

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

**(COMMERCIAL DIVISION)**

**AT DAR-ES-SALAAM**

**MISC. COMMERCIAL CAUSE. NO. 2 OF 2023**

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

AND

IN THE MATTER OF THE PETITION FOR WINDING UP OF  
GOLDEN PEACOCK COMPANY LIMITED BY  
GOLDEN PEACOCK COMPANY LIMITED.....PETITIONER

Date of the Last order: 08/11/2023

Delivery of the Ruling: 15/12/2023

**RULING**

**NANGELA, J.:**

This is a winding-up petition. It was brought to the attention of this Court under section 279 (1) (a) (c) (d) 281 (1) of the Companies Act, Cap.2002, R.E 2002 and Rule 90, 95 (1) and 100 of the Companies (Insolvency) Rules 2005. According to the Petitioner, the winding up orders sought are pegged on the reason, among others, that, she has been running her affairs at a loss and, hence, is currently unable to pay its debts.

By way of background, the Petitioner was incorporated on the 1<sup>st</sup> day of March 2008 and was granted a certificate of incorporation No.135982490. Its registered office is at Plot 77, at Tandamti Street, Kariakoo, her postal address being P.O Box 4096, Dar-es-Salaam, Tanzania.

In this petition, the Petitioner is seeking the following orders:

1. The Petitioner herein be wound up by the court to manage the winding up processes.
2. an official receiver be appointed by the court.
3. That the assets of the Company be realized to pay off the debts of the petitioner.

What can be gathered from the petition is that the decision to file this winding-up petition emanated from a resolution passed by the members of the company on the 15<sup>th</sup> of December 2022. By that resolution, it was effectively agreed

that the company shall be voluntarily wound-up. The said resolution was duly annexed to the petition as Annex, CC-6.

This winding up petition was further supported by a verifying affidavit of Ally Muhibu Athuman, a Director and Principal Officer of the Petitioner. The said affidavit was filed in this court on the 25<sup>th</sup> of May 2023. Having filed this petition, the Petitioner further complied with the legal requirement to have the petition published. The same was published in the *Government Gazette* dated 20<sup>th</sup> October 2023, on page 139, as well as in the *Mwananchi Newspaper* dated 16<sup>th</sup> August 2023 on page 24.

The said adverts were made in line with the requirements of Rule 99 (2)(b) of the Companies (Insolvency) Rules GN No. 43 of 2005, and were annexed to the petition as Annex, CC-1. When this petition was set for the hearing on the 8<sup>th</sup> of March 2023, Mr. Kelvin Mshana a learned advocate, entered an appearance in court on behalf of the Petitioner.

On that material date, this court directed that the matter be disposed of by way of the written submission. The order was made after the publication of this petition as earlier stated, no objection was made against the prayers to wind up the business affairs of the Petitioner.

Given the above stated position, this court issued a scheduling order to file the respective submissions and the Petitioner complied with the order, hence, this ruling. Submitting in support of the petition, it is the Petitioner's averments that, through a duly constituted company meeting, the members of the company resolved that the company be wound up.

Mr. Mshana submitted that, after its incorporation and commencement of business, the company has, for some time now, been running at a loss and currently has reached a point where it cannot afford to pay for its debts. He submitted further that, the company has never made profits and, as its audited financial statements reveal, it is fully indebted. The

company's audited reports were annexed to the petition as annexure CC3.

Mr. Mshana submitted further that, despite several demands from its debtors, nothing has been positively forthcoming from the company that could make it possible to either pay its debts now or to meet the promises made to clear out such accumulated debts. He argued, therefore, that, the value of the company's assets has continued to be less than the amount of its liabilities.

According to Mr. Mshana, the incapability, and survival of the Petitioner's business were further exacerbated by a long-time problem of theft within the company by its workers. He submitted that, due to that problem, the petitioner's demise was inevitable as she was weakened and unable to run her business as desired. He invited this court, therefore, to invoke its powers under section 279 (1) (e) of the Companies Act Cap 212 R.E 2019 and hold that it is just and equitable for the

Petitioner's business operations and the existence of the Petitioner as a corporate entity to be ended.

To support the Petitioner's prayer, Mr. Mshana cited and relied on several authorities whereby, this court, having been faced with a similar situation to the one at hand, made such orders. The respective authorities relied on by the Petitioner's counsel include the cases of **In the Matter of China Chang Group Limited**, Winding Up Cause No. 113 of 2017 High Court of Tanzania (Commercial Division) at Dar es salaam (Unreported), **In the Matter of Miniso Tanzania Company Limited**, Winding Up No. 4 of 2021 at the High Court of Tanzania, at Dar es Salaam (unreported) and, **In the Matter of Marlink Tanzania Limited**, Miscellaneous Civil Application No. 208 of 2023, High Court of Tanzania at Dar es Salaam (unreported).

In all those cases, the members of the respective companies had mutually agreed and resolved to wind up the business operations and existence of their companies and the

court granted them their wishes. Mr. Mshana urged the court to consider granting the prayer for the winding-up of the Petitioner and appoint the official receiver of the Company.

Following that submission, the question that follows is whether this court should grant the prayer sought by the Petitioner. As a matter of fact, and, indeed, of principle, winding-up orders are not easily issued by the court unless there are cogent reasons or grounds upon which the court will premise its orders of winding up a company.

I have carefully considered the submission by the Petitioner's counsel and the documents in support of the petition. As I said the court is invited to issue an order of winding up based on voluntary a winding-up resolution passed on 15<sup>th</sup> December 2022 whereby the members mutually agreed to wind up the said company because it has been unable to pay its debts and its liabilities have accumulated more than its assets.

The law is very clear that one of the reasons for the voluntary Winding up of a Company is that Members have passed a resolution to wind up the company, as per section 279 (1) (a) of the Companies Act, Cap 212 R.E 2019. When looking at the petition itself, there is evidence that members through special resolution, the members of the Petitioner agreed to put to an end the business life of the company. This special resolution was annexed to the petition as Annex. CC-6.

Having considered all necessary parameters and evidential materials submitted before me, it is my humble view 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 section 279 (1) (a) and (d) of the Companies Act Cap 212 [R.E 2019], the Petitioner in the name of Golden Peacock Trading Company Limited a company



registered with certificate No.  
135982490 is hereby wound up.

2. In terms of sections 209 and 292 of the Companies Act of 2019, the Court hereby appoints (for six months from the date of this ruling) Mr. Taher Muccadam, learned Advocate, to act, in line with the provisions of the Act and for the winding-up of the Petitioner, as the appointed Official Receiver.

**It is so ordered.**

DATED AT DAR-ES-SALAAM ON THIS 15<sup>TH</sup> DAY OF  
DECEMBER 2023



.....  
**DEO JOHN NANGELA**  
**JUDGE**