



**In re Arvind Engineering Limited (Insolvency Petition 3 of 2019)
[2021] KEHC 292 (KLR) (Commercial and Tax) (26 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 292 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION 3 OF 2019
A MABEYA, J
NOVEMBER 26, 2021
IN THE MATTER OF ARVIND ENGINEERING LIMITED
(UNDER ADMINISTRATION) COMPANY NO. C 81121
AND
IN THE MATTER OF AN APPLICATION BY NCBA BANK KENYA PLC
UNDER SECTION 474 (5) (A) & (B) OF THE INSOLVENCY ACT 2015
AND
IN THE MATTER OF REGULATION 10(4) & 96
OF THE INSOLVENCY REGULATIONS 2016**

RULING

1. Arvind Engineering Ltd (“the Company”) is under administration. On 21/10/2021, NCBA (“the Bank”) a secured Creditor, applied under Articles 50 (1) & 159 9d) (sic) of the *Constitution of Kenya* sections 474 95) (a) & (b) of the *Insolvency Act* (“the Act”) Regulation 10(4) and 96 of the Insolvency Regulations 2016 for the Administrator of the company to be exempted from complying with section 474 (2) (a) of the Act. It also sought that the proceeds of the sale of the assets of the company be applied to offset the debt owed to the bank.
2. The application was supported by the affidavit of Stephen Atenya sworn on 21/10/2021. It was contended that between 2013 and 2015, the company took facilities secured by a debenture dated 13/1/2014 for US \$ 4,050,000/= and Kshs 137,000,000/=. That the Company was placed under administration on 31/1/2019 by the bank.
3. That as at the date of the appointment of the Administrator, the Company was indebted to the bank in excess of Kshs 800 million. The Administrator was unable to revive the operations of the Company for reasons including that a huge capital was required to revive the operations thereof.



4. The administrator thereafter opined that in the interests of the Company, its assets should be disposed off.
5. That pursuant thereto, on 2/10/2020, Sosian Steel Mills Ltd made a bid of Kshs 300 million for the assets of the Company. The same was revised to Kshs. 145 m for the plant and machinery only.
6. That whilst the total debt owing to the bank is Kshs 1,056,090,365/03 as at 14/10/2021, the Act requires 20% of the value of the proceeds be distributed to the unsecured creditors under the law.
7. The applicant contended that if the 20% of the sale proceeds were distributed as such, it would be extremely unfair to the applicant considering the debt owing. The applicant therefore sought that the entire sum be distributed to it.
8. I have considered the contestations on record. The applicant is a secured creditor. Its application was served but not opposed. However, the law requires that a portion of the proceeds of an entity under administration be reserved or distributed to the unsecured creditors.
9. Considering the debt that the Company owes the bank, I am satisfied that this is a proper case whereby the Court should depart from the general rule.
10. That in the premises, it will cause less loss and harm in acceding to the application rather than to confirm and enforce the general rule.
11. Accordingly, the application dated 21/10/2021 is hereby allowed in terms of prayer No. 2 thereof.

It is so ordered

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2021.

A. MABEYA, FCI Arb

JUDGE

