

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL CAUSE NO. 56 OF 2015

**IN THE MATTER OF AFRICAN MEDICAL INVESTMENTS
TANZANIA PUBLIC LIMITED**

AND

IN THE MATTER OF THE COMPANIES ACT, 2002

AND

**IN THE MATTER OF A WINDING UP
PETITION BY THE CREDITOR,
LANCET LABORATORIES
TANZANIA LIMITED.....PETITIONER**

RULING

Mansoor, J:

Date of Ruling- 5th JUNE 2015

The Petitioner, Lancet Laboratories Tanzania Limited, filed a winding up petition under sections, 275, 281 (1), 279 (1) (d) & (e), 280 (a) & (c) and 267 (1) (a) of the Companies Act, 2002. The Petitioner as a creditor seeks to wind up the African Medical Investments Tanzania Public Limited, a company incorporated in Tanzania, for African Medical Investments Tanzania Public Limited was unable to pay its debts. .

Sec. 279 of the Companies Act, 2002 sets out circumstances in which a company may be wound-up by the Court, one such being where the company is unable to pay its debts. Sec. 280 sets out the circumstances and situations in which a company may be deemed to be unable to pay its debts. Such a deeming fiction would arise where a notice is served upon the company making a demand of a debt exceeding THz 50,000 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.

Rule 95 of the Companies (Insolvency) Rules, 2004 provides that the petition for winding-up a company verified by affidavit shall be presented in the Court. Upon the filing of the petition, the petition shall be served to the company where the petitioner is other than the company itself. Then the petition is

posted before the Judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for the directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served as provided under Rule 96 of the Rules. The Judge shall give directions as to the advertisement of the petition as provided under Rule 99 of the Companies (Insolvency) Rules. It would appear at a glance that the petition has to come-up in Chambers before the Judge and not before the Registrar, and the Rules confers a discretionary power on the judge not to give any directions at that stage but merely order service or issue a notice to the company before giving directions.

Before the date of hearing the petition, the petitioner is required to make advertisement. This is provided under Rule 99 (2) b, of the Companies (Insolvency) Rules which provides that an advertisement must appear in the gazette or newspaper not less than seven working days after service of the petition on the company.

Under Rule 101, the Directors, Contributory, and Creditors of the Company are also entitled to be served with the Petition within 2 days after requiring it, and on payment of the requisite fees.

Under Rule 102, the Petitioner or his advocate is required to file in Court, at least five days before the hearing of the petition, a certificate of compliance with the Rules, relating to service and advertisements, and also to file a copy of the advertisement, and a copy of the petition in court. The certificate of compliance will show the date of presentation of the petition, the date fixed for the hearing, and the date on which the petition was served and advertised in compliance with the Rules. The Petition may be dismissed for non-compliance of Rules, under Rule 102 (1), if the Court thinks fit.

It appears from the Rules that the petition cannot be admitted for hearing before it is served on the company and other people as directed by the Court. Therefore, the power is conferred on the Judge before whom the petition comes-up for admission to issue pre-admission notice to the company so that the company is not taken unaware and may appear and point out to the judge that the petitioner is actuated by an ulterior motive and presentation of the petition is a device to pressurise the company to submit to an unjust claim or the that the Company is able to pay its debts. These appears to be sufficient built- in safeguard in the provisions of the Companies Act and the Rules framed thereunder which would

save the company from any adverse consequences, if a petitioner actuated by an ulterior motive presents the petition.

Once a petition for winding-up is admitted to the file, the Court is bound to issue a direction to advertise the petition either in the newspaper or gazette. The court must as soon the petition is admitted, direct the petitioner to advertise the petition.

This petition was presented for filing on 16th March 2015, and on 17th March 2015, the file was placed before a judge, and the Judge ordered that the petition be served upon the Company. On 26th April 2015, the Judge ordered one Mr Navtej Singh Bains who entered appearance in court and requested to be joined in the proceedings to follow the procedures as prescribed in Rule 100 of the Companies (Insolvency) Rules. Mr Navtej Sigh Bains through his Advocate, Mr Dilip Kesaria filed a Notice of Appearance under Rule 104 (1) of the Rules, since he was the creditor to the Company which is sought to be wound up, having obtained the status of a Creditor through a Decree of the Court in Commercial Case No. 104of 2013. Mr Navtej Singh Bains filed the Notice on 13th April 2015. The file was placed before the Registrar on 21st April 2015, and the Registrar ordered the Petitioner to advertise the petition within a period of two weeks from that date, and on 14th May 2015, when the file was placed before a

Judge for orders, the Petitioner had not complied with the Insolvency Rules, and has not even complied with the orders given by the Court on 21/04/2005.

Due to non-compliance of the Rules, Mr Dilip Kesaria, the Advocate who appeared on behalf of Mr Navtej Singh Bains, the Creditor in this Petition, prayed to the Court that the Petition be dismissed.

I agree that the Petitioner failed to comply with the Rule; the Petition was not served to the Company as required by the provisions of Rule 96 of the Companies (Insolvency) Rules, the Petition was also not advertised as required under Rule 99 of the Rules, and no Certificate of Compliance was filed in Court as required under Rule 102 (1) of the Rules, thus this Court find that noncompliance of the aforesaid Rules is a ground upon which this petition is dismissed.

No costs is awarded to Mr Navtej Singh Bains, as he was required under Rule 101 to request to be served with the petition as the creditor, and to pay requisite fees.

It is so ordered.

DATED at DAR ES SALAAM this 5th day of JUNE, 2015

**MANSOOR
.JUDGE
5TH JUNE 2015**