

TANZANIA / JUDGMENT

miniso tanzania company limited

2021 tzhccomd 3378 3 november 2021

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TZHCCOMDDECIDED
3 November 2021

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM WINDING UP CAUSE NO. 4 OF 2021 IN THE MATTER OF THE COMPANIES ACT (CAP 212 R.E.2019) AND IN THE MATTER OF PETITION FOR WINDING UP OF MINISO TANZANIA COMPANY LIMITED..... PETITIONER

JUDGMENT

K. T. R. Mteule, J 28/09/2021 & 3/11/2021 This winding up petition has been filed at the instance of Miniso Tanzania Company Limited, the petitioner seeking for her winding up under Section 279 (1) (a) (d) and section 281 of the Companies Act, CAP 212 R.E

2019. The Petition is accompanied by a sworn affidavit of Wei Cao, the Director of the Petitioner, verifying the statements of the Petition, in compliance with Rule 100 of the Companies (Insolvency Rules) GN No 43 of 2005 The Petitioner herein is a limited liability Company registered under the laws of Tanzania with the certificate of incorporation 139034 with a share capital of TZS 900,000,000, engaging in importation and sale of household items, garments, textiles and electronics. According to the petition, winding up decision has been opted due to business fluctuation which positioned its operation on a big loss making it impossible to pay its debts since January 2020, leading to the passing of a special resolution on 25th June 2020 to file this winding up petition. Upon the petition having been filed, and upon Court direction pursuant to Rule 99 (1) and (2) (b) of the Companies (Insolvency Rules) GN No 43 of 2005, advertisement of the petition was published in two widely circulating newspapers for not less than seven working days. The publication was done in The Guardian News Paper dated 7th June 2021 and Nipashe News Paper dated 6th June 2021. Further, Certificates pacifying the manner of advertisement was filed pursuant to Rule 102 of the Companies (Insolvency) Rules GN 34 of 2014. After publication, having no objection lodged to challenge the petition, the same was heard by a way of written submissions. Submissions were filed by Ms. Ester Peter, the petitioners' counsel. In the submissions, the petitioner reiterated what was stated in the petition and added that the Company is trading on loss. The petitioner substantiated the loss by the audited financial statement annexed to the petition (Annexure MN-4) which reported a loss of TZS 1,584,634,338.00. It is further submitted by the petitioner that the Company has failed to

pay the debts as indicated by unpaid multiple demands which have been made to the petitioner (Annexure MN-6) 2 It is the submission of the petitioner that there is full compliance with the laws guiding the filing of this petition including passing of a special resolution to allow winding up petition to be filed in court, the advertisement of the petition and filing a certificate of compliance. Citing the cases of Winding up Cause No. 113 of 2017, In the Matter Of China Chang Group Limited, High Court of Tanzania, Dar es salaam, which acknowledged the case of Shell Tanzania Limited vs Scandinavian Express Services Limited, Misc. Commercial Case No. 36 of 2005 (Unreported) and Winding Up Cause No 113 of 2017, In The Matter Of China Chang Group Limited, High Court of Tanzania, Dar es salaam, the Petitioner submitted that she cannot proceed with business due to the reported loss of TZS 1,584,634,338.00 as without financial capabilities, a company cannot survive. Basing on what was submitted, the petitioner reiterated the prayers in the petition and asked for the court to allow them. From the contents of the petition and the submissions made, the issue for consideration is whether the Miniso Tanzania Company Limited qualify to be wound up. To answer the raised issue, I had to visit the relevant law winding up of a company. Conditions under which winding up of a company can be done are 3 provided under Section 279(1) (a) & (d) of the Companies Act [CAP 212 RE 2019] which states:- "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 is just and equitable that the company should be wound up.
- "(Emphasis ours) In the instant petition, the petitioner is relying on two of the above-named conditions which are the existence of the company resolution authorizing winding up and the company's inability to pay the debts. The first scenario of board resolution has been verified by the actual resolution annexed as MN-5 in the petition. With regards to the inability to pay, the financial statement annexed as MN 4 has clearly indicated a loss of TZS 1,584,634,338.00, along with the various unpaid demands for payment which are annexed as MN
- 6 in the petition. In my view, the two scenarios are sufficient to position the company on a need to be wound up as what sustains existence of a company is its financial capacity and ability to discharge its debt. In the instant case, having been proved that the petitioner is in such a big loss and with no capacity to pay debts, winding up should be a better cause to undergo. 4 In view of the above considerations, I am satisfied that, the issue as to whether the Miniso Tanzania Company Limited qualifies to be wound up is answered affirmatively. Consequently, this Winding up Petition is hereby allowed. I further make the following orders:-

1. Pursuant to the provisions of sections 279 (1) (d) and 281 (1) of the Companies Act of 2002, Cap.212 [R.E 2019], the Petitioner, Miniso Tanzania Company Limited, with Certificate of incorporation No. 139034 is hereby wound-up;
 2. In terms of Sections 294 of the Companies Act of 2002, Advocate Frank Elias Kifunda is hereby appointed as an official liquidator of the company for a periodic of three months within which he shall, subject to the control of the court, exercise all the powers enumerated under the Companies Act of 2002;
 3. The official liquidator, upon realizing all the property of the company or in his opinion there is no need of protracting liquidation, shall pay the petitioner's debt and file in court a report on his accounts for his discharge according to the provisions of Section 307 of the Companies Act. Dated at Dar es Salaam this 3rd Day of November 2021
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