



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION
CIVIL SUIT NO. E017 OF 2018
IN THE MATTER OF HORECA KENYA LIMITED
AND
IN THE MATTER OF INSOLVENCY ACT NO. 18 OF 2015
BETWEEN
ALPHA FINE FOODS LIMITED.....PETITIONER/APPLICANT
VERSUS
HORECA KENYA LIMITED.....COMPANY/RESPONDENT
RULING

1. Alpha Fine Foods Limited filed the subject petition herein on 4th December 2013, together with a notice of motion application of the same date seeking for orders that:-

(a) *The application be certified urgent and heard ex parte in the first instance;*

(b) *The court be pleased to appoint Julilus Ngonga and Anthony Muthusi as joint provisional liquidators of Horeca Kenya Limited ,pending hearing and determination of the liquidation petition;*

(c) *Directions do issue that, pending determination of the liquidation petition, the joint provisional liquidators will have authority to take steps to preserve and realize assets of Horeca Kenya Limited in the interest of Creditors; and*

(d) *Costs of this application be provided for.*

2. The Petitioner’s case is that, Respondent, Horeca Kenya Limited (herein “the company”) is indebted to it and other creditors and, and has resolved that it ought to be liquidated, by the court for being insolvent pursuant to section 424(1) and 425(1) (d) of the Insolvency Act.

3. The Petition is verified by and supported by an affidavit sworn by Fiaz Kurji, the director of the petitioner’s company. He avers that, the petitioner is a substantial creditor of the company and also a shareholder of the company and is represented in the Board of Directors of the company.

4. That the company’s directors have unanimously determined that the company is insolvent and resolved as aforesaid that it ought to be liquidated to safeguard the interest of all its creditors and shareholders. They have also agreed on the appointment of the proposed liquidators.

5. The petition and the subject application were served upon the company on 6th December 2018, and on the 13th December 2018, the learned counsels Mr.Ogunde for the Petitioner and Mr. Abuya for a company known “Cherrypik Limited” informed the court that, they were in agreement on the appointment of the provisional liquidators. As a result granted prayer (2) of the notice of motion application dated 4th December 2018, was allowed for the appointment of the provisional liquidators. The court directed that the petition be prepared for hearing.

6. However, on the 29th January 2019, a notice of motion application was filed in court, seeking for orders that the powers of the liquidators

be provided for. Subsequently it was allowed by the consent of the parties on 6th February 2019 and recorded in court on 11th February 2019. In a nutshell, the firm of; Iseme Kamau & Maema Advocates were appointed to act for the provisional liquidators in the matter and the powers of the provisional liquidators were provided for as prayed.

7. On 28th March 2019, the Petition was advertised and the court was informed that, there were no any other creditors who had entered appearance after the filing of the petition and advertisement thereof. The learned Counsel appearing for a company known as “Cherryrik Investment Limited” informed the court that, they have no objection to the grant of the orders in the petition. The petitioner then applied that the petition be allowed.

8. However in my considered opinion, the petitioner should formally prosecute the petition to enable the court make its final orders thereon. I do also note that, the petition names Horeca Kenya Limited as the company and/or Respondent. After the service of the petition, this party does not seem have entered appearance or to be on record at all. The petitioner therefore needs to address that issue before the matter is fully heard and determined. Consequently for reasons stated above I direct the matter be listed for hearing and all the parties be served.

9. It is so ordered.

Dated, delivered and signed in an open court this 28th day of May 2019.

G.L. NZIOKA

JUDGE

In the presence of;

Mr. Nyaburi for the Provisional Liquidator

Mr. Githua for Mr. Ogunde for the Petitioner

DennisCourt Assistant