

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM SUB DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISC. CIVIL CAUSE NO. 578 OF 2021**  
**IN THE MATTER OF THE COMPANIES ACT, [CAP. 212 R.E 2002]**  
**AND**  
**IN THE MATTER OF THE PETITION FOR THE WINDING UP OF THE**  
**SUPERCOACH BUILDERS LIMITED**

**SUPERCOACH BUILDERS LIMITED.....PETITIONER**

**RULING**

Date of last order: 25/08/2022

Date of ruling: 02/09/2022

**E.E. KAKOLAKI, J.**

The petitioner, **Supercoach Builders Limited** by way of petition preferred under the provisions of section 279 (1) (a), (c) and (e) of the Companies Act No. 12 of 2002 and Rule 100(1) of the Companies (Insolvency) Rules 2005, is petitioning for winding up order, appointment of its liquidator and any other favourable orders as the Court deem fit to grant. The petition is supported by the affidavit verifying it, dully sworn by Derick Paschal Kahigi petitioner's counsel.

Upon this petition filed in court, the Court ordered and/or directed that, the petition be advertised in the Government gazette as well as in one issue of Mwananchi (Local newspaper) widely circulated in the country. On 27/04/2022 and 15/07/2022, the petitioner complied with the Court's order by advertising in Mwananchi Newspaper at page 25 and the Government Gazette No. 28 at page 149, respectively, thus paving way for hearing of the petition.

Up to the time when the petition was called up for hearing on 25<sup>th</sup> August, 2022, no single person be it creditor or any other interested party fronted his/her caveat in contest of the petition. In that premises hearing proceeded orally as petitioner was represented by Mr. Derick Kahigi learned advocate. Arguing the petition, Mr. Kahigi recited the provisions under which the petition was preferred and prayed to adopt the contents of petition and its supporting documents to form part of his submission. He then submitted that, when the petitioner was registered had three directors. He said, the main reason as to why this petition is preferred is on account that, members or directors of the company have gone below two, since the rest of the two directors of the petitioner demised. He argued, the fact that two directors have demised is fortified by the copies of death certificates annexed to the

petition as annexure SUP-2 collectively. He echoed, at the moment the petitioner has remained with only one director namely **Swaran Kaur Matharu**, who is the wife to one of the directors and mother to the other director. He went on submitting that, the three directors were also the only shareholders as per the Memorandum and Articles of Association of the company annexed to the petition as annexure SUP1. He clarified that, in the meantime the petitioner has only one surviving director and shareholder and that, under section 279 (1) of the Companies Act, one of the circumstances that may call for windup of the company by court order is where the number of members or the directors of the company fall below two and where there is special resolution of the Company members that, the company be dissolved by the court order. According to him, there is also resolution of the company to that effect annexed as annexure SUP2 to the petition collectively.

Basing on the above submissions, Mr. Kahigi informed the court that, the petitioner has complied with the requirement of the law under Rule 99 (1) (a) of the Companies Insolvency Rules GN No. 43 of 2005 and since there is no any caveat filed despite of advertisement of the petition, this Court is justified to grant the orders as prayed in the petition and so prayed. Mr.

Kahigi further proposed appointment of Mr. Robert R. Rutaihwa as official liquidator of the petitioner to wind up the company, if in the premises the petitioner's prayer is granted.

Having considered the petition, its accompanying affidavit and supporting exhibits, together with the submission made thereon, the calling issue for determination by this Court is *whether the petitioner **Supercoach Builders Limited** has met the legal requirement for being wound up*. Upon revisiting the relevant provisions providing for conditions under which a company may be wound up as enumerated under section 279(1) (a-e) of the Companies Act Cap 212 R.E 2002, I find the above issue is answered in affirmative. For clarity the provision of section 279(1) (a-e) of the Companies Act, reads:

*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 is just and equitable that the company should be wound up.*

Deducing from Mr. Kahigi's submission, the conditions advanced by the petitioner in support of the petition are two and premised on section 279(1) (a) and (c) of the Act cited above. In my profound view, the two conditions advanced by the petitioner coupled with the company's special board resolution are sufficient conditions or factors to position the company on the necessity of being wound up as the same cannot exist under the circumstances.

That said, in absence of any objection taken against the petitioner after advertisement of petition in both Government Gazette and Mwananchi newspapers, I am satisfied that, the petitioner **Supercoach Builders Limited** qualifies to be wound up. That said and done, I am inclined to grant the petition as prayed and proceed to make the following orders:

- (1) The petitioner **Supercoach Builders Limited** with certificate of Incorporation No 16109 is hereby wound up pursuant to the provisions of section 279(1) (a) and (c) of the Companies Act, [Cap 212 R.E 2002]
- (2) In terms of section 294 of the Companies Act, **Mr. Robert R. Rutaihwa** is here by appointed as an official liquidator of the company specified above (1) for a period of 6 months within which

he shall, subject to the court control exercise all the powers enumerated under sections 299,300,301,302,303,304, and 306 of the Companies Act.

- (3) The official liquidator upon realizing all the properties of the Company or in his opinion if there is no need of protracting liquidation, and has distributed a final dividend if any, and adjusted the rights of the contributors and made a final return if any to the contributors, shall cause and file in court a report on his account for his discharge according to the provisions of section 307 of the Companies Act.
- (4) The winding up orders be served to the Registrar of the Companies for his necessary actions.

No orders as to cost.

Accordingly ordered.

Dated at Dar es Salaam this 2<sup>nd</sup> day September 2022.



E. E. KAKOLAKI

**JUDGE**

02/09/2022.

The ruling has been delivered at Dar es Salaam today 02<sup>nd</sup> day of September, 2022 in the presence of Mr. Derick Kahigi, advocate for the petitioner and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

02/09/2022.