In re Malde Holdings Limited (Insolvency Cause E030 of 2021)
[2024] KEHC 1321 (KLR) (Commercial and Tax) (16 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1321 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INSOLVENCY CAUSE E030 OF 2021

A MABEYA, J

FEBRUARY 16, 2024

IN THE MATTER OF THE INSOLVENCY ACT NO 18 OF 2015

IN THE MATTER OF MALDE HOLDINGS LIMITED

BETWEEN

HARVEEN GADHOKE ..... APPLICANT

AND

MALDE HOLDINGS LIMITED ..... RESPONDENT

RULING

1. Before Court is the Motion on Notice dated 27/7/2023. The same is brought under sections 593 and 594 of the *Insolvency Act*, 2015. It seeks the extension of the administration of the Company under Mr. Harveen Gadhoke, the Administrator. The extension sought is for 12 months from 28/7/2023.

2. The grounds for the application are set out on the face of the motion and the affidavit of Harveen Gadhoke sworn on 27/7/2023. These were that the Company was placed under administration. On 28/7/2022 and the term was coming to an end on 28/7/2023. That the administrator had been running the affairs of the company for the last 11 months, secured its assets and engaged the relevant stakeholders.

3. That he had uncovered various irregularities that amount to fraud committed against the company. The deponent set out the various transactions that he considered fraudulent and which may have hindered the smooth administration. That there were two applications then pending, one being the fraudulent preference application and a re-entry application dated 29/3/2023 and 26/9/2022 respectively.

4. That the extension will allow the administrator complete the engagement with interested parties and potential buyers, regularize title documents, clearance of land rates and rents, conclusion of the pending legal matters and realization of the assets of the company. He therefore sought the extension of administration for a further 12 months.

5. The Motion was opposed vide the affidavit of Dhrupun Sudhir Shah sworn on 18/9/2023. He swore that the company was truly and justly indebted to its directors and other related entity to the tune of approximately Kshs.128 Million. He denied that there had been any fraudulent preference.

6. That the secured creditor had the right to exercise its statutory power of sale over title LR Nos. 2019/10574/2 and 209/1574/3 respectively. That the administrator had not shown that he had made effort to achieve the objectives set out in section 522 of the *Insolvency Act* "the Act".

7. In the premises, the deponent deposed that in the circumstances of this case, the court should treat the present application as one for liquidation and terminate the administration. That he believed that the pending tasks could be completed by the liquidator. He prayed that the official Receiver be appointed as the Liquidator of the Company to complete the affairs of the company.

8. The parties filed their respective submissions which the court has considered. This is an application for extension of the administration. The initial period of administration of 12 months terminated on 28/7/2023. The application was made timely.

9. No doubt the court has the power to extend the Administrator's term under section 594 (1) of *the Act*. However, in doing so the court must always have in mind the objectives of administration under section 522 of *the Act*. In this regard, the court will ask itself whether by extending the administration there is a likelihood of maintaining the company as a going concern, and whether it will achieve a better outcome for the company's creditors as a whole than if it were liquidated. The court will also consider whether the administration would be able to realize the property of the company in order to make a distribution to one or more secured or preferential creditors.

10. In the case of *Cape Holdings (Under Administration) V Synergy Industrial Credit Ltd; & Others*, the court held as follows: -

> " In this regard an administrator who wishes to have his/her term extended must demonstrate to the Insolvency Court that, he/she has carried out the administration satisfactorily for the initial term of the administration, that his/her actions have been towards achieving the objectives of administration as set out in *section 522 of the Act*, that his/her actions have been for the benefit of the body of creditors. Further, such administrator must demonstrate to the Court what he/she has done for the past 12 or so months since appointment. He/she must at the very least demonstrate that the creditor's meeting has been held, he/she has identified and/or collected and preserved all available or substantial assets of the company. In addition, he/she should be able to provide a proposal suitable or otherwise on turning around the company or the way forward. This will be in tandem with the requirement of whether the continued administration would achieve the objectives set out in section 522 of the Act of not."

11. In the present case, the administrator was able to set out what he had achieved in the first 11 months of administration. He made a detailed statement of proposals dated 16/9/2022. In that proposal it was clear that the company is insolvent. That means that it cannot continue or be maintained as a going concern. The only possible income cannot satisfy or settle the creditors. In the premises, it was

suggested that the only available avenue was to resort to objective (c) in section 522 of *the Act*, realize the property of the company to make a distribution to one or more of the preferential creditors.

12. The court has appreciated the steps undertake by the administrator, which include regularizing the titles of the company settlement of land rates and rents amongst others. Further, his action in bringing an application for fraudulent preference was in a positive light of his effort to act for the benefit of all the creditors. However, the question that arises and as submitted by the respondents, of what benefit will the continued administration have yet the company is completely insolvent?

13. I take cognizant of the fact that save for the directors of the company, who themselves had executed fraudulent preference in their favour to the detriment of all other creditors, no other creditor has opposed the extension. Since one of the objectives of the administration is realization of company property for distribution to one or more preferential creditors, I will grant the extension sought for that purpose. The same must be concluded before 27/7/2024.

14. Accordingly, the application dated 27/7/2023 is allowed as prayed.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2024.

A. MABEYA, FCI Arb, EBS

JUDGE