

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 38 OF 2020

IN THE MATTER OF THE COMPANIES ACT, NO. 12 OF 2002

AND

IN THE MATTER OF PETITION FOR WINDING UP OF

CHICASA ICDV LTD..... PETITIONER

Date of last order 7/10/2021

Date of Ruling 03/11/2021

JUDGEMENT

ITEMBA, J;

Before me is a petition for winding up CHICASA ICDV LTD, a limited liability company incorporated on 1st day of August 2014, through a certificate of Registration No. 110302. In its registration, the company had a share capital of Tanzanian shillings Thirty Billion (**Tshs. 30,000,000,000/=**). It also has its registered office at Mbagala within Temeke Municipality, in Dar es salaam. The company's main object is to provide services of storage of containers of various sizes as a full-fledged inland container depot (ICD) for motor vehicles. The petition is filed under section 275,279(1)(a), 280,281(1) and 267 (1)(b) of Companies Act, No. 12 of 2002 herein the Company Act; and Rules 95(1) and 100 of the Companies (Insolvency) Rules, GN 43 of 2005.

Pursuant to section 279 (1) (d) of the Companies Act, a special resolution has been passed to wind up the company by the court due to the company's inability to pay debts and the company running under loss for two consecutive years.

After filing this petition, a court order was made under rule 99(2) (b) of the Companies (Insolvency) Rules GN 43 of 2005 (which were operated in 2012), for the petitioner to make advertisement in both the *Gazette* and daily newspaper. The advertisements were made in the *Gazette*, issue No. 9 dated 26th February 2021 as well as in a local newspaper namely Mwananchi dated 29th June 2021. Thereafter, the petitioner filed a certificate of compliance in accordance with rule 102(1)(2) (a)(b)(c) of the Companies (Insolvency) Rules, GN 43 of 2005 and the petition was scheduled for hearing.

At the hearing of the petition, the petitioner was represented by Mr. Gabriel Masinga, advocate. There was no objection filed. Mr. Masinga briefly submitted that they have filed a petition to wind up a company on grounds that the company is unable to pay its debts. The learned counsel submitted that the petitioner has complied by all legal requirements. He referred the court to the company's special resolution, audited financial report for the year ending 31st December 2015 and certificate of compliance dated 9th of September 2021. He sought for the court orders for the company to be wound up and appointment of liquidator in terms of section 279(1) (a)(b) of the Companies Act.

The learned counsel supported his petition with the cases of **Adesemi Tanzania Ltd v Registrar of Companies** Misc. Civil cause no. 5/2000 and **China Chang Group Ltd** winding up cause no. 113/2017.

Having gone through the submission by the learned counsel and court records herein, the counsel for the petitioner is moving the court to issue an order of winding up the petitioner CHICASA ICDV LTD.

Section 279(1) of the Companies Act states that:

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) n/a

(c) n/a

(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;

Further to that, section 280 of the Companies Act defines situations where a company will be deemed unable to pay its debts. This includes, when a notice is served upon a 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 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 liability taking into account the contingent and prospective liabilities of the company.

As mentioned earlier, the petitioner has filed a special resolution dated 3rd January 2018 whereas the Board of M/S CHICASA ICDV LTD resolved that the company be wound up following Government's Decision in Inland Container Depot and inability to meet its liabilities and that the company was running under loss for two consecutive years.

The petitioner's statement of financial position for the year ending 31st December 2015, at page 9 shows that the total liabilities are higher than the assets.

In his affidavit, the counsel for the petitioner also stated that the company owes liabilities of **Tshs. 102,580,000/=** and **23,400,000/=** from two awards issued in 2017 and 2019 respectively, by the Commission for Mediation and Arbitration (CMA) to the petitioners' former employees and that it is not capable of paying these debts.

Having considered the application, its' supporting winding up petition and affidavit, I am content that this is an appropriate case to grant the prayers sought by the petitioner. Therefore, this winding up petition is hereby allowed and the court issues the following orders: -

1. The petitioner, CHICASA ICDV LTD with certificate of incorporation No. 110302 is hereby wound up under the provisions of section 279 (1)(a) and (d) of the Companies Act No. 12 of 2002.

2. Pursuant to section 294 of the Companies Act; Mr. Francis Stolla, advocate, is hereby appointed to act as an 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 as provided for under sections 299,300,301,302,303,304 and 306 of the Companies Act, No. 12 of 2002.
3. Upon the official liquidator realizing all the property of the company or if in his opinion there is no need to protracting liquidation, and has distributed a final dividend, if any, and adjusted the rights of the contributories, shall cause and file in court a report on his accounts for his release according to the provisions of sections 307 of the Companies Act No. 12 of 2002.
4. No order of costs is made.

It is so ordered.

DATED at DAR ES SALAAM this 3rd of November 2021.



A handwritten signature in blue ink, appearing to read "L. J. Itemba".

L. J Itemba

JUDGE

03/11/2021