

NATIONAL SOCIAL SECURITY AUTHORITY  
versus  
CAPITAL BANK CORPORATION LIMITED  
and  
RENAISSANCE FINANCIAL HOLDINGS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 16 November 2018 and 30 January 2019

### **Opposed Application**

*T Zhuwarara*, for the applicant  
*R Mabwe*, for the 2<sup>nd</sup> respondent

TAGU J: This application is brought by the applicant as a contributory of the first respondent for its winding up in terms of section 206 read together with section 207 of the Companies Act [*Chapter 24.03*] on the basis that the first respondent by special resolution resolved that it be wound up by the court, the first respondent is unable to pay its debts and that it is just and equitable that the first respondent be wound up.

The circumstances are that the first respondent was incorporated as a merchant bank in or about the year 2001. Around the year 2009 the first respondent's performance as a viable company began to dwindle for various reasons. The first respondent was then placed under recuperative curatorship by the Governor of the Central Bank with effect from 2<sup>nd</sup> June 2011. After hearing of the much publicized ailing of the first respondent the applicant petitioned the relevant authorities including but not limited to the Central Bank and the Ministry of Finance to get clearance to rescue the first respondent financially. The applicant duly obtained the relevant clearance and agreed with the then Holding Company of the first respondent Renaissance Financial Holdings Limited (RFHL) (the second respondent) to inject capital into the first respondent amounting to USD\$24 000 000.00 (Twenty Four Million United States Dollars.) Accordingly the first respondent was removed from curatorship around March 2012. Despite the Capital injection the first respondent's performance did not improve.

This prompted the management and board to advise the shareholders of the dire straits that the first respondent was facing. Consequently, extraordinary shareholders' and Board meetings were called in accordance with the first respondent's Articles of Association and notice to all shareholders. On the meeting held on the 17<sup>th</sup> of October 2013 a report was presented that showed that the first respondent had a negative capital balance of USD\$17 304 101.00 (Seventeen Million Three Hundred and Four Thousand One Hundred and One United States Dollars) as at 31<sup>st</sup> of August 2013. The shareholders by the requisite majority passed a resolution that the first respondent be wound up. However, a mistake was made in that an application for voluntary liquidation was made. This was promptly withdrawn and the present court application was made.

The second respondent opposes the application.

At the hearing of this matter the second respondent took some points in limine. Firstly, that in terms of section 207 of the Companies Act the company should have filed a petition and whether this application should have been brought in terms of section 206, secondly, that the resolution did not come up with a unanimous decision to wind up and thirdly that there was a confusion as to who should be appointed as the provisional liquidator.

The applicant indicated that this application was being brought in terms of section 206 as read with section 207 of the Companies Act. Section 206 provides circumstances in which a company may be wound up by the court. Section 207 provides for the petition for winding up company. Under section 206 certain conditions have to be met for a company to be wound up by court, among them that there should be a resolution to that effect and or that the company is unable to pay its debts. Under section 207 a petition may be made but there is a proviso that a contributory shall not be entitled to present a petition unless certain conditions have been made. In my view the applicant properly brought this application in terms of section 206.

Coming to the issue of resolution to wind up, the Bank's shareholders indeed came up with several resolutions on the 17<sup>th</sup> of October 2013 one of which was that the Bank be wound up. While it may be noted that there was no unanimous decision to wind up the majority decided that it be wound up. The decision of the majority shareholders carried the day. As to who was to be appointed provisional liquidator the applicant appointed one John Mafungei Chikura who accepted and filed his declaration accepting the appointment. For these reasons I will dismiss the points in limine.

Coming to the application it is clear that the first respondent is woefully insolvent for the following reasons. The accounts of the first respondent show that in 2012 the first respondent suffered a loss of USD\$25 152 193.00. In 2013 the first respondent suffered a loss of USD\$ 13 108 771.00. Its Capital and Reserves are a negative USD\$20 397 174.00. During that period the first respondent had total outstanding liabilities in excess of USD\$35 307 656.00. Currently the first respondent has a negative Share Capital in excess of USD\$ 25 000 000.00. Clearly this shows that the first respondent is not able to pay its debt and this constitutes a firm ground to found an order for winding up.

The second respondent in its opposition clearly pointed out, whether rightly or wrongly that the applicant instead of turning up the fortunes of the first respondent has been asset-stripping it up. So the position is that the first respondent has been asset stripped and is no longer viable. Its fortunes cannot be turned around. In order to protect the remaining assets and to safeguard the interests of the creditors the first respondent has to be provisionally wound up pending the granting of an order for final liquidation. I therefore grant the application and make the following orders.

IT IS HEREBY ORDERED THAT

1. The 1<sup>st</sup> Respondent, Capital Bank Corporation Limited, be and is hereby provisionally wound up, pending the granting of an order in terms of paragraph 3 hereof or the discharge of this Order.
2. Mr John Mafungei Chikura of Deposit Protection Corporation Evelyn House 26 Fife Avenue /Corner Blackistone Street, Harare, be and is hereby appointed as the 1<sup>st</sup> Respondent's Provisional Liquidator with the powers set out in paragraphs (a) to (h) of subsection 2 of section 221 of the Companies Act [Chapter 24.03];
3. Any interested party may appear before this Honourable Court sitting at Harare on 13<sup>th</sup> March 2019 to show cause why an order should not be made placing the 1<sup>st</sup> Respondent Company in Liquidation and why an order should not be made that the costs of these proceedings shall be the cost of the liquidation.

