

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF MAURITIUS
COURT OF CIVIL APPEAL

JCPC Case ID: JCPC/2025/0070

IN THE MATTER OF:

EGALLYS LIMITED

Appellant

and

THE INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY

Respondent

STATEMENT OF FACTS AND ISSUES

*References below to the Consolidated Reproduced Record are in the form
[tab/page/paragraph].*

A. FACTUAL BACKGROUND

(i) The Parties

1. The Appellant, Egallys Limited (**Egallys**)¹, is a company incorporated in Mauritius on 29 July 2010. At all material times Mr. J.C.T. Esteves was the majority shareholder and the sole director of Egallys.

¹ References in this Statement of Facts and Issues to acts of or on behalf of “the Appellant” or “Egallys” are without prejudice to the Respondent’s contention that at all material times Mr. Esteves lacked power and/or authority to cause Egallys to commence and continue the Set Aside Application (as defined below) and make affidavits in support of it.

The Appellant does not accept that this was the premise of the Respondent’s objection below or of the decisions below. The Appellant’s position, which is accordingly reserved, is that the proceedings were

2. The Respondent, the Information and Communication Technologies Authority (the **ICT Authority**), is a body corporate established by section 4 of the Information and Communication Technologies Act 2001 (the **ICT Act**). The ICT Authority is the national regulator for the information and communication technologies sector in Mauritius. One of its functions is to administer a licencing system for the operation of information and communication networks and services in Mauritius.
3. Egallys held an International Long Distance (ILD) Network Licence issued by ICT Authority under section 24 of the ICT Act on 27 August 2013 and valid for 15 years with effect from 19 August 2013 (the **ILD Licence**). The licence issued to Egallys authorised the company to establish, install, operate and maintain, on a non-exclusive basis, an International Long Distance Network for the supply of international long-distance communication services to the public, subject to the terms and conditions set out in the ILD Licence.

(ii) The statutory demand

4. The terms of the ILD Licence required Egallys to pay licence fees to the ICT Authority. On 4 August 2020, the ICT Authority caused a statutory demand to be served on Egallys pursuant to section 180 of the Insolvency Act 2009, claiming the sum of Rs 14,066,666.68 in respect of alleged unpaid licence fees, plus attorney's commission, VAT and costs relating to the demand [2/2/4].

(iii) Proceedings before the Bankruptcy Division

5. On 28 August 2020, an application to set aside the statutory demand was filed in the name of Egallys in the Bankruptcy Division of the Supreme Court of Mauritius

commenced in the name of Egallys by its attorney-at-law, and that the issue below concerned Mr Esteves' authority to represent Egallys and/or to make affidavits on its behalf.

pursuant to section 181 of the Insolvency Act 2009 (the **Set Aside Application**) [1/7]. The Set Aside Application was supported by a founding affidavit sworn by Mr. Esteves [2/2].

6. In his founding affidavit, Mr. Esteves stated that he was “*the director*” of Egallys and that he was duly authorised to make the affidavit on behalf of the company [2/2/1]. He also gave his place of residence as 40 Rue de la Caravelle, Mont-Calme, 90905 Tamarin [2/2].
7. The ICT Authority, in resisting the Set Aside Application, stated in its affidavit evidence served in response to the application that that no document had been annexed to the founding affidavit in support of the averment that Mr. Esteves had been duly authorised to affirm the affidavit on behalf of the Appellant [3/6/4].
8. Mr. Esteves thereafter filed a second affidavit dated 30 December 2020 in which he stated that he was “*the sole director*” of Egallys and that he was “*by law*” authorised to make the affidavit on its behalf [4/11//1].
9. In response to that second affidavit, the ICT Authority took note of that averment [8/19/4].
10. No documentary evidence relating to the issue of Mr. Esteves’s authority was annexed to either any of his affidavits.
11. The Set Aside Application before the Bankruptcy Division of the Supreme Court was set down to be heard on the merits on 15 June 2022 [13/58].
12. On 7 June 2022, the ICT Authority, by way of written submissions, raised two preliminary objections to the Set Aside Application [14/60-62].
13. The first preliminary objection, which forms the basis of this appeal, concerned the authority of Mr. Esteves to represent Egallys and/or make any affidavits on its

behalf in support of the application. The ICT Authority submitted that there was no evidence that Mr. Esteves' was ordinarily resident in Mauritius (contrary to the requirement under section 132 of the Companies Act 2001 (the **Companies Act**) that a company must have at least one director so resident) and no document proving his authority to represent Egallys or to make affidavits on its behalf [14/60-61/11-12].

14. The second preliminary objection was that the Set Aside Application had been made after the deadline for doing so under section 181(2) of the Insolvency Act 2009 (the **Insolvency Act**) had expired [14/61-62/15-19].
15. On 13 June 2022, written submissions were filed in response to the ICT Authority's preliminary objections [18/69-76]. The Appellant made a motion for the ICT Authority's affidavits to be disregarded [18/70], and for the Set Aside Application to be granted with costs, unless the ICT Authority produced documentary evidence showing that Mr. Bhoolah, the ICT Authority's Director of Finance and Administration who had affirmed the affidavits filed and served on behalf of the ICT Authority, had the requisite authority at the material times to make the Respondent's affidavits.
16. In a judgment delivered on 4 May 2023 [21/92-96], the Bankruptcy Division (the Honourable P.D.R. Goordyal-Chitto, Judge) dealt first with the preliminary objections advanced by the ICT Authority. The Court rejected the ICT Authority's second preliminary objection (i.e. that the Set Aside Application had been made after the deadline for setting aside the statutory demand but upheld its first preliminary objection (i.e. that Mr. Esteves's authority to represent and make affidavits on behalf of Egallys had not been proved).
17. In relation to the first preliminary objection, under the heading "Findings" [21/94], the Bankruptcy Division held as follows:

“Albeit the provisions of section 128(7)(b) of the Companies Act, the Court has not been favoured with any evidence in support of the fact that the deponent, Mr. Esteves, has been duly authorised to swear affidavits on behalf of the applicant. Neither has there been any document attached to the said affidavits showing that Mr. Esteves has been appointed to represent the applicant or to swear affidavits on its behalf. In the circumstances, I hold that the first preliminary objection raised on behalf of the respondent as regards locus of the applicant is well taken and should succeed.”

18. The Bankruptcy Division dismissed the Set Aside Application and ordered Egallys to pay the amount of Rs 14,066,666.68, together with attorney’s commission as set out in the statutory demand by the end of November 2023 failing which the ICT Authority could apply to put Egallys into liquidation on the ground that it was unable to pay its debts as they became due in the ordinary course of business.

(iv) Proceedings before the Court of Civil Appeal

19. On 22 May 2023, an appeal against the judgment of the Bankruptcy Division was made in the name of Egallys to the Court of Civil Appeal of the Supreme Court of Mauritius [23/100].
20. The appeal was heard on 9 September 2024 before the Honourable Mrs. B.R. Mungly-Gulbul, Chief Justice, and the Honourable Mr. M.I.A. Neerooa, Judge [27/127].
21. Four grounds of appeal were initially lodged on behalf of Egallys [22/97-99], of which only the first three were pressed before the Court of Civil Appeal. The grounds pressed were directed against the Bankruptcy Division’s decision to dismiss the application on the ground that there was no document indicating that

Mr. Esteves had been duly authorised or appointed to represent Egallys or swear affidavits on its behalf.

22. The first ground of appeal was that the Bankruptcy Division had erred in allowing the ICT Authority to pursue its preliminary objection challenging Mr. Esteves' authority and to swear affidavits on behalf of the Egallys [43/327].
23. The second ground of appeal was that the Bankruptcy Division erred in dismissing the Set Aside Application on the ground of Mr Esteves' lack of authority to swear affidavits on behalf of the Appellant [22/98].
24. The third ground of appeal was that the Bankruptcy Division erred in accepting the ICT Authority's argument that Mr Esteves had to produce a board resolution of Egallys authorising Mr Esteves to swear affidavits on behalf of the Appellant [22/98].
25. By judgment delivered on 1 November 2024, the Court of Civil Appeal dismissed the appeal with costs [28/140-150].
26. The Court of Civil Appeal held that the management of a company is vested in the board, and that a director of a company is mandatorily required by the provisions of section 143(1)(a) of the Companies Act to exercise his powers in accordance with the Act and within the limits of the constitution of the company, and in the manner provided for in the Act. The Court of Civil Appeal further held that for the purposes of litigation by a company it is generally the board of directors which has authority to act in the name of the company.
27. The Court of Civil Appeal held that a director may therefore only institute proceedings on behalf of a company by showing that he has been validly delegated with the power to do so, whether by the company's ,by virtue of a power of attorney,

or by a resolution or decision duly taken by the board in conformity with the Companies Act.

28. The Court of Civil Appeal held that there was no exceptional situation or specific provision in the Companies Act entitling or empowering the sole director of a company to institute legal proceedings otherwise than in conformity with the provisions set out in its judgment.
29. The Court of Civil Appeal therefore held that, since there was no evidence indicating that Mr. Esteves was lawfully authorised by Egallys to enter the application and act on its behalf for the purposes of the proceedings, the Bankruptcy Division could not be faulted for setting aside the application.
30. The Court of Civil Appeal also rejected the Egallys' submission that Mr. Esteves' authority had not been properly disputed in the affidavits. The Court held that the ICT Authority had, from the outset, raised the absence of documentary proof of authority.
31. The Court of Civil Appeal further held that proceedings commenced without proper authority are not void ab initio and the company may ratify an unauthorised act by passing a subsequent resolution granting the required authority and that the issue of Mr Esteves' authority could simply have been addressed and rectified in the course of the hearing and that there was ample opportunity to produce a board resolution, power of attorney or rely upon the provisions of the constitution of the company, if any, once the issue had been raised by the ICT Authority in its first affidavit as early as on 14 October 2020 and that this had not been done. The Court of Civil Appeal held accordingly that Egallys had not been deprived of a fair opportunity to address the issue of Mr. Esteves' authority. The Court of Civil Appeal highlighted that it was never the case before the trial court that Mr Esteves should be afforded an opportunity to produce evidence of his authority to represent the company.

32. The Court of Civil Appeal amended the date inserted in the order of the Bankruptcy Division by requiring Egallys to pay the amount of Rs 14,066,666.68, together with attorney's commission as set out in the statutory demand, by the end of November 2024, failing which the ICT Authority could apply to put Egallys into liquidation on the ground that it was unable to pay its debts as they became due in the ordinary course of business.
33. On 15 November 2024, leave to appeal to the Board against the judgment of the Court of Civil Appeal was sought in the name of Egallys [29/151].
34. On 12 February 2025, leave to appeal to the Board was granted [33/158].

B. ISSUES BEFORE THE BOARD

35. The issues in the appeal are as follows:
 - (a) Whether the Court of Civil Appeal erred in holding that Mr. Esteves² was required to produce a board resolution, power of attorney, constitutional provision or other documentary authorisation in order to represent the Appellant and/or swear affidavits on its behalf.
 - (b) Whether, on the proper construction of section 128(7)(b) of the Companies Act 2001, the question of delegation of authority from the Board to Mr. Esteves could arise at all, where Mr. Esteves was the sole director of the Appellant and was therefore, by law, the Board of the Appellant.
 - (c) Whether the Court of Civil Appeal failed to give proper effect to sections 128(7)(b) and 129 of the Companies Act 2001, and to the legal

² The Appellant contends that Mr. Esteves's status as sole director of Egallys was not in dispute below. The Respondent does not agree that Mr Esteves' status as sole director was not in dispute below and reserves its position accordingly.

consequence that the sole director of a one-director company is the Board for the purpose of managing the business and affairs of the company.

In respect of the validity of the application

- (d) Whether the Court of Civil Appeal erred in treating the absence of documentary evidence of Mr. Esteves' authority as fatal to the Appellant's application under section 181 of the Insolvency Act 2009.
- (e) Whether the absence of a board resolution or other documentary authorisation, if required, affected the validity of the application itself, where the application had been entered by the attorney-at-law acting for the Appellant and where Mr. Esteves' affidavit was evidence filed in support of that application.
- (f) Whether the issue was properly to be approached as a question concerning the validity of the application, or instead as a question concerning the authority, admissibility or weight of the affidavit evidence filed in support of the application.
- (g) Whether, as the Respondent contends, the Appellant conceded³ before the Court of Civil Appeal that the issue of Mr Esteves's authority to represent Egallys and make affidavits on its behalf was one of pure fact, the issue was the Court of Civil Appeal's conclusion that the Bankruptcy Division was correct in finding that Mr. Esteves lacked such authority can only be overturned if it is shown to be plainly wrong and, if so, whether that conclusion was plainly wrong.

³ The Appellant does not agree with this characterisation. The Appellant's case was that the factual issue was whether Mr Esteves was the sole director of Egallys, which had not been properly traversed or made a fact in issue. The appeal then raised the separate legal question as to the consequences of that fact under the Companies Act.

- (h) Whether the Respondent should be permitted (a) to advance the contention that, in light of the requirement under paragraph 19.4 of Egallys' constitution and/or clause 4 of the Eighth Schedule to the Companies Act, the board of Egallys was inquorate and therefore unable to authorise the Set Aside Application and evidence filed in support of it and (b) to adduce such a copy of Egallys's constitution; and in the event that permission is granted whether the board of Egallys was inquorate and therefore unable to authorise the Set Aside Application and evidence filed in support of it.⁴

In respect of whether Mr. Esteves' authority was in issue

- (i) Whether the Court of Civil Appeal erred in holding that Mr Esteves' authority had been sufficiently challenged by the ICT Authority in the exchange of affidavits.

In respect of ratification, fairness and proportionality

- (j) Whether, if documentary authorisation was required, the courts below ought, having regard to all the circumstances of the case, to have afforded the Appellant an opportunity to produce such authorisation or otherwise ratify Mr. Esteves' authority before dismissing the application.
- (k) Whether the dismissal of the Appellant's application to set aside the statutory demand, without determination of its merits, was disproportionate or unjust having regard to all the circumstances of the case.

In respect of relief

⁴ This was not an issue before the Court of Civil Appeal and the Respondent has applied in its Written Case for permission to advance this argument before the Board. Its inclusion as an issue in the appeal is subject to the Board permitting that argument to be advanced.

- (I) If the appeal is allowed, what order the Judicial Committee ought to make, including whether the application under section 181 of the Insolvency Act 2009 should be remitted to the Bankruptcy Division of the Supreme Court of Mauritius for determination on its merits.

C. CHRONOLOGY

Date	Event	Record Reference
4 August 2020	The ICT Authority served a statutory demand on the Appellant under section 180 of the Insolvency Act 2009, claiming Rs 14,066,666.68 in alleged unpaid International Long distance licence fees, together with attorney's commission, VAT and costs.	Pages 13 & 14
28 August 2020	The Set Aside Application was filed before the Bankruptcy Division of the Supreme Court of Mauritius under section 181 of the Insolvency Act 2009 to set aside the statutory demand.	Page 7
14 October 2020	The ICT Authority filed its first affidavit in response, raising, among other matters, the absence of documentary proof that Mr. Esteves was authorised to affirm the founding affidavit on behalf of Egallys.	Page 44
30 December 2020	A further affidavit affirmed by Mr. Esteves was filed. In that affidavit, Mr. Esteves averred that he was the sole director of the Appellant and that he was, by law,	Page 52

	authorised to make the affidavit on its behalf.	
7 June 2022	The ICT Authority filed its written submissions raising preliminary objections.	Pages 278 – 284
13 June 2022	Written submissions were filed in reply to the preliminary objections and challenging the authority of the ICT Authority's deponent to make affidavits on the ICT Authority's behalf.	Pages 290 – 293
15 June 2022	The Set Aside Application was heard before the Bankruptcy Division.	Page 298
4 May 2023	The Bankruptcy Division delivered judgment dismissing the Set Aside Application on the basis that that documentary evidence establishing Mr. Esteves' authority to represent Egallys and make affidavits on its behalf had not been produced.	Pages 314 – 318
22 May 2023	Mr Esteves filed an appeal in the name of Egallys against the Bankruptcy Division's order dismissing the Set Aside Application.	Page 323
9 September 2024	The appeal was heard before the Court of Civil Appeal.	Page 361
1 November 2024	The Court of Civil Appeal delivered judgment dismissing the appeal with costs and amending the date for payment under the order below to the end of November 2024.	Pages 376 – 386
15 November 2024	Leave to appeal the Court of Civil Appeal's decision to the Board against the judgment of the Court of Civil Appeal was sought.	Page 388
12 February 2025	Leave to appeal to the Board was granted.	Page 425

D. COUNSEL

For the Appellant:

Mr. Vimalen Reddi & Mr. Ashvan Luckraz of Counsel

Mrs. Ayesha Jeewa, Senior Attorney

For the Respondent:

Mr Andrew McLeod

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF MAURITIUS**

Appeal Number: JCPC/2025/0070

EGALLYS LIMITED

APPELLANT

v

INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY

RESPONDENT

PRÉCIS

1. This appeal concerns the authority of the sole director of a company to represent the company and swear affidavits on its behalf in court proceedings.
2. The Appellant is Egallys Limited. At all material times, Mr J.C.T. Esteves was the majority shareholder of Egallys and its sole director.
3. The Respondent is the Information and Communication Technologies Authority, a body corporate established under the Information and Communications Technologies Act 2001 as the national regulatory authority in Mauritius for the information and communication sector.
4. On 4 August 2020, the Respondent served a statutory demand on the Appellant under section 180 of the Insolvency Act 2009, claiming Rs 14,066,666.68 in respect of alleged unpaid International Long distance licence fees, together with attorney's commission, VAT and costs.
5. On 28 August 2020, the Appellant applied under section 181 of the Insolvency Act 2009 to have the statutory demand set aside. In the course of the application, the Respondent sought to challenge the authority of Mr Esteves to represent and act as deponent for the Appellant, in the absence of any document from the Appellant's Board appointing him to represent the Appellant or swear affidavits on its behalf.
6. By judgment delivered on 4 May 2023, the Bankruptcy Division upheld that objection. It held that the Court had not been provided with evidence that Mr Esteves was authorised to swear affidavits on behalf of the Appellant, nor any document showing that he had been appointed to represent the Appellant or swear affidavits on its behalf. The application to set aside the statutory demand was therefore dismissed without determination of its merits.
7. The Appellant appealed to the Court of Civil Appeal. By judgment delivered on 1 November 2024, the Court of Civil Appeal dismissed the Appellant's appeal. It held, in substance, that the Appellant had not produced evidence showing that Mr Esteves had been lawfully authorised to enter the application and act on its behalf.
8. The principal issue before the Board concerns whether Mr Esteves had power or authority to act as the Appellant's representative in proceedings and affirm affidavits on its behalf in support of those proceedings. The appeal also seeks to raise issues whether the Court of Civil Appeal was correct in determining that Mr Esteves' authority was properly in issue before the Bankruptcy Division and that the application should be dismissed without a determination of its merits.