



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

COMMERCIAL & TAX DIVISION

INSOLVENCY CAUSE NO. 7 OF 2016

IN THE MATTER OF GEM CM CONSTRUCTION LIMITED

AND

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

RULING

1. The Court is now able to complete its Ruling of 6th July 2018.

2. In paragraph 5 of that Ruling this Court observed;

“Given that liquidation of a Company is really the death knell of a Company and is obviously a drastic Order, this Court is reluctant to make such an Order unless it is certain that it is the only appropriate Order to make. So as to satisfy myself fully as to which way to go, I direct that the parties furnish this Court with affidavit evidence as to whether item 7 of the Consent referred to in paragraph 3 herein was effected and whether the debt owed by the Company to the Bank is secured. And if so, the nature and details of the security and why they have not been enforced. The Court shall thereafter make its final orders on the Request for liquidation”.

3. The Petitioner herein filed an Affidavit through Christine Wahome which is sworn on 18th July 2018 while the Company’s further position was presented through the further Affidavit of Martin Kinoti sworn on 26th July 2018.

4. Having looked at the further evidence availed, I am able to conclude as follows:-

(i) The Petitioner was not party to the Consent Order of 24th October 2016 in Insolvency case No. 3 of 2016.

(ii) There is consensus between the Petitioner and the Company that the terms of the Consent were never effected.

(iii) Even if there was an intention to secure the Company’s debt to the Petitioner, the same was never done and therefore remains an unsecured debt.

5. I had in my earlier Ruling found that there is a debt owing to the Petitioner by the Company and that the Company conceded to its inability to pay. It now turns out that the unpaid debt is not secured.

6. One other issue would concern the Court. Liquidation Orders against a Company may in certain circumstances not be made if the Company owns assets that match the liabilities. There is no evidence of any assets belonging to the Company or their value. I am unable to find that the Company has assets that match the Petitioner’s liability.

7. The Court is satisfied that the Petition has established that the Company is unable to pay its debts in terms of Section 384 of The Insolvency Act and is therefore merited.

8. This Court grants the following Orders:-

(i) GEM-CM Construction Limited is to be liquidated under the Provisions of The Insolvency Act 2015.

(ii) The Official Receiver be appointed as a provisional liquidator of the Company.

(iii) Costs of this Petition to the Petitioner and shall be paid out of the Assets of the Company.

Dated, delivered and signed in open Court at Nairobi this 2nd day of November, 2018.

F. TUIYOTT

JUDGE

Present:-

Wafula h/b for Kimani for Petitioner

N/a for Company

Fred - Court Assistant