



REPUBLIC OF KENYA



KENYA LAW
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**In re Mohan Engineering Works Limited (Debtor) (Insolvency Cause 6 of 2018)
[2023] KEHC 1479 (KLR) (Commercial and Tax) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1479 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE 6 OF 2018
FA OCHIENG, J
FEBRUARY 28, 2023
IN THE MATTER OF THE INSOLVENCY ACT NO 18 OF 2015
INSOLVENCY CAUSE NO 6 OF 2018
AND
IN THE MATTER OF MOHAN ENGINEERING WORKS LIMITED (DEBTOR)

JUDGMENT

1. The application before me was filed by the debtor, Mohan Engineering Works Limited, seeking a receiving order against itself.
2. The applicant/Petitioner told the Court that it was unable to meet its debts and liabilities.
3. As at the date when the Debtor commenced these proceedings, it was not engaged in any income generating activity.
4. Through an affidavit sworn by Mohan Singh Thakar Singh Bamrah, who was one of the directors of the Company, the Debtor said that it had incurred huge debts amounting to Kshs 28,189,900.
5. The Debtor provided documents which demonstrated that several creditors had issued demand notices against it. For instance, Hardsteel Products Limited claimed Kshs 2,165,322/-. Other creditors who claimed money from the debtor included;
 1. Tandil Enterprises Ltd Shs 610,300/-
 2. Okha Steel & Hardware Shs 985,100/-
 3. Paul Otieno Okeyo Shs 500,000/-
 4. Bank of Africa Shs 4,831,742/-
 5. NIC Bank Shs 2,250,000/-



6. Old Mutual Shs 497,268/-
6. The full list of the unsecured creditors was set out in the Debtor's Statement of its Financial Position.
7. Other details set out in the Statement included the particulars of Trade Debtors; Partly Secured Debtors and Preferential Creditors.
8. After offsetting the debtors against the creditors, the Statement of the Debtor's financial position indicted that the estimated deficiency towards creditors was Kshs 22,859,572/-.
9. Some creditors appointed advocates to act for them, after the petition had been served upon them.
10. Some of the creditors who participated in these proceedings include;
- (a) Bank of Africa;
 - (b) Mjengo Supermart Limited; and
 - (c) National Bank of Kenya.
11. Initially, the National Bank of Kenya had raised objections to the petition, on the grounds that the Debtor had failed to demonstrate to the Court that it had acted above-board. The National Bank of Kenya felt that the Debtor had come to court with unclean hands, and was therefore trying to evade its obligation to settle the debts it owed to creditors.
12. Subsequently, the National Bank of Kenya changed its tune, and supported the petition.
13. I have given due consideration to the Debtor's Petition. I am satisfied that the debtor is unable to pay its debts. The basis for that conclusion is that the aggregate of its assets is very much lower than its liabilities.
14. Not only has the debtor been unable to service the loans it owes to financial institutions; it has also been unable to settle the decrees arising from judgments which various courts have entered against it.
15. In the said circumstances, the application before me was not simply an attempt by the debtor to avoid paying its debts. I find that the petition is a legitimate expression of the debtor's inability to meet its liabilities.
16. In the circumstances the application for the grant of a receiving order is granted.
17. Each party will meet his or her own costs.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF FEBRUARY, 2023.

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FRED A. OCHIENG

JUDGE

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

