



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: D. S. MAJANJA J.
INSOLVENCY PETITION NO. E164 OF 2019
IN THE MATTER OF THE INSOLVENCY ACT, 2015
AND IN THE MATTER OF IFLIX (KENYA) LIMITED
JUDGMENT

1. This petition concerns **Iflix (Kenya) Limited** (“the Company”) which was incorporated in Kenya on 11th October 2016 under the **Companies Act, 2015**. The nominal capital of the Company is Kshs. 1,000,000/- divided into 10,000 shares of Kshs. 100 each. The objects of the Company are unrestricted.
2. The petitioner, **Iflix International PTE Ltd**, is a limited liability company incorporated in the Republic of Singapore and presents this petition as creditor (“the petitioner”).
3. In the petition, the petitioner stated that between October and December 2018, it advanced the Company **USD 620,246.28** to finance its growth and operations. Despite the repayment dates of the debt falling due and commencing the 1st January 2019, the Company has been unable to repay the debt despite repeated demands to the Company for the payment.
4. The petitioner served the Company with a Statutory Demand on 11th October 2019 demanding payment of the debt but the Company has failed to repay the Debt or part thereof. The petitioner therefore contends that there is a statutory presumption that the Company is unable to pay its debts hence it is liable to be liquidated.
5. The petitioner further avers that since the Company is insolvent and or is unable to pay its debts, it is only fair, just and equitable that the Court grants the Liquidation Order for the liquidation of the Company.
6. The petitioner also prays that the court do appoint Mr. Peter Kahi, a licensed insolvency practitioner in good standing and of Insolvency License Number OR/IP/005, as the Liquidator of the Company to take charge of its business affairs and assets with all necessary powers under the **Insolvency Act, 2015** (“the **Insolvency Act**”).
7. The petitioner advertised the petition in the Kenya Gazette on 27th December 2019. The Company was also served with the petition as directed by the court on 27th February 2020. By the time of the hearing, the Company had not filed any replying affidavit and no creditor had indicated its opposition to the petition. Since the petition was not opposed, counsel for the petitioner submitted that it should be allowed as the Company was clearly indebted, the debt was not disputed and there was no prospect of recovery of the debt. Counsel also submitted that the petitioner had complied with all the procedural steps in prosecuting this petition.
8. **Section 384(1) and (2)** of the **Insolvency Act** deals with circumstances under which a company is declared as being unable to pay its debts. It provides as follows:

384(1) For the purposes of this Part, a company is unable to pay its debts—

(a) If a creditor (by assignment or otherwise) to whom the company is indebted for hundred thousand shillings or more has served on the company, by leaving it at the company’s registered office, a written demand requiring the company to pay the debt and the company has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) If execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) If it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.

(2) A company is also unable to pay its debts for the purposes of this Part if it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

9. **Section 424(1)** of the **Insolvency Act**, sets out the circumstances in which a company may be liquidated by the court and it provides as follows:

424.(1) A company may be liquidated by the Court if—

(a) The company has by special resolution resolved that the company be liquidated by the Court;

(b) Being a public company that was registered as such on its original incorporation—

(i) The company has not been issued with a trading certificate under the Companies Act, 2015; and

(ii) More than twelve months has elapsed since it was so registered;

(c) The company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;

(d) Except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;

(e) The company is unable to pay its debts;

(f) At the time at which a moratorium for the company ends under section 645—a voluntary arrangement made under Part IX does not have effect in relation to the company; or

(g) The Court is of the opinion that it is just and equitable that the company should be liquidated.

10. The petitioner is a creditor of the Company. It is entitled to bring this petition under **section 425(1)(b)** of the **Insolvency Act**. I am also satisfied that the Company was served with a Statutory Notice under **section 384(1)(a)** of the **Insolvency Act** as a pre-condition for presentation of this petition. The evidence of indebtedness presented by the petitioner is uncontroverted. The petitioner has therefore established grounds for liquidation hence the petitioner is entitled to an order of liquidation pursuant to **section 427(1)(c)** of the **Insolvency Act**.

11. In conclusion, I now make the following orders:

(a) An Interim Liquidation Order be and is hereby issued in respect of the Company, **Iflix (Kenya) Limited**;

(b) That the Peter Kahi (Insolvency License Number OR/IP/005) be and is hereby appointed as the Provisional Liquidator of the Company;

(c) Cost of the petition shall be borne out of the Company assets.

DATED and DELIVERED at NAIROBI this 17th day of JUNE 2020.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango.

Mr Wachira with him Ms Githire instructed by Chebet and Munyaka Advocates for the petitioner.