

TANZANIA / JUDGMENT

in the matter of companies act 2002 and in the matter of wilex auto trading ltd 2023 tzhccomd 251 31 july 2023

COURT
TZHCCOMDDECIDED
31 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM MISC. COMMERCIAL CAUSE NO. 12 OF 2023 (Pursuant to section 281(1), 279(1) (a), (b), (d), (e) of the Companies Act 2002) IN THE MATTER OF COMPANIES ACT 2002 [CAP 212] AND IN THE MATTER OF WILEX AUTO TRADING LIMITED TO: THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) DAR ES SALAAM

RULING

A.A, MBAGWAJ. This is a ruling in respect of a petition for voluntary winding up of a company. The Petitioner, WILEX AUTO TRADING LIMITED filed this petition under sections 281(1) and 279(1)(a), (b) (d) 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, Advocate Steven Frank Mhando be appointed as the official receiver. (iii) Any other order as this Honourable Court deems just and equitable to grant. i The statements in the petition were verified by an affidavit sworn by Mariam Nasor Suleiman, one of the two directors and shareholders of the petitioner company. The deponent stated that she is well acquainted with the day-to-day activities of the petitioner company. As such, she confirmed to the Court that the statements contained in the petition are true. The petition was not opposed. According to the petition, petitioner herein WILEX AUTO TRADING LIMITED is a registered company with Registration No.111190. It was incorporated on 19th day of June, 2008 with its office address P.O. BOX 3810, Msimbazi Road Kariakoo, Plot No. 2, Block 'M' Ilala Ward within Ilala District in Dar es Salaam. It is further stated that the share capital of the petitioner is TZS 400,000,000/= divided into 20,000 shares with the value of TZS 20,000/= each. The amount of capital paid up or credited as paid up is TZS 168,000,000/= subscribed as follows;

1. Mariam Nasor Suleiman with 8000 shares TZS 160,000,000/=

2. Siraji Mashaka Mbugi 400 share TZS 8,000,000/= It is stated that the petitioner failed to carry out its objects due to running at loss thereby failing to pay its debts. According to the petition, the petitioner is indebted to its employees in the sum of TZS 60,550,000/= being the outstanding salaries decreed by the Court in an Application for Execution No. 202 of 2022 (High Court, Labour Division). The petitioner further averred that it has no savings, cash flow or assets that can enable it to clear the outstanding debts and continue with the business. As such, the petitioner through its special board resolution passed on 31st January, 2023 resolved to wind up the Company through the Court. Upon filing this petition, the petitioner was ordered, in terms of Rule 99 of the Companies (Insolvency) Rules to advertise it in the widely circulated newspapers and Government Gazette. The petitioner duly complied with the Court order as on 12th May, 2023 and 14th May, 2023 advertised the petition in Government Gazette No. ISSN 0856-0323 and Nipashe Newspaper respectively. As no objection was filed against the petition, on 31st May, 2023 the Court ordered the petitioner to file written submissions in support of the petition. Mr. Adrian Mhina, learned counsel for the petitioner was so brief and focused in his submission. He said that the petitioner has met the requirements made under Section 279(1)(a) (b), (d) and (e) of the Companies Act. He elaborated that the company is unable to pay its debt and for that reason it has resolved, by a special resolution, to wind up the company. In addition, the counsel said that the requirements of Rule 99(1) and (2) (a) of the Companies (Insolvency) Rules, on advertising the petition was also complied with. He finally implored the Court to grant the orders sought. 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 stopped its operations since 25th July, 2016 as indicated in the special board resolution. Section 279 (1) of the Companies Act provides the grounds for winding up. For purposes of clarity, I find it apposite 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, squarely fit under section 279 (1) of the Companies Act. All the above considered, 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 Companies (Insolvency) Rules, has complied with all the legal prerequisites for winding up. Consequently, I am satisfied that the petitioner's grounds are sufficient to warrant issuance of a winding up 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, WILEX AUTO TRADING LIMITED. In consequence thereof, I hereby appoint Advocate Steven Frank Mhando the official receiver of the company in terms of section 291 of the Companies Act. No order as to costs. It is so ordered. A.A. Mbagwa JUDGE 31/07/2023 5

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Prepared on 13 October 2026 · Esheria