

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
INSOLVENCY CAUSE NO. E075 OF 2025

IN THE MATTER OF THE INSOLVENCY ACT 2015
AND
IN THE MATTER OF SEVEN SEAS TECHNOLOGIES LIMITED

HAKKEN CONSULTING LIMITED.....1ST
CREDITOR
HAKKEN S.A.2ND
CREDITOR
CARLOS OLIVEIRA.....3RD
CREDITOR

VERSUS

SEVEN SEAS TECHNOLOGIES
LIMITED...DEBTOR/APPLICANT

RULING

1. This insolvency cause arises from the Creditors’ statutory demand dated 6th May 2025 served upon the Debtor/Applicant for the sum of USD 309,969 being the amount due on a final judgment, decree or order obtained by the 1st Creditor in Milimani HCCOMM No. 287 of 2015 dated 29th May 2019. The Debtor has now filed the application dated 28th May 2025 seeking to set it aside and

stay further intended proceedings in the liquidation petition.

2. The application is filed pursuant to Section 384 of the Insolvency Act and Regulations 16 and 17 of the Insolvency Regulations 2016. It is supported by the affidavit and further affidavit of **Michael Macharia**, the Debtor's Chief Executive Officer sworn on 29th May 2025 and 23rd September 2025 respectively.
3. The Creditors oppose the application through the Replying Affidavit of **Nuno Pita**, the 1st and 2nd Creditors' director sworn on 2nd July 2025. He depones that the Applicant's debt arose out of commercial transaction dating back to 2014 and culminating in a consent judgment recorded on 4th July 2018 in HCCC/285/2015. He further contends that the decretal sum remains unpaid despite the Debtor being afforded the chance to pay the same in instalments.
4. The parties also filed written submissions to support their positions in the matter.
5. The Debtor's principal grounds for seeking to set aside the statutory demand is that it holds a decree of substantial amounts issued on 22nd December 2022 in HCCC No. E479 of 2020 and that an order of mandamus was issued on 7th May 2025 in HCJRMISC/E125/2024 compelling the PS - Ministry of Health to pay the Applicant the decretal amount within 90 days.

6. It is contended that the Debtor has made substantial payments towards the consent judgment demonstrating good faith and therefore a liquidation order would impede the Debtor from pursuing the decree in HCJRMISC/E125/2024 and prejudice its ability to use the decretal sum satisfy creditors and sustain its operations.
7. The main issue for determination is whether the court should set aside the statutory demand.
8. A statutory demand is ordinarily issued where a company is unable to pay its debts as per the provisions of **Section 384(1)** of the **Company Act**.
9. **Regulations 16** and **17** of the **Insolvency Regulations** provide an outline of the grounds for setting aside a statutory demand and the procedure to be followed once it has been issued. The provisions state, in part, as follows:
 - 16. Application to set aside statutory demand**
 - (1) The debtor may, apply to the Court for an order to set aside the statutory demand—**
 - a) within twenty-one days from the date of the service on the debtor of the statutory demand; or**
 - b) if the demand has been advertised in a newspaper, from the date of the advertisement's appearance or its first appearance, whichever is the earlier.**

(2) Subject to any order of the court under regulation 17(7), time limited for compliance with the statutory demand shall cease to run from the date on which the application is lodged with the court.

17. Hearing of application to set aside statutory demand

(6) The court may grant the application if—

(a) the debtor appears to have a counterclaim, set-off or cross-demand which equals or exceeds the amount of the debt or debts specified in the statutory demand;

(b) the debt is disputed on grounds which appear to the court to be substantial;

(c) it appears that the creditor holds some security in respect of the debt claimed by the demand, and either paragraph (6) is not complied with in respect of the demand, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or

(d) the court is satisfied, on other grounds, that the demand ought to be set aside.

10. In determining an application to set aside a statutory demand, Courts have to be satisfied whether the applicant has established either, or all the grounds set out under Regulation 17(6). In the instant application, the Debtor pegs its application on the fourth ground, that is, *“if the court is satisfied, on other grounds, that the demand ought to be set aside”*.
11. It is not disputed that there is a consent judgment which gave rise to the unsatisfied decree herein, and that the Debtor paid a part of the decree. But the substantial amount remains outstanding.
12. Upon perusal of the supporting affidavit, I note that the Debtor only makes general averments that it will pay the Creditors after a decree in its favour is settled by the Ministry of Health. There is however no definite timeline when this will be. In essence, the Respondent merely asserts payment without any credible certainty.
13. It is also noted that through the Court and on indulgence by the Creditors, the Debtor has previously been afforded the opportunities to settle the outstanding decree. Despite this indulgence, no material progress was made, and this undermines the credibility of the Debtor’s claim of being committed to pay.
14. It bears emphasis that mere promises to settle the decree upon payment by the Government at a later and

uncertain date cannot suffice to displace the statutory demand. The evidential burden lies with the Applicant to demonstrate, by credible and contemporaneous commitments, that the debt will indeed be paid without unreasonable delay.

15. In the absence of such commitment, and considering the fact that the decree has remained unsatisfied since 2018, I am not persuaded that the Debtor has raised any credible grounds warranting the statutory demand to be set aside. Consequently, the application fails to meet the threshold set under Regulation 17(6)(d) of the Insolvency Regulations, 2016.

16. In the result, I find no merit in the application dated 28th May 2025. The same is hereby dismissed with costs to the Creditors.

RULING delivered virtually, dated and signed at **NAIROBI**

This **12th** day of **February** 2026.

P.M. MULWA

JUDGE

In the presence of:

Ms. Saina for Debtor/Applicant

Ms. Muluvi for Creditors

Court Assistant: *Carlos*