

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR-ES-SALAAM**

**MISC. COMMERCIAL CAUSE NO. 57 OF 2020**

**WINDING UP PETITION**

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

**AND**

**IN THE MATTER OF BENSON INFORMATICS LTD**

(Made under Section 279(1)(d) and 281 of Companies Act, No.12  
of 2002 as amended, (Cap.212:R.E 2002))

Date of Last order: 08/06/2020

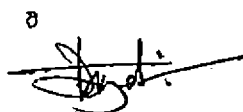
Delivery of Ruling: 14/07/2021

**RULING**

**NANGELA, J.:**

This is a winding up petition brought under sections 279(1) (d), and 281 of the Companies Act, 2002. The Petition was filed by Benson Informatics Ltd, a Company duly registered under the laws of Tanzania.

The Petitioner was incorporated on 10<sup>th</sup> day of October 2002 and was issued with a certificate of incorporation No.44597, with a share capital of TZS

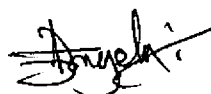
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150,001,000. According to the Petition, the Petitioner has been providing telecommunication related services under a licence issued by the Tanzania Communication Regulatory Authority (TCRA) in 2011.

It has been averred, however, that, since its business activities in the related field demanded huge sums of money as capital, from 2014 and 2015 its financial status started to decline and from 2015 to 2019 the company was running on losses.

The Petitioner has submitted that, currently, regulatory and other associated costs have accumulated debts and claims from its creditors such that the Company is unable to pay or discharge such debts, and, that, such debts have outweighed the total value of the Company's assets.

Besides, it was also averred that, the Petitioner has been besieged with immense governance challenges making it impossible to comply with various regulatory requirements the effect of which has been a cancellation

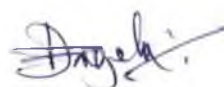


of its licences. It was contended farther, that, since 2013 its books of account revealed that the Petitioner has been operating on a negative assets base.

It is from the foregoing background that the Petitioner, through a special resolution of its shareholders, (annexed to the Petition as **Annexure BIL 6**, proposed to have Mr Clement E.A. Kihoko appointed by the Court to wind up the affairs of the Company. In view of that, the Petitioner has prayed for the following orders:

1. That the Company, Benson Informatics Ltd, be wound up.
2. A competent person, approved by this Court be appointed as a liquidator of the Company ; and
3. Such other orders, as the Court thinks fit and just in the circumstances.

On 08<sup>th</sup> June 2021, Mr Emmanuel Akyoo and Ms Esther Shadrach, learned advocates, appeared in Court for the hearing of this Petition. They informed this Court that, as per **Rule 102 of the Companies (Insolvency)**



**Rules, 2006, (G.N. No. 43 of 2005)**, the Petition was advertised in compliance with the Rule in question, and that the Petitioner has fully complied with Rule 99 of the said Rules.

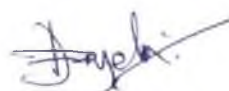
I have looked at the Petition and its annexure as well as the certificate of compliance with Rule 102 of the Companies **(Insolvency) Rules, 2006, (G.N. No. 43 of 2005)**. As I stated earlier, this Petition was brought under section 279(1) (d) and 281(1) of Cap.212 R.E 2002. These underlying sections provides as follows:

*279.-(I) A company may be wound up by the court if –:*

*.....*

*(d) the company is unable to pay its debts.*

*281.-(I) An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or*



*by an administrator, or by all or any of those parties, together or separately.*

As it may be noted from the above provisions, a Company that finds itself unable to pay its debts and claims made by its creditors can apply to the Court to be wound up. This is the gist of the current Petition.

I have also looked at the Special Resolution filed in support of the Petition and the accompanying audited financial accounts of the Company which runs from 2013 and I am satisfied that the Company has been accumulating losses all along.

As it was held in the case of **Shell Tanzania Limited Vs Scandinavian Express Services Limited, Misc. Commercial Case No. 36 of 2005 (Unreported)**, the survival of a company depends upon its financial capabilities.

It is worth noting as well that, section 280 of the Companies Act of 2002, does outline the circumstances

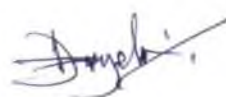


within which a company may be deemed to be unable to pay its debts.

According to sub-sections (c) and (d) of section 280 of the Companies Act, Cap.212 R.E 2002, circumstances to consider include a situation where it is proved to the satisfaction of the court that:

1. the company is unable to pay its debts as they fall due; or
2. that, the value of the company's assets is less than the amount of its liabilities, taking into account the contingent and prospective liabilities of the company.

In the course of their submissions in support of this Petition, Ms Shedrach and Mr Akyoo, the learned counsels for the Petitioner, sought and relied on, not only the financial reports of the Petitioner which ranges from 2013 to 2018 to prove the dwindling trend of their financial abilities of the Petitioner, but also on **Annex.BIL 4**, which is a Regulatory decision by the Tanzania

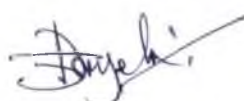


Communication Regulatory Authority (TCRA) to cancel all licences issued to the Petitioner.

According to the Petitioner, that decision further crippled the operations of the Petitioner as well making the Petitioner unable to do business from 2019. The cancellation, according to **Annex.BIL4**, was based on the Petitioner's inability to pay regulatory fees amounting to **USD 5,295,597.39**.

From the foregoing discussion, I find it clear to me and, in line with Section 280 (c) and (d) of the Companies Act, Cap.212, R.E 2002, that, the Company is unable to pay its debts. Besides, as I said earlier, the petition was filed following the special resolution passed by the company directing the director to file to this Court a petition for winding up.

The said resolution was duly passed on 30<sup>th</sup> September 2020 and authorised M/s Rollette & Partners, a law firm representing the Petitioner, to commence these winding proceedings in this Court.

A handwritten signature in dark ink, appearing to be 'Danyel', is written over a faint, large, light-blue watermark that reads 'ORIGINAL' diagonally across the page.

In view of the above considerations, I am satisfied that, this is the fit case to grant the prayers sought by the Petitioner. As such, this Winding up Petition is hereby allowed and the Court settles for the following orders, that:-

1. Pursuant to the provisions of sections 279 (1) (d) and 281(1) of the Companies Act of 2002, Cap.212 [R.E 2002], the Petitioner, Benson Informatics Limited, with Certificate of incorporation No. 44597 is hereby wound up;
2. In terms of Sections 294 of the Companies Act of 2002; **Mr. Clement E.A. Kihoko**, 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 enumerated under





Sections 299, 300, 301, 302, 303, 304, and 306 of the Companies Act of 2002;

3. The official liquidator, upon realising all the property of the company or in his opinion there is no need of protracting liquidation, shall cause and file in court a report on his accounts for his release according to the provisions of Section 307 of the Companies Act No. 12 of 2012.
4. The Court makes no further orders.

**It is so ordered.**

**DATED at DAR-ES-SALAAM 14<sup>th</sup> JULY, 2021.**



**HON. DEO JOHN NANGELA  
JUDGE**