because our voting powers were equal. There was a deadlock.

On 14th meeting was adjourned. It was when it was resumed, Qumi and Crawford told us about their increased shares. Then they told us that their voting power was greater than ours and that we could not replace Mr. Crawford. We do not accept that they have these increased shares. We complain about this increase of shares.

Since 14th January 1975, the Company has paid its creditors only in part. Some have not been paid at all. Karan Singh is the landlord of the Company's premises. When the nightclub started, he did some work on the premises costing about $8,000. Before filing this petition I saw Karan Singh about three months ago and he said his money was still owing. He asked us to settle our differences. At that time two months' rent was also owing to him. I also saw Raymond Yam. We owed him $1,808.26 on 31st May 1975. At that time $330.77 was owing to Caines Janif. I saw them about it. Also saw the Fiji Times and was told that $2,242.30 was then owing to them. $11,00 plus $4,500 was owing to Karan Singh. Jaffar Ali is suing the company for $5,000. Until 1975 I have not been shown the minutes of Company's meetings. Nor have I been shown the Company's accounts. Through my own efforts I obtained some figures from the Company's auditors. No general meeting has ever been held of the Company. I also say that no

sic

proper accounts have been kept by the Company. Whatever accounts they have are not kept at the registered office. I have checked at the registry office, no register of member, no annual returns have been filed there.

On 9th April 1975 I instructed my lawyer to write to the Company. This is the letter.

(Exhibit 1 by consent)

On 23rd May 1975 gave notice in relation to winding up.

(Exhibit 2 by consent)

No reply has yet been received to either of these.

Since 14th January 1975, I have been to the City Bank once or twice. Have also spoken to the Company's creditors. I found that Company had not been banking any money. Creditors were being paid in cash, not by cheque. This surprised us. When I was director creditors were always paid by cheque. As far as I know the Company has never lodged an income tax return.

We wrote to the Company asking them not to sell any assets and requested their views as to winding up the Company. Until now they have not given us their views.

They have now filed an undertaking not to sell the Company's assets.

I propose to leave Fiji by next week but will appoint an attorney to look after my interests.

Cross-examination

XE - MR. MITCHELL:

I lent $3,000 to Company on 22nd February 1974. One or two days before that I took my title and share certificates to the Bank. Borrowed $3,000. Had borrowed other money in 1973. My title and share certificates were security only for this $3,000. I issued a notice, not a writ, against the Company.

I was a participating director in the Company until I resigned. I managed the restaurant. No

In the Supreme Court

Petitioners' Evidence

No.23

Francis Ravendra Kumar

Cross-examination

15th August 1975 (continued)

fixed hours. I resigned because changes were made to the restaurant.

On 17th May 1974 I withdrew from the Board because of these changes. These changes meant rough handling of customers. I tried to change this but the other three voted against me. Don't remember if I received any notice of meeting to be held on 3rd December 1974.

I wanted to have Mr. Crawford removed because he never told us what was happening in the Company. On 14th January 1975, no vote was taken. We also wanted rearrangement of the management. No vote was taken on this either. No vote was taken on any of the resolutions. There was a discussion of a sale of shares. Mr. Crawford did not say what price he wanted for his shares. Nor did Mr. Qumi. I wanted to sell mine for $15,000. Jaffar Ali wanted $30,000.

When I was a director, I didn't know if every director was collecting his salary. I collected my salary for the last time in April 1974. Jaffar Ali and I asked for minute book when we had a meeting but Mr. Crawford would not show it. On 14th January 1975, we did not ask for it. He used to bring a book with him. Jaffar Ali and I used to ask for the Cash book, not the minute book. We asked to see it on the day Jaffar Ali's share was increased. Crawford did not show it to us. Gave no reason for refusal.

From the time business started, some of the creditors have not received a cent. From this I infer that it is unable to pay its debt. Uncertified accounts show assets $93,200, liabilities $96,000.

If the Company is wound up, all the debts will have to be paid. Don't know if all the creditors will be fully paid. Don't know if I will get $10,000. If someone offered me $10,000 or $15,000 now, I would consult my lawyer. I want the Company wound up mainly because the creditors cannot be paid. My main complaint is that we were not told anything about the Company's business. I am going to Canada for good. Not true, that I want to recover my money and take it to Canada.

Mr. Lateef:

No question.

RE-EX. BY MR. KOYA:

Mr. Koya handled the question of recovering $3,000 from the Company. Got the money through Mr. Ramrakha's office after the notice was issued. A writ may have been issued. I would have known about it.

(Adjourned to 12th September 1975 9.30 a.m.)

Mr. Koya:

May this witness be released from further attendance. This man is going to Canada.

Mr. Mitchell:

No objection.

Court:

Witness released from further attendance.

(Sgd.) G. Mishra
JUDGE

No. 24

Proceedings

Mr. S.M. Koya for the Petitioners
Mr. R.W. Mitchell for the Directors
Mr. Lateef for the Creditors.

Mr. Mitchell:

The audited accounts are not quite ready; likely to take another four weeks. Have discussed with other counsel. Will not be much point unless accounts can be presented. Mr. Koya has kindly agreed to an adjournment as he is also anxious to see the accounts.

Mr. Koya:

I consent on condition that the undertaking given by Mr. Crawford be extended to cover the period of adjournment.

In the Supreme Court

No.24

Proceedings

12th September 1975 (continued)

Mr. Mitchell:

I have consulted Mr. Crawford and, on his behalf, I assure the Court that the undertaking given by him will be extended to cover the period of adjournment.

Mr. Lateef:

No objection.

Court:

Very well. Adjourned to 10th October, 1975 at 9.30 a.m.

Question of costs of this application reserved.

(Sgd.) G. Mishra
JUDGE

Friday 10th October 1975
at 9.30 a.m.

10th October 1975

Mr. G.P. Lala for Mr. Koya for the Petitioners
Mr. R/W Mitchell for the Company
Mr. R.W.Mitchell also for Karan Singh & Co.

Mr. Lala:

I have limited instructions from Mr. Koya for purposes of adjournment only.

Mr. Mitchell:

Accounts will be ready today, but confirmation with regard to certain matters is still not available. I am in the Court's hands for the purpose of this application for adjournment.

Court:

Adjourned to 14th November, 1975 at 9.30 a.m.

(Sgd.) G. Mishra
JUDGE

Friday 14th day of November 1975
at 9.30 a.m.

14th November 1975

Mr. S.M. Koya for the Petitioner
Mr. R.W. Mitchell for the Directors, Qumi and Crawford.
Mr. Koya also for Messrs. Lateef & Lateef for Creditors Raymond Yam and M.H. Ltd.

Mr. Koya:

Only yesterday served with unaudited accounts prepared by the Company's accounts. The petitioners are unable to accept the reliability of the accounts. I have no objection to the statement of account going in with that reservation.

(1973 Account - Exhibit 3(a)
1974 Accounts - Exhibit 3(b)
Memorandum of Association - Exhibit 4)

Mr. Koya:

1975 Accounts are in the course of preparation. Our attitude is to try to see that a business of this size should continue to function. Will not oppose adjournment if it can help.

Mr. Mitchell:

1974 shows an improvement over 1973. Feel that the accounts for first six months of this year will show an upward trend. The accounts for this period will, in my view, be of great assistance to parties and to Court. Coopers and Leybrand say it will take two weeks to get it ready.

Mr. Koya:

I agree to such an adjournment.

Court:

Adjourned to 27th November, 1975 at 9.30 a.m.

(Sgd.) G. Mishra
JUDGE

Thursday the 27th day of November 1975 at 9.30 a.m.

Mr. S.M. Koya for the Petitioners
Mr. R.W. Mitchell for the Directors.

27th November 1975

(Stood down until 10 a.m. at Mr. Koya's request for him to get fresh instructions)

On resumption at 10 a.m.

Mr. Koya:

The accounts for the first six months 1975

In the Supreme Court

No.24

Proceedings

27th November 1975 (continued)

have been handed to me today. They are not audited. I accepted them without accepting their authenticity. May this statement be taken as an exhibit.

(1975 Jan.-June accounts - Exhibit 5)

Both parties agree that the affidavits filed in this case now be treated as evidence as neither party wishes to adduce further evidence.

Mr. Mitchell:

That is so.

Mr. Koya:

Section 170 of the Ordinance gives very wide powers. We are 50% owner as well as creditors. Seek an interim order for independent investigation by another firm of accountants. Two directors now in charge are getting a big salary.

Suggest the matter be referred to independent accountant for investigation. If the Court has no power to do so, then submit that under section 183 a provisional liquidator be appointed. I make this application before I formally close my case.

Mr. Mitchell:

Oppose appointment of an accountant, as accounts have already been prepared. Will be a duplication.

Grounds - (i) inability to pay debts
(ii) just and equitable

Some creditors have given notice of opposition to petition.

Unaudited accounts presented. Capital $50,000. Loss at 30th June 1975 $24,634.08. Value of assets considerable. Accounts clearly show the Company to be able to pay its debts. Loss really represents depreciation in the accounts. The three years' accounts show decline in loss.

Company unable to pay only if liabilities exceed the assets and the capital of the Company. This Company is still operating is able to get its supplies.

Second Ground - Just and Equitable

(a) Deadlock - two factors: do not get along. Palmer - Company precedents (17th Edn.) page 33. If deadlock can be resolved, an order should not be made. Two directors have resigned. So matter is simpler. Mr. Kumar himself withdrew from participation. So did the other director. Company can carry on without them.

(b) Failure to file returns etc. not a ground under section 167.

On just and equitable several authorities - Ebrahimi v. Westbourne Galleries Ltd. 1973 A.C.360.

In present case no loss of entitlement as no dividend. The complaining directors are not deprived of anything.

Section 113(10) - This section does not apply to private company. No need for a statutory meeting.

The Company should be allowed to continue.

Kumar's share can be bought for more than what it is worth. He won't sell. If wound up, they will only get half of what it is worth.

No case for provisional liquidator, either wound up or not.

Mr. Koya:

I have not closed my case. I indicated this earlier. I only asked for an interim order before closing my case.

In any case, I do not wish to call further evidence. Though I should have addressed first, I am quite content to address now.

Court:

I assumed that this was being done by consent between the parties.

Mr. Koya:

That was not so, but I don't mind addressing after Mr. Mitchell:

In the Supreme Court

No.24

Proceedings

27th November 1975 (continued)

Para 19 of Petition -

November 1974, we requisitioned General Meeting. No general meeting has been called. Petition shows that shares increased irregularly. These shares shown as advance from shareholders by the accountants.

It is against this background that the petition should be considered. Not possible for petitioners to participate fully. Letter written on 9th April 1975 made clear that affairs of Company not being properly managed. We gave final notice 23rd May 1975 of intent to petition.

Deadlock does exist. Even if majority shareholders (though not admitted) oppressive handling a ground for winding up.

Unaudited accounts produced. Responsibility to produce audited accounts. Can't produce even now. Shows accountants won't give a certificate. The petitioners resigned only because, the other two would not do anything that they were requested to do by the petitioner.

Grounds.

(1) Inability to pay - Present debts are the only debts to be considered. Not assets. Jaffar Ali's money has not been paid. They can't reduce the debt. Creditors some of them, support winding up. Company has made nothing but loss in every year.

(Examples of inability to pay in Palmer.)

(2) Just and Equitable - Palmer p.28 and 29.

(a) Substratum deemed to be gone if can be run only at a loss.

(b) Deadlock - No question of reconcilation. 50% shares on each side. No resolution will ever pass. If petition refused, Company will still find it difficult to run without abuse of power.

Submit that winding up last course but it must be given in this case. Also costs at higher level.

Mr. Mitchell:

Directors still directors. They don't have to resign every year. That is the only matter I wish to revise.

Mr. Koya:

Every year there has to be a general meeting. Articles require it.

(Judgment on notice.)

(Sgd.) G. Mishra
JUDGE

No. 25

Judgment

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

AND

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

Mr. S.M. Koya for the Petitioners
Mr. R.W. Mitchell for the Directors

JUDGMENT

This is a petition for winding-up of Bali Hai Restaurant Limited, a private company limited by shares, registered under the Companies Ordinance. The petitioners are two of the four shareholders.

The company commenced its business in August 1973. It runs a night club restaurant in the city of Suva. By 31st December, 1973 the whole of the authorised capital had been issued as follows:

In the Supreme Court

No.25

Judgment

19th February 1976 (continued)

(a)	First petitioner	$10,000
(b)	Second petitioner	$15,000
(c)	J.G.B.Crawford	$15,000
(d)	A.Qumi	$10,000
	TOTAL	$50,000

Each of the four shareholders was appointed a director of the company and actively participated in the conduct of its business. Each was paid a monthly salary.

The petition is opposed by Crawford and Qumi who are the present directors of the company the two petitioners having resigned their directorship owing to differences between them and the present directors. The petition is supported by three creditors to whom the company owes a total of about $4,042. It is opposed by two creditors with a debt of about $17,600 owing to them.

The petition alleges two grounds. Firstly, that the company is unable to pay its debts and secondly, that it is just and equitable that the company should be wound up.

It is clear from the evidence and the affidavits filed by the parties that the company was intended to be a small private organisation giving each of the four shareholders active participation in the business. Differences, however, soon arose as to the conduct of the business and sometime in 1974 the two petitioners found themselves at loggerheads with Crawford who had been appointed the managing director and Qumi, the fourth shareholder. According to the authorised capital this would have given rise to an almost impossible situation as the two petitioners between them held 25,000 shares as against 25,000 shares of Crawford and Qumi. There has, however, been a purported increase in the shares of some of the shareholders, Crawford claiming that he now has 19,000 shares, Qumi 13,000 shares and the second petitioner 20,000 shares. These increases would appear to have resulted from a purported conversion of arrears of salary and other debts owing to these shareholders into additional shares. Accounts prepared by the auditors of the company, however, do not treat these shares as additional shares but regard the money involved merely as "advance from shareholders". I also hold this to be the correct

view as any purported conversion of such debts into shares, in the manner it was effected, would have been contrary to the company's articles of association. It would appear, therefore, that the two petitioners still have 25,000 shares as against 25,000 shares held by Crawford and Qumi.

Only the first petitioner gave evidence on oath and was cross-examined. After his evidence had been completed an adjournment was sought by consent to enable audited accounts of the company to be made available. These accounts, not certified, were put in evidence at the close of the case. Both counsel indicated that they did not wish to call any further evidence and that the affidavits filed herein be treated as additional evidence.

From the accounts prepared by the company's auditors it would appear that the company, since it commenced business, has not made a profit in any year. No dividends have been declared. The company has incurred a loss every year and there are certain outstanding debts. The only immediate benefit to the shareholders would appear to have been the salaries received by them. In early 1974 the directors attempted to reduce the running expenses of the business and one of the measures adopted was to reduce each director's salary. The first petitioner's function was to look after the restaurant part of the business and, owing to certain changes brought about in the management of that part against the first petitioner's wishes, he withdrew from its management on 17th May, 1974. The last salary he received was for April 1974. The second petitioner was also dissatisfied with the manner in which the business of the company was being conducted and he also withdrew from its management in July 1974. Later both resigned from the directorship of the company; the first petitioner on 14th November, 1974 and the second on 23rd May, 1975. By July 1975 the two petitioners had become so unhappy with the running of the company's business that they wanted to have Crawford removed from the office of the managing director and to have one of themselves appointed to that office. At their request an extraordinary general meeting was called on 17th December, 1974. At this meeting, according to the minutes exhibited to Crawford's affidavit, the question of Crawford's removal was discussed; so was the possible sale of the two petitioners' shares

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Judgment

19th February 1976 (continued)

in the company to the other two shareholders. No decision, however, was taken and the meeting was adjourned to 14th January, 1975.

Minutes of the meeting held on that day are not before the Court. It is possible that no minutes were kept. According to the first petitioner's sworn evidence the question of sale of shares was again discussed at this meeting but the price asked by the two petitioners was, with justification, considered too high by Crawford and Qumi. Crawford and Qumi would also appear to have been reluctant to sell their shares to the two petitioners. The result was a deadlock. Sometime during this meeting the two petitioners were informed by Crawford and Qumi that their shares had been increased and that the two of them now held a majority of shares. The first petitioner in his evidence said:

> "On 17th December, 1974 we were not told that Mr. Qumi's and Mr. Crawford's shares had been increased. We found this out on 14th January, 1975. Mr. Crawford's share had been increased by $4000 and Mr. Qumi's by $3,000. This was done by converting arrears of their salary. We were surprised. We did not know this had been done. No general meeting had been held."

As I have already indicated that I consider the purported increase in capital as irregular and contrary to the articles of association. Shares of the two petitioners, therefore, remain equal to those held by Crawford and Qumi. As it was, the meeting of 14th January, 1975 came to nothing. None of the shares were sold and Crawford remained the managing director. It would appear that since that date Crawford and Qumi alone have been managing the business of the company, the main power of management being in the hands of Crawford. Soon afterwards these two petitioners decided to petition for an order of winding-up.

The affairs of the company has undoubtedly been conducted in a rather informal and unsatisfactory manner. Regular general meetings were not held and returns required to be submitted to the Registrar of Companies were not submitted. Keeping of accounts would also appear to have been unsatisfactory and the auditors who have prepared the company's accounts for submission to this Court have,

for some reason, found themselves unable to confer their certificate upon them. These matters, by themselves, may not constitute a ground for winding-up, but a Court ought nevertheless to take them into account when it is considering the "just and equitable" ground (Loch v. John Blackwood Ltd. /1924/ A.C.783 at 787). This is particularly so where a company fails to hold its general meetings at which dissatisfied shareholders may be able to bring about changes they consider desirable. From the evidence before me it is difficult to escape the inference that the purported increase in the capital by Crawford and Qumi on 14th January, 1975 was designed to oust the authority of the two petitioners as equal shareholders. This certainly was contrary to what must have been in contemplation of all the four shareholders when the company was incorporated. The actual legal effect, however, seems to have been the creation of a complete deadlock in the affairs of the company. As Lord Cozens-Hardy, M.R. said in Re Yenidje Tobacco Co. Ltd. (/1916/ 2 Ch. D. 426 at 432):

> "If ever there was a case of deadlock I think it exists here; but, whether it exists or not, I think the circumstances are such that we ought to apply, if necessary, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the company was formed and which ought to be terminated as soon as possible."

A company, even a small private company of this nature, is essentially different from a partnership (Ebrahimi v. Westbourne Galleries Ltd. /1973/ A.C. 360) but the Court should nevertheless take into account what the parties must have had in contemplation at the time of the company's incorporation.

The company has not made a profit yet. It is difficult to say when, if ever, it will be able to declare a dividend. Crawford and Qumi alone are taking an active part in the management of the company's business and, presumably, drawing salaries from the company's funds. The two petitioners derive no benefit whatever from the business. This could not have been in the contemplation of the parties when the company was incorporated. It is true that the two petitioners have themselves resigned their directorship in the

In the Supreme Court

No.25

Judgment

19th February 1976 (continued)

manner provided for in the articles of association. Counsel for the company submits that they should not, therefore, be permitted to complain. As Lord Wilberforce said in Ebrahimi v. Westbourne Galleries Ltd. (supra at page 379):

> "The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the Court to dispense him from it. It does, as equity always does, enable the Court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

The Court in this case, therefore, ought to have regard to the circumstances leading to the petitioners' withdrawal from participation in the company's business and their eventual resignation from directorship. It must not overlook the irreconcilable nature of the differences between the parties which will not permit the business of the company to be conducted smoothly, at least not without causing injustice either to the two petitioners on the one side or Crawford and Qumi on the other, who between them hold equal shares. Both counsel agree that the company's business is an important new venture in a developing country and, if possible, should not be allowed to die. Neither, however, has been able to suggest a practical way out. The company at present is not making any profit. Even if it were making sizeable profits, as was Yenidje Tobacco Co. Ltd. (supra), the circumstances here, as there, are such as would warrant the making of an order for winding-up.

The petition is, therefore, allowed and an order for winding up of the company made on the ground that it is just and equitable to do so. The costs of this petition, including those of the creditors who have appeared, are to be paid out of the assets of the company. Creditors who have appeared by same counsel will get only one set of costs. Those who have appeared by the company's counsel or by the petitioners' counsel will get no separate costs. In every case costs are to be taxed.

(Sgd.) G. Mishra, JUDGE.

Suva, 19th February, 1976.

In the Supreme Court

No.25

Judgment

19th February 1976 (continued)

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Action No. 173 of 1975

Before the Hon. Mr. Justice Mishra
Thursday the 19th day of February, 1976 at 9.30 a.m.

Between:

IN THE MATTER of BALI HAI RESTAURANT LIMITED

and

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFA ALI

Mr. Lateef for Mr. Koya for the Petitioners
Mr. R.W. Mitchell for the Directors

J U D G M E N T

Delivered.

(Sgd.) G. Mishra
JUDGE

Mr. Mitchell:

I make application for the stay of this Order. The Company wishes to appeal to the Court of Appeal and it may take a few days to lodge the necessary papers.

Mr. Lateef:

Nothing to say.

Court:

Very well. Order stayed pending submission of papers relating to appeal. 14 days to lodge these papers.

(Sgd.) G. Mishra
JUDGE

In the Court of Appeal

No.26

Notice of Appeal

27th February 1976

No. 26

Notice of Appeal

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

Appeal No.14 of 1976

Supreme Court Action No. 173 of 1975

IN THE MATTER of BALI HAI RESTAURANT LIMITED

- and -

IN THE MATTER of the Companies Ordinance Cap.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that the Fiji Court of Appeal will be moved at the expiration of fourteen (14) days from the service upon you of this notice, or so soon thereafter as Counsel can be heard by Counsel for the abovenamed Bali Hai Restaurant Limited FOR AN ORDER that the verdict given and the Judgment directed on the trial of the abovenamed action before his Lordship Mr. Justice Mishra at Suva on the 19th day of February 1976 whereby it was ordered that the Petition for winding up Bali Hai Restaurant Limited be allowed and that costs be paid out of the assets of the company BE SET ASIDE and that in lieu thereof Judgment be entered for the said BALI HAI RESTAURANT LIMITED and the Petition be dismissed or alternatively FOR AN ORDER that a new trial be heard between the parties and the costs of the former trial be paid by the Petitioners to the said Bali Hai Restaurant Limited or alternatively that the costs abide the result of the new trial AND FOR AN ORDER that the Petitioners pay to the said Bali Hai Restaurant Limited the costs of and occasioned by this Application.

AND FURTHER TAKE NOTICE that the grounds of this application are:-

(i) THAT the learned Judge erred in not taking into consideration the interest of the Creditors who opposed the Petition.

(ii) THAT the learned judge erred in finding that the difference between the parties would not

permit the business of the company to be conducted smoothly.

(iii) THAT the learned judge erred in holding that the continuation of the Company's business would cause injustice to either the two petitioners or to the other shareholders.

(iv) THAT the learned judge erred in holding that the company was intended to be a small private organisation giving each of the four shareholders active participation and that the four shareholders were actively participating in the business of the company.

(v) THAT the learned Judge erred in assuming that the four shareholders contemplated that the company should be operated on the basis of partnership law.

(vi) THAT the learned Judge failed to take into consideration that if it had not been for the taking into account of nominal taxation depreciation of the various items of plant and equipment the company would have made a profit for the year ended 31st December 1974 and for the six months ended 30th June 1975.

(vii) THAT the learned Judge erred in holding that the fact that the accounts were not audited should be taken into account when considering the "just and equitable ground" when the reasons for the absence of the auditors' certificate were not before the Court.

(viii) THAT the learned Judge failed to take into account the fact that the Petitioners had not exhausted the proceedures for meetings of the company and motions to be put to such meetings as provided for in the Companies Ordinance and the Articles of Association of Bali Hai Restaurant Limited.

(ix) THAT the learned Judge failed to give any ruling on the first ground of the Petition namely, whether the Company was unable to pay its debts.

(x) THAT the learned Judge erred in law and fact in holding that it would be just and equitable that the company be wound up.

In the Court of Appeal

No.26

Notice of Appeal

27th February 1976 (continued)

The Company shall seek leave at the hearing of this Appeal to file up-to-date accounts of the Company.

DATED this 27th day of February 1976.

(Sgd.) Robert W. Mitchell

Solicitor for BALI HAI RESTAURANT LIMITED

This Notice of Motion was taken out by ROBERT W. MITCHELL of Third Floor, Dominion House, Suva, Solicitor for the Appellant, BALI HAI RESTAURANT LIMITED whose address for service is at theChambers of the said Solicitor.

TO: the Respondent/Petitioners Francis Ravendra Kumar and Jaffar Ali and/or their Solicitors Messrs. Koya & Co. of 23 Cumming Street, Suva.

No.27

Judgment of Spring J.A.

26th November 1976

No. 27

Judgment of Spring J.A.

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 14 of 1976

Between:

IN THE MATTER of BALI HAI RESTAURANT LIMITED — Appellant

- and -

IN THE MATTER of THE COMPANIES ORDINANCE CAP.216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI — Respondent

R.W. Mitchell for the Appellant
M. Tappoo & U. Mohammed for the Respondent

Date of Hearing: 16th November, 1976.
Date of Judgment: 26th November, 1976

JUDGMENT OF SPRING J.A.

This is an appeal from the decision of the

Supreme Court given at Suva on the 19th February, 1976 in which an order for the winding up of the company known as Bali Hai Restaurant Limited was made. The facts briefly are as follows. The company was incorporated as a private company under the Companies Ordinance Cap. 216 on the 13th March, 1972. The nominal capital is $50,000 divided into 50,000 $1 shares and issued to the following shareholders:- Francis Ravendra Kumar $10,000; Jaffar Ali $15,000; J.G.B. Crawford $15,000 and A.Qumi $10,000. The business of the company is a restaurant and nightclub proprietor and it commenced operations on 2nd August, 1973. Clearly, it was, the joint contemplation of the four shareholders that they would actively participate in the running of the business; each of them was appointed a director of the company. Serious differences soon arose between the four shareholders as to the conduct of the business. Francis Ravendra Kumar withdrew from the active management of the business on 17th May, 1974 and Jaffar Ali in July, 1974. Francis Ravendra Kumar resigned as a director on 14th November, 1974. In December, 1974 Messrs. Crawford and Qumi endeavoured to increase the number of their shares in the capital of the company by purporting to convert arrears of salary and other moneys owing to them into additional shares so that they would have increased voting rights and thereby obtain control of the company.

The learned Judge found there was a distinct lack of confidence between the shareholders and that they were irreconcilable. Various attempts had been made to resolve their differences. Discussion took place in December, 1974 regarding the sale of shares in the company and the learned Judge found:

> "According to the first petitioner's sworn evidence the question of sale of shares was again discussed at this meeting but the price asked by the two petitionsrs was, with justification, considered too high by Crawford and Qumi. Crawford and Qumi would also appear to have been reluctant to sell their shares to the two petitioners. The result was a deadlock."

On the 9th April, 1975 the solicitors for Messrs. Kumar and Ali wrote to Messrs. Crawford and Qumi setting out in some detail their complaints about

In the Court of Appeal

No.27

Judgment of Spring J.A.

26th November 1976 (continued)

the management of the company and asking that the assets of the company be kept intact. No reply was received to this letter. On 23rd May, 1975 a notice was sent to Messrs. Crawford and Qumi by the solicitors for Messrs. Kumar and Ali advising that a petition for winding up the company would be presented to the Supreme Court and setting out the proposed grounds. No reply was received to this notice. Jaffar Ali resigned as a director on the 23rd May, 1975. On 6th June, 1975 a petition for winding up the company was presented to the Supreme Court by Messrs. Kumar and Ali.

Evidence was given by Francis Ravendra Kumar alone; no other evidence was given although certain uncertified financial accounts were put before the lower Court by consent at the end of the hearing. Certain creditors supported the petition for winding up while others opposed it. The learned trial Judge at the close of the case made an order for the winding up of the company upon the ground that it was just and equitable so to do.

There were 10 grounds of appeal filed but they can be summarised by saying that the appellant seeks to have the winding up order set aside on the premise that the circumstances as found by the learned trial Judge do not support a finding that it is just and equitable that the company should be wound up.

The Companies Ordinance Cap. 216 Section 167 states:

> "167. A company may be wound up by the court if -
>
> .....
>
> (f) the court is of opinion that it is just and equitable that the company should be wound up."

At the hearing of this appeal counsel for the appellant sought leave to place before this Court certain uncertified accounts covering the trading of the company for the period from July, 1975 up to September, 1976. No motion seeking leave to adduce these accounts before this Court had been filed. The respondents, who had not seen the accounts, objected to their production; this Court refused to allow the accounts to be placed before it.

The learned trial Judge found that the company was intended to be a small private organisation with each of the four shareholders having active participation in the business. Early in January, 1975 the differences between the shareholders became marked and Francis Ravendra Kumar in giving evidence before the Supreme Court said:

> "The meeting was held on 17th December, 1974. All four directors attended. It was adjourned to 14th January, 1975. On 17th we were not successful in changing the management, which we wished. On 17th December, 1974 we were not told that Mr. Qumi's and Mr. Crawford's shares had been increased. We found this out on 14th January, 1975. Mr. Crawford's share had been increased by $4,000 and Mr. Qumi's by $3,000. This was done by converting arrears of their salaries. We were surprised. We did not know this had been done. No general meeting had been held."

He said further:

> "Until 1975 I have not been shown the minutes of Company's meetings. Nor have I been shown the company's accounts. Through my own efforts I obtained some figures from the company's auditors. No general meeting has ever been held of the company. I also say that no proper accounts have been kept by the company. Whatever accounts they have are not kept at the registered office. I have checked at the registry office, no register of member, no annual returns have been filed there. ....."

Again, he said:

> ".....
> Since 14th January, 1975 I have been to the City Bank once or twice. Have also spoken to the Company's creditors. I found that Company had not been banking any money. Creditors were being paid in cash, not by cheque. This surprised us. When I was director creditors were always paid by cheque. As far as I know the Company has never lodged an income tax return."

It is to be noted that the respondents Messrs. Crawford and Qumi did not give evidence before the

In the Court of Appeal

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Judgment of Spring J.A.

26th November 1976 (continued)

Supreme Court, nor were they examined or cross-examined on the uncertified accounts submitted to that Court.

Counsel for the appellant, on this appeal, argued that as the company was now in better heart financially, and, the business was being run smoothly by Messrs. Crawford and Qumi that the order for winding up should be set aside.

Counsel for the respondent submitted that the company was being run by two shareholders to the total exclusion of the respondents who between them held 50% of the issues share capital - a circumstance, he submitted, that was not envisaged when the company was formed; Messrs. Kumar and Ali could not get their money out of the company; there was a complete lack of confidence between the contributories which had culminated in the withdrawal from the business of Messrs. Kumar and Ali and their subsequent resignations from the directorate. It was argued that while there had not been any expulsion from the company the appellants by their conduct had left the respondents no other alternative than to take the course of action they did. The question now is - was the learned Judge in the Court below correct when he made an order winding up the company on just and equitable grounds. In Ebrahimi v. Westbourne Galleries Ltd. & Ors. (1973) A.C. 360 Lord Wilberforce reviewed the considerable line of cases which have dealt with this type of petition and at p.379 said:

> "My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed. The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association bywhich shareholders agree to be

bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

In some of the cases on winding up, the approach has been that the members of a small company are in substance partners or quasi partners and that a winding up order may be made if circumstances exist which could 'justify a dissolution of partnership between them on just and equitable grounds'. Lord Wilberforce in Ebrahimi v. Westbourne Galleries Ltd. & Ors. (supra) at p.379 said:

"It may be convenient because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words 'just and equitable' sum these up in the law of partnership itself. And in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

"The just and equitable" principles applicable to a partnership are stated in "Lindley on Partnership"

In the Court of Appeal

No.27

Judgment of Spring J.A.

26th November 1976 (continued)

(6th Edition) at p.657:

> "Refusal to meet on matters of business continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation, have been held sufficient to justify a dissolution. It is not necessary, in order to induce the court to interfere, to show personal rudeness on the part of one partner to the other, or even any gross misconduct as a partner. All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it."

However, it has been held to be wrong to create categories or headings under which cases must be brought if the just and equitable principles are to apply; the generality of the words is not to be reduced in that way. In Ebrahimi's case (supra) Lord Wilberforce suggested some of the factors which may arise at p. 379:

> " It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements:
>
> (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company;
>
> (ii) an agreement, or understanding that all, or some (for there may be 'sleeping' members) of the shareholders shall participate in the conduct of the business;

(iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere."

The respondents complained that as a result of the complete breakdown in confidence between them coupled with the conduct of the appellants they have been forced to resign and consequently ousted from active management participation; that the moneys invested by them cannot be taken out of the company with resulting injustice to them; they are receiving no dividends and that the machinations of Messrs. Crawford and Qumi in endeavouring to obtain control of the company, while it brought no practical benefits to them, spelt complete anathema to the trust that the respondents reposed in them as working shareholders; and finally that the relationship on which they became shareholders in the company had irretrievably broken down.

The entitlement to management participation is one of the important factors that the Court should take into account as was stated by Lord Wilberforce in Ebrahimi's case (supra) at p.380:

> "The just and equitable provision nevertheless comes to his assistance if he can point to, and prove some special underlying obligation of his fellow member(s) in good faith, confidence, that so long as the business continues he shall be entitled to management participation, an obligation so basic that, if broken, the conclusion must be that the association must be dissolved. And the principles on which he may do so are those worked out by the courts in partnership cases where there has been exclusion from management (see Const v Harris (1824) Tur. & Rus. 496, 525) even where under the partnership agreement there is a power of expulsion (see Blisset v. Daniel (1853) 10 Hare 493; Lindley on Partnership, 13th ed. (1971) pp.331, 595)."

The Courts have, in cases where there is a deadlock in a company, applied the just and equitable principle in making orders for winding up. While this company Bali Hai Restaurant Limited, is still

In the Court of Appeal

No.27

Judgment of Spring J.A.

26th November 1976 (continued)

operating under the management of Messrs. Crawford and Qumi the learned Judge found that it was:

> "difficult to escape the inference that the purported increase in the capital by Crawford and Qumi on 14th January, 1975 was designed to oust the authority of the two petitioners as equal shareholders."

In re Yenidje Tobacco Company Limited (1916) which was a case of two equal director shareholders with an arbitration provision in the articles, between whom a state of deadlock came into existence, Lord Cozens-Hardy, p.432 says:

> "If ever there was a case of deadlock I think it exists here; but, whether it exists or not, I think the circumstances are such that we ought to apply, if necessry, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the company was formed and which ought to be terminated as soon as possible. We are told that we ought not to do it because the company is prosperous, making large profits, rather larger profits than before the disputes became so acute. I think one's knowledge of what one sees in the streets is sufficient to account for that, having regard to the number of cigarettes that are sold, and we can take judicial notice of that in judging whether the business is much larger than it was before. Whether such profits would be made in circumstances like this or not, it does not seem to me to remove the difficulty which exists. It is contrary to the good faith and essence of the agreement between the parties that the state of things which we find here should be allowed to continue."

It is clear from the evidence that in this case there is a complete lack of confidence between the shareholders. I am mindful that the lack of confidence, must be a justifiable lack of confidence as was stressed in Loch v John Blackwood Ltd. (1924) A.C. 783 at p.788 but I believe the learned judge came to this conclusion when he said:

> "The Court in this case, therefore, ought to have regard to the circumstances leading to

> the petitioners' withdrawal from participation in the company's business and their eventual resignation from directorship. It must not overlook the irreconcilable nature of the differences between the parties which will not permit the business of the company to be conducted smoothly, at least not without causing injustice either to the two petitioners on the one side or Crawford and Qumi on the other, who between them hold equal shares."

Further, it appears that the future running of this company under the basic obligation of equal management participation is out of reasonable contemplation. As the learned trial Judge said:

> "Crawford and Qumi alone are taking an active part in the management of the company's business and, presumably, drawing salaries from the company's funds. The two petitioners derive no benefit whatever from the business. This could not have been in the contemplation of the parties when the company was incorporated."

Counsel for the appellant submitted that the financial position of the company had improved since the date of the winding up order, but there was no evidence to support this. However, the question whether it is just and equitable to wind up a company within the meaning of section 167 of the Companies Ordinance must be answered on the facts which exist at the time of the hearing of the petition. Re Fildes Bros. Ltd. (1970) 1 All. E.R. 923.

In my view the learned Judge in the Court below was correct in making an order for the winding up of the company on the ground that it is just and equitable. Accordingly, I would dismiss the appeal with costs to be taxed.

(Sgd.) B. C. SPRING

JUDGE OF APPEAL

LAUTOKA,

26th November, 1976,

In the Court of Appeal

No.28

Judgment of Gould V.P.

26th November 1976

No. 28

Judgment of Gould V.P.

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 14 of 1976

BETWEEN:

IN THE MATTER OF BALI HAI RESTAURANT LIMITED — Appellant

- and -

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 216 & RAVENDRA KUMAR & JAFFAR ALI — Respondent

Date of Hearing: 16th November, 1976
Delivery of Judgment: 26th November, 1976

R.W. Mitchell for the appellant
M. Tappoo & U. Mohammed for the respondent

JUDGMENT OF GOULD V.P.

I have had the advantage of reading the judgment of Spring J.A. in this appeal and I agree with his reasoning and conclusions. I do not find in any of the material argued on the appeal, adequate reason for holding that the learned judge in the Supreme Court erred in his assessment of the situation which has arisen among the shareholders of the company or in his decision to make the winding up order.

I agree with Spring J.A. that the appeal must be dismissed with costs to be taxed and, this being the majority opinion, it is so ordered.

(Sgd.) TREVOR GOULD

VICE PRESIDENT.

No.29

Judgment of Marsack J.A.

In the Court of Appeal

No.29

Judgment of Marsack J.A.

26th November 1976

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 14 of 1976

BETWEEN:

IN THE MATTER OF BALI HAI RESTAURANT LIMITED — Appellant

- and -

IN THE MATTER OFFTHE COMPANIES ORDINANCE CAP. 216 & RAVENDRA KUMAR & JAFFAR ALI — Respondent

Date of Hearing: 16th November, 1976
Delivery of Judgment: 26th November, 1976

R.W. Mitchell for the Appellant
U. Mohammed with M. Tappoo for the Respondents

JUDGMENT OF MARSACK J.A.

In this case the learned judge in the Supreme Court made an order for the winding up of the company known as Bali Hai Restaurant Limited on the grounds that it was just and equitable to do so, having regard to the fact that there were irreconcilable differences between the parties which would not permit the business of the Company to be conducted smoothly, at least not without causing injustice to two of the four shareholders.

The Company was incorporated for the purpose of conducting a night club restaurant in Suva. The paid up capital was $50,000; J.G.B. Crawford and Jaffar Ali each held $15,000 shares; A.Qumi and Ravendra Kumar each $10,000 shares. The Company commenced operations in August, 1973. All four shareholders were appointed directors; each was to play some part in running the company and would receive remuneration in the form of directors' fees. Differences arose among the shareholders as to the management of the business; Ravendra Kumar withdrew from any active part in the business in May, 1974 and Jaffar Ali in July,

In the Court of Appeal

No.29

Judgment of Marsack J.A.

26th November 1976 (continued)

1974. Later they each resigned tjeir directorships; Ravendra Kumar in November, 1974 and Jaffar Ali in May, 1975. They took steps to have Crawford removed from the position of managing director and to have one of themselves appointed to that office; but they did not control enough voting power to enable this to be done.

At one stage Crawford and Qumi sought to acquire additional shares in the Company by diverting their arrears of directors' fees to that purpose; but as the learned judge in the Supreme Court held, this purported increase in capital was irregular and contrary to the articles of association. Accordingly, the shares remained at the same level as they had been when the Company was incorporated. On the 6th June, 1975 Ravendra Kumar and Jaffar Ali filed a petition under the Companies Ordinance asking that the Company be wound up by the Court, and on the 19th February, 1976 the order was made on the grounds which have already been stated.

At the hearing of the appeal counsel for the appellant sought to put before the Court statements of account showing how the Company had fared since 30th June, 1975, the last date up to which statements had been produced to the Supreme Court. Counsel for the respondents objected to the admission of those statements, and as they were not properly proved the Court ruled that they could not be received.

Although the basis of the learned judge's decision is that the irreconcilable differences among the parties made it just and equitable that the Company should be wound up, there is some confusion in the evidence in support of the petition as to the reasons for the action brought by the petitioners. The only witness called at the hearing was the first petitioner Ravendra Kumar, and in the course of his evidence he stated:

> "I want the Company wound up mainly because the creditors cannot be paid. My main complaint is that we were not told anything about the Company's business. I am going to Canada for good. Not true, that I want to recover my money and take it to Canada."

The question at issue in the present appeal

is whether the circumstances disclosed in the evidence made it just and equitable that the Company should be wound up. Considerable stress was laid on the action of Crawford and Qumi in purporting to increase the capital of the Company in January, 1975. The learned judge held that this action "was designed to oust the authority of the two petitioners as equal shareholders." I agree that this was a reprehensible action on the part of Crawford and Qumi; but as the learned judge points out, it was of no practical effect.

In his judgment the learned judge placed considerable reliance on the decision of the House of Lords in Ebrahimi v. Westbourne Galleries Limited (1972) 2 All E.R. 492 and that of the Court of Appeal in Yenidje Tobacco Company Limited (1916) 2 Ch. 426. In the argument before this Court, counsel for the respondent submitted that the principles laid down in those two cases were definitely applicable to the present. But in my opinion, the basis of those judgments - and also of Re Lundie Brothers Limited (1965) 2 All E.R. 692, cited in the argument - is different in one essential respect from the matter before this Court. In each of those cases there was an expulsion of one director, who was thereafter excluded from any share in the conduct of the Company's business; and it was held that this expulsion amounted to such oppressive conduct on the part of the remaining one director (in the Yenidje case) and two directors (in the other two cases) that it was just and equitable for the Company to be wound up. In the present case each of the petitioners withdrew from his part in the management of the Company's affairs of his own volition. No pressure was put on him to resign his directorship; and one of them has gone to live permanently in Canada. The Courts in the three cases quoted held that the Company was analogous to a partnership, and that, as is stated by Lindley on Partnership (6th Ed.) p.657:

> "Continued quarrelling and such a state of animosity as preclude all reasonable hope of reconcilation and friendly coOoperation have been held sufficient to justify a dissolution."

That state of affairs does not, in my view, exist here. In the course of his judgment the learned judge says:

In the Court of Appeal

No.29

Judgment of Marsack J.A.

26th November 1976 (continued)

"Both counsel agree that the company's business is an important new venture in a developing country and, if possible, should not be allowed to die."

In a business such as this, it is well recognised that there will be difficulties at the start and that it will be some time before a business can be made to operate smoothly and profitably, so that it may acquire what is known in commercial circles as goodwill. The statements produced before the Court below indicate that the losses which were incurred - as could only be expected - in the early stages, have now been converted into a small profit if the tax allowance for depreciation of the Company's material assets be not taken into account. There is no evidence that the business of the night club restaurant is not running smoothly. If the Company is wound up and the assets sold by a liquidator, substantial capital losses can be expected.

The bona fides of the petitioners is in my opinion, far from being established. Although there was justification for their annoyance over Crawford's attempt to reduce the petitioners to minority shareholders, his efforts in the direction were, on legal grounds, futile. At a meeting in January, 1975 there was some discussion on the subject of the purchase of petitioners' shares by Crawford and Qumi. The first petitioner stated in his evidence in the Court below that the creditors could not be paid; but he wanted $15,000 for his $10,000 shares and stated that the second petitioner Jaffar Ali wanted $30,000 for his $15,000 shares. This indicates, to my mind, that they had no intention of settling the matter amicably. Their object would seem to be, now that they had voluntarily withdrawn from the activities of the Company, to ensure that Crawford and Qumi would not be allowed to carry on with the business which showed some signs of making progress. It may perhaps, be said, as the learned judge does in his judgment, that a deadlock has been created. But this type of deadlock is one quite distinguishable from that referred to in the cases already cited. This deadlock results from the refusal of the petitioners to co-operate at all with the directors who are managing the business. This deadlock does not in any way hinder or even detrimentally affect the management of the business, which continues to operate and, as has

been pointed out, to make some progress. The Court should in m y view, apply the principle enunciated by Lord Cottenham L.C. in Re Agriculturist Cattle Insurance Company (1849) 1 Mac & G 170:

> "There must be something in the management and conduct of the company which shows the Court that it should be no longer allowed to continue and that the concern ought to be wound up."

It would be quite wrong, in my view, to allow what appears to be a recalcitrant attitude on the part of the petitioners to close down, with distressing results to all shareholders, a business which shows signs of developing into a profitable enterprise.

Accordingly, I find myself, with respect, unable to agree with the learned judge that there appears no practical way out. The practical way out, to my mind, is to allow the business to continue to operate; with every prospect that the financial interests, not only of Crawford and Qumi but also of the petitioners themselves, will be better protected thereby than they would on the compulsory winding up of the Company.

For these reasons I would allow the appeal and quash the order for winding up. In view of the conduct of the parties, I would make no order for costs.

(Sgd.) C. C. MARSACK

JUDGE OF APPEAL

Lautoka,

26th November, 1976

In the Court of Appeal

No.30

Order

26th November 1976

No. 30

Order

IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 14 of 1976

BETWEEN: IN THE MATTER of BALI HAI RESTAURANT LIMITED

Appellant
(Original Plaintiff)

AND: IN THE MATTER of the COMPANIES ORDINANCE CAP 216 and FRANCIS RAVENDRA KUMAR and JAFFAR ALI

Respondents
(Original Defendants)

FRIDAY THE 26TH DAY OF NOVEMBER 1976

UPON MOTION by way of Appeal from the Judgment dated the 19th day of February, 1976 made unto this Court by Counsel for the Appellant (Original Plaintiff) AND UPON HEARING MR. ROBERT W. MITCHELL of Counsel for the Appellant and MR. MAHENDRA L. TAPPOO and MR. UDAY MOHAMMED of Counsel for the Respondent AND UPON READING the said Judgement dated 19th day of February, 1976 AND MATURE deliberation thereupon had THIS COURT DID ORDER that the said Appeal should stand for Judgement AND the said appeal standing this day for Judgement in the presence of Counsel for the Appellant and the Respondents THIS COURT DOTH ORDER that the said Judgement dated 19th day of February 1976 be affirmed AND IT IS ORDERED that the Appellant do pay to the Respondents its costs occasioned by the said Appeal such costs to be taxed.

BY THE COURT

(Sgd.) Illegible

REGISTRAR

ENTERED the 14th day of December, 1976

No.31

Order granting leave to appeal to Her Majesty in Council

In the Court of Appeal

No.31

Order granting leave to appeal to Her Majesty in Council

14th January 1977

IN THE FIJI COURT OF APPEAL
CIVIL JURISDICTION

Civil Appeal No. 14 of 1976
Supreme Court Action No. 173 of 1975

BETWEEN: IN THE MATTER OF BALI HAI RESTAURANT LIMITED Appellant

AND: IN THE MATTER OF THE COMPANIES ORDINANCE CAP.216 & RAVENDRA KUMAR & JAFFAR ALI Respondent

BEFORE THE HONOURABLE MR. JUSTICE C.C. MARSACK IN CHAMBERS

FRIDAY THE 14TH DAY OF JANUARY 1977

UPON READING the Motion for Leave to Appeal to Privy Council herein filed the 10th day of December 1976 AND UPON HEARING MR. ROBERT WILLIAM MITCHELL of Counsel for the Appellant and MR. VIJAYA PARMANADAM of Counsel for the Respondent and MR. QORANISI BABITU BALE of Counsel for the Official Receiver IT IS THIS DAY ORDERED that the Appellant do have Leave to Appeal to Her Majesty in Council from the judgment of the Fiji Court of Appeal given on the 26th day of November 1976 on condition that the Appellants do lodge with the Registrar within thirty (30) days from the date hereof the sum of $750 in cash as security for all such costs as may become payable by the Appellant by Order of Her Majesty in Council and that all execution on the said judgment be stayed upon the condition that the Appellant do prosecute its appeal to Her Majesty in Council with all due diligence AND that the costs of this Application be costs in the cause.

BY THE COURT

(Sgd.) Illegible

REGISTRAR
FIJI COURT OF APPEAL

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972

EXHIBITS

Exhibit 4 - Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

THE COMPANIES ORDINANCE
(Cap. 216)

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

- of -

BALI HAI RESTAURANT LIMITED

1. The name of the Company is "BALI HAI RESTAURANT LIMITED".

2. The Registered Office of the Company will be situate at Suva or elsewhere in the Dominion of Fiji.

3. The objects for which the Company is established are for all or any of the following objects:-

(a) To carry on the business of restaurant, night club, cafe, hotel, motel, tavern, apartment house, lodging house, saloon, cottage colony, guest house keepers, take away food suppliers, caterers, licensed victuallers, wine, beer and spirit merchants, brewers, maltsters, distillers, manufacturers of aerated, mineral and artificial waters and other drinks, theatre, music hall, concert hall, dance hall, ballroom, cinema, picture palace, circus, hippodrome, theatrical box office and musical proprietors and agents, entrepreneurs, showmen, exhibitors and general agents, song, music, play, programme and general publishers and printers, scene, procenium and general painters and decorators, producers, directors, promoters and caterers for public and private amusement and entertainment of every description, ice merchants, importers, exporters and brokers of food, live and dead stock and foreign produce of all descriptions and with power to acquire, buy, purchase, lease, bargain, exchange or otherwise deal with any real and personal property to hold the same as an investment with power to develop, improve, manage, sell, exchange, lease, mortgage, let or otherwise deal with the same as the company may from time to time determine.

(b) To apply for take on license purchase or otherwise acquire and to carry on conduct control and operate concessions rights or privileges for or in relation or incidental to the operation of "drive-yourself" and chauffeur driven motor vehicle services at from or in connection with all airports aerodromes air terminals cities towns and other places throughout Fiji or elsewhere and to grant licences or transfer assign delegate dispose of and deal with any such concessions rights and privileges as the Company may deem fit.

(c) To carry on operate maintain conduct and control all and every manner and class of "drive-yourself" and chauffeur driven motor vehicle services at any place or places and by any means whatsoever.

(d) To procure supply buy sell and deal in and manufacture petrol oils lubricants batteries tyres lighting firing and propelling materials and methods and all other articles commodities equipment parts and accessories which shall be capable of being used for or incidental to the purpose of any business or activity herein mentioned or which are likely to be required by the customers of such business.

(e) To carry on the business of garage and service station proprietors and motor aircraft marine mechanical electrical radio television refrigeration civil and general engineers builders and contractors and to manufacture buy sell import export deal in and distribute as principal or agent all materials machinery appliances plant fittings equipment or things capable of being used or employed in or in connection with or in relation to any of such businesses or otherwise in respect of the Company's objects.

(f) To purchase or otherwise acquire the whole or any part of the undertaking, business, properties and assets of any company, firm or person carrying on any business within the objects of this Company.

(g) To take part in the formation, management, supervision or control of the business or operations of any company or undertaking, and

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

for that purpose to appoint and remunerate any directors, managing directors, managers, accountants or other experts or agents, and to act as consultants to and agents for and to manage, advise on, supervise or control the business, property or operations of any person, company or undertaking, or any property in which the Company may be interested, and to act as secretaries of other companies.

(h) To construct, carry out, maintain, improve,- manage, work, control and superintend any roads, ways, tramways, railways, bridges, reservoirs, canals, docks, wharves, watercourses, hydraulic works, gasworks, electric works, factories, warehouses and other works and conveniences which may be considered directly or indirectly conducive to any of the Company's objects and to contribute to, subsidise or otherwise assist or take part in the construction, carrying out, maintenance, improvement, management, working, control or superintendence of any such works or conveniences.

(i) To carry on any other business which may seem to the Company capable of being conveniently carried on in connection with any of the objects of the Company or any other businesses the carrying on of which the Company may deem directly or indirectly conducive to the development of any business of the Company or calculated directly or indirectly to enhance the value of or render profitable any of the Company's property or rights.

(j) To purchase or otherwise acquire and undertake and extend the whole or any part of the business goodwill property and other assets and liabilities of any person firm or company carrying on any business which the Company is authorized to carry on or possessed of property suitable for any of the purposes of the Company.

(k) To borrow and raise money and to secure or discharge any debt or obligation of or binding on the Company in such manner as may be thought fit and in particular by mortgages and charges upon the undertaking and all or any of the real and personal property and assets (present and future) and the uncalled capital of the Company, or by the creation and issue on such terms as

may be thought expedient of debentures, debenture stock or other securities of any description.

(l) To draw, make, accept, endorse, discount, negotiate, execute and issue bills of exchange, promissory notes, bills of lading, warrants and other negotiable transferable or mercantile instruments.

(m) To amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint adventure, reciprocal concessions or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the Company is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company.

(n) To promote any company whose objects shall include the acquisition of all or any of the assets or liabilities of this Company, or the promotion of which shall be considered to be calculated to advance directly or indirectly the objects of this Company, or the interests of its Members.

(o) To lend money to and guarantee the performance of the obligations of, and the payment of capital and principal of, and dividends and interest on, any stock, shares and securities of any company, firm or person in any case in which such loan or guarantee may be considered likely directly or indirectly to further the objects of this Company or the interests of its Members.

(p) To sell, lease, grant licences, easements and other rights over, and in any other manner deal with or dispose of, the undertaking, real and personal property, assets rights and effects of the Company or any part thereof for such consideration as may be thought fit, and in particular for stocks, shares or securities of any other company.

(q) To remunerate any person or company by payment in cash or the allotment or issue of shares in the Company either fully or partly paid up or

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

otherwise for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the Company's capital or any debenture debenture stock or other securities of the Company or the advancement or conduct of its business and to pay any brokerage fees or commission to brokers or other persons for placing or obtaining subscriptions for or underwriting any of the Company's shares or securities.

(r) To subscribe for, underwrite, purchase or otherwise acquire and to hold, dispose of and deal in the shares, stocks and securities of any company promoted by this Company or carrying on or proposing to carry on any business within the objects of this Company.

(s) To enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects, or any of them, and to obtain from any such government or authority any rights, privileges and concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

(t) To establish and regulate in any part of the world agencies for any purpose of the Company and to establish local boards, to appoint attorneys and agents and to open branch registers and to do all acts and things whatever necessary to procure the Company to be registered incorporated or legally recognised in any part of the world, and to secure to the Company the same rights and privileges in any State or country as are possessed by local companies or partnerships of a similar nature.

(u) To subscribe or guarantee money for any national, State, local, charitable, benevolent, public, general or useful object, or for any exhibition, or for any purpose which may be considered likely, directly or indirectly, to further the objects of the Company or the interests of its Members.

(v) To grant pensions or gratuities to any

directors, officers or employees or ex-directors, ex-officers or ex-employees of the Company or its predecessors in business, or the relations, connections or dependents of any such person and to establish or support associations, institutions, clubs, funds and trusts which may be considered calculated to benefit any such persons or otherwise advance the interests of the Company or of its Members.

(w) To invest any moneys of the Company not for the time being required for the general purposes of the Company in such investments (other than shares in the Company) as may be thought proper, and to hold, sell or otherwise deal with such investments.

(x) To distribute among the Members of the Company in specie any property in the Company.

(y) To do all or any of the things and matters aforesaid in any part of the World, and either as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with others.

(z) To do all such other things as may be considered to be incidental or conducive to the above objects or any of them.

AND IT IS HEREBY DECLARED that the objects specified in the different paragraphs of the clause shall except where otherwise expressed in such paragraph be in no wise limited by reference to or influence from any other paragraphs but may be carried out in as full and ample a manner and shall be construed in as wide a sense as if each of the said paragraphs defined the objects of a separate distinct and dependant company.

4. THE liability of the members is limited.

5. The share capital with which the company proposes to be registered is $50,000.00 (FIFTY THOUSAND DOLLARS) divided into 50,000 shares of $1.00 (ONE DOLLAR) each.

6. The Company has power from time to time to increase its capital and to issue any shares in

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

the original or increased capital as vendor, ordinary, preferred, deferred or guaranteed or employee shares and to attach to any class or classes of such shares any preference, rights, privileges or conditions or to subject the same to any restrictions or limitations that may be determined by any ordinary resolution of the Company passed before its issue of the shares affected thereby.

WE the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of the Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers	Signatures	Number of shares taken by each Subscriber
James Gibson Barron CRAWFORD Gomati Street, Tamavua Heights, Suva Theatrical Agent	(Sgd.) J.Crawford	One
Akuila QUMI 6 Seqeloa Lane, Raiwaqa, Suva Rental Car Proprietor	(Sgd.) A. Qumi	One
Jaffar ALI (f/n Cheddi) 18 Batiki Street, Vatuwaqa, Suva Company Director	(Sgd.) Jaffar Ali	One
Robert William MITCHELL Muaicolo Road, Tamavua, Suva Solicitor	(Sgd.) R.W.Mitchell	One

DATED the 8th day of February 1972.

Witness to the above Signatures:

(Sgd.) Illegible

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

ARTICLES OF ASSOCIATION

- of -

BALI HAI RESTAURANT LIMITED

1. In these Articles unless there be something in the subject matter or context inconsistent therewith:

"The Company" means "BALI HAI RESTAURANT LIMITED".

"The Companies Ordinance" means the Companies Ordinance Cap.216 and includes amendments thereof from time to time.

"The Office" means the registered office for the time being of the Company.

"The Register" means the register of members to be kept pursuant to the Companies Ordinance, Cap.216.

"Month" means calendar month.

"Dividend" includes bonus.

Words importing the masculine gender only shall include the feminine.

Words importing the singular number only shall include the plural and vice versa.

Words denoting persons shall include partnerships associations and companies whether incorporated or unincorporated.

"In writing" shall include printed matter or partly written and partly printed or typewritten.

"Ordinary meeting" shall mean an ordinary meeting of the members of the Company duly called and constituted and any adjourned holding thereof.

"General Meeting" shall mean an ordinary general meeting or an extraordinary general meeting or any adjourned holding thereof.

"Special Resolution" and "Extraordinary Resolution" shall have the meaning assigned thereto respectively by the Companies Ordinance Cap.216.

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

"Members present at a meeting of the Company" shall mean shareholders personally present or by proxy or attorney.

"Seal" means the Common Seal of the Company.

2. The registered office of the Company shall be at Suva or elsewhere in the Dominion of Fiji.

3. The capital of the Company shall be $50,000 divided into 50,000 shares of $1 (ONE DOLLAR) each.

4. The regulations contained in Table "A" in the First Schedule to the Companies Ordinance shall not apply to the Company except so far as expressly incorporated herein.

5. The Company is to be a private company and accordingly:

(a) The number of members for the time being of the Company (exclusive of persons who are for the time being in the employment of the Company) is not to exceed 50 but where two or more persons hold one or more shares in the Company jointly they shall for the purpose of this paragraph be treated as a single member.

(b) Any invitation to the public to subscribe for any shares or debentures or debenture stock of the Company is hereby prohibited.

(c) The right of transfer of shares shall be restricted as hereinafter provided.

6. None of the funds of the Company shall (except by way of reduction of capital confirmed by the Court) be applied in the purchase of or lent on shares of the Company.

7. The Company may, upon any offer of shares, pay a commission to any person for subscribing or agreeing to subscribe for or underwriting shares of the Company not exceeding 5 per cent of the nominal amount of the shares issued.

8. Subject to the provisions of the Ordinance the shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons and on such terms and conditions as they think fit.

CERTIFICATES

9. Share certificates shall be issued under the Seal of the Company and signed by a Director and countersigned by the Secretary or some other person appointed by the Directors.

10. Every member shall be entitled to one certificate for all the shares registered in his name. Every share certificate shall specify the number and the denoting numbers of the shares in respect of which it is issued and the amount paid up thereon.

11. If any Certificate be worn out or defaced then, upon production thereof to the Directors, they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed then, upon proof thereof to the satisfaction of the Directors, and on such indemnity as the Directors deem adequate being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.

12. The Certificate of shares registered in the names of two or more persons shall be delivered to the person first named on the register.

13. The Directors may from time to time and subject to any special terms upon which any shares may have been issued make calls upon members in respect of any moneys unpaid on their shares and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on his shares. A call may be made payable by instalments.

14. A call shall be deemed to have been made when the resolution of the Directors authorising such call was passed.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of eight per centum per annum from the day appointed for the

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

payment thereof to the time of the actual payment, but the Directors shall be at liberty to waive payment of that interest wholly or in part.

17. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

18. The Directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

19. The Directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the Company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the Directors.

FORFEITURE OF SHARES

20. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

21. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

22. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at

any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

23. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

24. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all moneys which, at the date of forfeiture, were presently payable by him to the Company in respect of the shares together with interest accrued and all expenses incurred by the Company by reason of such non-payment, but his liability shall cease if and when the Company receive payment in full of the nominal amount of the shares.

25. A statutory declaration in writing that the declarant is a Director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture sale or disposal of the share.

26. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified. The forfeiture of a share shall include all dividends declared in respect of the forfeited share and not actually paid before the forfeiture.

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

27. The Company shall have a first and paramount lien on all shares (including fully-paid shares) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of those shares and the Company shall also have a lien on all shares (including fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the Company but the directors may at any time declare any shares to be wholly or in part exempt from the provisions of this regulation. The Company's lien, if any, on a share shall extend to all dividends payable thereon.

28. The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

29. For giving effect to any such sale the Directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

30. The proceeds of the sale shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale), be paid to the person entitled to the shares at the date of the sale.

TRANSFER AND TRANSMISSION OF SHARES

31. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the

transferee is entered in the register of members in respect thereof provided that the Direcotrs may dispense with the execution of the instrument of transfer by the transferee in any case in which it is lawful and in which they think fit.

32. Shares shall be transferred in the following form, or in any usual or common form which the Directors shall approve:-

> I, of in consideration of the sum of $ paid to me by of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered . in the undertaking called " " to hold unto the said transferee subject to the several conditions on which I hold the same; and I, the said transferee do hereby agree to take the said share (or shares) subject to the conditions as aforesaid. As witness our hands the day of 19 .
> Witness to the signature of, etc.

33. The Directors may in their absolute and uncontrolled discretion refuse to register any proposed transfer of shares.

34. The legal personal representative of a deceased sole holder of a share shall be the only person recognised by the Company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the Company as having any title to the share.

35. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the Directors have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the Directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

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36. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

37. The Company shall not, except as ordered by a Court of competent jurisdiction or as by statute required, be bound by or compelled in any way to recognise even when having notice thereof any trust or any other right in respect of a share than an absolute right thereto in the registered holder thereof for the time being, or such other rights in cases of transmission thereof as are conferred by Articles 34 to 37 hereof.

ALTERATION OF CAPITAL

38. The Company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

39. Subject to any direction to the contrary that may be given by the Company in general meeting all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the Company of general meetings in proportion, as nearly as the circumstances admit, to the number of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the Directors may dispose of those shares in such manner as they think most beneficial to the Company. The Directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an order of new shares) cannot in the opinion of the Directors, be conveniently offered under this article.

40. The new shares shall be subject to the same

provision with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

41. The Company may by ordinary resolution -

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) sub-divide its existing shares, or any of them into shares of smaller amount than if fixed by the Memorandum of Association subject, nevertheless, to the provisions of Section 51(1)(d) of the Ordinance;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

42. The Company may by special resolution reduce its share capital and any capital redemption fund in any manner and with, and subject to, any incident authorised and consent required, by law.

43. The Directors may, subject to the provisions of the Companies Ordinance, accept surrenders of shares.

MODIFYING RIGHTS

44. If at any time the capital by reason of the issue of preference shares or otherwise, is divided into different classes of shares, all or any of the rights and privileges attached to each class may be annulled or modified by agreement between the Company and any person purporting to contract on behalf of the holders of shares of that class provided such agreement is ratified in writing by the holders of at least three-fourths of the nominal amount of the issued shares of that class. Every such agreement shall bind all holders of shares of that class.

BORROWING POWERS

45. The Directors may, from time to time, at their discretion borrow with or without security any sum or sums of money for the purposes of the Company.

46. The Directors may secure the repayment of such moneys in such manner and upon such terms and

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conditions in all respects as they think fit and in particular subject to Article 5(b) hereof by the issue of debentures or debenture stock of the Company charged upon all or any part of the property of the Company (both present and future) including its uncalled capital for the time being.

GENERAL MEETING

47. The first meeting of the Company shall be held at such time not being less than one month nor more than three months from the date of the registration of the Company, and at such place as the Directors may determine.

48. Other general meetings shall be held once at least in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and at such place as may be determined by the Directors. Such General Meetings shall be called "ordinary meetings" and all other meetings of the Company shall be called "extraordinary meetings".

49. The Directors may, whenever they think fit, convene an extraordinary meeting, and the Directors shall on the request in writing of the holders of not less than one-tenth of the issued capital of the Company upon which all calls or other sums then due have been paid forthwith proceed to convene an extraordinary meeting and the provisions of Section 114 of the Companies Ordinance shall apply.

50. If at any time there are not within the Dominion of Fiji sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extraordinary meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

NOTICE OF GENERAL MEETINGS

51. Subject to the provisions of Section 117(2) of the Ordinance relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business,

the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as these members may think fit.

52. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

53. Notice of an adjourned meeting shall not be requisite in any case.

PROCEEDINGS AT GENERAL MEETINGS

54. All business shall be deemed special that is transacted at an extraordinary meeting, and all business shall be deemed special that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the Directors and Auditors, the election of Directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

55. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided two members present personally or by proxy shall be a quorum.

56. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the appointed time for the meeting the members present shall be a quorum.

57. The Chairman, if any, of the Board of Directors shall preside as Chairman at every General Meeting of the Company.

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58. If there is no such Chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairman, the members present shall choose someone of their number to be Chairman.

59. The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

60. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen percent of the paid-up capital of the Company and, unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

61. If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

62. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

63. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs.

VOTES OF MEMBERS

64. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

65. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

66. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis or other person in the nature of a committee or curator bonis, and any such committee, curator bonis or other person may, on a poll, vote by proxy.

67. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

68. On a poll votes may be given either personally or by proxy.

69. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the Company.

70. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Company not less than twenty-four hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

71. An instrument appointing a proxy may be in

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the following form, or any other form which the Directors shall approve or accept:-

I, of being a member of hereby appoint . of as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the Company to be held on the day of 19 , and at any adjournment thereof. Signed this day of 19 .

72. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

73. Any corporation which is a member of the Company may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the Corporation which he represents as that corporation could exercise if it were an individual member of the Company.

DIRECTORS

74. The number of Directors shall not be fewer than two nor more than ~~seven~~. four.

75. The remuneration of the Directors shall from time to time be determined by the Company in general meeting.

76. There shall be no share qualification for the office of Director.

77. The number and the names of the First Directors shall be determined by the Subscribers of the Memorandum of Association.

78. The Company in general meeting may from time to time increase or reduce the number of persons who may be appointed Directors but the minimum shall not be reduced below two.

79. The holders for the time being of a majority of the issued shares in the capital of the Company conferring the right to vote at all general meetings of the Company may at any time and from time to time appoint any other persons to be Directors to fill casual vacancies or as additions to the Board of Directors but so that the total number does not exceed the maximum fixed by or in accordance with these Articles.

80. The Directors may at any time and from time to time appoint any other persons to be Directors to fill casual vacancies or as additions to the Board of Directors but so that the total number does not exceed the maximum fixed by or in accordance with these Articles. If at any time the number of Directors falls below the minimum number fixed by or in accordance with these Articles the continuing Directors may act for the purpose of increasing the number of Directors to that minimum number or of calling a general meeting of the Company but for no other purpose.

81. A Director shall hold office subject only to Article 88, but may at any time be removed from office by the holders for the time being of a majority of the issued shares in the capital of the Company conferring the right to vote as aforesaid. Any appointment under Article 79 or any removal under this Article may be made at any time and shall be in writing under the hands of the holders for the time being of a majority of the issued shares in the capital of the Company conferring the right to vote as aforesaid or under the hand of the Chairman of Directors or some other person as attorney or officer of each such holder duly authorised in their behalf. Any such appointment or removal shall take effect immediately upon delivery of the instrument of appointment or removal (as the case may be) to the Office.

82. Subject to Article 83 the Directors shall be paid out of the funds of the Company by way of remuneration for their services such sum per annum as the Company in general meeting may from time to time determine. The remuneration of a Director shall be deemed to accrue from day to day. A resolution of the Directors temporarily suspending or reducing or postponing payment of such remuneration or any part thereof shall bind all the Directors for the time being.

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83. Every Director shall be entitled to be paid out of the funds of the Company all reasonable travelling hotel and other expenses incurred in attending meetings of the Company or of the Directors or any committees thereof or while engaged on the business of the Company, and, if any of the Directors shall be called upon to perform extra service or exercise any special professional acquirements for any purpose of the Company or to make special exertions in going from his usual residence or abroad or otherwise for any purposes of the Company, he shall be paid all his travelling outlays and such additional sum by way of remuneration, as shall be fixed by the Directors.

84. No Director shall be disqualified by his office from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise, nor shall any such contract or arrangement or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement, by reason of such Director holding that office or of the fiduciary relation thereby established, but every Director shall observe the provisions of the Ordinance relating to the declaration of the interests of the Directors in contracts or proposed contracts with the Company or of any office or property held by the Directors which might create duties or interests in conflict with their duties or interests as Directors. No Director shall as a Director vote in respect of any contract or arrangement in which he is so interested as aforesaid, and, if he do so vote, his vote shall not be counted, but this prohibition as to voting shall not apply to any contract by or on behalf of the Company to give any Director any security for advances or by way of indemnity or to any allotment of shares or debentures of the Company or to any contract or arrangement where the Director is interested merely as a shareholder or director of another company, and such prohibition may at any time or times be suspended or relaxed to any extent by the Company in general meeting.

85. A Director may hold any other office or place of profit under the Company (except that of Auditor) in conjunction with his office of Director and on

such terms as to remuneration or otherwise as the Directors shall approve. A Director may be or become a Director of or hold any other office or place of profit under any company promoted by the Company or in which it may be interested, whether as a vendor or shareholder or otherwise, and no such Director shall be accountable for any benefits received as a director or member of or holder of any other office or place of profit under such company. The Directors may exercise the voting power conferred by the shares in any company held or owned by the Company in such manner in all respects as the Directors think fit (including the exercise thereof in favour of any resolution appointing the Directors or any of them directors of such company or voting or providing for the payment of remuneration to the Directors of such Company) and any Director of the Company may vote in favour of the exercise of such voting rights in manner aforesaid notwithstanding that he may be, or be about to be, appointed a director of such other company and as such is or may become interested in the exercise of such voting rights in manner aforesaid.

86. Notwithstanding anything contained in these Articles no Director shall be paid remuneration (whether as a Director or otherwise) free of income tax or otherwise calculated by reference to or varying with the amount of his income tax or the rate of income tax.

ALTERNATE DIRECTORS

87. Subject to the provisions of the Ordinance, each Director shall have power from time to time, by writing under his hand, to appoint any person approved by a majority of his co-Directors to act as an Alternate Director in his place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise he shall be unable to attend to his duties as a Director, and the following provisions shall apply to any such Alternate Director:

(a) He may be removed or suspended from office by written notice, letter, telegram, cablegram, radiogram or other form of visible communication from the Director by whom he was appointed to the Company;

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(b) He shall be entitled to receive notice of meetings of the Directors and to attend and vote thereat if the Director by whom he was appointed be not present;

(c) He shall be entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director, insofar as the Director by whom he was appointed had not exercised or performed them;

(d) He shall not be required to hold any share qualification in, or be entitled to receive any remuneration as a Director from, the Company;

(e) He shall ipso facto vacate office if the Director by whom he was appointed vacate office or die;

(f) He shall not be taken into account in determining the number of Directors;

(g) He shall, whilst acting as a Director, be responsible to the Company for his own acts and defaults and shall not be deemed to be the agent of the Director by whom he was appointed.

VACATION OF OFFICE OF DIRECTOR

88. The office of a Director shall be vacated:-

(a) if he becomes bankrupt or suspends payment or liquidates by arrangement or compounds with or assigns his estate for the benefit of his creditors;

(b) if he is found lunatic or becomes of unsound mind;

(c) if he ceases to hold his share qualification (if any);

(d) if he resigns office by notice in writing to the Company addressed to it at the office;

(e) If he is removed from office pursuant to Article 81;

(f) if not being duly engaged abroad on the

business of the Company he is absent from meetings of the Directors for three consecutive months and the remaining Directors have not within seven days of having been personally served by the Secretary with a notice giving particulars of such absence resolved that special leave of absence be granted.

PROCEEDINGS OF DIRECTORS

89. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit and determine thequorum necessary for the transaction of business. Until otherwise determined, two Directors shall form a quorum.

90. The Directors may at any time, and the Secretary, upon the request of a Director, shall convene a meeting of the Directors.

91. Questions arising at any meetings shall be decided by a majority of votes, and, in the case of an equality of votes, the Chairman shall (except when only two Directors are competent to vote on the question then at issue) have a second or casting vote.

92. The Directors may elect a Chairman and a Deputy Chairman of their meetings and determine the period for which he is to hold office but if no Chairman or Deputy Chairman be elected or if at any meeting the Chairman or Deputy Chairman be not present at the time appointed for holding such meeting the Directors present shall choose one of their number to be Chairman of such meeting.

93. A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions for the time being vested in or exercisable by the Directors generally by or under this Article.

94. The Directors may, by resolution or by power of attorney or writing under the Seal, delegate any of their powers to Committees consisting of such member or members of their body or any other person or persons as the Directors think fit to act either in Fiji or elsewhere. Any Committee so formed or person or persons so appointed shall

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in the exercise of the powers so delegated, conform to any regulation that may from time to time be imposed by the Directors.

95. The meetings and proceedings of any Committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors, so far as the same are applicable thereto and are not superseded by any regulations made by the Directors under the last preceding Article.

96. All acts done at any meeting of the Directors or by a Committee or by any person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or members of the Committee or persons acting as aforesaid or any of them or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified and continued to be a director.

97. A resolution in writing signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted and may consist of several documents in the like form each signed by one or more of the Directors.

POWERS OF DIRECTORS

98. The management and control of the business and affairs of the Company shall be vested in the Directors, which (in addition to the powers and authorities expressly conferred upon them by these Articles) may exercise all such powers and do all such acts and things as are within the scope of the Memorandum and are not hereby or by Statute expressly directed or required to be exercised or done by the Company in general meeting but subject nevertheless to the provisions of the Ordinance and these Articles and to any regulations from time to time made by the Company in general meeting, provided that:-

(a) no regulation shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made;

(b) any sale of the Company's main undertaking and any payment of remuneration to any Director

for services in connection therewith shall only be made subject to the approval or ratification thereof by a general meeting of members;

(c) in the event of it being proposed to make any such payment of remuneration as aforesaid the notice calling the general meeting at which the making of such payment is to be proposed shall give particulars (including the amount) thereof.

MANAGING DIRECTOR

99. The Directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits or partly in one way and partly in another) as they may think fit, and a Director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of Directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a Director, or if the Company in general meeting resolve that his tenure of the office of managing director or manager be determined.

MINUTES

100. The Directors shall cause minutes to be duly entered in books provided for the purpose -

(a) of the names of the Directors present at each meeting of the Directors and of Committees;

(b) of all orders made by the Directors and Committees of Directors;

(c) of all resolutions and proceedings of general meetings and of meetings of the Directors and Committees

and any such minutes of any meeting of the Directors or of any Committee or of the Company, if purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes.

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DIVIDENDS AND RESERVE

101. The Directors may from time to time declare a dividend to be paid to the members entitled thereto.

102. The Directors may from time to time pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company.

103. No dividend shall be paid otherwise than out of profits.

104. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares but if, and so long as nothing is paid up on any of the shares in the Company, dividends may be declared and paid according to the number of the shares. No amount paid on a share in advance of calls shall, while carrying interest be treated for the purpose of this article as paid on the shares.

105. The Directors may, in arriving at the net profits of the Company first set aside such sum as in the opinionof the Directors is proper to provide for bad and doubtful debts, to replace wasting property, to write down the valuation of the Company's intangible assets and to maintain the plant, works and property used in the Company's business or any part thereof, and, in addition thereto, the Directors may create a reserve or reserves out of profits of the Company by setting aside, in priority to any dividend, such sums as they shall think fit for the purpose of meeting contingencies, equalising dividends and providing a reserve for any purpose for which the profits of the Company may be applied and may divide any of the sums so set aside into such special accounts as they think fit and may at any time resort thereto for dividends or bonuses.

106. The Directors may invest any sums representing the whole or any part of such reserve as aforesaid as a fund in such shares or securities or other investments (not being shares of the Company or its holding company) as the Directors in their absolute discretion may think fit and may from time to time deal with vary or dispose of the whole or any part

thereof for the benefit of the Company. Any income derived from or accretions to such shares, securities or other investments may either be carried to the credit of the reserve fund or reserve funds represented by such shares, securities or other investments or be dealt with as profits arising from the business of the Company.

107. The Directors shall have full power to employ in the business of the Company the whole or part of any reserve not invested as a fund as aforesaid and without being bound to keep the representative assets separate from other assets of the Company.

108. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

109. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

110. No dividend shall bear interest against the Company.

111. When declaring a dividend, the Directors may direct payment of such dividend wholly or in part by the distribution of specific assets or documents of title and in particular of paid-up shares, debentures or debenture stock of this or any other company or in any one or more such ways, and, where any difficulty arises in regard to the distribution, the Directors may settle such difficulty as they think expedient and in particular may issue fractional certificates and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to the Directors.

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CAPITALISATION

112. The Company in general meeting may, upon the recommendation of the Directors, resolve that the whole or portion of any sum standing to the credit of any reserve account be capitalised and that the amount so capitalised be appropriated to the members in the respective proportions in which they would be entitled to receive the same if distributed by way of dividend and be applied on their behalf in or towards paying up the amounts for the time being unpaid on any issued shares held by them or in paying up in full unissued shares or debentures of the Company (of an aggregate nominal amount equal to the amount so capitalised) to be issued to them accordingly, or partly in one way and partly in the other.

113. The Directors shall give effect to every such resolution as aforesaid and shall make all necessary appropriations and applications of the amount to be capitalised and all necessary allotments and issues of fully paid up shares or debentures. The Directors may make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as they think fit, for the case of shares or debentures becoming distributable in fractions or for adjusting differences and settling any difficulty arising therein. Where requisite, a proper contract shall be filed in accordance with the Ordinance and the Directors may appoint a person to sign such contract on behalf of the members entitled upon such capitalisation.

CHEQUES BILLS ETC.

114. The Directors may open and maintain a banking account or accounts at such bank or banks as they may select and may at their discretion from time to time transfer any such account to any other bank. All money shall be drawn from any such account by cheque, draft or bill of exchange signed by such person or persons as may from time to time be designated in writing by any two Directors.

THE SEAL

115. The Seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and in the presence of at least one Director and of the

Secretary or such other person as the Directors may appoint for the purpose, and that Director and Secretary or other person as aforesaid shall sign every instrument to which the Seal of the Company is so affixed in their presence.

ACCOUNTS

116. The Directors shall cause proper books of account to be kept with respect to:-

(a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the Company; and

(c) the assets and liabilities of the Company.

117. The Books of Account shall be kept at the registered office of the Company, or at such other place or places as the Directors think fit, and shall always be open to the inspection of the Directors.

118. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorised by the Directors or by the Company in general meeting.

119. The Directors shall from time to time in accordance with Section 123 of the Ordinance, cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

120. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting together with a copy of the Auditors' report shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notice of General Meetings of the Company.

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

AUDIT

121. Once at least in every year the accounts of the Company shall be examined and the correctness of the profit and loss account and balance sheet ascertained by an auditor.

122. The Company at each ordinary meeting shall appoint an Auditor to hold office until the next Ordinary Meeting and his appointment, remuneration, rights and duties shall be regulated by Sections 132 to 134 of the Companies Ordinance.

NOTICES

123. A Notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter, envelope or wrapper, addressed to such member at his registered place of address.

124. Each holder of registered shares whose registered place of address is not in the Dominion of Fiji may from time to time notify in writing to the Company an address in the Dominion of Fiji which shall be deemed his registered place of address within the meaning of the last preceding clause. If he shall not have named such an address he shall not be entitled to any notice.

125. All notices shall with respect to any registered shares to which persons are jointly entitled be given to which-ever of such persons is named first in the register and notice so given shall be sufficient notice to all the holders of shares.

126. Any notice sent by post shall be deemed to have been served on the day on which the letter, envelope or wrapper containing the notice was properly addressed and put into the post office.

127. Where a given number of days' notice or notice extending over any other period is required to be given the day of service shall not, but the day upon which such notice shall expire shall, be counted in such number of days or other period.

128. Save as hereinbefore provided notice of every General Meeting shall be given to every member of the Company.

WINDING UP

129. (1) If the Company shall be wound up, whether voluntarily or otherwise, the liquidators may, with the sanction of a special resolution, divide among the contributories in specie or kind any part of the assets of the Company, and may, with the like sanction, vest any part of the assets of the Company in trustees upon such trusts for the benefit of the contributories or any of them as the liquidators, with the like sanction, shall think fit.

(2) If thought expedient, any such division may be otherwise than in accordance with the legal rights of the contributories (except where unalterably fixed by the Memorandum) and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.

(3) In case any shares to be divided as aforesaid involve a liability to calls or otherwise, any person entitled under such division to any of the said shares may, within ten days after the passing of the special resolution, by notice in writing direct the liquidators to sell his proportion and pay him the net proceeds and the liquidators shall, if practicable, act accordingly.

(4) No commission or fee shall be payable to the liquidators unless the payment of such commission or fee shall have been ratified by a general meeting of the Company and the amount of such proposed payment shall have been specified in the notice calling such meeting.

PAYMENTS BY THE COMPANY

130. Whenever any law for the time being of any country state or place imposes or purports to impose any immediate or future or possible liability upon the Company to make any payments or empowers any Government or taxing authority or Governmental official to require the Company to make any payment in respect of any shares registered in any of the Company's registers as held either jointly or solely by any member or in respect of any dividends, bonuses or other moneys due or payable or accruing due or which may become due or payable to such member by the Company on or in respect of any shares registered as aforesaid or for or on account or in respect of any member and whether in consequence of:-

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

(a) the death of such member;

(b) the non-payment of any income tax or other tax by such member;

(c) the non-payment of any estate, probate, succession, death, stamp or other duty by the executor or administrator of such member or by or out of his estate; or

(d) any other act or thing;

the Company in every such case :-

(i) shall be fully indemnified by such member or his executor or administrator from all liability;

(ii) shall have a lien upon all dividends, bonuses and other moneys payable in respect of the shares registered in any of the Company's registers as held either jointly or solely by such member for all moneys paid or payable by the Company in respect of the said shares or in respect of any dividend, bonus or other money as aforesaid thereon or for or on account or in respect of such member under or in consequence of any such law, together with interest at the rate of eight pounds per centum per annum thereon from date of payment to date of repayment, and may deduct or set off against any such dividend, bonus or other money payable as aforesaid together with interest as aforesaid;

(iii) may recover as a debt due from such member or his executor or administrator, wherever constituted, any moneys paid by the Company under or in consequence of any such law and interest thereon at the rate and for the period aforesaid in excess of any dividend, bonus or other money as aforesaid then due or payable by the Company to such member; and

(iv) may, if any such money be paid or payable by the Company under any such law as aforesaid, refuse to register a transfer of any shares by any such member or his executor or administrator until such money and

interest as aforesaid is set off or deducted as aforesaid, or, in the case the same exceed the amount of any such dividend, bonus or other money as aforesaid then due or payable by the Company to such member until such excess is paid to the Company.

Nothing herein contained shall prejudice or affect any right or remedy which any law may confer or purport to confer on the Company, and, as between the Company and every such member as aforesaid, his executor, administrator and estate, wheresoever constituted or situate, any right or remedy which such law shall confer or purport to confer on the Company shall be enforceable by the Company.

131. Every Director, Manager or officer of the Company or any person (whether an officer of the Company or not) employed by the Company as auditor shall be indemnified out of funds of the Company against all liability incurred by him as such Director, Manager, Officer or Auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under Section 349 of the Companies Ordinance in which relief is granted to him by the Court.

132. Any Director, Manager, Secretary or other officers or servant of the Company shall be liable only for so much money as he shall actually receive, and he shall not be answerable for the acts or default of any other officer, or servant, or for any loss, damage or misfortune whatever which shall happen in the execution of the duties of his office unless the same happen through his own wilful act, neglect or default.

Names and addresses and Descriptions of Subscribers	Signatures	Number of Shares taken by each Subscriber
James Gibson Barron Gomati Street, Tamavua Heights, Suva Theatrical Agent	CRAWFORD (Sgd.) J. Crawford	One

Exhibits

Exhibit 4

Memorandum and Articles of Association of Bali Hai Restaurant Ltd.

8th February 1972 (continued)

Names and Addresses and Descriptions of Subscribers	Signatures	Number of Shares taken by each Subscriber
Akuila QUMI 6 Seqeloa Lane, Raiwaqa, Suva Rental Car Proprietor	(Sgd.) A. Qumi	One
Jaffar Ali (f/n Cheddi) 18 Batiki Street, Vatawaqa, Suva Company Director	(Sgd.) Jaffar Ali	One
Robert William MITCHELL Muaicolo Road, Tamavua, Suva Solicitor	(Sgd.) Robert W. Mitchell	One

DATED this 8th day of February, 1972

WITNESS to the above Signatures:-

(Sgd.) Illegible

Exhibit 1

Letter, Koya & Co. to Bali Hai Restaurant Ltd.

9th April 1975

Exhibit 1 - Letter, Koya & Co. to Bali Hai Restaurant Ltd.

KOYA AND CO.
BARRISTERS AND SOLICITORS

Suva.
9th April, 1975

The Managing Director,
Bali Hai Restaurant Limited,
Registered Office, Messrs. Cromptons,
66 Renwick Road,
SUVA.

Dear Sir,

We are instructed by Messrs. Jaffar Ali and Francis Ravendra Kumar to ask you not to sell or dispose of any of the assets belonging to Bali Hai Restaurant Limited.

Our Clients visited the premises of the Company

Exhibits

Exhibit 1

Letter, Koya & Co. to Bali Hai Restaurant Ltd.

9th April 1975 (continued)

at Rodwell Road, Suva, last night and after investigations they found:

(a) that Mr. Akuila Qumi a paid Director of the Company was absent,

(b) that Mr. J.G.B. Crawford a paid Director of the Company was asleep on the premises (close to the kitchen),

(c) that restaurant side of the business had been closed,

(d) that you and your colleague Mr. Akuila have intimated to the staff that the business has gone down considerably and that very soon you would sell all the kitchen equipment,

(e) that the actual takings are not banked in the customary way,

(f) that Creditors are paid in cash and later a cash cheques are issued payable "Cash" and such cheques are deposited with First National City Bank.

You have been already notified (vide our letter dated the 21st January, 1975) that our clients intend to present a Winding-up Petition against your Company. There are various grounds on which the Petition can be justifiably presented and acted upon.

We must state categorically that the Board of Directors have been managing the affairs of the Company in contravention of the Company's Articles of Association and the Companies Ordinance. In addition it has not thought fit to invite Mr. Jaffar Ali, a Director of the Company to any of its meeting since the month of July, 1974. No general meeting has been held and having regard to the fact that you and your colleague Mr. Qumi hold no more than 50 per cent shares in the Company and duties and responsibilities that our laws have imposed on Directors of a registered Company, we must urge you not to sell or dispose of Company's assets without the sanction of the General Meeting and secured Creditors. We must emphasise that any sale or disposal of the assets without the consent of the First National City Bank, the Debenture Holder may well amount to a criminal offence.

We look forward by return mail a firm undertaking that:-

Exhibits

Exhibit 1

Letter, Koya & Co. to Bali Hai Restaurant Ltd.

9th April 1975 (continued)

(a) you and your colleague would not sell or dispose of the assets and

(b) you and your colleague's views to wind up the affairs of the Company either voluntarily (by holding of a lawful general meeting and passing an appropriate resolution) or compulsorily by obtaining an Order of Court.

We regret you to give us a reply without delay.

Yours faithfully,
KOYA AND CO.

Per: Sgd. S.M. Koya

Distribution

1) R.W. Mitchell, Esq.,
2) FIRST NATIONAL CITY BANK
3) Messrs. Cooper & Leybrand.

Exhibit 2

Notice of Winding Up Petition

23rd May 1975

Exhibit 2 - Notice of Winding Up Petition

IN THE MATTER of BALI HAI RESTAURANT LIMITED

- and -

IN THE MATTER of the Companies Ordinance Cap. 216 & FRANCIS RAVENDRA KUMAR & JAFFAR ALI

TAKE NOTICE that we intend to present a WINDING UP Petition to the Supreme Court of Fiji for an Order that Bali Hai Restaurant Limited be wound up by the Court under the provisions of Companies Ordinance Cap.216, inter alia on the following grounds:-

1. That the Company is unable to pay its debts within the meaning of the words in Section 167(e) of the Companies Ordinance Cap.216. (The present Directors Messrs. J.G.B. Crawford and A. Qumi who alone have been controlling the affairs of the Company since July 1974 and in particular the running of the restaurant are well aware of the true state of the Company's financial affairs including the fact that about $25,427.02 was due and owing as at the 31st December 1974 to various

creditors (including a sum of $11,127.04 to Mr. K. Singh) of which a substantial part is still due and owing). Further the creditors have demanded payment.

Exhibits

Exhibit 2

Notice of Winding Up Petition

23rd May 1975 (continued)

2. That it would be just and equitable that a Winding up Order be made having regard to all the circumstances of the case and in particular that:

(a) Messrs. J.G.B. Crawford and A. Qumi as Directors have acted fraudulently in increasing their shares to equate their voting rights with us;

(b) There exists a serious dispute between the said J.G.B. Crawford and A. Qumi and ourselves as to policy and other matters relating to the Management of the Company's affairs and there is a complete dead-lock on these issues;

(c) That Messrs. J.G.B. Crawford and A. Qumi as Directors are directly responsible for the offences now committed by the Company in not complying with Sections: 122(1), 122(2), 123(2), 96, 108, 110 and 112 of the Companies Ordinance Cap. 216.

Dated this 23rd day of May, 1975.

Sgd. Francis R. Kumar

Sgd. Jaffar Ali

To: Bali Hai Restaurant Limited,
Registered Office,
SUVA.

Exhibits

Exhibit 3A

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1973

Exhibit 3A - Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1973

BALI HAI RESTAURANT LIMITED

BALANCE SHEET AS AT 31ST DECEMBER 1973

CAPITAL			
Authorised: 50,000 shares of $1 each	$50,000.00		
Issued: 4 shares of $1 each fully paid		$	4.00
PROFIT AND LOSS ACCOUNT			(11,822.21)
			(11,818.21)
ADVANCE FROM SHAREHOLDERS			50,396.00
CURRENT LIABILITIES			
Golden Dragon Limited - Secured	2,197.30		
First National City Bank - loan account secured	15,000.00		
Trade Creditors	40,898.52		
First National City Bank - Current Account - Secured	258.70		58,354.52
			$96,932.31

FIXED ASSETS	Cost	Provision for Depreciation	
Fixtures, fittings, uniforms, crockeries and cutleries	73,466.71	3,228.46	70,238.25
Pool tables	4,800.00	120.00	4,680.00
Leasehold improvements	19,794.55	1,979.45	17,815.10
	$98,061.26	5,327.91	92,733.35

CURRENT ASSETS		
Stock on hand	3,851.14	
Bank of New South Wales	60.72	
Cash on hand	40.60	3,952.46
FORMATION EXPENSES		246.50
		$96,932.31

(Sgd.) J. Crawford ..... Director

(Sgd.) A. Qumi .....Director

The above balance sheet and attached trading accounts and profit and loss account have been prepared from the books and records of the company and from information supplied by its Managing Director.

We have not verified the assets and liabilities nor vouched the receipts and payments nor done anything in the nature of an audit of the accounts of the company.

COOPERS & LYBRAND
CHARTERED ACCOUNTANTS

Suva
27th October 1975.

BALI HAI RESTAURANT LIMITED

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER 1973

GROSS PROFIT (LOSS) FROM TRADING		
Liquor	$16,971.33	
Food	(354.04)	
Pools	6,920.82	
Cigarettes	213.57	$23,751.68
OTHER INCOME		
Cover Charge	15,490.60	
Printing & Murals	150.00	
Subscriptions to Spotlight Theatre	110.00	
Sundry Income	24.80	15,775.40
		$39,527.08
EXPENSES		
Accounting fees	800.00	
Advertising	3,530.44	
Bank Charges	97.71	
Performance and entertainment fees	1,728.50	
Legal expenses	369.50	
Licence fee	335.00	
Light and power	2,430.65	
Forward		39,527.08

Exhibits

Exbibit 3A

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1973 (continued)

Brought forward			39,527.08
Rent		12,300.00	
Freight		75.88	
Telephone and postage		133.60	
Stationery and printing		1,468.33	
Repairs and Maintenance		695.84	
Water rates		188.76	
Interest		254.73	
General expenses		125.40	
Entertainment expenses		237.56	
Travelling expenses		199.07	
Wages		9,075.50	
Directors salary		9,428.06	
Fiji NAtional Provident Fund		372.45	
Cleaning and laundry		273.58	
Depreciation		5,207.91	49,328.47
			9,801.39
PRE-OPERATIVE EXPENSES			2,020.82
LOSS FOR THE YEAR			$11,822.21

BALI HAI RESTAURANT LIMITED

TRADING ACCOUNTS FOR THE YEAR ENDED 31ST DECEMBER 1973

LIQUOR

Sales		$30,141.25
Cost of Sales		
Purchases	$16,584.36	
Less stock at 31st Dec.1973	3,414.44	13,169.92
Gross Profit 56.30%		$16,971.33

FOOD

Sales	$ 4,829.56
Purchases	5,183.60
Gross Loss	$ 354.04

POOLS

Sales		$ 8,076.90
Expenses		
Wages	944.64	
Basic tax and PAYE	44.24	
Fiji National Provident Fund	47.20	
Depreciation	120.00	1,156.08
Gross Profit 85.68%		$6,920.82

CIGARETTES

Sales		1,842.60
Cost of Sales		
Purchases	2,065.73	
Stock at 31st December 1973	436.70	1,629.03
Gross Profit 11.56%		$ 213.57

Exhibits

Exhibit 3A

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1973 (continued)

SCHEDULE OF FIXED ASSETS AND DEPRECIATION THEREON

31ST DECEMBER 1973

			Cost $	Depreciation $	W.D.V. 31/12/73 $
	PLANT EQUIPMENT, FIXTURES AND FITTINGS				
	Air Conditioner	½ of 10%	18,450.00	922.50	17,527.50
	Cool Room	½ of 10%	3,200.00	160.00	3,040.00
10	Adding Machine	½ of 10%	50.00	2.50	47.50
	Cash Register NCR 72-3	½ of 10%	634.50	31.72	602.78
	Cash Register NCR Cl.24	½ of 10%	736.20	36.81	699.39
	Water Heater Tank	½ of 10%	333.00	16.65	316.35
	Electric Sign	½ of 7½%	917.03	34.39	882.64
	Fan	½ of 10%	160.37	8.02	152.35
	Stoves	½ of 10%	194.93	9.74	185.19
	Crockery & Cutlery		5,523.01	-	5,523.01
	Fixtures & Fittings - Kitchen and Bar	½ of 10%	22,495.20	1,124.76	21,370.44
20	Furniture & Fittings - General	½ of 10%	9,973.12	498.65	9,474.47
	Band Instrument	½ of 10%	4,538.07	226.90	4,311.17
	Linens		143.24	-	143,24
	Curtains		1,002.04	-	1,002.04
	Uniforms		784.60	-	784.60
	Spotlights	½ of 7½%	1,630.91	61.16	1,569.75
	Pool cues & bins		166.10	-	166.10
	Electrical Installations	½ of 7½%	2,534.39	94.66	2,439.73
			$73,466.71	3,228.46	$70,238.25
30	POOL TABLES	½ of 5%	$ 4,800.00	120.00	$ 4,680.00
	LEASEHOLD IMPROVEMENTS	½ of 20%	P$19,794.55	1,979.45	$17,815.10
	TOTAL DEPRECIATION			$5,327.91	

Exhibits

Exhibit 3B

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1974

Exhibit 3B - Balance Sheet and Accounts, Bali Hai Restaurant Ltd. Year to 31st December 1974

BALI HAI RESTAURANT LIMITED

BALANCE SHEET AS AT 31ST DECEMBER, 1974

CAPITAL			
Authorised: 50,000 shares of $1 each		$50,000.00	
Issued: 50,000 shares of $1 each fully paid			$50,000.00
PROFIT AND LOSS ACCOUNT			(20,970.92)
			$29,029.08
ADVANCE FROM SHAREHOLDERS			12,825.11
CURRENT LIABILITIES			
Golden Dragon Ltd. - Secured		$ 771.41	
Frank Ah Tong & Brothers - secured		3,996.19	
First National City Bank - Loan Account		-	
Trade creditors		35,337.08	
First National City Bank - Current Account - Secured		1,059.99	
			41,164.67
			$83,018.86

FIXED ASSETS	Cost	Provision for Depreciation	
Plant, fixtures, fittings, uniforms, crockeries and cutleries	$75,146.45	9,804.25	65,342.20
Pool tables	-	-	-
Leasehold improvements	20,403.36	6,060.12	14,343.24
	$95,549.81	$15,864.37	$79,685.44

CURRENT ASSETS		
Stock on hand	2,933.77	
Bank of New South Wales	53.15	
Cash on hand	100.00	3,086.92
FORMATION EXPENSES		246.50
		$83,018.86

Exhibits

Exhibit 3B

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1974 (continued)

(Sgd) J. Crawford .....Director

(Sgd) A. Qumi .....Director

The above balance sheet and attached trading accounts and profit and loss account have been prepared from the books and records of the company and from information supplied to us by its Managing Director.

We have not verified the assets and liabilities nor vouched the receipts and payments nor done anything in the nature of an audit of the accounts of the company.

COOPERS & LYBRAND
CHARTERED ACCOUNTANTS

Suva
13tth November 1975

BALI HAI RESTAURANT LIMITED

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER 1974

GROSS PROFIT FROM TRADING		
Liquor	$46,897.91	
Food	1,968.05	
Pools	1,182.12	
Cigarettes	2,597.62	$52,645.70
OTHER INCOME		
Cover Charge	$43,639.10	
Printing and Murals	-	
Subscription to Spotlight	-	
Sundry Income	4.10	43,643.20
		$96,288.90
EXPENSES		
Accounting and audit fees	800.00	
Advertising	2,693.30	
Bank charges	17.29	
Performance and entertainment fees	8,113.00	
Legal fees	847.20	
Licence fee	260.00	
Light and power	4,666.29	
Rent	22,300.00	
Freight	51.13	
Telephone and postage	237.05	
Forward		$96,288.90

Exhibits

Exhibit 3B

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1974 (continued)

Brought forward		$96,288.90
Stationery and printing	756.83	
Repairs and maintenance	4,411.67	
Water rates	487.24	
Interest	1,844.70	
General expenses	1,039.46	
Entertainment expenses	336.60	
Travelling expenses	1,030.00	
Wages	28,019.67	
Fiji National Provident Fund	1,252.50	
Directors salary	13,500.00	
Cleaning and laundry	936.09	
Hire of musical instruments	35.00	
Replacements	1,146.13	
Depreciation	10,656.46	105,437.61
LOSS FOR THE YEAR		$ 9,148.71
LOSS BROUGHT FORWARD FROM 1973		11,822.21
TOTAL LOSS CARRIED FORWARD		$20,970.92

BALI HAI RESTAURANT LIMITED

TRADING ACCOUNT FOR THE YEAR ENDED 31st DECEMBER 1974

LIQUOR

Sales		$100,319.38
Cost of Sales -		
Stock at 1st Jan.1974	$ 3,414.44	
Purchases	52,819.51	
	56,233.95	
Stock at 31st Dec.1974	2,812.48	53,421.47
Gross Profit 46.74%		$46,897.91

FOOD

Sales		$16,536.42
Purchases	$13,545.46	
Gas	1,022.91	14,568.37
Gross Profit 11.90%		$ 1,968.05

POOLS

Sales		$ 4,085.20
Expenses -		
Wages	846.83	
Basic tax and PAYE	19.75	
Fiji Nat.Provident Fund	56.50	
Loss on sale of pool tables	1980.00	2,903.08
Gross Profit 28.93%		$ 1,182.12

Exhibits

Exhibit 3B

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1974 (continued)

CIGARETTES

Sales		9,594.99
Cost of Sales -		
Stock at 1st Jan. 1974	$ 436.70	
Purchases	6,681.96	
	7,118.66	
Stock at 31st Dec. 1974	121.29	6,997.37
Gross Profit 27.07%		$2,597.62

BALI HAI RESTAURANT LIMITED
SCHEDULE OF FIXED ASSETS AND DEPRECIATION THEREON
31ST DECEMBER 1974

		W.D.V. 31/12/73	Additions (Sales)	Depreciation	W.D.V. 31/12/74
PLANT, EQUIPMENT, FIXTURES & FITTINGS					
Air Conditioner	10%	$17,527.50		$1,752.75	$15,774.75
Cool Room	10%	3,040.00		304.00	2,736.00
Adding Machine	10%	47.50		4.75	42.75
Cash Register NCR 72-3	10%	602.78		60.28	542.50
Cash Register NCR Class 24	10%	699.39		69.94	629.45
Water Heater Tank	10%	316.35		31.64	284.71
Electric Sign	7½%	882.64		66.20	816.44
Fan	10%	152.35		15.23	137.12
Stoves	10%	185.19		18.52	166.67
Crockery & Cutlery		5,523.01		-	5,523.01
Fixtures & Fittings -					
Kitchen & Bar	10%	21,370.44		2,137.04	19,233.40
Furniture & Fittings -					
General	10%	9,474.47		947.45	
Jan-Jun	20%		$228.36	45.67	
	10%			22.83	8,686.88
Band Instrument	10%	4,311.17		431.11	
Jan-Jun	20%		1,033.18	206.63	
	10%			103.31	
Jul-Dec	20%		215.00	43.00	
½ of	10%			10.75	4,764.55
Linens		143.24		-	143.24
Curtains		1,002.04		-	1,002.04
Uniforms		784.60	186.50	-	971.10
Spotlights	7½%	1,569.75		117.73	
Jul-Dec	20%		16.70	3.36	
½ of	7½%			.62	1,464.74
Pool cues & bins		166.10		-	166.10
Electrical Installations	7½%	2,439.73		182.98	2,256.75
		$70,238.25	1,679.74	$6,575.79	$65,342.20

Exhibits

Exhibit 3B

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., Year to 31st December 1974 (continued)

		W.D.V. 31/12/73	Additions (Sales)	Depreciation	W.D.V. 31/12/74
POOL TABLES					
Jan		$ 4,680.00			
			300.00		
			(4,980.00)	-	-
		$ 4,680.00	$4,680.00	-	-
LEASEHOLD IMPROVEMENTS	20%P	17,815.10		3,958.91	
	20%P		608.81	121.76	
		$17,815.10	$ 608.81	$4,080.67	$14,343.24
TOTAL DEPRECIATION				$10,656.46	

Exhibit 5

Balance Sheet and Accounts, Bali Hai Restaurant Ltd. as at 30th June 1975

Exhibit 5 - Balance Sheet and Accounts as at 30th June 1975

CAPITAL		
Authorised: 50,000 shares of $1 each	$50,000.00	
Issued: 50,000 shares of $1 each fully paid		$50,000.00
PROFIT AND LOSS ACCOUNT		(24,634.08)
		$25,365.92
ADVANCE FROM SHAREHOLDERS		17,135.51
CURRENT LIABILITIES		
Golden Dragon Ltd. - Secured	$ 809.91	
Frank Ah Tong & Brothers - Secured	2,947.17	
Trade Creditors	30,083.12	
First National City Bank - Current Account - Secured	492.23	34,332.43
		$76,833.86

Exhibits

Exbibit 5

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., as at 30th June 1975 (continued)

FIXED ASSETS	Cost	Provision for Depreciation	
Plant, fixtures, fittings, uniforms, crockeries etc.	$72,186.66	$12,534.69	$59,651.97
Leasehold Improvements	20,403.36	8,100.46	12,302.90
	$92,590.02	$20,635.15	$71,954.87
CURRENT ASSETS			
Stock on hand		2,490.34	
Bank of New South Wales		52.15	
Cash on hand		100.00	
Debtors & Prepayments		1,990.00	4,632.49
FORMATION EXPENSES			246.50
			$76,833.86

Sgd. A. Qumi .....Director

Sgd. J. Crawford .....Director

The above balance sheet and attached trading accounts and profit and loss account have been prepared from the books and records of the company and from the information supplied to us by its Managing Director.

We have not verified the assets and liabilities nor vouched the receipts and payments nor done anything in the nature of an audit of the accounts of the company.

COOPERS & LYBRAND
CHARTERED ACCOUNTANTS

SUVA
27th November 1975.

BALI HAI RESTAURANT LIMITED

PROFIT & LOSS ACCOUNT FOR SIX MONTHS ENDED 30TH JUNE 1975

GROSS PROFIT FROM TRADING		
Liquor	$25,650.31	
Food	2,609.68	
Cigarettes	1,744.77	$30,004.76

Exhibits

Exhibit 5

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., as at 30th June 1975 (continued)

Brought forward		$30,004.76
OTHER INCOME		
Cover Charge	$11,085.50	11,085.50
		$41,090.26
EXPENSES		
Accounting and Audit Fees	400.00	
Advertising	206.47	
Performance & entertainment fees	6,383.60	
Licence fee	200.00	
Light & Power	1,695.05	
Rent	9,000.00	
Fiji National Training Council	153.34	
Telephone & Postage	110.13	
Stationery and Printing	153.92	
Repairs & Maintenance	527.86	
Water Rates	249.08	
Interest	242.04	
General Expenses	708.46	
Entertainment Expenses	16.40	
Travelling Expenses	720.42	
Wages	12,609.90	
Fiji National Provident Fund	693.00	
Directors Salary	5,400.00	
Cleaning & Laundry	110.39	
Hire of Musical Instruments	64.00	
Replacements	338.58	
Depreciation	4,770.78	44,753.42
LOSS FOR THE YEAR		$ 3,663.16
LOSS BROUGHT FORWARD FROM 1975		20,970.92
TOTAL LOSS CARRIED FORWARD		$24,634.08

BALI HAI RESTAURANT LIMITED

TRADING ACCOUNT FOR SIX MONTHS ENDED 30TH JUNE 1975

LIQUOR

Sales		$48,815.71
Cost of Sales -		
Stock at 1st January 1975	$ 2,812.48	
Purchases	22,702.40	
	25,514.88	
Stock at 30th June 1975	2,349.48	23,165.40
Gross Profit		$25,650.31

Exhibits

Exhibit 5

Balance Sheet and Accounts, Bali Hai Restaurant Ltd., as at 30th June 1975 (continued)

FOOD			
Sales -			$ 3,488.89
Purchases	$ 710.24		
Gas	168.97		879.21
Gross Profit			$ 2,609.68
CIGARETTES			
Sales			$ 4,942.23
Cost of Sales -			
Stock 1st January 1975	$ 121.29		
Purchases	3,217.03		
	3,338.32		
Stock at 30th June 1975	140.86		3,197.46
Gross Profit			$ 1,744.77

BALI HAI RESTAURANT LIMITED

FIXED ASSETS AND DEPRECIATION THEREON 30TH JUNE 1975

	W.D.V. 31/12/74	Additions (Sales)	Depreciation	W.D.V. 30/6/75
PLANT, EQUIPMENT, FIXTURES & FITTINGS				
Air Conditioner ½ of 10%	$15,774.75		$ 788.73	$14,986.02
Cool Room ½ of 10%	2,736.00		136.80	2,599.20
Adding Machine ½ of 10%	42.75		2.13	40.62
Cash Register NCR 72-3 ½ of 10%	542.50		27.12	515.38
Cash Register NCR Class 24 ½ of 10%	629.45		31.47	597.98
Water Heater ½ of 10%	284.71		14.23	270.48
Electric Sign ½ of 7½%	816.44		30.62	785.82
Fan ½ of 10%	137.12		6.85	130.27
Stoves ½ of 10%	166.67		8.33	158.34
Crockery & Cutlery	5,523.01	$(250.00)		5,273.01
Fixtures & Fittings -Kitchen & Bar ½ of 10%	19,233.40	(3,190.00)	802.17	
½ of 20%		122.00	12.20	
½ of 10%			6.10	15,344.93
Band Instruments ½ of 10%	4,764.55		238.22	
½ of 20%		186.00	18.60	
½ of 10%			9.30	4,684.43

Carried forward

Exhibits

Exhibit 5

Balance Sheet and Accounts, Bali Hai Restaurant Ltd. as at 30th June 1975 (continued)

		W.D.V. 31/12/74	Additions (Sales)	Depreciation	W.D.V. 30/6/75
Brought forward					
Linens		143.24			143.24
Curtains		1,002.04			1,002.04
Uniforms		971.10			971.10
Spotlights	½ of 7½%	1,464.74		54.93	
	½ of 20%		172.21	17.22	
	½ of 7½%			6.46	1,558.34
Furniture & Fittings	½ of 10%	8,686.88		434.34	8,252.54
Pool Cues and Bins		166.10			166.10
Electrical Installations	½ of 7½%	2,256.75		84.62	2,172.13
		$65,342.20	($2,959.79)	$2,730.44	$59,651.97
LEASEHOLD IMPROVEMENTS	½ of 20%P	$14,343.24		$2,040.34	$12,302.90
TOTAL DEPRECIATION				$4,770.78	

IN THE PRIVY COUNCIL NO. 12 of 1977

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

IN THE MATTER OF BALI HAI RESTAURANT LIMITED

- and -

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 216

B E T W E E N :

BALI HAI RESTAURANT LIMITED APPELLANT

- and -

RAVENDRA KUMAR AND JAFFAR ALI RESPONDENTS

RECORD OF PROCEEDINGS

Philip Conway Thomas & Co.
61 Catherine place
London,
SW1E 6HB

Solicitors for the Appellant