

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF MWANZA)**

**AT MWANZA**

**MISCELLANEOUS CIVIL CAUSE NO. 05 OF 2020**

**IN THE MATTER OF THE COMPANIES ACT 2002**

**AND**

**IN THE MATTER OF AN APPLICATION MADE UNDER SECTION 281**

**(1) OF THE COMPANIES ACT (Cap. 212 R.E. 2019)**

**AND**

**IN THE MATTER OF AN INVOLUNTARY WINDING UP OF ETERNUM**

**LIMITED**

**AND**

**IN THE MATTER OF ETERNUM LIMITED ..... PETITIONER**

**RULING**

*16<sup>th</sup> March, & 15<sup>th</sup> June, 2021*

**ISMAIL, J.**

A petition has been filed for winding up of a company, the petitioner, on account of the fact that its business operations have registered massive losses. The petition has been preferred under the provisions of section 281

(1) of the Companies Act, Cap. 212 R.E. 2019. The institution of this petition followed a resolution by the shareholders of the company, made on 30<sup>th</sup> August, 2020. The decision to place the company on a winding up is informed by the audit report of the company's financial statements which concluded that *"the company has a net loss of Tshs (1,787,399,333) (2018: 754,051,216) for the year ended 30 June 2020 and as at that date the company's total liabilities exceed its total asset by Tshs 505,666,990."*

The company was incorporated on 16<sup>th</sup> January, 2015 vide a certificate of incorporation No. 114448. It was subsequently issued with a Taxpayer's Identification Number (TIN) No. 126-006-691, valid with effect from 28<sup>th</sup> January, 2015. The company's line of business was a retail sale of household appliances, furniture, lighting equipment and other forms of merchandise. From 2018, the company began to register successive losses that saw their assets dwarfed by liabilities, thereby failing to meet their obligations with third parties. This business trend cast a doubt on the company's going concern, hence a resolution that the company be placed on a winding up.

The application is accompanied by an affidavit sworn by Evan William Lorendo, the petitioner's principal officer, verifying truthfulness of the statements averred in the petition. Attached to the petition, as well, are

copies of the shareholders' resolution, audited financial statements, memorandum and articles of association, TIN and certificate of incorporation.

Upon filing the petition and, in compliance with the provisions of Rule 99 (2) (b) of the Companies (Insolvency) Rules GN. 34 of 2014 (Rules), a notice was issued for publication in the newspaper and Government Gazette, informing the general public of the institution of the petition, and invite any concerned person to file a representation and oppose the petition. This notice was duly published and copies thereof were duly furnished to the Court on 10<sup>th</sup> November, 2020, ahead of the hearing which was scheduled 18<sup>th</sup> November, 2020. This was consistent with Rule 102 (1) and (2) of the Rules.

Disposal of the matter was ordered to be by way of written submission. In his brief submission, the petitioner's counsel reiterated what is averred in the petition, highlighting the fact that the company's assets have been consumed by debts and liabilities, and that the company's going concern had become questionable. Besides praying for issuance of a winding up order, the counsel prayed that Mr. Felix James of Vetus Advocates, be appointed as a Liquidator of the company.

I have gone through the pleadings, accompanying documents and the submission filed in support of the petition. My unflustered view is that the petition has complied with the requirements of section 279 of Cap. 212, in that, a special resolution calling for its winding up due to its failure to liquidate its obligations has been filed. This has been done through an audit report of the company's financial statements which has clearly pointed that the sum of TZS. 505,666,990/-, which represents the value of the company's assets are far paltrier than the sum of TZS. 1,787,399,333/- which is an aggregate of the net loss incurred by the company. This means that the company's ability to meet its financial obligations has massively dissipated. In terms of section 280 of Cap. 212, this is a reason that justifies the decision to bring business to a closure.

Having satisfied myself that the petition has met the threshold for its grant, I hereby grant it and, in consequence, the following orders are made:

- (i) That Eternum Limited, the petitioner herein, a limited liability company incorporated vide a Certificate of Incorporation No.114448, is hereby wound up;
- (ii) That pursuant to (i) above, Mr. Felix James of Netis Advocates, is hereby appointed to serve as the Company's

official Liquidator, and that his tenure of office shall last for three months, during which he shall, subject to the Court's control, exercise all powers bestowed on him under sections 299, 300, 301, 302, 303 and 304 of Cap. 212;

- (iii) That upon fulfillment of the requirements of law that governs his obligations, he shall cause and file in Court a report on his accounts for his release or discharge, in accordance with the provisions of section 307 of Cap. 212; and
- (iv) No order as to costs.

It is ordered accordingly.

DATED at **MWANZA** this 15<sup>th</sup> day of June, 2021.



  
**M.K. ISMAIL**

**JUDGE**

**Date:** 15/06/2021

**Coram:** Hon. M. K. Ismail, J

**Petitioner:** Mr. Gibson Ishengoma, Advocate

**Respondent:** Absent

**B/C:** P. Alphonce

**Court:**

Ruling delivered in chambers, in presence of Mr. Gibson Ishengoma, Advocate of the Petitioner, this 15<sup>th</sup> day of June, 2021.



**M. K. Ismail**

**JUDGE**

**At Mwanza**

**15<sup>th</sup> June, 2021**