

TANZANIA / JUDGMENT

in the matter of companies act of 2002 and in the matter of petition for winding up of china chang group ltd 2018 tzhccomd 17 13 february 2018

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13 February 2018

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT OAR ES SALAAM WINDING UP CAUSE NO. 113 OF 2017 IN THE MATTER OF COMPANIES ACT OF 2002 AND In the matter of Petition for Winding Up of CHINA CHANG GROUP LIMITED PETITIONER

JUDGMENT

Date of the Last Order: 09/02/2018 Date of the Judgment 13/02/2018 SEHEL, J. This is a judgment on a petition for winding up China Chang Group Limited, a limited liability company incorporated through a Certificate of Registration No. 101896 with its registered office at Plot No. 32 Ismailia Street, Chang'ombe, Oar es Salaam. The petition is presented by the Company under Section 279 (1) (a) of the Companies Act of 2002 after a duly special resolution had been ~ 1 passed for the company to be wound up by the Court due to the reason that it is trading under loss. After filing the petition, pursuant to Rules 96 and 98 of the Companies (Insolvency) Rules GN 34 of 2014 a direction was given that the petition be served upon the Directors, Contributory, and Creditors of the Company and the registrar of the companies. It was further directed that the petitioner under Rule 99 (2) (b) of the Companies (Insolvency) Rules GN 34 of 2014 shall make an advertisement in the gazette or newspaper not less than seven working days after service of the petition and that a Certificate specifying the manner of advertisement be filed in court pursuant to Rule 102 of the Companies (Insolvency) Rules GN 34 of 2014. The petition was then fixed for hearing. At the hearing of the petition, no objection was filed thus the sole counsel for the petitioner, Mr. Taher Hussein Muccadam who appeared on behalf of the petitioner submitted that the company was incorporated on 27th August, 2013 with nominal share capital of 100 million divided into 10,000 shares of 100,000 each and that it was 2 ~ carrying a business of aluminium, glassworks, steel sheets, and alloys products. He said in 2015 the business began to fluctuate that prompted the management to hold a meeting wherein a special resolution was passed that the director to make petition to the court for winding up the company. The counsel submitted that the company is running at loss such that it is unable to pay its debts as evidenced

by its audited financial statement which is attached to the petition. He said the petitioner has to date failed to make payments to its creditors. He therefore prayed for the company to be wound up because the survival of it depends upon its financial capabilities as it was held in the case of Shell Tanzania Limited Vs Scandinavian Express Services Limited, Misc. Commercial Case No. 36 of 2005 (Unreported). I have carefully followed the submissions made by counsel Muccadam representing the petitioner and I gathered that he is inviting this Court to issue an order of winding up of the petitioner. Section 279 of the Companies Act of 2002 provides that a company may be wound up by the court if the company has by a special resolution resolved that the company be wound up by the court and that such company is unable to pay its debts. Section 280 of the Companies Act of 2002 outlines the circumstances in which a company may be deemed to be unable to pay its debts. The circumstances are when a notice is served upon the company making a demand of a debt exceeding fifty thousand Tanzanian shillings then due and requiring the company to pay the same and the company has for a period of 3 weeks or twenty one days neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; and that the value of the company's assets is less than the amount of its liabilities (including contingent and prospective). As I said the petition was filed following the special resolution passed by the company directing the director to file to this Court a petition for winding up. The said resolution was passed on 10th day of April, 2017 and it is attached to the petition. Further, the petition is attached with its audited financial statement ending 31st day of December, 2015 that shows its total assets is less than its liabilities ~ 4 (both contingent and prospective liabilities) as such it cannot meet its debts due. Having taken all these matters into account, I am satisfied this is the fit case to grant the prayers made as such the petition is hereby allowed and the following orders are made:-

- 1) The petitioner, China Chang Group Limited with Certificate of Incorporation No. 101896 is hereby wound up under the provisions of Section 279 (1) (a) and (d) of the Companies Act of 2002;
- 2) In terms of Sections 294 of the Companies Act of 2002; Mr. Hans Francis Mamuya is do hereby appointed to act as official liquidator of the company for a period of three months within which he shall, subject to the control of the court, exercise all the powers enumerated under Sections 299, 300, 301, 302, 303, 304, and 306 of the Companies Act Of 2002; ~ 5
- 3) The official liquidator upon realising all the property of the company or in his opinion there is no need of protracting liquidation, and has distributed a final dividend, if any, and adjusted the rights of the contributories and made a final return, if any, to the contributories, shall cause and file in court a report on his accounts for his release according to the provisions of Section 307 of the Companies Act No. 12 of 2012.
- 4) No order for costs is made since there is no objection filed. It is so ordered. Dated at Dar es Salaam this 13th day of February, 2018. B.M.A Sehel JUDGE 13th day of February, 2018. 6

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