



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
INSOLVENCY PETITION NO.5 OF 2016

PRINTWELL INDUSTRIES LIMITED..... PETITIONER

VERSUS

EAST AFRICAN EDUCATIONAL PUBLISHERS..... RESPONDENT

AND

MULTIPACKAGING LIMITED T/A

PRINTPAK..... INTERESTED

RULING

1. These Insolvency proceedings were presented to Court on 26th September 2016 to liquidate a private Company, East African Educational Publishers Limited (hereinafter the Company).

2. Printwell Industries Limited (the Petitioner) states that, as at 16th September, 2016, the Company was indebted to it in the sum of Kshs.21,774,930.05 together with interest accrued at 30% per month from the date of invoice in respect of services provided and other charges to the Company.

3. On 2nd September, 2016 the Petitioner served a Formal Demand Notice upon the Company. Although made under section 220 of the already Repealed Companies Act (Chapter 486 Laws of Kenya), the highlights of the Notice are that:-

(i) It was dated and duly issued and signed by the firm of Robi Kerato Partners Advocates on behalf of the Petitioner.

(ii) It stated the amount due as being Kshs.21,672,686.80.

(iii) It stated that the debt was for the services rendered.

(iv) It stated that if the debt was not repaid then the Company would be deemed as unable to pay its debts and the Petitioner would commence a Petition to wind up the Company.

(v) It gave the Company 21 days to comply with the Notice by paying up and in default, the

Petition would be filed.

4. Any blemish in the Notice for citing a Repealed Act was mitigated by the substance of the Demand in that it substantially conformed to the requirements of Section 384 of the Insolvency Act which provides:-

“(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).

(3) The insolvency regulations may increase or reduce the amount specified in subsection (1)(a)”.

5. Upon presentation of the Petition, the Company filed an Affidavit in Opposition to the Petition by Kiarie Kamau sworn on 24th January 2017. He is the Chief Executive Officer of the Company. The debt was expressly admitted. He then explains that due to the nature of business cycle in the publishing industry, coupled with business disruption with regard to the Government Book buying policy, the Company has lately suffered cash flow constraints.

6. The Company states that it has previously done substantial business with the Petitioner and has always honoured its obligations.

7. The Petitioner boasts of a strong presence in Kenya, Uganda, Tanzania, Rwanda, Zambia and Malawi and was apprehensive that its plans at expansion and reputation will suffer because of the Winding up Petition.

8. The affidavit was made on 24th January 2017. This would be about 14 months ago. In the intervening period the Court encouraged the parties to settle this matter amicably so as to avoid a dark end to the Company.

9. When this matter came up before the Court on 16.01.2018, Counsel for the Petitioner told Court that the negotiations had collapsed. On his part Counsel for the Company stated that the Company had a proposed payment plan and sought time to discuss it with the Petitioner’s Lawyer. The Petitioner’s lawyer would not hear of it and the Court is now forced to make this determination.

10. A debt by the Company is due and owing to the Petitioner. It is admitted by the Company. A Formal Demand has been made but the Company has failed to pay the debt or to secure or compound for it to the satisfaction of the Creditor. Even after granting some indulgence to the Company it still has been unable to pay the debt which is admittedly due.

11. In addition there is no prove that the value of its assets is more than its liability to the Petitioner. Other than make a generalized averment that the amounts owed to it by its debtors is ‘way above’ the amount owed to the ‘Creditor’, the Company provides no specifics or proof of what would otherwise be considered as its assets.

12. In the meantime PrintPak Limited (a supporting Creditor) joined the proceedings with an allegation that the Company owed it a sum of Khs.1,942,450/= plus interest at commercial rates of 24% from 12.10.2011. The Company has not responded to this.

13. The debt by the Company to the Petitioner is due and owing. The Company has been unable to pay this debt. The Company does not have sufficient assets to match the debt and so the Court cannot ask the Petitioner to look to the Assets of the Company instead of pressing for its liquidation. The Court is therefore satisfied that the Petitioner has proved that there exists circumstances which show that the Company is unable to pay its debts within the meaning given to the words '*inability to pay its debts*' ascribed by Section 384 of The Act and circumstances under which the Company may be liquidated has arisen (Section 424 (1) (e) of the Insolvency Act).

14. In the end the Petition dated 22nd September 2016 is merited and is for granting. It is accordingly granted as follows:-

- (a) The Company is hereby liquidated under the provisions of the Insolvency Act, 2015.
- (b) The Officer Receiver is appointed as the liquidator of the Company.
- (c) Costs of the Petitioner shall abide the liquidation of the Company.

Dated, Signed and Delivered in Court at Nairobi this 15th Day of March, 2018.

F. TUIYOTT

JUDGE

PRESENT;

Njaramba for Petitioner and Supporting Creditor

Kinyanjui holding brief for Kazungu for Company.

Nixon - Court Assistant