



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**INSOLVENCY PETITION NO. E002 OF 2018**

**IN THE MATTER OF METRO IMPEX LIMITED**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015**

**RULING**

1. The Petitioners Manish Kanti Shah and Hemal Navin Jhakharia (herein “the Petitioners”) filed a petition dated 4<sup>th</sup> May 2018 and amended on 27<sup>th</sup> November 2018 on behalf of Metro Impex Limited (herein “the company”) following the Company’s Board of directors resolution dated 4<sup>th</sup> May 2018, that the company be wound up and all the bank accounts operated by the company be closed.

2. The Petitioners seek for the following prayers;

*(a) That Metro Impex Ltd be wound up by an order of the court, being just and equitable to do so, pursuant to the provisions of the Companies Act (now repealed) and in particular Section 381 and 734(i) and (ii) of the Insolvency Act No. 18 of 2015;*

*(b) That pending the hearing and determination of the the Petition, an interim liquidator be appointed;*

*(c) That such orders be made in the premise as shall be fair and equitable;*

*(d) That the costs of these proceedings be the Petitioners in any event.*

3. It is averred that, the company is unable to meet its financial obligations to creditors as it has been making heavy losses due to hard economic times and unfair business competition from other market players. That the Kenya Revenue Authority (KRA), (herein “the creditor”) has frozen the company accounts with various banks, demanding tax arrears and thus grounding the company’s operations.

4. The Petition was advertised in the Standard newspaper on 22<sup>nd</sup> December 2018, whereupon the commissioner general of Kenya Revenue Authority entered appearance on 28<sup>th</sup> February 2019 as a creditor in the matter. In a subsequent affidavit dated 21<sup>st</sup> February 2019, sworn by Manish Kanti Shah, he deposed that, the company closed its business in the year 2016, and that, at the time all the creditors were fully paid except Kenya Revenue Authority with whom it had a dispute over tax assessments. On 12<sup>th</sup> April 2019, the creditor filed a replying affidavit to the Petition dated 11<sup>th</sup> April 2019, and sworn by David M. Mwangi, a chief manager with the domestic taxes department of the creditor. He deposed that, the creditor commenced tax investigations into the affairs of the company pursuant to the powers given to it under Section 5(i) of the Kenya Revenue Authority Act (herein “the Act”). The investigations were in relation to a fraud scheme called Missing Traders Scheme and a Data Driven Compliance unit, which was established for that purpose. The investigations revealed that the company had under paid VAT and income tax using invoices for which no deliveries were made. On 17<sup>th</sup> April 2018, a demand for additional VAT of Kenya shillings two million one hundred thousand and income tax for Kenya shillings 3.9 million was issued. On 16<sup>th</sup> June 2018, the company was served with additional assessment for the years 2012 and 2013 for Kenya shillings 13.5 million as the principal tax, Kenya shillings 15.3 million for corporate tax and Kenya shillings 16.1 million for VAT. A demand letter was served on the Applicants on the 16<sup>th</sup> July 2016, by there was no response, thus provoking a reminder letter dated 13<sup>th</sup> February 2018. It was averred that the last PAYE return was filed on 6<sup>th</sup> July 2016 and the last VAT return filed on 19<sup>th</sup> July 2016. That despite the demand notices, the last having been issued vide a letter dated 17<sup>th</sup> April 2018, the Petitioners were totally non-responsive and the matter was forwarded to prosecution for enforcement. One of the directors of the company was arrested whereupon the company passed a resolution on 9<sup>th</sup> March 2018, to file winding up proceedings. The deponent argued that, the board meeting of 9<sup>th</sup> March 2018, came a few days after receipt of the demand letter dated 13<sup>th</sup> February 2018 and the Petition was signed on 4<sup>th</sup> May 2018 which is coincidentally few days later after receipt of the second demand letter dated 17<sup>th</sup> April 2018. The creditor argues that the Petition is aimed at aiding the company escape liability of paying taxes.

5. Upon filing of the Petition and the subsequent amendment thereof, the court ordered that the amended petition be re-advertised and it was done. On 3<sup>rd</sup> July 2019, the learned counsel Mr. Eliakim Owala appearing for the petitioners informed the court that, the parties had been negotiating the matter and that they have reached an agreement that the creditor will not oppose the petition. He requested that the court do appoint an official receiver. The creditor's learned counsel Ms. Chelang'at Mutai, confirmed that the creditor was not opposing the petition and the court should appoint the official receiver to take care of the interest of the creditor.

6. I have considered the application for a appointment an Official Receiver and I note that the provisions section 423 of the Insolvency Act 2015, (herein "the Act"), empowers the High Court to supervise the liquidation of a company registered in Kenya as herein. Under section 424 (e) of the Act a company may be liquidated due to its inability to pay its debts.

7. Similarly under section 427 the court has the power upon hearing the application for liquidation of a company to may issue an interim liquidation order. In this case, the only creditor has not opposed the petition and therefore I grant the order of interim liquidation order and order that a provisional liquidator be appointed.

8. Consequently, the company shall henceforth within seven (7) days of this order lodge this order with the Registrar for registration and the office of the Official Receiver. The appointed liquidator, who I direct shall be the "Official Receiver and Liquidator" shall comply with the provisions of section 433 of the Act. The appointed the "Official Receiver and Liquidator" shall perform the functions provided for under section 438, 439, 443, 444 and 464 of the Act.

9. In a nutshell the application for appointed of an Official Receiver and Liquidator is allowed with direction that the appointed Official Receiver and Liquidator shall exercises the powers bestowed upon the office under the Act.

10. It is so ordered

**Dated, delivered and signed in an open court this 8<sup>th</sup> day of July 2019.**

**G.L. NZIOKA**

**JUDGE**

In the presence of;

Mr. Owala for the Petitioner

Ms. Chelangat for the Respondent

Dennis .....Court Assistant