



REPUBLIC OF KENYA



**In re Malde Holdings Limited (Insolvency Cause E030 of 2021)
[2024] KEHC 1011 (KLR) (Commercial and Tax) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1011 (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 9, 2024

BETWEEN

HARVEEN GADHOKE APPLICANT

AND

MALDE HOLDINGS LIMITED RESPONDENT

RULING

1. This is a ruling on an application dated 29/3/2023. This Motion was brought by the administrator under Sections 683, 684 and 685 of the *Insolvency Act* and Rule 10 of the *Insolvency Regulations* 2016. It sought various orders to void the actions of the Company done and perpetrated by the respondents. Those actions included assigning rentals due to the company to the 4th respondent, assignment of debts owed to the company to the 6th respondent, amongst others.
2. The grounds for the application were that the company was placed under administration on 28/7/2022. The 1st to 5th respondents are directors of the company (“the directors”) and in control of the company before it was placed under administration on 28/7/2022 aforesaid. The 6th respondent is a tenant of the company pursuant to a lease entered into on 10/6/2019.
3. Whilst the application for the administration of the company was pending the directors entered into several preferential payments in breach of S 683 of the *Insolvency Act* (“the Act”). The said preferential payments were to the benefit of the 1st, 2nd, 4th respondent, and a 3rd party by the name Pradamshi Nathoo Brothers between June 2021 and July 2022. The approved preferential payments allegedly due to the 1st and 2nd respondent were for Kshs. 39,015,550/= and Kshs. 31,000,000/= respectively.
4. The alleged debts were offset from current and future rental payments due from the 6th respondent. That the said action was preferential treatment to the directors and the 6th respondent who were not secured creditors of the company. The other approved assignment was the rentals from the



- 6th respondent to offset an alleged debt of Kshs. 44,650,000/= allegedly owed to representatives of Pradamshi Nathoo & Brothers and Wwww.bid Investments Ltd which is associated with Dilesh Bid a director of the 6th respondent.
5. It was contended that the said assignments were made in bad faith. That no proof of debt had been produced to the administrator for which the assignments were made.
 6. The application was opposed vide the replying affidavit of Drupon Sudhir Shah sworn on 18/9/2023. He swore the same for himself and on behalf of all the other respondents. He swore that although the administrator had agreed to continue the manufacturing agreement between the company and the 6th respondent the Administrator late rescinded the same and locked out the 6th respondent from the premises.
 7. He deposed that on various days the respondent advanced the company loans as follows:-
 - a. 7/3/2017 – Kshs. 35M by the 2nd respondent.
 - b. 28/4/2017 – Kshs. 3,050,000/= Padamshi Nathoo & Sons Ltd
 - c. 29/6/2017 – Kshs. 41.6M by Padamshi Nathoo & Sons Ltd.
 - d. 31/5/2019 – Kshs. 42,268,423/= by the 1st respondent.
 - e. Undisclosed date – Kshs. 7, 117,200/= by the 4th respondent.
 8. He further contended that the debt assignments were for legitimate Commercial reasons made in the ordinary course of business. That on 10/6/2021 and 28/4/2022, the applicant resolved to settle the debts of the 1st respondent and Padamshi Nathoo & Sons. That the said debts were to be settled through current and future rents. That however the Administrator had evicted the 6th respondent from the premises thereby exposing the applicant to legal action on shareholder debts and an arbitration by the 6th respondent.
 9. It was further contended that the transactions were undertaken when the company was solvent. That the secured creditor has its debt secured by charges over LR Nos. 2019/10574/2 (sic) and 209/1574/3. He urged that the application be dismissed.
 10. Although the parties were directed to file and exchange submissions way back in September, 2023, the respondents did not file theirs until January, 2024 leading to delay in the delivery of this ruling. I have considered the submissions of the parties dated 5/12/2023 and 6/12/2023, respectively.
 11. This is an application to nullify certain transactions entered into by the directors. The applicant wants the court to void the assignments made for the benefit of the respondents by the company. The same was made within two (2) years before administration kicked in.
 12. Section 683(3) of the Act provides:-
 - “(3) If, on the hearing of an application under sub-section (2), the court is satisfied that the company has at a relevant time given a preference to a person it shall make an order voiding the act constituted by giving the preference and restoring the position that which would have existed if the preference and restoring the position that which would have existed if the preferences had not been given.”



13. This section is geared towards putting all creditors on the same pedestal. The *Act* was enacted to bring sanity in corporate governance. To correct situations where owners of Companies pile debts on the company and discriminate on who is to be preferred in settlement thereof.
14. Fraudulent preference is where there is evidence of intent on the part of the company to prefer one creditor over the others. In the present case, it is clear that the persons to whom the assignments were made were not only shareholders but they were also directors of the company save for one of them. Their alleged debts were not secured. The company had many other unsecured creditors but were never considered.
15. The question that arise is, why would the shareholders who also double as directors ring fence their alleged debts around the only income of the company, the rent from the 6th respondent? Is it not because they knew the ongoings of the company, its debt portfolio and its ability or inability to repay the same in future?
16. Whilst the 2nd respondent contended that the same was done in good faith and in the normal cause of business the court doubts it. The said assignments were done in extreme bad faith. They were done to defeat the interest of other creditors. It will be unconscionable to leave them standing.
17. Accordingly, I hold that the said assignment and resolutions were made in bad faith, were fraudulent and are liable to be nullified.
18. Consequently, I find the application dated 29/3/2023 to be meritorious and I allow the same as prayed. I award the costs to the company.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2024.

A. MABEYA, FCI Arb, EBS

JUDGE

