

TANZANIA / JUDGMENT

centre stage productions ltd vs commissioner general tra 2023 tzhccomd 112 20 april 2023

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TZHCCOMDDECIDED
20 April 2023

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM WINDING UP CAUSE NO. 22 OF 2022 IN THE MATTER OF COMPANIES ACT [CAP 212 R.E 2019] AND IN THE MATTER OF PETITION FOR WINDING UP OF CENTRE STAGE PRODUCTIONS LIMITED..... PETITIONER VERSUS COMMISSIONER GENERAL TANZANIA REVENUE AUTHORITY.....RESPONDENT WINDING UP PETITION

RULING

A.A, MBAGWAJ. This is a ruling in respect of a petition for voluntary winding up of a company. The Petitioner, CENTRE STAGE PRODUCTIONS LIMITED filed this petition under sections 281(1) and 279(l)(a), (b) and (e) of the Companies Act praying for the following reliefs;

- i. That the petitioner be wound up by the court under the provisions of the Companies Act. /
- ii. That the official receiver be appointed by the court. i iii. Any other order as this honourable court deems just and equitable to grant. The statements in the petition were verified by an affidavit sworn by Magreth Wilson Chacha, one of the directors and shareholders of the petitioner company who stated that she is well acquainted with the day-to-day activities of the petitioner company. The respondent did not file counter affidavit nor did it enter appearance during hearing. The brief background of the petition is that the petitioner herein Centre Stage Productions Limited is a registered company with registration No.111190. It was incorporated on 12th September 2014 and its address is P.O. Box 6519, Jamhuri Street, at Plot No.2300/13 Block "E" House No. 192 situated within Ilala District in Dar es Salaam region, Tanzania. The nominal capital for the petitioner was Tsh. 100,000,000/= divided into 10,000 shares of 10,000/= each. The amount of the capital paid or credited as paid-up shares was Tsh. 10,000,000/= subscribed in the following order; Magreth Wilson Chacha 800 shares worth TZS. 8,000,000/= and Serena Fredrick Diaz Shao 200 shares worth TZS. 2,000,000/=. The principal objectives of the petitioner include carrying out the events management and business solutions, material solutions, public relations, business entertainment, brand building, promotions, advertisements and other related activities. All the same, the petitioner 2 failed to effectively run its day-to-day business activities hence

became unable to pay its debts thereby leading to file the present petition for winding up. Upon filing this petition, the petitioner was ordered, in terms of rule 99 of the Company Insolvency Rules to advertise it in the widely circulated newspapers. As such, through Daily News Newspapers dated 29th October 2022 and Mwananchi Newspaper dated 25th October 2022, the petitioner advertised the petition. As no objection was filed against the petition, on 14th February, 2023 the matter was called on for hearing and it proceeded exparte. During the hearing, the petitioner was represented by Mr. Ally Hamza, learned advocate. Submitting in support of the petition, the learned advocate adopted the petition with its annexures. The learned counsel told the court that the petition has been made under sections 281(1) and 279(l)(a), (b) and (e) of the Companies Act. Mr. Ally Hamza outlined two grounds which triggered the petition at hand. One, he elaborated that the company is unable to pay its debts as it has an outstanding debt from Tanzania Revenue Authorities in the sum of Tshs. 150,256,278.44 being principal tax and interest thereof. Two, the learned counsel stated that the company has suspended its business since 24th April, 2020 and took 3 r efforts to notify the Tanzania Revenue Authority via a letter (annexure centre 5). In addition, the petitioner claimed that the company has neither savings, cash flow, nor assets as indicated in the petition. The learned counsel continued that the petitioner has complied with rule 99(1) and (2) (a) of the Companies Insolvency Rules by advertising the petition through Daily News Newspapers dated 29th October 2022 and Mwananchi Newspaper dated 25th October 2022. Citing the cases of the Peter C. Pereira and Another vs Isle of Germs, Misc. Civil Cause No. 16 of 2019, High Court at Arusha and Bizazine Company Limited, Misc. Civil Cause No. 224 of 2020, High Court at Dar es Salaam, the counsel submitted that the company may be wound up voluntarily upon passing a special resolution to that effect. In fine, the counsel implored this court to find the petition meritorious and consequently grant the reliefs sought. Having heard the submissions by the petitioner's counsel and upon scanning the depositions along with their annexures, the pertinent issue for determination is whether the petitioner has given the sufficient reasons for the court to issue a winding up order. Through the petition, affidavit of Magreth Wilson Chacha and the counsel's submissions, the petitioner demonstrated that petitioner company owes Tanzania Revenue Authority (TRA) a sum of Tsh. 150,246,278.44/= being principal tax and interest thereof which it is unable to pay. It was further stated that the company was served with an immediate demand notice dated 19th April 2022 directing it to pay the said sum, failure of which recovery measures would be instituted without further notice. The petitioner referred this court to the correspondences between Tanzania Revenue Authority and the petitioner company including demand notice with reference number TRA/IU\1_A/AUD/MTU/TIN 124-987-783 which was attached to the petition and marked annexure Centre-4. More so, the petitioner contended that she has suspended its business since 24th April 2020 and a notification of the suspension was submitted to Tanzania Revenue Authority on 30th April 2020. To buttress its assertion, the petitioner referred the court to the said notification which was attached to the petition and marked annexure Centre 5. Finally, the petitioner stated that it has no savings or cash flow nor does it have assets that can enable it to effectively continue with its business and eventually settle the outstanding debts. I have had an

occasion to scan and analyse the grounds for winding up together with the evidence produced before this court. It is uncontested that the petitioner has outstanding debts and on top of that, it has suspended its business as exhibited via a notification to Tanzania Revenue Authority (annexure Centre 5). Following the dire business situation which the company experienced, the board decided to pass a special resolution to wind up the company as evidenced through annexure 6. Section 279 (1) of the Companies Act provides the grounds for winding up. For purposes of clarity, I find it apt to reproduce it. "279-(1) A company may be wound up by the court if -

- (a) the company has by special resolution resolved that the company be wound up by the court;
 - (b) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
 - (c) the number of members falls below two;
 - (d) the company is unable to pay its debts;
 - (e) the court is of the opinion that it is just and equitable that the company should be wound up."
- Having considered the above, it is common cause that the circumstances of this petition as stated, fall squarely within the purview of section 279
- (1) of the Companies Act. It has been established that the company has suspended its business following the business difficulties it encountered. As such, it became unable to discharge its debts including Tsh. 150,246,278.44/= which it owes Tanzania Revenue Authority. In the result, the company's board resolved to pass a resolution for winding up. 6 On the above account, I am of the unfeigned view that the petitioner, in terms of sections 281(1) and 279(1)(a)(b)(c)(d)(e) of the Companies Act and rule 99(1) and (2) of the Company Insolvency Rules, has complied with all legal prerequisites for winding up. Consequently, I am satisfied that the petitioner's grounds are sufficient to warrant issuance of a winding order. In the event, I find this petition meritorious and consequently, pursuant to section 279(1)(e) of the Companies Act, I hereby grant an order for winding up the petitioner company, CENTRE STAGE PRODUCTIONS LIMITED. In consequence thereof, I hereby appoint Mr. Gasper Nyika the official receiver of the company in terms of section 291 of the Companies Act. No order as to costs. 7

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/commissioner-general-tanzania-revenue-authority-windingupofcompanies-tzhccomd-2023

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