



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

INSOLVENCY PETITION NO.E003 OF 2019

TRISTAR TRANSPORT LTD.....PETITIONER

VERSUS

EAST AFRICAN LOGISTICS LTD.....RESPONDENT

JUDGMENT

1. On 19th March 2019, Tristar Transport Limited (hereinafter “**the Creditor**“) a limited liability company incorporated in Kenya, filed a petition seeking orders for the liquidation of East African Logistics Limited (hereinafter “**the Company**”) and the appointment of an Official Receiver as the provisional Liquidator .

2. The Creditor’s case is that the Company is truly indebted to it in the sum of Kshs. 645,550 on account of 10,000 litres of Automotive Gas Oil (AGO) it supplied to the company. It is the Creditor’s case that it does not hold any security on the company’s assets and that all it’s requests for payment of the debt amount has not yielded any positive response from the company.

3. The petitioner served a Statutory Demand Notice upon the company on 16th April 2018 which notice the company did not comply with or set aside. It is the Creditor’s case that the company is unable or has no reasonable prospects of settling the debt and that it is therefore fair, just and equitable that the liquidation order be granted.

4. The petition was not opposed by the company despite proper service and on 12th June 2019, the Deputy Registrar of this court directed the petitioner to advertise the petition in a local daily newspaper with a wide circulation.

5. When the matter came up for mention on 30th July 2019, **Mr. Muriungi**, learned counsel for the creditor informed the court that service of the petition has been effected through an advertisement placed in the Standard Newspaper of 19th July 2019 and upon satisfying itself on the issue of service of the petition, this court listed the petition for hearing on 27th November 2019.

6. At the hearing of the petition, **Mr. Vilayannur Ramamoorthy Subramanian**, the petitioner’s Finance Manager, reiterated the contents of the petition and testified that the company owes the creditor the sum of Kshs 645,550. The said witness also produced a bundle of documents attached to the petition as the petitioner’s exhibits in the case.

7. I have considered the petition filed herein, the testimony of the creditor’s witness, the bundle of documents produced as exhibits together with the petitioners written submissions.

8. Section 424 of the Insolvency Act (hereinafter “**the Act**”) sets out the circumstances under which a company may be liquidated in the following terms:

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.....

9. Section 425(1) (b) of the Act on the other hand stipulated that:

1) An application to the Court for the liquidation of a company may be made any or all of the following;-

a).....

(b) a creditor or creditors (including any contingent or prospective creditor or creditors);

10. The petitioner herein has demonstrated that it complied with service of the Statutory Demand as provided for under Section 384(1) of the Act.

11. I find that it is not in dispute that the debt is owed and that the statutory demand has not been set aside.

12. I therefore find that the petitioner/creditor has discharged the burden of proof as required by the law. My further finding is that the company is truly indebted to the creditor to the tune of kshs 645,550.

13. Consequently, I allow the petition in the following terms:

a. Liquidation order is hereby issued against the company herein in line with the provisions of the Insolvency Act.

b. The Official Receiver is hereby appointed as the Liquidator of the company.

c. The cost of the petition to be paid to the petitioner out of the Company's assets.

Dated, signed and delivered via Microsoft Teams at Nairobi this 21st day of May 2020 in view of the declaration of measures restricting court operations due to Coved -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

No appearance for the parties

C/A & DR – Hon. Wanyama