ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

PRACTICAL AND LEGAL GAPS IN LIQUIDATION AND WINDING-UP OF PLCs IN ETHIOPIA: THE PRACTICE OF FEDERAL COURTS IN ADDIS ABABA

By

Tewodros Zeleke,

Advisor: - Prof. Tilahun Teshome

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A Thesis Submitted to the College of Law and Governance Studies, School of Law, in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LL.M) in Business Law

Approval Sheet by the Board of Examiners

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Approved by Board of Examiners

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DECLARATION

I hereby declare that this thesis represents my own work and has never been presented in any other institution. I further affirm that, to the best of my knowledge and belief, all used materials have been properly cited.

Name: Tewodros Zeleke

Signature:_________________

Acknowledgement

First and foremost, I would like to praise the Almighty God for His grace and guidance throughout this journey.

I am profoundly grateful to my advisor, Professor Tilahun Teshome, for his exceptional guidance, invaluable insights, and unwavering support. His expertise and dedication was crucial in the completion of this thesis, and I am deeply appreciative of his contributions.

I would also like to extend my sincere thanks to Mr. Meka Nesiru, and Mr. Gerawork Yitbarek, Judges at the Federal First Instance Court, Commercial and Investment Bench, for their cooperation in answering my questions and providing the necessary case materials for this research. Their assistance was instrumental to my work.

My gratitude also goes to Mr. Ahmed Abdela from the Ministry of Trade and Regional Integration, Mr. Yirga Tamre, Certified Accountant and Business Consultant, for their cooperation in answering my questions, and Mr. Marshet Mohammed, PhD student at the Geneva Academy, for his invaluable comments, as well as to Mr. Abera Bogale, Mr. Muluzer Gebrehiwot and Biruk Alemayehu, Attorneys and Consultants at Law, and Mr. Muluken Abate, Assistant Judge at the Federal High Court, for their encouragement and support.

Lastly, but by no means least, I am especially thankful to Mr. Ashenafi Lemecha, Judge at the Federal First Instance Court, Commercial and Investment Bench, and Mr. Woldemariam Kenennisa, Attorney and Consultant at Law, for their unwavering encouragement and invaluable support from the inception of this thesis to its completion.

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Acronyms

AABE	Accounting and Audit Board of Ethiopia
EEA	European Economic Area
EPRDF	Ethiopian People's Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
GDP	Gross Domestic Product
IAASA	Irish Auditing and Accounting Supervisory Authority
MOTRI	Ministry of Trade and Regional Integration
ODCE	Office of the Director of Corporate Enforcement
PLC	Private Limited Company
USA	United States of America

Abstract

The dissolution and liquidation of a private limited company involve the processes of winding up a company's affairs and distributing its assets among creditors and shareholders. This can happen for various reasons, including insolvency, the completion of the company's purpose, or a decision by the shareholders. Various countries' Commercial laws incorporate rules to regulate dissolution and liquidation of companies. From such rules, the appointment and criteria to be a liquidator is the main objective of dissolution and liquidation. Similarly, the new FDRE Commercial Code attempts to regulate these matters. Even though the Code has incorporated rules for the proper liquidation of companies, there are problems regarding the liquidation of companies in general and PLC's in particular. Among these are inadequate rules on the qualifications and regulations of the liquidator, which cause unnecessary delays and damage to creditors and shareholders.

This thesis seeks to evaluate the legal framework's adequacy with regard to PLC winding up and liquidation, as well as the challenges that creditors, shareholders, and courts may confront throughout these processes and the unique aspects of PLC liquidations. The thesis builds on analysis of legislation, interviews, and literature reviews to achieve the study's goals. The thesis concludes that there are problems with the application of current rules, a lack of supporting legislation passed by relevant bodies, and a lack of clarity and adequacy in the provisions in the new FDRE Commercial Code. The requirements for becoming a liquidator are unclear, and there is no authority in place to license and oversee liquidators, causing issues, draining court time and resources, and damage to third parties.

Thus, the thesis maintains that, to provide additional clarity, the standards outlined in the Commercial Code should be backed by specific subordinate rules, and that an accountable body should take responsibility for licensing and overseeing liquidators.

Key Words; Liquidator, Liquidation, Dissolution, Private Limited Company

Chapter One

Introduction and Overview of the Study

1.1 Background of the Study

Any economy depends heavily on business. A nation's gross domestic product or GDP, which determines how well it performs internationally, is one way that a business' performance can affect the success of the entire country. There are thousands of ways commercial success translates to economic growth, from job creation that generates revenue for the community to taxes that support efficient government operations and pay for infrastructure upkeep and renovations, or in other ways that benefit the nation's population.[1]

Small businesses boost of economic revenue on a smaller scale, but one that's of vital importance, directly and positively affecting the health, quality of life and purchasing power of residents in the local community.[2] A sole proprietorship or business organizations are both viable business models. Business organizations can take the shape of a partnership or a company when it is carried out in cooperation with others. One of the primary types of business organization is company.

The company form had a modest beginning in the late 16th or early 17th century, and from that point on, it increased in size and power in various ways in various counties. In the USA, it became known as corporations or a multi-national, and it reached the tallest and mightiest heights that man has ever known.[3] Corporations' relative permanence is one of its key characteristics. There are more than 333 million companies around the world.[4] South Africa has a lot to offer compared with other African countries. South Africa attracts many professionals and big multinational companies. It's currently home to more than 75% of all top global companies in Africa.[5] In comparison, Ethiopia has a slow rate of companies' development.

[1] The Roles of Business Organizations in Economic Development (bizfluent.com), retrieved on 11/6/2022.
[2] Ibid.
[3] Alemayehu Fentaw and Kefene Gurmu (2009), ***Law of Traders and Business Organizations***, JLSRI, pp. 91
[4] Global companies 2021 | Statista, retrieved on 11/6/2022.
[5] Global companies give Africa a second look | Africa Renewal (un.org), retrieved on 11/6/2022.

As stated above companies are relatively permanent. However, sometimes it became necessary to close the companies for several reasons. The closing passes through dissolution. A company's assets must be realized as part of liquidation or winding-up process in order to cover charges and expenses related to the liquidation and winding-up process. This can be done either through a private agreement or at a public auction. After costs and expenses are covered, any money left over is allocated to creditors in the stipulated order of priority and in accordance with those creditors' rights and interests in the business.[6] Then after, the residue is distributed among the shareholders.

The topic of dissolution is one of the key elements of a company's phase of existence that the Ethiopian legal system addresses. Corporations can be dissolved for a number of reasons, including failure to comply with legal requirements, provisions in the company's bylaws, a general member's agreement to dissolve, or a court order dissolving the companies for good reason.[7]

In Ethiopia the new Commercial Code incorporated provisions for dissolution, liquidation and winding up of business organizations in general and companies including Private Limited Companies (PLCs) in particular. Therefore, this study tries to explain concept of dissolution, liquidation, winding-up with emphasizing on assessing the law and practice of liquidation of PLCs in Addis Ababa Federal Courts.

1.2 Statement of the Problem

The final extinction of a corporation should occur in two stages in order to safeguard those third parties as well as the company itself and its partners. The first one would be dissolution, in which case the business maintains its legal status but stops operating for business purposes and begins the liquidation process. The second option would be liquidation, in which case the business pays out its debts and obligations to third parties and divides the remaining assets among all owners. The registered entries of the liquidated company will have their registrations cancelled after the liquidation process is complete. From this point forward, the company will no longer exist.

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[6] Bowmans the Value of Knowing, Guide - Liquidation, Business Rescue and Compromise in South Africa, pp. 7

[7] Grounds of Company Dissolution under Ethiopian law – Fikadu and Associates Law Office, retrieved on 11/7/2022.

Following the overthrow of the Dergue, EPRDF transformed the economy into a market-based and imposed limitations were removed. People came to take part in a variety of economic endeavors. They operate businesses in the form of sole proprietorship, partnerships, and companies. PLCs, a type of company are growing quickly. Private limited company is considered to be the hybrid form of partnerships and a share company; there exist certain special features of a private limited company particularly as compared to a share company.

Even though the economic system reformed, until recently business organizations have been governed by the 1960’s commercial code. Very recently the new commercial code adopted and entered in to force by repealing three books of the 1960’s commercial code.[8]

As incorporation is the act of establishing a company, winding up is the act of ending its existence. Although a company is usually expected to have an endless life span; nevertheless, if circumstances arise that necessitate ending its corporate existence, the appropriate legal procedures must be implemented to accomplish this. In this procedure, the company's assets are managed for the benefit of its shareholders and creditors.[9]

To govern the dissolution, liquidation and winding-up process of business organizations the commercial code of Ethiopia incorporated different provisions and chapters.[10] For instance, Art-181, 205, 208, 232 & 242 regarding partnerships in general and Chapter nine Title six of the new Commercial Code deals about dissolution and winding up of share companies. On the other hand, Chapter Seven (Art-531 and subsequent provisions) of Title Seven of the same code talks about liquidation and winding-up of Private Limited Companies. Although the commercial code stipulates different provisions, there are gabs in the law regarding clear stipulation as to who can be a liquidator? What types of qualification he/she has to fulfill other than ethical tended requirements listed in the code? The requirements stated in the code under Art-477 are very general like to be a good character, having necessary expertise in liquidation and no record of conviction of breach of trust and related crimes in connection with business organization. For

[8] Preface of the New Commercial Code (Commercial Code of Ethiopia, Federal Negarit Gazette Extra Ordinary Issue Proclamation No. 1243/2021) states the new commercial code repealed Book I, II and III of the 1960 Commercial Code. Here in after called New Commercial Code.

[9] R. Aashish Jaangda and M. Kannappan (2018), ***A Study on Compulsory Liquidation of a Company and its Liability***, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 2018, 647-658, pp.648)

[10] Art-181, 205, 208, 232 & 242 regarding partnerships in general and chapter nine of title six of the Commercial Code talks about dissolution and winding up of share companies. Chapter Seven (from Art-531 and ff.) of title seven talks about liquidation and winding-up of private limited company.

instance, whether managers can be liquidators or not is not clearly stated. Shall the liquidator be certified? Who can and shall certify liquidators? Does the liquidation of one member private limited company differ? These gabs as to the law have been creating problems in practice; in particular in the process of liquidation of PLCs. There is no clearly stated educational requirement to be a liquidator. There is no authority which certifies liquidators. Due to these cases liquidation and winding up of PLCs is taking up to twelve years in the process or litigation. This is increasing problems to the courts, shareholders and creditors as well as to the national economy due to failure of liquidators to liquidate properly.

Therefore, this research critically examines laws as well as practices giving special emphasis on liquidation and winding up of PLCs in Addis Ababa Federal Courts.

1.3. Research Questions

In general, the research deals with the legal and practical challenges PLCs' may face in the process of the liquidation and winding-up.

Particularly, the research has strived to answer the following specific questions:

- Does the Ethiopian legal system provide sufficient legal framework for liquidation and winding up of PLCs?
- What challenges are there in liquidation and winding up of PLCs before Federal Courts located in Addis Ababa?
- What are peculiarities in liquidation and winding up of PLCs before Federal Courts located in Addis Ababa? If any?

1.4. Objectives of the Study

The new Commercial Code provides rules governing the dissolution, liquidations and winding up of companies in general and PLCs in particular. However, practically courts, shareholders and creditors are suffering during liquidation of PLCs. Hence, the study aims at examining and critically analyzing the sufficiency of the existing legal framework regarding liquidation and winding up of PLCs in Ethiopia in general and the practical challenges the process involves, drawing from the practice at Federal Courts located in Addis Ababa. In particular it aims:

- To assess the sufficiency of legal framework concerning liquidation and winding up of PLC;

- To investigate problems faced by shareholders, creditors and courts during liquidation and winding up of PLCs;
- To examine peculiarities of liquidation and winding up of PLCs;
- To suggest possible recommendations for the problems based on finding of the study.

1.5 Literature Review

A well-known author on Ethiopian company law, Fekadu Petros, describes liquidation and evaluates the legal rules surrounding company liquidation in his book "*Ye Ethiopia Kubanya Hig*" ("Ethiopian Company Law"). Except for the notion of liquidation, he does not particularly address PLC liquidation or liquidator qualification.[11]

Hailemariam Temesgen researched and reached on the conclusion that provisions of the 1960's commercial code were problematic as to voluntary dissolution of PLCs and the Ethiopian legal system has no sufficient rules to that effect.[12]

Despite the contributions the studies made to the dissolution and winding up of PLCs in Ethiopia in general and Addis Ababa courts in particular, issues regarding criteria which need to be fulfilled to be a liquidator, who can and shall certify liquidators and what new process is inserted for the liquidation one member private limited company still remain unanswered. The then commercial code is also repealed by the new commercial code, new form of business organization, one member private limited company, is introduced and the proposed area has not been the subject of any research.

1.6. Scope of the Study

Entertaining cases of dissolution, liquidation and winding up of company (Share Company and Private Limited Companies) is the jurisdiction of federal courts. Although these federal courts exist outside Addis Ababa, the study limits itself to liquidation and winding up of PLCs in Federal Courts located in Addis Ababa.

1.7. Significance of the Study

The study will have both legal and social significance. Its legal significance relates to its role in the investigation of the legal sufficiency regarding liquidation and winding up of PLCs which

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[11] Fekadu Petros, '**Ye Ethiopia Ye Kubanya Hig (Ethiopian Company Law**)' Far East Tading East Tradin PLC 2008 and the revised one in 2014.
[12] Hailemariam Temesgen (2017), ***Dissolution and Winding up of PLCs under the Ethiopian Law***, AAU SGS.

enables to know the potential gabs and initiation to fill those gaps. The study will serve the judiciary as reference guide of while they entertain dissolution, liquidation and winding up of PLCs.

Moreover, it will also be a base for potential researchers. The study will benefit creditors and shareholders from a social importance standpoint by highlighting issues and offering suggestions.

1.8 Methodology

The study employed a qualitative research methodology, utilizing both doctrinal and empirical approaches to critically assess the adequacy of relevant legal regimes and analyze practical issues through the examination of pertinent court cases. Data collection involved both primary and secondary sources, gathered through the following methods:

1.8.1 Methods

A combination of research methods is used in the study. As a result, both primary and secondary sources are utilized. The study follows a deductive approach. The writer has collected and analyzed different court cases. Data collection methods include legal document analysis, case analysis, and semi –structured interviews.

1.8.1.1 Primary Data:

The research used in person interview with judges, Ministry of Trade and Industry officials, and PLC liquidators in order to get adequate and in-depth information about the challenges on the round. For a more thorough analysis, slightly semi-structured and non-directional interviews have been used. The study uses purposive sampling to select participants who are most knowledgeable about the subject matter. As a result participants (judges) are selected based on their direct involvement in relevant cases focusing on those who have handle Plc. liquidation matters in federal first instance court commercial and investment bench, Ministry of Trade and Industry officials and liquidators, are chosen based on their experience and expertise in dealing with liquidation.

Primary documentary sources including the Commercial Code and other relevant federal substantive and procedural laws have been analyzed. Focus group discussion with judges has been conducted and cases are analyzed.

1.8.1.2 Secondary data

Relevant literature materials books, articles and journals have been used as secondary sources. In addition, various internet sites have been consulted for relevant data and information. The study employs purposive sampling to select specific court cases and literature for in-depth analysis. The study also tries to examine other countries experience. The method of selection of these states is based on the type and development of the legal system.

Data Analysis: To draw a conclusion, methodologies for qualitative data analysis have been used.

Ethical Considerations

The researcher taken into account the following ethical considerations during the interviews and entire research process: -

Informed consent; after being informed of the purpose and content of the study, the interviewees asked to provide their full agreement to participate in an interview. **Confidentiality**; the research participants are informed that their privacy and confidential information will be protected.

1.9 Limitation of the Study

The absence of pertinent materials on the topic under the Ethiopian legal system was the first obstacle this study faced, especially, in regard to PLC winding up and liquidation. However, by using resources written in various legal systems and reviewing cases the research makes an effort to address this issue. Not to mention, there is a financial constraint that makes conducting this research difficult.

1.10. Organization of the Study

The research paper is organized in four chapters. Accordingly, the first chapter provides general introduction and overview of the study, which includes introduction, background of the study, statement of the problem, the research questions, objective of the study, scope of the study, research methodology, significance of the study, limitation of the study and organization of the study.

The concept of dissolution, liquidation, and winding up are covered in the second chapter. The development of dissolution and liquidation of companies, grounds of dissolution of companies in general and PLCs in particular, the justifications for company liquidation, the role of liquidators, the criteria to become a liquidator of company, and review of experiences from other countries are tried to include in this chapter.

The place given to liquidation of companies in general and PLCs in particular under Ethiopian legal system are examined under the third chapter. Thus, the legal framework and institutional set up for the proper implementation of liquidation and winding up of PLCs and one member private limited company are scrutinized. The manner courts are entertaining liquidation and winding up cases of PLCs and one member private limited company, problems facing during liquidation are the concern of this chapter.

On the basis of the research findings, the final chapter provides conclusions and a couple of recommendations.

Chapter Two

Conceptual Framework of Dissolution and Liquidation of Private Limited Company

2.1. Introduction

A company comes into being through a legal process and also comes to an end through dissolution and liquidation. Laws of different jurisdictions stipulate dissolution, liquidation and winding up provisions to bring an end the life of companies. Dissolution and winding up of company cannot be carried out in a single day. It takes time. Therefore, this chapter discusses about the concept of dissolution, liquidations and winding up of company and their differences, types and grounds of dissolution and liquidation of companies and their rationales. Criteria to be a liquidator, the functions of a liquidator and the experiences of other countries are the concern of this chapter.

2.1 Dissolution of Company

A company can be considered, on one hand, a contract signed by at least two people and, on the other hand, a legal person which has several legal relationships with third parties.[13] Company dissolutions are uncommon. Shareholders frequently prefer to sell their shares to a firm or other persons than to disband it. Nonetheless, there are some circumstances where dissolution of company is unavoidable.[14] There is a statement “Sometimes the best gain in business is to close it!”[15]

In order to protect those third parties, as well as the company itself and its partners, the final extinction of a company should go through different stages. The first one would be dissolution, in which some agree that the company continues to be a legal person but ceases its commercial purpose and starts the liquidation. Liquidation comes second on the stage, in which the company compensates its credits and debts vis-à-vis third parties and distributes the corporate assets resulting from the liquidation among all shareholders. Once the liquidation procedure is finished,

[13] The goal is to discuss the most typical type of companies. There are companies which doesn’t need association like One-man company and more than two persons like a share company.
[14] Law of Traders and Business Organizations Teaching Material, JLSRI, pp. 129.
[15] De. P. S.Teimukhe (Kawale) Liquidation. pp. 297-298

the registered entries of the dissolved company will be cancelled. From this moment, the company will be extinguished. The last one is called winding up.[16]

Differently from the above, in some states a company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, the company's name shall be struck off by the registrar from the register of companies and it shall also get this fact published in the official gazette. The dissolution thus puts an end to the existence of the company.

A company can be considered, on one hand, a contract signed by at least two people and, on the other hand, a legal person which has several legal relationships with third parties. In order to protect those third parties, as well as the company itself and its partners, the final extinction of a company (Winding up) should go through (preceded by) two different stages. The first one is dissolution, in which the company continues to be a legal person but ceases its commercial purpose and starts the liquidation. Dissolution of company means abandoning the agreement shareholders entered into.[17] However, sometimes dissolution may be without the consent of shareholders. The second one is liquidation, in which the company compensates its credits and debts vis-à-vis third parties and distributes the corporate assets resulting from the liquidation among all shareholders. The continuance of the company as a legal person is only for liquidating the company. Once the liquidation procedure is completed, the registered entries of the dissolved company will be cancelled. From this moment, the company will be extinguished.[18]

There are differences between writers on the issue which one comes first, is dissolution or liquidation. Some states dissolution is the last stage and comes after liquidation, whereas, others say dissolution comes first.[19] Nonetheless, dissolution by any dissolution-related ground is required. After that, winding up and liquidation could take place. After dissolution, the process of resolving claims is called liquidation.

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[16] Renee C. Nash, J.D, Limited Liability Company, Professional Education Service Course Material, Pp. 10-1.

[17] Fekadu Petros "Ye Ethiopia Kubanya Hig" (2nd Edition 2008), pp. 435

[18] Renee C. Nash, J.D, Limited Liability Company, Professional Education Service Course Material, Pp. 10-1

[19] https://saylordotorg.github.io/text_law-for-entrepreneurs/s32-03-dissolution.html#:~:text=The%20first%20is%, accessed on 7/7/2023.

2.2 Types/Grounds/ of Dissolution of Company

There are several ways in which a company can be dissolved. Types or grounds of dissolution of company are almost similar in various jurisdictions.[20]

A. Voluntary Dissolution

A company may be dissolved by the decision of shareholders. Usually unanimous vote of the shareholders and extra-ordinary shareholders meeting needed to dissolve the company.[21] Members of companies may decide to avoid their company. Where the life span of a company was not limited by a formative document, shareholders of the company, at any time, can make themselves free from a business bond by dissolving the company.

Voluntary dissolution may also include dissolving according to the terms of its operating agreement or articles of organization, i.e. if the agreement provides an expiration period for the company.[22]

B. Legal or Administrative Dissolution

Under certain circumstances the state in which the company is organized has authority to dissolve the entity by law or administrative action. This occurs when the company fails to follow certain statutory requirements.[23]

States usually have detailed laws governing the operation of limited liability companies, beginning with formation and ending with dissolution. These laws all contain provisions that set forth certain events that can lead to an administrative dissolution of the entity, that is, one initiated by the state in which the company is organized. Non-fulfillment of required obligation can be an example.

C. Judicial Dissolution

A shareholder, director or interested party of a company may ask a court to dissolve the company, a process which is referred to as judicial dissolution. This can happen, for example,

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[20] Fekadu Petros, note 5 above, pp. 436.

[21] For instance in Ethiopia Art-473 of the FDRE Commercial Code shows possibility of dissolution by the decision of members of company.

[22] Three Types of Dissolution - Apex Law Group (apexlg.com) accessed on 6/10/2023

[23] Ibid.

when a member believes that other members are not acting in the best interests of the company.[24] A shareholder may file suit to have a court dissolve the company on a showing that the company is being irreparably injured because the directors are deadlocked in the management of corporate affairs and the shareholders cannot break the deadlock. Shareholders may also sue for dissolution if corporate assets are being misapplied or wasted, or if directors or those in control are acting illegally, oppressively, or fraudulently.

2.3 Liquidation of Company

Company liquidation was, until a generation or so ago, a sterile legal concept describing the circumstances and process in accordance with which a company was eliminated from the commercial world.[25] The process by which a company is brought to a legal end and its assets are divided is known as liquidation. In order to liquidate a company, all of its usual normal operations must be stopped, its financial situation must be investigated, its assets must be realized, its creditors must be paid in full (if there are sufficient funds), and any remaining funds, after all debts have been paid in full, must be distributed to the shareholders.[26] The liquidator typically assumes the directors' authority while the company is in liquidation. In reality, the company's operations cease until the liquidator need them to assist with the winding-up procedure.

During liquidation, the company continues to be a legal person but its activity will be orientated towards the final extinction of the company. Liquidation in this sense refers to the process whereby the company's property is administered by liquidator/s/ for the benefits of securing the interests of the creditors & shareholders of the company.

One could wonder how this concept of liquidation differs from bankruptcy when it is explained here. The term bankruptcy is used only for individual debtor’s insolvency whereas the term liquidation is used for insolvency of business organization according to some writers. However,

[24] Renee C. Nash, J.D, Limited Liability Company, Professional Education Service Course Material, Pp. 10-1

[25] Harry Rajak, McPherson and Keay: The Law of Company Liquidation Andrew Keay (4th edn) (2017, Sweet and Maxwell, London.

[26] Office of the Director of Corporate Enforcement (2015), Information Book 7 The Principal Duties and Powers of Liquidators, Receivers & Examiners Under the Companies Act, PP. 8. Linda Hamed Malkawi, The Effect of Liquidation on The Legal Personality of the Public Shareholding Company Under Compulsory Liquidation, Journal of Legal, Ethical and Regulatory Issues, Volume 24, Special Issue 1, 2021, pp. 1

many jurisdictions use the term bankruptcy interchangeably with insolvency and sometimes use bankruptcy as general term applied for both natural and legal persons.[27]

2.4 The Difference between Dissolution and Liquidation of Company

Some countries reverse the order of the steps, bringing liquidation first and dissolution later. For these countries before dissolution, the company has to wind off its affairs. Surplus has to be distributed among the shareholders. During this period the company is said to be in liquidation. After the satisfactory completion of liquidation process, final declaration is made that the company is dissolved. Thus liquidation is the process of ending while dissolution is the end itself. In these jurisdictions a dissolved company no longer exists. But a company in liquidation, though in the hands of liquidator, retains its complete existence. If the liquidation is annulled, the company will resume its power. Thus a company in liquidation may survive. But there is no question of survival of a dissolved company. It is not in existence. However, this is not true in other jurisdictions.

2.5 Meaning, Power and Qualification of Liquidator of Company

2.5.1 Meaning of Liquidator

A liquidator is a person selected to handle the company's liquidation. When the liquidation phase begins, the company's directors stop working and are replaced by the liquidating body/liquidator/ in their roles. Official liquidator is the title used for this person if the winding up is according to a court order. The responsibilities of the liquidator include gaining access to and realizing the company's assets, paying its obligations, and distributing any remaining assets to the shareholders. If the winding up is carried out pursuant to a court order, the liquidator operates under the direction of the court and reports to it regularly.[28]

2.5.2 Powers and Responsibilities of Liquidator

1. To institute or defend any suit, action, prosecution or other legal proceeding, civil or criminal on behalf of the company.

2. To carry on the business of the company so far as may be necessary for winding up.

3. To pay to the creditors.

[27] Demarso, Y. K., & Abba, B. A. (2021). Bankruptcy Law of Share Companies under Ethiopian Law: Focus on Non-Financial Sectors. Beijing Law Review, 12, 250-265. https://doi.org/10.4236/blr.2021.121015.

[28] Guide on Winding up / Dissolution of Companies, Securities and Exchange Commission of Pakistan, pp. 1.

4. To make any compromise or arrangement with creditors.

5. To sell the movable and immovable property and things in action of the company by public auction or private contract, with power to transfer to any person or to sell the same in parcels.

6. To do all acts and to execute all deeds, receipts and other documents in the name and on behalf of the company and for that purpose to use in the company's seal when necessary.

7. To draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.[29]

At the end of the process, the company is wind-up. Liquidation does not mean that the creditors of the company will get paid. The purpose of liquidation is to ensure that all the company's affairs have been dealt with properly.[30]

2.5.3 Qualification to be a Liquidator

Countries provide different qualifications to be a liquidator of company. For instance, Companies Act 2014 of Ireland stipulates five qualifying categories a person in order to qualify for appointment as a liquidator of a company. These are:-

Category 1; The person must be a member of a prescribed accountancy body and hold a current practicing certificate from that body and is not prohibited by the rules of that body from acting as a liquidator.

Category 2; The person must be a practicing solicitor and hold a current practicing certificate from the Law Society of Ireland under the Solicitors Acts 1954 to 2002 and is not prohibited from acting as a liquidator.

Category 3; The person is a member of a professional body recognized by the Irish Auditing and Accounting Supervisory Authority (IAASA) and, is authorized for the time being by that professional body to pursue the activity and is not prohibited by the rules of that body from acting as a liquidator.

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[29] Ibid.
[30] Ibid.

Category 4; The person qualified under the laws of another European Economic Area (EEA) state to act as a liquidator in insolvency proceedings and the qualifications held entitles him or her to act as a liquidator in the State.

Category 5; The person has practical experience of winding-up a company, has knowledge of the relevant law, and has been authorized by IAASA, in consultation with the Office of the Director of Corporate Enforcement (ODCE), to be authorized as a fit and proper person to act as a liquidator. In addition, the person must have in place indemnity against losses and claims that may arise.

In addition to the above the following persons are ineligible for appointment as liquidator of a company:

- A person who is an officer or employee of the company or who held those positions within 24 months of the commencement of the winding-up of the company;
- A parent, spouse, civil partner, brother, sister or child of an officer of the company, (except with the leave of the Court);
- A person who is a partner or in the employment of an officer or employee of the company;
- A person who is an undischarged bankrupt;
- A person who is not qualified for appointment as liquidator because of a link with a subsidiary or holding company or otherwise connected to the company being liquidated;
- A person who is the subject of a disqualification order.

Almost similar qualification criteria and impediments exist under Malaysia law.[31] Furthermore, liquidators need to be ethical and professional, as they have to act in the best interests of the company or the partnership in liquidation and its stakeholders. They have to uphold the standards and the principles of their profession, such as integrity, independence, competence, and confidentiality. They also have to abide by the rules and the codes of conduct of their regulatory body. A liquidator should be honest, trustworthy, and respectful, and be able to demonstrate their accountability and responsibility.[32]

2.6 Appointment and Removal of Liquidator

The nomination of liquidators needs to be done carefully because there are competing interests and concerns about impartiality; unless it results in a conflict or a misuse of authority. When a

[31] Who Is Qualified Or Not Qualified To Be Company Liquidator? (fareezlaw.com), retrieved on 24/06/2023
[32] Appointment of company liquidator (linkedin.com), accessed on 6/10/2023.

company's shareholders or directors decide to dissolve the company, they usually choose liquidators at the same time.

In the case of dissolution and liquidation ordered by the court, the company laws of many jurisdictions provide that the court may appoint an official liquidator. The company laws do not regulate the procedure for selecting the practitioner and the courts of each relevant jurisdiction have developed their own rules and conventions to deal with the selection process.[33]

The issues arise when the liquidator is appointed by the court or by parties other than the company (such as directors or shareholders). The rules differ between jurisdictions, but there are essentially two types of systems: the nomination system and the rotation system. In a nomination system, the applicant for the liquidation of company, who is usually a creditor petitioning the court for a liquidation order, nominates a preferred liquidator and the court will, in the ordinary course, appoint the nominated liquidator. In a rotation system, the petitioning creditor has no say in the appointment and the court selects a liquidator from a list of official liquidators by rotation. The rotation system has been criticized because of possible anti-competitive effects.[34]

According to the democratic and agency principles, the body that appoints a person to a post has the power to have that person removed from it. The reasons for removal may include misconduct, fraud or misfeasance, inability to act as liquidator, conflict of interest or lack of independence and professional incompetence or failure to exercise its powers and functions by taking due diligence. For instance, in Singapore the court can remove a liquidator for good cause.[35]

2.7 Reporting Account and Meeting

The liquidation procedure takes time to complete. Finalization might take years. The liquidators provide report about the progress or final account. The period to provide report differs from jurisdiction to jurisdiction. In South Africa, the liquidators must lodge a first liquidation and distribution account (account) within six months of the date of their appointment as final liquidators. If the assets (if any) have all been realized and there are no unresolved issues, it

[33] Trade Practices Commission, Study of the Professions, Final report—July 1992, Accountancy, pp. 83–87.
[34] Ibid.
[35] Raja & Tann (2017), Criteria for Removal of Liquidator, Criteria for Removal of Liquidators (rajahtann.com) accessed on 6/28/2023.

could be a first and final account. If it is not a final account, the liquidator must submit an account every six months until the winding-up process is complete. The liquidator may apply for extensions of time in appropriate circumstances. The accounts sets out the details of all funds received by the liquidator from the realization of assets, all expenses incurred and how the funds are to be distributed. Once the court approves an account (i.e. the court is satisfied that it appears correct), it will give the liquidators permission to advertise that the account will lie open for inspection. It must lie open for inspection for a period of not less than 14 days. During this period creditors may inspect the account and lodge objections. Assuming that there are no objections, the court will usually confirm the account within a few days of the expiry of the advertising period. The liquidator must give notice of the confirmation of the account by the court in the government gazette.[36]

2.8 Winding up

Winding up is the end of life of a company. The decision of dissolution, whether by agreement of shareholders or actions of third parties (creditors and court), is the beginning of the end. But winding up is the end itself.[37] When the liquidation is complete, the liquidator submits an application to have the company removed from the register of companies, thereby certifying it to be dissolved.[38] Even after dissolution, cancellation of registration is required to put an end to the existence of a company.

Chapter Summary

In this chapter the idea of a company, in particular, private limited company's dissolution, liquidations, and winding up are covered. The establishment of a company and its ending are subject to legal procedures. Dissolution, liquidation, and winding up provisions are required to end a company's existence properly. Dissolution and liquidation take time and cannot be completed in a single day. While liquidation pays out the company’s and creditors and distributes the proceeds of the liquidation to all shareholders, dissolution entails the company ceasing to operate for profit.

[36] BOWMANS The Value of Knowing (2019), Guide - Liquidation, Business Rescue and Compromise in South Africa, pp. 8
[37] Fekadu Petros, note 5 above.
[38] A BIS SERVICE, Dealing with Debt How to wind up your own company, The Insolvency Service.

There are several dissolution types and reasons, and although some states consider dissolution to be the final step, others believe it to be the first. When a company is liquidated, its directors are replaced by the liquidating body or liquidator, who is chosen to conduct the liquidation.

The complex and potentially lengthy liquidation procedure takes years. In some jurisdictions, the corporation winds up its affairs prior to dissolution before going through liquidation first and dissolution thereafter. A company that is dissolved in these jurisdictions ceases to exist, whereas a firm that is in liquidation continues to exist in full. The task of handling the company's liquidation is assigned to a liquidator, who is responsible for accessing and realizing the company's assets, satisfying the company's debts, and distributing any remaining assets to shareholders. Different nations have different requirements for liquidators, including membership in a prescribed accounting body, practice as a lawyer, belong to a professional organization and have actual experience in winding up of company. Due to conflicting interests and worries about impartiality, the selection of liquidators is carefully thought out. A company's shareholders or directors typically select liquidators concurrently when they decide to terminate the business. Many jurisdictions' company rules allow the court to appoint an official liquidator in circumstances of dissolution and liquidation that the court has ordered. In liquidation, two different sorts of systems are employed: the nomination system and the rotation system. The rotation system has come under fire for its potential to have an anti-competitive effect and for having the authority to remove someone from a position, like in Singapore.

Chapter Three

Dissolution, Liquidation and Winding Up of Private Limited Companies in Ethiopia

3.1 Introduction

As the new Commercial Code defines, a private limited company is a business organization whose capital is fully paid in advance, divided into shares and whose members are not liable for the debts of the company provided that they have paid up their contributions.[39] It is constituted by a minimum of two and a maximum of fifty members.[40] It can be established for a limited period of time to accomplish a specific plan of the company or for unlimited period of time. The members of the company are fully, jointly and severally liable to third parties in respect of commitment intended into the formation of the company. Not only that, any shareholder with a decisive vote may be jointly and severally liable with the company.[41]

Although companies including PLC are characterized to have a perpetual existence, their life may come to an end due to different reasons. For instance, the market dynamics and competitive landscape may change, potentially leading to a decline in the company's performance. Factors such as technological advancements, shifts in customer preferences, or new regulations can impact a company's ability to thrive. If the decline continues, it could eventually lead to the dissolution, liquidation and winding up of the company.[42] Although there are courts in the regional states which entertain federal jurisdiction [through constitutional delegation], this chapter deals with dissolution of PLC, types and grounds of dissolution, and liquidation of PLC under Ethiopian law with specific focus on the law and practice in federal first instance courts situated in Addis Ababa. The law is similar throughout the country.

3.2 Dissolution of PLC under FDRE Commercial Code

The former as well as the new Commercial Codes of Ethiopia do not explicitly define what dissolution means. But one can get some clue about it by reading different provisions on the dissolution of business organization and company. As stated in chapter two, dissolution is

[39]New Commercial Code of FDRE, Art-495 (1)
[40] Id, Art-495 (4)
[41] Id, Art-295
[42]L.C.B, Gower's principles of modern company law, (4th ed.), p.719

basically about bringing to an end an agreement among members or shareholders to work together.[43] Dissolution is often followed by liquidation and winding up. Art-181 and 182 of the new FDRE Commercial Code govern the grounds of dissolution and winding up process of business organizations in general.

According to authors such as Misganaw Kifelew et al., commercial organizations may come to an end in three stage processes that follow one another. These are dissolution, liquidation (also known as winding up) and cancellation from the commercial register.[44]During dissolution, a company ceases its regular business activities and initiates the process of winding down its affairs. However, the company does not lose its legal personality.[45]

3.2.1 Grounds of Dissolution

There are grounds of dissolution applicable for all kinds of business organization though some grounds are unique to specific type of business organization.

According to Art-181 of the new Commercial Code of Ethiopia, grounds of dissolution common to all business organizations are:

- Where the purpose of the business organization has been achieved or cannot be achieved;
- Expiry of a fixed term, unless the members agree to extend the period;
- A court decides to dissolve the business organization for good cause;
- A court declares to dissolve the business organization bankrupt;
- Members agree to dissolve the business organization, at any time.

These general modes of dissolution of business organization, which are equally applicable to PLC, can be grouped into the following main categories:

A. Voluntary Dissolution

Where members agree to dissolve their business organization, they are free to decide at any time. The requirement for the decision depends on the type of the business organization.[46] In case of a share company, it's the extra-ordinary general meeting that can decide on dissolution.[47] The

[43]MisganawKifelew et al (2023), "Law of Traders and Business Organizations: A Textbook", ELSA, pp. 426.
[44]Id, pp. 134.
[45]A contrario reading of Art-182 (1) of new FDRE Commercial Code.
[46]Id, Art-181 (4).
[47]Id, Art-400 (4).

same is true for a PLC.[48] Not less than a two-third majority of capital represented by voting shares represented at a meeting is required for a resolution to be adopted in an extraordinary general meeting.[49]

B. Dissolution by the Operation of the law/ Administrative Dissolution

There are common grounds for dissolution of all business organizations by operation of law/administrative decision.[50] These include achieving the purpose and the expiration of the term. Other grounds for dissolution by operation of law/administrative decision are distinct for companies and partnerships. For example, incapacity, bankruptcy, and/or partner death are grounds for dissolution by operation of law for partnerships unless partners agree to preserve the partnership, but they cannot be grounds for dissolution of companies. Since companies are not a collection of individuals, the death of a partner cannot be a ground of dissolution of company.

When two or more companies merge or consolidate, the original companies may be dissolved and dissolution due to bankruptcy is also another way of dissolution of business organizations through operation of the law. Reduction of number of shareholder below the minimum number is also another ground.[51] The loss of three-quarter of capital of the PLC is a ground of dissolution.[52] The loss of three-quarter of capital is also a ground of dissolution of Share Company.[53]

C. Dissolution by the Decision of Court

Art-181 (4) of the new Commercial Code empowers courts to dissolve a company for good cause upon application by members. The Code elaborates what constitutes good cause. Accordingly, Art- 181 (6) states;

"*There shall be good cause for the purpose of Sub Article (4) of this Article, in particular, if there is a serious disagreement between members and the disagreement obstructs the attainment of the purpose of the organization.*"

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[48]Id, Art-527 (1).
[49]Id, Art-402 (1).
[50] For instance, Art-217 of the former Commercial Code states Any business organization shall be dissolved where its purpose has been achieved or cannot be achieved. The new Commercial Code Art-181 has a carbon copy of these grounds.
[51] Art-473 (1, A)ofNew FDRE Commercial Code.
[52]Id, Art-532
[53]Id, Art-473 (1, A) (3)

The mere disagreement between members shall not constitute a good enough cause to dissolve a business organization, where the organization can attain its business purpose if some members are expelled by paying them their share.[54] However, this justification seems ineffective for the company because a company, in principle, is not a collection of people. Due to this reason Art-473 (4) of the Code allows any interested party to lodge application for the dissolution where the board of directors fails to call an extraordinary general meeting to consider voluntary dissolution or continuation of the company where three-quarters of the capital has been lost. Declaration of bankruptcy by the court is also dissolution by the decision of court.[55] From the reading of Art-969 and 970 of former commercial code we can understand that even if the suspension of payment by the trader is a ground, the mere suspension of payment does not result in bankruptcy and decision of court is required.

The general provision for the dissolution of business organizations, found in Art-181, is applicable to PLCs as well, according to Art-531 of the new Commercial Code. However, it doesn't exclude grounds that are inherently applicable to partnerships. For instance, a partner's death or incapacity only applies to partnerships. Generally speaking, Art-532 refers to Share company provisions of the new Commercial Code.

Once a PLC is decided to be dissolved, such decision shall be published in a newspaper having wide circulation and posted on the company`s website within twenty one days from the date of the decision to dissolve;[56] The notice, to which the words “in liquidation” shall be added, shall include the name of the company, amount of the capital, ground for dissolution, name, address, and the scope of power of the liquidator.[57]

3.3 Liquidation of PLC under FDRE Commercial Code

A company keeps its legal personality during the liquidation procedure. It will only lose its legal personality upon cancellation from the commercial register as specified in Art-181 after it has gone into liquidation. Liquidation thus covers the period from the time the dissolution is confirmed until the cancellation of registration.

[54]Id, Art-184 (7).
[55]Id, Art-181 (5)
[56] Id, Art-474
[57]Ibid.

Although the term "liquidation" is used in a number of legislation, it is not defined by different Ethiopian laws. The Law of Succession, for instance, contains a notion of liquidation to acquire the net inheritance without defining what liquidation means. Even though there is no clearly given definition for the term liquidation, the reading of provisions here and there in the legislations show, the aim of liquidation is to get net asset. Some uses winding-up interchangeably with the word liquidation.

During liquidation, liquidators take the responsibility of directors or manager of the Share Company and PLC respectively. Similar to grounds of dissolution, the Code cross-refers to Share Company provisions for liquidation of PLCs.[58] Hence, issues for instance, of appointment of liquidators, roles and responsibilities of liquidator, are governed by general provisions and provisions dictated for Share Company.

A. Appointment of Liquidators

First, liquidators may be appointed in the memorandum of association. A memorandum of association is an instrument drawn up to establish a business organization.[59] Memorandum of association is essentially the agreement of shareholders. Secondly, if the memorandum of association does not say anything, liquidators may be appointed by the extraordinary general meeting which resolved dissolution.[60]

Thirdly, if the memorandum of association and the extraordinary general meeting which resolved dissolution failed to appoint liquidators, the court may appoint liquidators on the application of the board of directors, supervisory board, auditors, shareholders or creditors.[61]

Civil procedure code of Ethiopia deals about appointment of commissioner to investigate the accounts and property of a partnership to know the accounts of a partnership and also administer the property.[62] This provision seems also useful for the process of liquidation of company.

B. Removal of Liquidators

[58] Id, Art-533
[59] Id, Art-173 (1)
[60] Id, Art-475 (1)
[61] Id, Art-475 (2)
[62] Civil Procedure Code of the Empire of Ethiopia of the 1965, NegaritGazetta Extra Ordinary issue No. 3/1965, Art-134 & 188.

The power of removal is incidental to the power of appointment.[63] Thus, the body which granted power has the ability to revoke it. In principle, the body that appointed the liquidators can have them dismissed. Hence, the body which appointed liquidators can remove them by extraordinary general meeting.[64] However, court can remove liquidators irrespective of appointing body with good cause.[65] The body who removed liquidators shall replace them.[66] Liquidators may resign from their position by giving prior notice.[67]

C. Criteria to Qualify for or to be Appointed as a Liquidator

A person to be appointed as liquidator of company needs be:[68]

- Of a good character,
- have the necessary expertise to undertake liquidation,
- No record of conviction of breach of trust, theft, robbery or other similar criminal offenses while serving as a promoter, director, manager, member of supervisory board, auditor or holding any other managerial position or under any other circumstance.

A person must be of good character and have no prior convictions of breach of trust when laws specify certain requirements that must be satisfied in order to obtain certain types of licenses, such as an advocacy license.[69] Before somebody enters into such professions, certain criteria or conditions must be satisfied, and the appropriate regulating bodies monitor the fulfillment. However, having a good character needs to be presumed.

What level and kind of expertise is required to carry out liquidation is not expressly stated in the Commercial Code. Is it professional, or is just having skill/experience/ enough? Is having license requirement to engage as liquidator?

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[63] Guy DespardGof (1931), *The Appointing and Removal Powers of the President Under the Constitution of the United States*, College of William & Mary Law School William & Mary Law School Scholarship Repository, pp. 36.
[64] Art-475 (3)ofNew FDRE Commercial Code
[65] Ibid.
[66] Id, Art-475 (4)
[67] Id, Art-476
[68] Art-477 of New FDRE Commercial Code
[69] Federal Advocacy Service Licensing and Administration Proclamation No. 1249/2021, Federal Negarit Gazette 27th Year No.42, Art- 6 & 7.

The 1960 Commercial Code of Ethiopia did not require or state liquidators to have necessary expertise on liquidation. However, the new commercial code requires having necessary expertise.[70]

3.4 The Practice of Liquidation of Private Limited Companies in Federal First Instance Courts Located in Addis Ababa

Cases involving business organizations and associations registered with, or established by, federal government organs including dissolution and liquidation of companies is the jurisdiction of federal courts, specifically federal first instance courts.[71] Therefore, cases related with dissolution of PLCs registered with or established by federal government are initially being entertained by Federal First Instance Courts.

3.4.1 Cases on the Liquidation of PLCs

A. W/ro Gebeyanesh Getahun (plaintiff) vs. Ato Birhan Tagele (Defendant) and Liquidator of a dissolved Company (Big Trading PLC)[72]

In this particular case, the court dissolved the company (Big Trading PLC) in 2001 E.C. In 2002 E.C., an application for the liquidation of the dissolved company was filed. The liquidation process took longer than twelve years. In 2015 E.C., the liquidators submitted their liquidation report to the court. According to the liquidators' report, neither the plaintiff nor the defendant was capable to provide proof of their contribution while the company was formed. As a result, they came to the conclusion that it should be seen as a debt that they must settle or pay to the company. Nonetheless, this report was created by editing the earlier one that had been submitted to the court and approved by the latter. The court rejected this part justifying that, there is an assumption that a PLC can only be formed if the capital has been paid in whole. In addition, no one (no party) has a claim on the settlement of contribution, and there is no dispute over this matter. The other point caused contestation is the liquidators imposed extra-contractual liability on the manager of the PLC without having such power and following due process of law. The court rejected these parts of the report and claims.

[70] Art-477 (2)ofNew FDRE Commercial Code
[71]Federal Courts Proclamation No. 1234, Federal NegazitGazeta 27th Year No. 26, Art- 5(1) (k).
[72]W/roGebeyaneshGetahun (plaintiff) vs. AtoBirhanTagele (Defendant) and Liquidator of dissolved Company (Big Trading PLC), FFIC Commercial and Investment Bench, File No. 165765, Jan 2016 E.C

B. Ato Adugna Anbelu (plaintiff) vs. 1.Dissolved PLC (Being liquidating) 2.Ato BelaynehSergualem (Defendants) and Amhara National Regional State Bahirdar City Urban development and Construction Department (Respondent)[73]

In this case, there were two PLCs, BA Omega PLC and Dynamic General Trading PLC, owned by the same shareholders. The two PLCs decided to be dissolved by two separate divisions of courts entertained in two different files and dissolved subsequently one another before the establishment of current FFIC Commercial and Investment Bench. Following their liquidation process, the case of one of the dissolved PLCs, Dynamic General Trading, reached FSCCD. The division entertained the case at cassation level and decided change of liquidator and remanded the case to the lower FFIC.

The newly appointed liquidator restarted the liquidation process by applying to the FFIC Commercial and Investment Division, citing difficulties in liquidating the two PLCs separately due to conflicting orders from two different courts. The liquidator argued that, since both companies had the same shareholders, their liquidation should be combined, even though each company had its own separate legal identity. This approach led to confusion and complications for creditors' and interested third parties' claims, as the first PLC's liquidation was already being handled by the Federal High Court. Ultimately, the lower court rejected the request to consolidate the liquidation of the two PLCs, stating that having the same shareholders did not justify merging cases involving distinct legal entities. Furthermore, the court emphasized that the cases were being heard by courts of different hierarchies, and it was not within the lower court's jurisdiction to order the consolidation.

C. W/ro Adanech Begashaw (7 persons) (Applicants) vs. 1. Mamo Kacha PLC 2. Ato Dereje Begashaw 3. Begashaw Shitayena Ena Lijochachew PLC (Being liquidating and represented by liquidator) (Respondents)[74]

[73] AtoAdugnaAnbelu (plaintiff) vs. 1.Dissolved PLC (In liquidation) 2.AtoBelaynehSergualem (Defendants) and Amhara National Regional State Bahirdar City Urban development and Costruction Department (Respondent), FFIC Commercial and Investment Bench, File No. 194315, June 15/2015 E.C

[74] W/ro Adanech Begashaw (7 persons) (Applicants) vs. 1. Mamo Kcha PLC 2. Ato Dereje Begashaw 3. Begashaw Shitayena Lijochachew PLC (Respondents), FFIC Commercial and Investment Bench, File No. 257006, December 06/2015 E.C.

In this case, the court appointed a liquidator to finalize the liquidation of Begashaw Shitayena Ena Lijochachew PLC. Acting on this assignment, the liquidator auctioned the company's immovable property. During the auction held on June 16, 2014 E.C., the immovable property of the 3rd respondent was sold for 118,000,000 Birr. The auction winner has already paid 6,800,000 Birr as a bid guarantee and provided proof that Awash Bank will cover the remaining 111,200,000 Birr. The payment guarantee from the bank specifies that the payment will be made once the bank has secured the property as collateral through a mortgage.

Based on this, the liquidator submitted a request to the court, seeking an order for the relevant government body to register the buyer or auction winner's name by canceling the previous ownership in accordance with the law governing immovable property. As supporting evidence, a letter from Awash Bank was attached. To expedite the liquidation process, the liquidator agreed to grant the auction winner an additional two months to complete the payment after the initial forty-five-day period had passed.

However, the second respondent opposed the liquidator's claim, arguing that the liquidator acted without following mandatory legal procedures and unlawfully granted an extended payment period beyond the legal limit. The second respondent requested that a second auction be held instead of transferring the title deed to the auction winner. After reviewing the relevant laws, including Articles 441 and 442 of the Civil Procedure Code, the court rejected the liquidator's request. The court reasoned that the auction winner should have paid the full amount within the required forty-five days, and the liquidator's extension of the payment period was illegal.

D. Addis Ababa University Business Enterprise PLC (Under liquidation) vs. No person is called or there is no defendant called[75]

In this case, the liquidator filed a claim requesting the court to order Addis Ababa University, a shareholder in the dissolved PLC, to allocate a budget for the liquidator's remuneration. However, the court rejected the claim based Article 499(4) justifying that as a mere shareholder in the dissolved PLC, Addis Ababa University is not liable for the liquidator's remuneration. Instead, the remuneration should be paid from the remaining assets of the dissolved company.

[75] Addis Ababa University Business Enterprise PLC (Under lquidation) vs. No person is called or there is no defendant called, FFIC Commercial and Investment Bench, File No. 286934.

The court also urged the liquidator to conclude the long-delayed liquidation process. In addition, the court noted that the liquidator may request Addis Ababa University to pay any outstanding unpaid share, if any.

Other cases are also reviewed.[76] For example, in the case of Ato Benti Tasisa vs. Golden Prospect Mining (involving two persons), the liquidator reached a compromise with the shareholders after the court had decided the company's dissolution and ordered liquidation, without fulfilling his duties or settling the claims of third parties. However, the court rejected the compromise and did not approve it.[77] These cases show the delay of liquidation of PLCs for long period of time.

3.4.2 Causes for the Problems in Liquidation of PLCs

The former commercial code did not stipulate necessity of expertise to be a liquidator.[78] Unlike the former commercial code, the current one dictates the liquidator needs to have necessary expertise.[79] However, it does not dictate what kind of professional background is necessary to be a liquidator. How long he has to acquire experience before serving as a liquidator is not clearly stipulated on the commercial code.[80] In fact, it may not be necessary to dictate details on the commercial code. Nevertheless, there are no other subordinate laws and guidelines too. This is creating practical problems as discussed so far.[81] The Cambridge Dictionary defines the word expertise as a high level of knowledge or skill in a given field.[82]

There is no specific authority that licenses and regulates liquidators independently. The Accounting and Audit Board of Ethiopia (AABE) is authorized to license auditors.[83] However, there are no precise regulations or guidelines that specify the requirements for obtaining a

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[76]Ato Mohammed Anilu (Plaintiff) vs. Ahmed Bela (Defendant), FFIC Commercial and Investment Bench, File No. 271248 and AtoFikaduAmbaye(Plaintiff) vs. AtoFikaduWorku (defendant),), FFIC Commercial and Investment Bench, File No. 230091.

[77] Ato Benti Tasisa (Plaintiff) vs. 1. Golden Prospects Mining PLC 2. Dr. Kebede Hailu (Defendant), FFIC Commercial and Investment Bench, File No. 185064.

[78]Art-264 & the subsequent provisions for partnerships and Art-496 & subsequent provisions for company of previous Commercial Code.

[79]Art-477 (2) of New Commercial Code.

[80]Interview with AtoMekaNesru Mohammed, Judge at Federal First Instance Court Commercial and Investment Division, on 13/9/2023 at 3 PM.

[81]Ibid.

[82] Available at EXPERTISE | English meaning - Cambridge Dictionary, retrieved on 19/10/2023

[83]A Proclamation to Provide for Financial Reporting, Proclamation No. 847/2014, Negarit Gazette 20th Year No. 81, Art-4 (2) (e). In fact, the Board also gives license for accountants.

liquidator license. The law does not provide specific professional background. Mr. Yirgu Tamire argues that being accounting professional by itself is not sufficient to conduct proper liquidation. There are practical problems in liquidation of company; existence of incompetent liquidators due to lack of sufficient legal knowledge, existence of ethical problems and remedies for the ethical problems can be mentioned.[84] There is no clearly stated code of conduct.

Most liquidators who work in practice could not fill the gaps in the legal framework. Lack of experience and expertise of liquidators is creating problem.[85] The Board gives license for accountants whose professional background is accounting. There is a work rule in courts which provides and obliges judges to select from the lists provided by the Board the registered accountants on rotation basis. However, still courts face challenge due to lack of expertise and experience on the part of liquidators. Judges at FFIC Commercial and Investment Bench could not appoint liquidator which they can think of capable enough.[86] This is due to prohibition under the work rule. The Board does not give training regarding liquidation of companies for the liquidators. There are no checking mechanisms on the part of the Board to check the competency of liquidators when it gives license/send lists to the court/.[87]

The Board has no rules except international accounting and auditing principles to regulate liquidators of company. When there is conflict between the two parties, the Board tries to solve the issue amicably. The Board has no ethical rules and never took measures before. The Ministry of Trade and Industry accepts the final reports prepared by liquidators of companies including PLCs. After accepting the final report cancels the company from the commercial register. The ministry does not check whether the liquidator is competent or not.[88] It is the company which appoints the liquidator when the dissolution is voluntary. The ministry believes that the shareholders have appointed competent liquidators, provided the liquidator issues a publication regarding the company's dissolution.

[84]Interview with AtoYirguTamire, certified accountant and Business consultant, on 12/9/2023, Addis Ababa at 5 AM

[85]Ibid and interview with AtoMekaNesru, note 77.

[86] Ibid.

[87] Interview with AtoFikaduAgonafir, Manager of Federal Democratic Republic of Ethiopia Accounting and Audit Board of Ethiopia, on 12/9/2013 at 4 AM, Addis Ababa.

[88] Interview with Ato Ahmed Abdella, Head of Business Licensing Department of Ministry of Trade at Addis Ababa on 13/9/2023, 4 AM.

The new FDRE Commercial Code on its preface Art-4 and 5 empowers the Council of Ministers and Ministry of Trade and Industry to issue regulation and directives for the proper implementation of the Code. However, there are no regulations and directive related with liquidation and liquidators of business organizations in general.

When a company is a PLC, the liquidation issue is more serious for liquidators. This can be attributed to their opaque managerial style. The regulatory body that oversees companies is likewise lax. Consequently, documents are purposefully hidden and difficult to access.[89] While managing a PLC is not inherently complex, in practice, managers often create complications.

There is no clear stipulation about who shall bear the remuneration of liquidators. Specially, if the dissolved company has no sufficient balance to cover creditors claim.[90] Sometimes this causes conflict and issue of trust between interested parties on the impartiality of liquidators. The following case clearly illustrates the issue:

1. Ato Tomas Feyisa 2. Helen Alemayehu 3. Tofiga General Trading (Applicants) vs. There is no person called (No defendant) and Meseret PLC (Current Applicant)[91]

In this case, the current applicant, judgment creditor, submitted an action for the appointment of a new liquidator and asked the court to order the dissolved company or its manager to cover the liquidator's remuneration. In its application the current applicant stated the first court-appointed liquidator was unable to fulfill his duties because of a disagreement between the manager of the dissolved company, the liquidator, and the company's creditor. The creditor, a judgment creditor, was seeking payment but the manager of the dissolved company refused to personally enter into an agreement with the liquidator. The creditor argued that, as a creditor, the liquidator's remuneration should be covered by the dissolved company or the manager. Due to this dispute, the first liquidator was unable to complete the liquidation process. Consequently, the creditor filed a lawsuit against the dissolved company and its manager to cover the liquidator's fees.

The judgment creditor (the current applicant) argued that the manager was deliberately obstructing the liquidation process to avoid paying the debt. After analyzing the case, the court

[89] Interview with AtoYirguTamire, note 79 above.
[90] Interview with AtoMekaNesru Mohammed, note 77 above.
[91] 1. Ato Tomas Feyisa 2. Helen Alemayehu 3. Tofiga General Trading (Applicants) vs. There is no person called (No defendant) and Meseret PLC (Current Applicant), FFIC Commercial and Investment Bench, File No. 259858.

first stated absence of clear law on the issue. Due to this the court ruled that the creditor must initially cover the liquidator's remuneration and later recover the amount from the assets of the dissolved company, with priority, if any such assets exist. The issue mentioned above could be resolved or mitigated if there were distinct regulatory laws governing liquidators.

In addition to the above issue, just as the names of managers must be entered in the business register, the names of liquidators must also be entered in the registration and made public in the widely read gazette.[92] This is to inform interested parties. However, this is not practically applicable.[93]

Chapter Summary

Although some causes are specific to a particular type of business organization, there are grounds of dissolution that apply to all types of business organizations. Common grounds for dissolution, such as member agreement, are outlined under Art-181 of the new Commercial Code. They can be broadly categorized as voluntary dissolution, dissolution caused by the operation of the law or administrative dissolution, and dissolution caused by a court decision. There are unique grounds only for companies. For example, unless partners agree to maintain the partnership, incapacity, bankruptcy, and/or partner death are reasons for dissolution by operation of law for partnerships; nevertheless, these cannot be grounds for dissolution of companies.

The regulations governing dissolution and liquidation of PLCs are cross-referenced to the share company provisions rather than being specified individually. Liquidators assume management of the PLC responsibilities during liquidation. If the memorandum of association is silent, liquidators may be chosen by a court ruling or by an extraordinary general meeting. Liquidators may also be appointed in accordance with the memorandum of association. The power of removal is incidental to the power of appointment. However, court can remove liquidators irrespective of appointing body with good cause.

To be appointed as a company's liquidator, an individual must possess the requisite skills for liquidation, be of good character, and have no prior convictions for crimes such as theft, robbery, or breach of trust.

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[92] Art-474 of NewFDRE Commercial Code.

[93] Interview with Ato Ahmed Abdella, Head of Business Licensing Department of Ministry of Trade at Addis Ababa on 13/9/2023, 4 AM. Interview with AtoMekaNesru, note 77 above.

There are cases that show the complexity and delays in PLC winding up and liquidation procedures. Numerous factors are cited as the root of these issues and delays. A few examples include the absence of a body that licenses and regulates liquidators independently, the inexperience and incompetence of liquidators, and unclear commercial code provisions.

Chapter Four

Conclusions and Recommendations

4.1 Conclusions

Companies are types of business organizations formed for the purpose of conducting business activities. They are business entities distinct from their owners and are created to pursue profit. They have a distinct legal status, separate from the individuals who own or manage them. This separation helps to protect the personal assets of the owners/shareholders/ from the business's liabilities.

The new FDRE Commercial code recognized three types of companies. These are Share Company, Private Limited Company and One Person Private Limited Company. From these types of companies PLC is mostly used and widely exist type of company in Ethiopia. Private limited company is a business organization whose capital is fully paid in advance, divided into shares and whose members are not liable for the debts of the company provided that they have paid up their contributions. They play a crucial role in the economy by creating jobs, contributing to economic growth, and providing goods and services that meet the needs and demands of consumers operating in competitive market. Intense competition within an industry can squeeze profit margins and make it difficult for some companies to survive.

Poor leadership, mismanagement, or internal conflicts within the management team can contribute to a company's downfall. Companies facing serious legal problems, such as lawsuits, regulatory issues, or compliance failures, may find it difficult to continue operations. This may lead the company to dissolution. There are also other reasons for dissolutions of company in general and PLC in particular. These can be bankruptcy and strategic decision to cease the company's operation.

Liquidation of a company refers to the process of winding up its affairs and distributing its assets to creditors and shareholders. Liquidation thus covers the period from the time the dissolution is confirmed until the cancellation of registration from commercial register. In Ethiopia, FDRE Commercial Code incorporated rules to govern dissolution and liquidation of partnerships in general and Share Company in particular. In the case of dissolution and liquidation of PLC the Code cross refer to Share Company provisions.

Share company dissolution and winding up are covered in Chapter nine Title six of the new Commercial Code. However, the liquidation and winding-up of private limited companies is covered under Title Seven of the same code's Chapter Seven (Article-531 and related provisions). There are ambiguities in the law about who can be a liquidator, even though the commercial code makes distinct rules. Other than the ethical standards outlined in the code, what qualifications does he or she need to meet? A good reputation, the required experience in liquidation, and the absence of any convictions for offenses relating to company organization or breach of trust are just a few of the general qualifications listed in the code under Art. 477.

The previous and new Commercial Codes do not adequately address issues such as whether managers can act as liquidators, whether the liquidator must obtain certification, which body has the authority to certify liquidators, what particular educational background is required to serve as a liquidator, and similar matters. Particularly when it comes to PLC liquidations, substantial problems have been brought about by misunderstandings and a lack of clarity in practice. Except ethical criteria no specific educational requirements are required under the new Commercial Code. Liquidators are not under anyone's control to certify. Certification is not required of those who are actively employed as liquidators. Their certifications are not for liquidation, but rather for accounting and auditing. As a result of these instances, the process of litigation sometimes take long years for PLC liquidation and winding up. Damage to interested third parties, creditors and shareholders is the result, and the courts are using limited resources and time.

The data shows that since the shareholders have consented and are obligated to give up their trading license, creating a liquidation report and posting it on the Gazette suffices. When a company dissolves, the interest to be kept is not only the shareholders rather third parties too. It affects indirectly the public. Therefore, proper procedures and rules need to be respected.

4.2 Recommendations

The researcher suggests the following actions should be taken, and the relevant organs should consider them carefully, based on the discussions so far:

4.2.1 Legislative Measures

There is no body empowered to license and regulate liquidators of companies, despite the fact that the Council of Ministries is empowered to issue regulations and the relevant ministry (the Ministry of Trade and Industry) is empowered to issue directives under the new FDRE Commercial Code Art-4 and 5 respectively. Additionally, regulations and directives can be issued to address the Commercial Code's ambiguity and lack of clarity. As a result, these bodies ought to pass regulations enabling a particular body to license liquidators, regulate them, and establish the requirements needed to qualify as a corporate liquidator.

4.2.2 Reconsideration Measure

The federal first instance court commercial and investment division is using lists prepared by AABE. The list includes fresh auditors even without liquidation experience. Judges are being forced to use the lists even if they come to know that the appointed liquidators lack experience. This is creating problems on creditors and shareholders. Therefore, the concerned bodies should reconsider using the lists.

The commercial and investment division of the federal first instance court uses lists created by Accounting and Audit Board of Ethiopia. Even without prior expertise with liquidations, there are new auditors on the lists. Judges are compelled to use the use the lists even if they discover that the liquidators who were appointed are inexperienced. Both stockholders and creditors are having issues as a result. The interested bodies ought to think twice before employing the lists as a result.

Bibliography

1. Laws

Civil Procedure Code of the Empire of Ethiopia of the 1965, Negarit Gazetta Extra Ordinary issue No. 3/1965

Commercial Code of Ethiopia, Federal Negarit Gazette Extra Ordinary Issue Proclamation No. 1243/2021

Commercial Code of the Empire of Ethiopia Proclamation No. 166 OF 1960 Extraordinary Issue 19th Year No. 3

Federal Advocacy Service Licensing and Administration Proclamation No. 1249/2021, Federal Negarit Gazette 27th Year No.42

Federal Courts Proclamation No. 1234, Federal Negazit Gazeta 27th Year No. 26

2. Journal Articles, Books

Fekadu Petros, '**Ye Ethiopia Ye Kubanya Hig (Ethiopian Company Law**)' Far East Trading PLC 2008 and the revised one in 2014.

A BIS SERVICE, Dealing with Debt How to wind up your own company, The Insolvency Service.

A letter sent to Federal First High Court on by Federal Democratic Republic of Ethiopia Accounting and Audit Board of Ethiopia via Reference Number አሂአቦ/1242 on 10/03/2013 E.C

Alemayehu Fentaw & Kefene Gurmu (2009), Law of Traders and Business Organizations Teaching Material, Justice and Legal System Research Institute.

Alemayehu Fentaw and Kefene Gurmu (2009), ***Law of Traders and Business Organizations***, JLSRI.

Almineh Sinishaw (2008), the Nature and Scope of Private Limited Company in Ethiopia the law and Practice focus on Bankruptcy, St. Mary's University College Faculty of Law, LL.B Thesis

Ben S. Branch Hugh M. Ray Robin Russell, Last Rights Liquidating a Company (Oxford University Press 2007)

Bowmans (2022,) The Value of Knowing, Guide - Liquidation, Business Rescue and Compromise in South Africa,.

BOWMANS The Value of Knowing (2019), Guide - Liquidation, Business Rescue and Compromise in South Africa.

Capital, Trade, investment divisional court opens its doors in Addis, Oct. 16.2022.

Companies House Liquidation and Insolvency, GPO8 February 2014

Cornelia LEFTER and Ovidiu Ioan DUMITRU (2011) Dissolution of the Commercial Companies due to the Passing of Time Established as a Duration of the Company – Theoretical and Practical Aspects, Theoretical and Applied Economics Volume XVIII (2011), No. 11

De. P. S.Teimukhe (Kawale) Liquidation

Demarso, Y. K., & Abba, B. A. (2021). Bankruptcy Law of Share Companies under Ethiopian Law: Focus on Non-Financial Sectors. Beijing Law Review, 12, 250-265. https://doi.org/10.4236/blr.2021.121015.

Director of Corporate Enforcement (2015) The Principal Duties and Powers of Liquidators, Receivers & Examiners under the Companies Act

Elena Cristina Baciu (), general Considerations on the Dissolution and Liquidation of Romanian Companies, CES Working Papers, IV,(1), 2012

Fitsum Zeleke Tesfaye (2018) Business Rescue Proceeding and Ethiopian Bankruptcy Lawupon Business Distress, School of Graduate Studies AAU

Guide on Winding up / Dissolution of Companies

Guide on Winding up / Dissolution of Companies, Securities and Exchange Commission of Pakistan.

Guy Despard Gof (1931), *The Appointing and Removal Powers of the President Under the Constitution of the United States*, College of William & Mary Law School William & Mary Law School Scholarship Repository.

Hailemariam Temesgen (2017), ***Dissolution and Winding up of PLCs under the Ethiopian Law***, AAU SGS.

Harry Rajak (2017), Book Review McPherson and Keay: The Law of Company Liquidation Andrew Keay (4th edn) (2017, Sweet and Maxwell, London)

Harry Rajak, McPherson and Keay: The Law of Company Liquidation Andrew Keay (4th edn) (2017, Sweet and Maxwell, London)

L.C.B, Gower's principles of modern company law, (4th ed.), p.719

Lea Mehari, The Vulnerability of Partners in PLCs, Fortune Jan 18, 2019.

Linda Hamed Malkawi (2021), The Effect of Liquidation on the Legal Personality of the Public Shareholding Company Under Compulsory Liquidation, Journal of Legal, Ethical and Regulatory Issues Volume 24, Special Issue 1.

Linda Hamed Malkawi, The Effect of Liquidation on The Legal Personality of the Public Shareholding Company Under Compulsory Liquidation, Journal of Legal, Ethical and Regulatory Issues, Volume 24, Special Issue 1, 2021.

Liquidators, Receivers and Examiners Their duties and powers A quick guide Office of the Director of Corporate Enforcement

Misganaw Kifelew et al (2023), "Law of Traders and Business Organizations: A Textbook", ELSA, pp. 426.

Office of the Director of Corporate Enforcement (2015), Information Book 7 The Principal Duties and Powers of Liquidators, Receivers & Examiners Under the Companies Act.

R. Aashish Jaangda and M. Kannappan (2018), ***A Study on Compulsory Liquidation of a Company and its Liability***, International Journal of Pure and Applied Mathematics, Volume 119 No. 17 (647-658).

Raja & Tann (2017), Criteria for Removal of Liquidator, Criteria for Removal of Liquidators (rajahtann.com) accessed on 6/28/2023.

Renee C. Nash, J.D (2023), Limited Liability Company, Professional Education Service Course Material.

Renee C. Nash, J.D, Limited Liability Company, Professional Education Service Course Material.

Simon Goulding, BA, LLM, Barrister (1999), COMPANY LAW, Second Edition, Goulding

Tigist Dessie Kassa (2020), The Protection of Corporate Creditors under Ethiopian Share Company Law in Light of International Recommendations, School of Law, Bahir Dar University, Trade Practices Commission, Study of the Professions, Final report—July 1992, Accountancy, pp. 83–87.

Yared Kefyalew Demarso, Bogale Anja Abba (2021), Bankruptcy Law of Share Companies under Ethiopian Law: Focus on Non-Financial Sectors, Beijing Law Review, 2021, Vol. 12, 250-265

3. Internet Sources

Appointment of company liquidator (linkedin.com), accessed on 6/10/2023.

EXPERT Definition & Meaning - Black's Law Dictionary (thelawdictionary.org) accessed on 10/3/2023.

EXPERTISE | English meaning - Cambridge Dictionary, retrieved on 19/10/2023

Global companies 2021 | Statista, retrieved on 11/6/2022.

Global companies give Africa a second look | Africa Renewal (un.org), retrieved on 11/6/2022.

Grounds of Company Dissolution under Ethiopian law – Fikadu and Associates Law Office, retrieved on

https://saylordotorg.github.io/text_law-for-entrepreneurs/s32-03-dissolution.html#:~:text=The%20first%20is%,

Raja & Tann (2017), Criteria for Removal of Liquidator, Criteria for Removal of Liquidators (rajahtann.com) accessed on 6/28/2023

The Roles of Business Organizations in Economic Development (bizfluent.com), retrieved on 11/6/2022.

Three Types of Dissolution - Apex Law Group (apexlg.com) accessed on 6/10/2023

Who Is Qualified Or Not Qualified To Be Company Liquidator? (fareezlaw.com), retrieved on

A BIG SERVICE Dealing with Debt How to wind up your own company, The Insolvency Service, How to wind up your own company (citizensadvice.org.uk).

Professional Education Service ()Limited Liability Companies, Course Material, Dissolution.PDF

Interviewees

Ato Ahmed Abdella, head of Licensing Desk of Ministry of Trade, on 9/20/2023 at 3:00 PM, Addis Ababa

Ato Ashenafi Lemecha Moti, Judge at Federal First Instance Court Commercial and Investment Division, on 13/9/2023 at 5 PM.

Ato Fikadu Agonafir, Manager of Federal Democratic Republic of Ethiopia Accounting and Audit Board of Ethiopia, on 12/9/2013 at 4 PM

Ato Gerawork Yitbarek, Federal First Instance Court Judge at Commercial and Investment Division, Addis Ababa on 17/9/2023 at 4:00 PM

Ato Yirgu Tamire, certified accountant and Business consultant, on 12/9/2023, Addis Ababa at 5 AM

Bedilu Manaye, Auditor and being work as liquidator of Company, on 12/9/2023 Addis Ababa at 3 PM

Meka Nesru Mohammed, Judge at Federal First Instance Court Commercial and Investment Division, on 13/9/2023 at 3 PM.

Annex; Interview Guides

Interview questions for Federal First Instance Court Commercial and Investment Bench Judges

1. What is the role of courts regarding dissolution of company in general and PLC in particular?
2. How do you see or assess the sufficiency of legal provisions regarding liquidation and winding-up of PLC under the new Commercial Code? If they are not sufficient enough, what are the loopholes?
3. Is there a case pending in your court involving the dissolution and liquidation of PLC? Have there been any cases previously entertained? How long do they take?
4. How are liquidators chosen if cases of PLC liquidation exist? What criteria were used to choose them?

5. Does the liquidation process of PLC finalized shortly and in reasonable time? If not, what are the reasons for delay?
6. What are the challenges not to finalize the liquidation process of PLC shortly and the causes of such challenges?
7. Is there any meaningful coordination between the federal first instance court and the Ministry of Trade regarding liquidation of PLC?
8. What activities and responsibilities should be carry out by liquidators of PLC? What activities they perform practically?
9. What makes liquidation of PLCs unique or difficult?

Interview questions for Ministry of trade officials

1. What is the role of the Ministry of Trade in connection with competency evaluation and licensing of liquidators of Company and PLC?
2. Does the Ministry of Trade give license for the competent professionals in connection with liquidation of PLC? If yes, what criteria does it take to give the license?
3. Is there any specialized unit in the Ministry of Trade for assessment and licensing of liquidators?
4. What are the major competency evaluation and licensing of liquidators problems regarding liquidators of company in Ministry of Trade?
5. If there are problems regarding competency evaluation and licensing of liquidators of company, what are the possible recommendations to fill the gaps and curb the problems?
6. Does the Ministry of Trade have effective information and regulation system about liquidators of business organizations/company/?

Interview questions for Business organization/company liquidators

1. How the sufficiency of legal provisions regarding liquidation of PLC look like?
2. What are the problems you face in liquidation of PLC?

Annex

Addis Ababa University
School of Law

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ሕግ ትምህርት ቤት

Date: 09/20/2023

To: Federal First instance Court

Dear Sir/Madam:

Tewodros Zelete is a 2023/24 year graduate student in the Law School of Addis Ababa University. This student is writing LL.M Thesis on the title" PRACTICAL AND LEGAL GAPS IN LIQUIDATION AND WINDING-UP OF PLCS: THE PRACTICE IN ADDIS ABABA COURTS".

We would acetate if the above-mentioned student is given access to you collections and/or resources in accordance with the arrangements the student may make with your good office.

Thanking you for any assistance you may provide to the above-named student!

Best Regards,

Dr Wondemagegn Tadesse
Head, School of Law

Tel. +251-111 8695648 P.O. Box 1176

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር 7/73/6163/16
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አዲስ አበባ/Addis Ababa

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ጉዳዩ፡- ትብብር እንዲደረግላቸው መግለፅን ይመለከታል፡

የአዲስ አበባ ዩኒቨርስቲ የሕግና ት/ቤት በቀን 28/01/2016 ዓ/ም በተፃፈ ደብዳቤ የትብብር ጥያቄ እንድናደርግላቸው ጠይቀውናል ስለሆነም የፌ/መ/ደ/ፍ/ቤት (PRACTICAL AND LEGAL GAPS IN LIQUIDATION AND WINDING-UP OF PLCS THE PRACTICE IN ADDIS ABABA COURTS) ዙሪያ የሚሰሩ ዳኞችን የአዲስ አበባ ዩንቨርሲቲ ተማሪ የሆኑት ቴዎድሮስ ዘለቀ ቃለ-መጠየቅ እንዲያደርጉ ትብብር እንዲደረግላቸው እንገልፃለን ፡፡

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የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

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ከሳሽ ፡- ወ/ሮ ገበያነሽ ጌታሁን - ከጠበቃ ሰለሞን ተፈራ ጋር ቀረቡ

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<u>ው ሳ ኔ</u>

በዚህ መዝገብ የተያዘው ጉዳይ ማህበር መፍረስን ተከትሎ የሂሳብ ማጣራት ሥራን የተመለከተ ሲሆን ቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር በፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት በልደታ ምድብ በመዝገብ ቁጥር 147765 በሐምሌ 21 ቀን 2001 ዓ/ም በዋለው ችሎት በሰጠው ውሳኔ እንዲፈርስ መወሰኑን ተከትሎ በዚህ መዝገብ የፈረሰው ማህበር ሂሳብ ሊጣራ ስለሚገባው በፍርድ ቤቱ ሬጅስትራር የማህበሩ ሂሳብ የሚያጣራ ሂሳብ አጣሪ እንዲመደብ በሚያዝያ 19 ቀን 2002 ዓ/ም በዋለው ችሎት ውሳኔ መስጠቱን ተከትሎ የማህበሩ ሂሳብ አጣሪዎች በየካቲት 27 ቀን 2015 ዓ/ም የተዘጋጀ የሂሳብ ማጣራት ሪፖርት አቅርበዋል። በቀረበው ሪፖርት ላይ ግራ ቀኙ አስተያየት እንዲሰጡበት በተሰጠው ትዕዛዝ መሰረት በከሳሽ በኩል በመጋቢት 26 ቀን 2015 ዓ/ም የተፃፈ እንዲሁም በተከሳሽ በኩል በመጋቢት 25 ቀን 2015 ዓ/ም የተፃፈ አስተያየት አቅርበዋል።በግራ ቀኙ በቀረቡት ትሬታዎች የሂሳብ አጣሪዎቹ በሚያዝያ 14 ቀን 2015 ዓ/ም በፅሁፍ እና በቃል ማብራሪያ ሰጥተዋል።

ፍርድ ቤቱም የቀረበው ሪፖርት፣ የግራ ቀኙ ቅሬታ እንዲሁም የቀረቡት ማብራሪያዎች አግባብነት ካላቸው የሕግ ድንጋጌዎች ጋር በማገናዘብ እንደሚከተለው መርምሯል።

- ካፒታልን በተመለከተ የሂሳብ አጣሪው ባቀረቡት ሪፖርት አመልካች እና ተጠሪ እያንዳንዳቸው ለማህበሩ መመስረቻ ያዋጡትን ብር 2,500,000 በማህበሩ ሂሳብ ገቢ የተደረገ ስለመሆኑ ምን ዓይነት ማረጋገጫ ስላልቀረበ በእያንዳንዳቸው ስም በእዳነት እንዲያዝ ተደርጓል በማለት ገልፀዋል። ይህን በተመለከተ በአመልካች በኩል የቀረበ አስተያየት የሌለ ሲሆን በተጠሪ በኩል ካፒታልን አስመልክቶ ቀደም ሲል በቀረበው ሪፖርት ብር 381,123.70 ብቻ ከተጠሪ ላይ እንደሚፈለግ ተገልፆ እያለ እና ፍ/ቤቱም ሌሎች የሚጣሩ ሪፖርች እንዲጣሩ እንጂ በተጣሩ ነጥቦች ላይ በድጋሚ እንዲጣራ ባላዘዘበት ሁኔታ የሂሳብ አጣሪው ከቀደመው ሪፖርት የሚጣረስ ሪፖርት ማቅረባቸው ተገቢነት የለውም በማለት አስተያየት ሰጥተዋል። ካፒታልን አስመልቶ ቀደም ሲል የቀረበውን ሪፖርት መርምሮ ይህ ፍርድ ቤት በሐምሌ 09 ቀን 2013 ዓ/ም በሰጠው ውሳኔ ማህበሩ ኃ/የተ/የግ/ማህበር ከመሆኑ አንፃር ካፒታሉ ቀድሞ የተከፈለ ስለመሆኑ ግምት የሚወሰድበት እና በግራ ቀኙ በኩልም ያልተከፈለ ካፒታል ክፍያን አስመልክቶ የተነሳ ክርክር በሌለበት ከአመልካች ላይ ተሰብሳቢ ገንዘብ አለ የተባለው ተቀባይነት የሌለው መሆኑን በመግለፅ በቀድሞው ሪፖርት ካፒታልን በተመለከተ ከባለአክሲዮኖች የሚፈለግ እዳ ተብሎ የቀረበውን ፍ/ቤቱ ውድቅ አድርጓል። ይህን አስመልክቶ በውሳኔው ይግባኝ ተብሎ የተቀየረ ነገር በሌለበት ሁኔታ አጣሪው አሻሽለው ባቀረቡት ሪፖርትም በድጋሚ እዳ ብለው ማቅረባቸው ፍ/ቤቱ በሰጠው ውሳኔ ላይ ሪፖርቱ እንዲሻሻል በሰጠው ትዕዛዝ መሰረት ስላልሆነ ተቀባይነት ያለው አይደለም። ሆኖም ሂሳቡን ከመስራት አንፃር ሪፖርቱን ለማዘጋጀት አመልካች እና ተጠሪ ማህበሩን ሲያቋቁሙ የከፈሉት ገንዘብ ለማህበሩ ገቢ ያደረጉበት ማስረጃ ባለማቅረባቸው የተከተተ ስለሆነ ከግራ ቀኙ ድርሻ አንፃር ማህበሩ ዕዳውን መክፈል ችሎ ተጨማሪ ገንዘብ ስላለው እኩል የሆነ ገንዘብ እልከፈሉም ተብሎ በሪፖርቱ መካተቱ የሚያመጣው የድርሻ ልዩነት አይኖርም።ሆኖም በሪፖርቱ ከአመልካች እና ከተጠሪ ከእያንዳንዳቸው ብር 2,500,000 ተሰብሳቢ ገንዘብ አለ ተብሎ የተገለፀው የሪፖርቱ ክፍል ተቀባይነት ያለው ሆኖ አልተገኘም።

ለሦስተኛ ወገን የሚከፈል ዕዳን በተመለከተ በተጠሪ በኩል በቀረበ አስተያየት ሂሳቡን እንዲያጣሩ ለሂሳብ አጣሪው የቢግ ትሬዲንግ ኃላፊነቱ ተወሰነ የግል ማህበር የሂሳብ ሰነዶች የቼክ ፓዶችና በርካታ የወጪና የገቢ ደረሰኞችና የሂሳብ መግለጫዎች ያስረከብን ሲሆን ከዚህም ውስጥ ለጌታነህ ትሬዲንግ ብር 3,500,000 (ሶስት ሚሊዮን አምስት መቶ ሺህ)

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በቼክ ቁ BC0325797 ኃላፊነቱ የተወሰነ የግል ማህበር በ26/8/97 ዓ/ም ለጌታነህ ኃላፊነቱ የተወሰነ የግል ማህበር (ለአቶ ዮሀንስ ጌታነህ) የተከፈለ ስለመሆኑ የሚያስረዳ ቀሪ የቼክ ጋር በእጃቸው ያለ ሲሆን መመንዘሩንና ገንዘቡን ለጌታነህ ትሬዲን የተከፈለ ስለመሆኑም ከንብ ኢንተርናሽናል ባንክ በፍ/ብ/ስ/ስ/ህ/ቁ. 145 መሰረት በትዕዛዝ ሊረጋገጥ የሚችል ጭምር መሆኑን ገልፀን ብናስረዳቸውም ሊቀበሉን አልቻሉም ስለሆነም ድርጅታችን ለጌታነህ ትሬዲንግ የተከፈለው ብር 3,500,000 (ሶስት ሚሊዮን አምስት መቶ ሺህ) እያለ ይህንንም በሰነድ ማስረጃ የተደገፈ ሆኖ መረጋገጥ እየቻለ በዕዳነት መያዙ የአመልካችንም ሆነ የተጠሪ መብት በእጅጉ የሚጎዳ ስለሆነ ችሎት ይህን ያህል መጠን ያለው ግብይት በሌለ የሪፖርቱ ክፍል ያልተጠቀሰና ይህን መጠን ያለው ገንዘብ ለሌላ ግብይት ወጪ መደረጉ ያልተረጋገጠ መሆኑ በራሱ በቼክ የተከፈለው ገንዘብ ባንኩ በእዳ ለሸጠው ቤት ምትክ መሆኑን የሚያሳይ በመሆኑ ተቀናሽ ተደርጎ ብር 1,000,000 (አንድ ሚሊዮን ብር) ብቻ ተብሎ እንዲያዝ በማለት አስተያየት ሰጥተዋል።

ሂሳብ አጣሪዎች ባቀረቡት ማብራሪያ ላይ ቼኩ የተሰጠበት ምክንያት ለዱቤ ግዢ ክፍያ ወይም ለብድር ክፍያ በሚል በማህበሩ የክፍያ ሰነድ ተዘጋጅቶ ክፍያው በሚያዝያ 26 ቀን 1997 ዓ/ም መፈፀሙ ቤቱ በባንክ የተሸጠው በ2002 ዓ/ም በመሆኑ ግንኙነት ባለው መልኩ ማህበሩ ለአቶ ዮሐንስ ጌታነህ ክፍሏል ለማለት አለመቻላቸውን ገልፀዋል።

ይህ ችሎትም በዚህ ረገድ የቀረበው ክርክር ከሕግ አንፃር መርምሮ ምላሽ መስጠት ያስፈልጋል።

ቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር ንብረትነቱ የአቶ ዮሐንስ ጌታነህ የሆነ በንፋስ ስልክ ላፍቶ ክፍለ ከተማ ቀበሌ 03 የቤት ቁጥር 1101 መኖሪያ ቤት በሐምሌ 30 ቀን 2000 ዓ/ም በተደረገ የመያዣ ውል ቤቱንና የማህበሩ ተሽከርካሪዎች ለንብ ባንክ አክሲዮን ማህበር በማስያዝ ከባንኩ የብድር ገንዘብ ብር 8,060,626.84 የወሰደ ቢሆንም የብድር ገንዘቡ በብድር ውሉ በተቀመጠው ጊዜና ሁኔታ ለባንኩ መመለስ ባለመቻሉ የማህበሩን ተሽከርካሪዎች እና ንብረትነቱ የአቶ ዮሐንስ ጌታነህ ካሳ የሆነው ቤት ንብ ባንክ አክሲዮን ማህበር በመጋቢት 17 ቀን 2002 ዓ/ም በመሸጥ ቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ባንኩ የነበረበት የብድር ገንዘብ መክፈሉን በግራ ቀኙ መካከል ክርክር ያልቀረበበት ንብ ባንክ አክሲዮን ማህበር ጣና ትርንጫፍ በሐምሌ 13 ቀን 2014 ዓ/ም ለፍርድ ቤት ምላሽ የሰጠበት ፍሬ ነገር ነው።የመያዣ ውሉም አያይዞ ልኳል። አከራካሪው ጉዳይ ቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር ከቤቱ ሽያጭ ገንዘብ ለመመለስ በሚል ለአቶ

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ዮሴንስ ጌታነህ የከፈለው ገንዘብ መኖር አለመኖሩን የሚመለከት ነው።በቼክ ቁጥር BC0325797 ብር 3,500,000 በ26-8-1997 ዓ/ም የተፃፈው ቼክ የተፃፈው በጌታነህ ኃላፊነቱ የተወሰነ የግል ማህበር ነው። ቼክ ከተፃፈም በኃላ ከቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር የባንክ ሂሳብ ወጪ ተደርጎ የተከፈለው ሚያዝያ 26 ቀን 1997 ዓ/ም ሕንጻ አውሮፕ አቆጣጠር በ04-05-2005/ መሆኑን በሂሳብ አጣሪዎች በኩል የቀረበው ማስረጃ ያረጋግጣል።

ቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር ለንብ ባንክ ሊከፍለው የሚገባው የብድር ገንዘብ ባለመከፈሉ የአቶ ዮሴንስ ጌታነህ የሆነ ቤት በመያዣ በባንክ ተይዞ ስለነበረ ቤቱ ተሸጦ የባንክ ዕዳ በመከፈሉ ተጠሪ ባቀረቡት ክርክር እንደገለጹት የማህበሩ ቼክ ብር 3,500,000 የያዘ በ26-08-1997 ዓ/ም ተዕፎ የተሰጣቸው መሆኑ ይግለፁ እንጂ ቤቱ በመያዣ ውል ሳይያዝ ቼኩ ከቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር በሥራ አስኪያጁ ለአቶ ዮሴንስ ጌታነህ ተፈርሞ በመስጠት ለዕዳ መመለሻ እንዲውል የሚደረግበት አግባብ አይኖርም።ቼክ ተፈርሞ የተሰጠበት እና ንብረቱ በመያዣ ተይዞ ከተሸጠበት ጊዜ አንጻር ያለው አለመጣጣም እደተጠበቀ ሆኖ ተጠሪ ቼኩ ተፈርሞ የተሰጠው ለአቶ ዮሴንስ ጌታነህ መሆኑን ይግለፁ እንጂ በቼኩ ላይ የተፃፈው የተከፋይ ስም ጌታነህ ኃላፊነቱ የተወሰነ የግል ማህበር መሆኑ የቀረበው የቼክ ሰነድ ያሳያል።ተጠሪ ቤቱ ከዚህ በፊት በቀረቡት ሪፖርቶች አስተያየት ሲሰጡ ቤቱ የግል ንብረቱ ነው በማለት ክርክር ሲቀርቡ ቆይተው የቤቱ ባለቤት ማንነት በማስረጃ ሲረጋገጥ ከጉዳዩ ጋር ግንኙነት የሌለው የክፍያው ጊዜ ከቤቱ ሽያጭ ጊዜ በፊት የነበረ የቼክ መስጠት ተግባር ቤቱ ለዕዳ ክፍያ መዋሉን ተከትሎ ለአቶ ዮሴንስ ጌታነህ በማካካሻነት የተሰጠ ነው በማለት ያቀረቡት ክርክር በማስረጃ የተደገፈ አይደለም።ቼኩም ለማህበሩ የተሰጠበት ምክንያት የዱቤ ሽያጭ ግንኙነት መኖሩን ከክፍያ ሰነዱ ሂሳብ አጣሪዎቹ መረዳታቸውን ሪፖርት ስላቀረቡ በዚህ ረገድ ተጠሪ ቀረቡት ክርክር ተቀባይነት ያለው ሆኖ ፍርድ ቤቱ አላገኘውም።

ሌላኛ የተጠሪ ቅሬታ ከአቶ ብርሀን በሥራ አስኪያጅ ስልጣናቸው ያወጡትን ወጪ በማስደገፍ ያላወራረዱ በመሆኑ ተሰብሳቢ (የተጠሪ እዳ) ነው በሚል የተጠቀሰውን ብር 2,267,885.86 (ሁለት ሚሊዮን ሁለት መቶ) በተመለከተ ይህን ወጪ ተጠሪ ለሂሳብ አጣሪው በሰጠናቸው ዝርዝር የሂሳብ ሰነዶች ውስጥ መርምረው ያቀረቡት ሪፖርት አይደለም፣ ይህ የተጠቀሰው ገንዘብ ወጪ ከድርጅቱ ወጪ ተደርጎ ማስረጃ የሌለው ይሁን ወይም በሌላ ምክንያት ተጠሪ በስራ አስኪያጅ ስልጣናቸው ከሌሎች ሶስተኛ ወገኖች ላይ መሰብሰብ የነበረባቸው የድርጅቱ ገቢዎች የተገለፀ ነገር ካለመኖሩም ምን ያህል ገንዘብ

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ወጪ ተደርጎ ደጋፊ ሰነድ አልቀረበለትም፣ ምን ያህል ከሌሎች ሰዎች መሰብሰብ ነበረባቸው
አልተሰበሰቡም የሚለ በዝርዝር ቀርቦ ተጠሪ በማስረጃ ለማስተባበል እድል አይሰጥም።
የንግድ ህጉ ድንጋጌ የማህበር ስራ አስኪያጅ ሀላፊ የሚሆነው በዘፈቀደ ሳይሆን ጥፋት
ሲረጋገጥ መሆኑን አንቀፅ 516(3) ያስገነዝባል፤ የሂሳብ አጣሪው ይህን ያህል ገንዘብ
በተዝኪው ማስረጃ ያልተደገፈ ወጪ ይሁን ወይም ስራ አስኪያጁ ከሶስተኛ ወገኖች ላይ
የመሰብሰብ ኃላፊነታቸውን ያልተወጡ ይሁን ሳይረጋገጥ፤ ምን ያህል ገንዘብ ወጪ ተደርጎ
ማስረጃ አልቀረበበትም የሚለው ባልተጣራበት ሁኔታ፤ ይህን ሀላፊነት በተጠሪ ላይ
መጣላቸው አግባብ አይሆንም፤ ይልቁንም ይህ ኃላፊነት የሚጣለው ድርጅቱ በመክሰሩ
ምክንያት ድርጅቱ ያለው ገንዘብ የሌሎች ሰዎችን ጥያቄ መመለስ የማይችል ቢሆን
ስለመሆኑ የአንቀፅ 516 ንዑስ ቁጥር 2 ያስገነዝበናል፤ ስለሆነም ይህ የተጠቀሰው ገንዘብ
መጠን በቀጥታ የስራ አስኪያጁ (ተጠሪ) ሃላፊነት ሆኖ ከተጠሪ ድርሻ ላይ ተቀናሽ
የሚደረገው በፍታብሄር ህግ አግባብ ሃለፊነቱ/ጥፋቱ የተረጋገጠ እንደሆነ ብቻ ስለመሆኑም
የፌ/ጠ/ፍ/ቤት የሰ.መ.ቁ. 57932 እና ሌሎችም የድርጅት ስራ አስኪያጅ የንግድ ህጉን
ወይም የድርጅቱን መተዳደሪያ ደንብ በመጣስ መስራቱ በፍ/ብሄር ህጉ የተረጋገጠ እንደሆነ
ከድርጅቱ ጋር በአንድነት ወይም እንደነገሩ ሁኔታ በተናጠል ሊጠየቅ ስለመቻሉ አስገዳጅ
ውሳኔ ተሰጥቶበታል። ይህ ከሆነ ዘንድ አንደኛ የተጠሪ ጥፋት አልተረጋገጠም፤ ሁለተኛ
ሀላፊነቱ በአንድነት ይሁን በነጠላ ሂሳብ አጣሪው ውሳኔ የመስጠት ስልጣል ሳይኖረው
በቀጥታ ሃላፊነቱን በተጠሪ ኃላፊነቱን በተጠሪ ላይ መጣል ለህጉ እና ለጠቀስነው
ለፌ/ጠ/ፍ/ውሳኔ ተቃራኒ ነው። ስለሆነም ይህ የሪፖርቱ ክፍል የህግ ድጋፍ የሌለው ግኝት
በመሆኑ ውድቅ ሊያደርገው ይገባል በማለት ተከራክረዋል።

ሂሳብ አጣሪዎቹ በአንፃሩ በሰጡት ማብራሪያ ላይ በሂሳብ አያያዝ ህግና ደንብ ማንኛውም
የሚፈጸሙ ክፍያዎች የክፍያውን ምክንያት ክፍያ የተፈጸመለት ድርጅት ወይም ግለሰብ
ገንዘቡን ስለመቀበሉ ደረሰኝ በመስጠቱ ወይም በፊርማው ማረጋገጥ ይኖርበታል። ሆኖም
ተጠሪ የቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር ሥራ አስኪያጅ ሆነው የተመደቡ
ቢሆንም ኃላፊነታቸውን በአግባቡ ተወጥተዋል ማለት አያስደፍርም። ምክንያቱም በዕዳ
ተጢያቂ የሆኑባቸው ግድፈቶች በመሉ ከላይ የብ የገለጥቸው እንዲሟሉ ባልማድረጋቸው
ወይም ባለማስደረጋቸው ነው ስለሆነም ከተጠሪ የሚሰበሰብ ተብሎ የተያዘው ብር
2,267,885.86 (ሁለት ሚሊዮን ሁለት መቶ ስልሳ ሰባት ሺህ ስምንት መቶ ሰማንያ
አምስት ብር ከ86/100) ድርጅቱ የሥራ እንቅስቃሴ ከጀመረበት ከ1996 ጀምሮ እስከ
ተዘጋበት 2002 ዓ/ም ሲሆን የመክፈያ ሰነድ ያልተዘጋጀላቸው፣ ተቀባይ ያልፈረመባቸው፣
የመክፈያ ሰነድ የሌላቸው፣ ለማንና ለምን እንደተከፈሉ መግለጫ የሌላቸው ከቼክ ቀሪ

ፖርቱ ከባንክ ሂሳብ መግለጫ መሠረት ከተሰበሰበ መረጃዎች የተገኙ ጉድለቶች ናቸው። የተጠቀሱት ጉድለቶች በተመለከተ ተጠሪ ቀርበው እንዲያስረዱ ተደጋጋሚ ሙከራ ቢደረግም ሊቀርቡ አልቻሉም ባለመቻላቸው የመጡ ናቸው በማለት በፅሑፍ ማብራሪያ ሂሳብ አጣሪዎቹ ያቀረቡ ሲሆን በቃል ችሎቱ ባደረገው ማጣራት ተጠሪ በሥራ አስኪያጅነት ከማህበሩ ያወጡት ገንዘብ ለምንና ለማን እደሰጡ የሚያሳይ ደጋፊ ማስረጃ ባለማቅረባቸው ለማህበሩ ሊከፍሉት የሚገባ ዕዳ ተደርጎ ከመያዙ ውጪ ለቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ ግል ማህበር ሦስተኛ ወገን ሊከፍለው የሚገባ ያልተሰበሰበ ገንዘብ ከተጠሪ የሚፈለግ ዕዳ ተደርጎ የተያዘ ገንዘብ አለመኖሩን አስረድተዋል።

በዚህ ፍርድ ቤት በግንቦት 19 ቀን 2014 ዓ/ም በዋለው ችሎት የሂሳብ አጣሪው በጥቅምት 16 ቀን 2014 ዓ/ም ባቀረቡት ሪፖርት ላይ በሰነድ ያልተደገፉ ወጪዎች የተባሉትን በተመለከተ የሂሳብ አጣሪው በባንክ ስቴትመንት ላይ ክፍያ ስለመፈፀሙ የሚታይ ሆኖ ወይም ጉርድ ቼክ ቀርቦ ግን በምን ምክንያት እንደወጣ ማብራሪያ ወይም ደጋፊ ማስረጃ ያልቀረበበት እንደሆን ማብራሪያ ለፍ/ቤቱ የሰጡ ሲሆን እነዚህ ወጪዎች ምን ምን እንደሆኑ በሪፖርቱ በዝርዝር ማመልከት ባይቻልም እንኳን በሪፖርቱ በበአባሪነት በየትኛው ሰነድ ምን ያህል ወጪ የወጣ መሆኑን የሚያሳይ ማጠቃለያ እንዲካተት ሊያደርጉ ይገባ ነበር። በመሆኑም ሂሳብ አጣሪው በየዓመቱ ወጥተዋል በሰነድ አልተደገፈም ያሏቸውን ወጪዎች በተመለከተ እዳው ከምን የመጣ/የእዳው ምንጭ ምን እንደሆነ በሚያመለክት መልኩ የወጪዎቹን ማጠቃለያ በሪፖርቱ በአባሪነት አካተው እንዲያቀርቡ በማለት በሰጠው ትዕዛዝ መሰረት ሂሳብ አጣሪው ደጋፊ ሰነድ አልቀረበላቸውም የሚባሉት ወጪዎች ዝርዝር በየዓመቱ በሰንጠረዥ በማካተት በሰኔ 20 ቀን 2014 ዓ/ም አቅርበው ለተጠሪ ጭምር ደርሷቸዋል። አስቀድሞ የቀረበው ሪፖርት ላይ በተጠሪ ደጋፊ ሰነድ ያልቀረበለት ጪ መጠን ወደ ብር 2,267,885.86 ዝቅ ተደርጎ ሪፖርቱ ታርሞ አሁን ላይ ለፍርድ ቤቱ ቀርቧል። ተጠሪ የቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ ግል ማህበር ሥራ አስኪያጅ ሆነው ሲሰሩ ከማህበሩ ሂሳብ ገንዘብ ወጪ ሲያደርጉ ገንዘቡ ለማህበሩ የንግድ ሥራ የዋለ መሆኑ አልያም ሊሰበሰብ የሚችል ገንዘብ መኖሩን ለሂሳብ አጣሪው ማስረጃት ይጠበቅባቸዋል። ሆኖም ተጠሪ በክፍያ ሰነድ እና በቼክ ወጪ አድርገው ሲከፍሉ ለማህበሩ ጥቅም የተከፈለ ስለመሆኑ የማስረዳት ኃላፊነታቸው ካልተወጡ ገንዘቡ ከእሳቸው የሚሰበሰብ መሆኑ ድምዳሜ ላይ መደረሱ የሂሳብ ማጣራቱ ስራ በአግባቡ መሰራቱን ያረጋግጣል። የሂሳብ አጣሪው የትኛው ማስረጃ ተቀባይነት እንዳላገኘ በሚያሳይ መልኩ የየዓመቱ ለይተው ለፍርድ ቤት እና ለግራ ቀኙ ካቀረቡ የቀረበው የማስረጃ ጥያቄ በእርግጥም ለማህበሩ ወጣ ገንዘብ ከሆነ የማስረዳት ኃላፊነታቸው መወጣት ይኖርባቸዋል።ይህን ባላደረጉበት ሁኔታ ደጋፊ

ሰነድ ሳይኖር የማህበሩ ገንዘብ በቼክ እና በክፍያ ሰነድ ወጪ አድርገው ክፍያ ከፈፀሙ ለዚህ ክፍያ ለማህበሩ ጥቅም የዋለ መሆኑ የማስረዳት ኃላፊነት ስላልተወጡ ሪፖርቱ በዚህ ረገድ የሚነቀፍበት ምክንያት የለም።

ማህበሩ ከፈረሰ በኋላ የማህበሩ ተሸከርካሪዎች ለማቆሚያ ኪራይ ክፍያ በማስረጃ የተደገፋት ሊከፈል እንደሚገባ ሂሳብ አጣሪዎቹ ለይተው ሊከፈል ይገባል በማለት ሪፖርት ስላቀረቡ ይህን በሚያስተባብል መልኩ የቀረበ ማስረጃ በሌለበት የቀረበው የተጠሪ ቅሬታ ፍርድ ቤቱ አልተቀበለውም።

የማህበሩ ንብረት ተሽጦ የተገኘው ገንዘብ በባንክ ገቢ የተደረገ፣ ተሽከርካሪዎቹ ተሽጠው ከተገኘው ገቢ ላይ የሚፈለገው ግብር ተከፍሎ እንዲሁም የሰስተና ወገን ዕዳ በዋናነት የአቶ ዮሐንስ ጌታነህ ወራሽ ሊከፈል የሚገባ ብር 4,500,00 እንዲሁም ከተጠሪ የሚሰበሰብ እና ሊከፈለው የሚገባው ገንዘብ መጠን በለየ መልኩ ሪፖርቱ ተዘጋጅቶ የማህበሩ ዕዳ ተከፍሎ የአመልካች እና የተጠሪ የድርሻ መጠን በመለየት የቀረበው ሪፖርት ተቀባይነት ሊረው አይገባም በማለት አመልካች ተረቡት ክርክር ፍርድ ቤቱ ተቀባይነት ያለው ሆኖ አላገኘውም። ማህበሩ በሊዝ የነበሩት ሁለት ይዞታዎች ለሦስተኛ ወገን መተላለፋቸው በፍርድ ቤቱ በግንቦት 19 ቀን 2014 ዓ/ም በተሰጠ ብይን ድምዳሜ ላይ ተደርሶበት የሚሰበሰብ ገንዘብ ካለ ተለይቶ እንዲቀርብ ትዕዛዝ ተሰጥቷል።ከዚህ አንፃር ተጠሪ የሚያስገቡት ከፊል ገንዘብ ተለይቶ ሪፖርቱ ስለቀረበ ይዞታዎቹ አስመልክቶ ፍርድ ቤቱ ከደረሰበት ድምዳሜ ውጪ በድጋሚ ሊጣራ የሚችልበት አግባብ ባለመኖሩ ፍርድ ቤቱ አልተቀበለውመም።የማህበሩ የቢሮ እቃዎች ዋጋ ሊያወጡ እንደማይችሉ ሂሳብ አጣሪው እና ግራ ቀኙ ለፍርድ ቤቱ በቃል ስላረጋገጡ በዚህ ጉዳይ ላይ ሪፖርቱ የሚቀይር ውጤት ማስቀረብ የሚቻል ሆኖ አልተገኘም።

ሲጠቃለልም ሂሳብ አጣሪዎቹ-የቢግ ትሬዲንግ ኃላፊነቱ ተወሰነ የግል ማህበር በጥቅምት 27 ቀን 2015 ዓ/ም አዘጋጅተው ያቀረቡት 04 ገፅ የሂሳብ ሪፖርት ከላይ በተገለፀው ዝርዝር ምክንያት ፍርድ ቤቱ ተቀብሎ አፅድቆታል። በሂሳብ አጣሪ ሪፖርቱ ላይ የተመለከተው ገንዘብ ወጪ ተደርጎ ለገንዘብ ጠያቂዎች እና ለአመልካች እንዲሁም ለተጠሪ ከባንክ ወጪ ሆኖ ሊከፈል ይገባል በማለት ተከታዩ ትዕዛዝ ተሰጥቷል።

ት ዕ ዛ ዝ

1. የዚህ ውሳኔ ግልባጭ እና የሂሳብ አጣሪዎቹ በየካቲት 27 ቀን 2015 ዓ/ም አዘጋጅተው ያቀረቡት 04 ገፅ የቢግ ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር ሂሳብ ማጣራት ሪፖርት በፍርድ ቤቱ ማህተም ተረጋግጦ ለግራ ቀኙ በማስረጃነት እንዲሰጣቸው ታዟል።
2. ሂሳብ አጣሪዎቹ፣ በሂሳብ አጣራ ሪፖርቱ ላይ የተመለከተው ገንዘብ ወጪ ተደርጎ ለገንዘብ ጠያቂዎች እና ለአመልካች እንዲሁም ለተባበረ ከባንክ ወጪ ሆኖ እንዲከፍሉ ታዟል።

መዝገቡ በውሳኔ እልባት ስላገኘ ተዘግቷል። ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የዳኛ ፊርማ አለበት።

የኮ/መ/ቁ 194315

ሰኔ 15 ቀን 2015 ዓ/ም

በፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

ንግድ እና ኢንቨስትመንት ምድብ 2ኛ ንግድ ችሎት

ዳኛ፡- መካ ነስሩ

ከሣሽ፡- አቶ አዱኛ አንበሉ - ጠበቃ ተሻገር ደሳለኝ ቀረቡ

ተከሣሾች፡- 1 - በመጣራት ላይ ያለው ዳይናሚክ ጀነራል ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር - ሂሳብ አጣሪ አቶ ጌታቸው ይመንሸዋ ቀረቡ

2 - አቶ በላይነህ ሠርጉዓለም - ቀረቡ

ተጠሪ፡- አማራ ብሔራዊ ክልላዊ መንግስት የባህርዳር ከተማ ልማትና ኮንስትራክሽን መምሪያ /የአሁኑ የባህር ዳር ከተማ ከተማ እና መሰረተ ልማት መምሪያ/ - ሥራ አስኪጅ ኃይለየሱስ ፀጋዬ ቀረቡ

መዝገቡ ተመርምሮ ተከታዩ ትዕዛዝ ተሰጥቷል፡፡

ት ዕ ዛ ዝ

2ኛ ተከሳሽ በሰኔ 14 ቀን 2015 ዓ/ም በተፃፈ ማመልከቻ በዚህ ፍርድ ቤት በልደታ ምድብ 7ኛ ፍትሐ ብሔር ችሎት በመዝገብ ቁጥር 137998 በተያዘው ክርክር እና በዚህ መዝገብ የተያዘው ክርክር ተመሳሳይ ሆነው እያለ በተመሳሳይ ጉዳይ ላይ የተለያየ ትዕዛዝ እና ውሳኔ እየተሰጠ በመሆኑ ሁለቱ መዛግብት የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በሰበር መዝገብ ቁጥር 172114 እና 172115 በሰጠው ትዕዛዝ ተጣምረው መታየት እንዳለባቸው ትዕዛዝ ሰጥቶ እያለ መዛግብቱ ሳይጣመሩ በመቅረቱ ለዳኝነት ሥራ አካሄድ በቀና ሁኔታ ክርክሩ እየሄደ ባለመሆኑ፣ ፍርድ ቤት ክርክሩን በትክክለኛ መንገድ ሊዳኝ ስላልቻለ ዘወትር አስቸጋሪ ክርክር እየተነሳ የሕግ ጥያቄ ያለበት ስለሆነ ጉዳዮቹ በሁለት ችሎቶች ከሚታዩ ይልቅ በፌዴራል ከፍተኛ ፍርድ ቤት ታይተው አንድ ዓይነት እና ወጥ የሆነ ትዕዛዝ እንዲሰጥ በማለት አመልክተዋል፡፡

ፍርድ ቤቱም የቀረበው አቤቱታ ከሕጉ አንፃር መርምሯል።

2ኛ ተከሳሽ በዚህ መዝገብ የተያዘው ጉዳይ 1ኛ ተከሳሽ ማህበር ሸበፍርድ ቤት መፍረሱን ተከትሎ የሂሳብ አጣሪ ማህበሩን ከንግድ መዝገብ ለማሰረዝ ሂሳብ እያጣ መሆኑ የመዝገቡ ሂደት ያሳያል። በልደታ ምድብ 7ኛ ፍትሐ ብሔር ችሎት በመዝገብ ቁጥር 137998 የተያዘው ክርክር በከሳሽ እና በ2ኛ ተከሳሽ መካከል የተቋቋመው ቢ. ኤ አሚጋ ቢዝነስ ግሩፕ ኃላፊነቱ ተወሰነ የግል ማህበር መፍረሱን ተከትሎ ሂሳብ እየተጣራ መሆኑ ከአቤቱተው ጋር 2ኛ ተከሳሽ ያቀረቡት ትዕዛዝ ግልባጭ እና ከዚህ መዝገብ የቀረቡት ክርክሮች መረዳት የሚቻል ነው።

በሁለቱም መዛግብት ላይ ማህበራቱ መፍረሳቸውን ተከትሎ ሁለቱም ላይ ሂሳብ አጣሪ ተመድቧል። ሂሳብ አጣሪ ተደርጎ የተመደበ ሰው የማህበሩ ሰነዶች እና ንብረቶች እንዲሁም የሂሳብ መግለጫዎች ከማህበሩ ዋና ሥራ አስኪያጅ የመረከብ ግዴታ ይኖርበታል።ይህን ሰነዶች ተረክቦ የማህበሩ ሂሳብ አስቀድሞ ከተሰራ በአግባቡ መሰራት አለመሰራቱ በሂሳብ አጣሪነት የተመደበው ግለሰብ ከቻለ በራሱ ካልቻለ የኦዲት እና የሂሳብ ሥራ የሚሰራ ሌላ አካል ዘንድ በመውሰድ የማህበሩ ሂሳብ መመርመር ወይም ማስመርመር ከሚገኘው ውጤት አንፃር ከሦስተኛ ወገኖች የሚሰበሰብ ንብረት እና ገንዘብ መሰብሰብ፣ የማህበሩ ንብረት ከሥራ አስኪያጅ ተረክቦ ሸጦ ወደ ገንዘብ መለወጥ፣ የሚከፈለው ዕዳ የጋዜጣ ጥሪ በማድረግም ሆነ በሂሳብ ሰነድ ምርመራ ለይቶ እንደቅደም ተከተላቸው መክፈል፣ ተራፊ ገንዘብ ካለ ለባለአክሲዮኖቹ እንደ የአክሲዮን ድርሻቸው ሊከፋፈሉት የሚገባውን ገንዘብ መጠን ለይቶ ለመክፈል ሂሳቡ ማጣራት ከተጀመረበት ቀን ጀምሮ ሂሳብ ሚዛኑ እስከሚዘጋጅበት ቀን ድረስ ያለውን የመጨረሻ የሂሳብ ሚዛን ማዘጋጀት፣ የሂሳብ ሚዛኑም በንግድ መዝገብ እንዲገባ በማድረግ ተቃውሞ ካልቀረበበት በሪፖርቱ መሰረት ለባለአክሲዮኖቹ ማከፋፈል ማህር መፍረስን ተከትሎ የሚሾም ሂሳብ አጣሪ /Liquidator/ ኃለፊነት መሆኑ ከቀድሞ የንግድ ሕግ ቁጥር 500 እና ተከታዮቹ ድንጋጌዎች እንዲሁም በተሻሻለው የንግድ ሕግ አዋጅ ቁጥር 1243/2013 አንቀጽ 533 እና አንቀጽ 475 እና ተከታዮቹ ድንጋጌዎች ይዘት መረዳት የሚቻል ነው።ሁለቱ መዛግብት ላይ ያለው ክርክር ሁለት የተለያየ ሕጋዊ ሰውነት ያላቸው ማህበራት በፍርድ ቤት ውሳኔ መፍረሳቸውን ተከትሎ ሂሳብ እየተጣራ ስለሆነ በሁለቱ መዛግብት የተያዘው ክርክር የባለአክሲዮቹ ተመሳሳይ ከመሆን ውጪ አንድ ዓይነት ተግባራ ይከናወናል ማለት አይደለም።

በዚህ መዝገብ በመጋቢት 28 ቀን 2015 ዓ/ም የተሰጠው ትዕዛዝ አስቀድሞ የነበረ ሂሳብ አጣሪ እንዲነሳ እና ሌላ ሂሳብ አጣሪ እንዲመደብ በተሰጠው ትዕዛዝ መሰረት ሂሳብ አጣሪ

ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት

ተመድቧል፡፡ የተሰወጠው ሂሳብ አጣሪ ሥራውን ሲሰራ የተረከበው ንብረትም ሆነ ሰነድ አዲስ ለተመደበው ሂሳብ አጣሪ ሰነድና ንብረት እንዲስረክበት ተብሎ ትዕዛዝ መስጠቱ የማህበሩ መፍረስ ሂደት ተጀምሮ እያለ በአዲስ መልክ እንዲጀመር የማያደርግ ነው፡፡ በሌላኛው መዝገብ የተያዘው ሂሳብ ማጣራት ሂሳብ አጣሪ በመሞቱ ምክንያት የሠነድ አቀራረብ አስመልክቶ ፍርድ ቤቱ የመሰለውን ትዕዛዝ ሰጥቷል፡፡ የንግድ ህግ ቁጥር 243-266 ስለተራ ሽርክና ማህበርን የሚመለከቱ ድንጋጌዎች ናቸው እነዚህ ድንጋጌዎች ለ2ኛ ተከሳሽ ዓይነት ማህበር ተፈፃሚነት አይኖረውም፡፡

የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በሰበር መዝገብ ቁጥር 172114 እና 172115 በሐምሌ 30 ቀን 2011 ዓ/ም በተሰጠው ውሳኔ የሰበር አቤቱታ የቀረበበት ጉዳይ ተጣምሮ እንዲታይ የተደረገ መሆኑን ያስረዳል፡፡በዚህ መዝገብ የፈረሰው 1ኛ ተከሳሽ ማህበር እና በልደታ ምድብ 7ኛ ፍትሐ ብሔር በመዝገብ ቁጥር 137998 በተሰጠ ውሳኔ የፈረሰው ቢ.ኤ ኦሜጋ ኃላፊነቱ ተወሰነ የግል ማህበር እንዲፈርስ ውሳኔ መሰጠቱ ተከትሎ የተመደቡት ሂሳብ አጣሪዎች የሚሰሩት ሥራ ጋር በተያያዘ መዛግብቱ ተጣምረው እንዲታዩ የተሰጠ ትዕዛዝ አለመኖሩ ይህ ችሎት ከተሰጠው ውሳኔ መረዳት ስለቻለ 2ኛ ተከሳሽ መዝገቦቹ ተጣምረው እንዲታዩ ሰበር ሰሚ ችሎት ትዕዛዝ ሰጥቶ አልተፈፀመም የሚል ይዘት ያለው አቤቱታ ማቅረባቸው የመዝገቡን ሂደት ያገናዘበ አይደለም፡፡

2ኛ ተከሳሽ በዚህ መዝገብ የተያዘው ክርክር እና በልደታ ምደብ 7ኛ ፍትሐ ብሔር ችሎት በመዝገብ ቁጥር 137998 የተያዘው ጉዳይ ተጣምሮ ወደ ፌዴራል ከፍተኛ ፍርድ ቤት ሄዶ ሊታይ ይገባል የሚሉ ከሆነ ይህ ጥያቄ በፌዴራል ፍርድ ቤቶች አዋጅ ቁጥር 1234/2013 አንቀጽ 11(2-ለ) መሰረት ለፌዴራል ከፍተኛ ፍርደድ ቤት አቤቱታው ከሚያቀርቡ በቀር በዚህ ጉዳይ ይህ ፍርድ ቤት ውሳኔ የመስጠት ሥልጣን የለውም ተብሏል፡፡

መደበኛ ቀጠሮ አልተሰወጠም፡፡

የማይነበብ የዳኛ ፊርማ አለበት፡፡

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FEDERAL FIRST INSANCE COURT

ቁጥር......................
No.
...................ቀን ....ዓ.ም
አዲስ አበባ/ADDIS ABABA

የኮ/መ/ቁ 194315

ቀን 8/04/2016 ዓ.ም

የፌ/መ/ደ/ፍ/ቤት ን/ኢንቨስትመንት ምድብ 2ኛ ንግድ ችሎት

ዳኛ - መካ ነስሩ

ከሣሽ - አቶ አዱኛ አንበሉ - አልተጠሩም

ተከሣሽ - 1. ዳይናሚክ ጀነራል ትሬዲንግ ኃ/የተ/የግ/ማ

2. አቶ በላይነህ ሰርጉአለም - ቀረቡ

ት ዕ ዛ ዝ

1. በዚህ ችሎት በሰኔ 15 ቀን 2015 ዓ.ም በዋለው ችሎት በተሰጠ ትዕዛዝ ላይ የ1ኛ ተከሣሽ ማህበር የንብረት መሸጥ እስከ ታህሳስ 30 ቀን 2016 ዓ.ም በይግባኝ ሰሚ ፍርድ ቤት የታገደ ስለሆነ እንዳይሸጥ ታዟል፡፡
2. የሂሣብ አጣሪው ከቀድሞ ሂሣብ አጣሪ የማህበሩ ንብረት እና ሰነድ ርክክብ ማድረግ በተመለከተ ስላልታገደ በቀጠሮ ዕለት ርክክቡ ተደርጎ ውጤቱ እንዲቀርብ ታዟል፡፡
3. 2ኛ ተከሣሽ የሰነድና የንብረት ርክክብ ማድረጉን አስመልክቶ ዕግድ አመጣለሁ በማለት ለፍ/ቤቱ በቃል ትዕዛዙ ሲገለፅላቸው የተነገሩ ቢሆንም ይግባኝ ሰሚ ፍ/ቤቱ ዕግድ ከሰጠበት ጉዳይ በላይ ዕግድ አመጣለሁ በሚል ለችሎቱ መግለፁ ትክክል አለመሆኑ በቃል ተገልፆላቸዋል፡፡
4. ለጥር 06 ቀን 2016 ዓ.ም በ 4:40 የተያዘው ቀጠሮ አልተለወጠም፡፡

የማይነበብ የዳኛ ፊርማ አለበት

ቤ.ሰ
15/4/16

ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት ንግድና ኢንቨስትመንት ምድብ ችሎት

1

ስልክ Tel 0112-73-31-08 0112-73-39-08 ፋክስ Fax 011-276 75 78 ፖ.ሣ.ቁ P.O.Box 8389 E-Mail FFIC@ethionet.et

መዝገብ ቁጥር 259858

መጋቢት 04 ቀን 2016 ዓ/ም

ፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

ንግድና ኢንቨስትመንት ምድብ 2ኛ ንግድ ችሎት

ዳኛ፡- መካ ነስሩ

አመልካቾች፡- 1. አቶ ቶማስ ፈይሳ - ጠበቃ ደጀኔ ገበየሁ ቀረቡ

2. ወ/ሮ ሄለን አለማየሁ - ጠበቃ ደጀኔ ገበየሁ ቀረቡ

3. ቶፊጋ ጀኔራል ትሬዲንግ ሃላፊነቱ የተወሰነ የግል ማህበር - አልቀረቡም

ተጠሪ፡- የለም

የአሁን አመልካች፡-መሰረት ኃላፊነቱ የተወሰነ የግል ማህበር -ጠበቃ ምስጋናው ተመስገን ቀረቡ

መዝገቡ ተመርምሮ ተከታዩ ብይን ተሰጥቷል፡፡

ብ ይ ን

አመልካቾች ጠበቃ በታህሳስ 25 ቀን 2016 ዓ/ም በተፃፈ ቃለ መሐላ አቤቱታ ላይ ችሎቱ ባዘዘው መሰረት ሬጅስትራር ጽ/ቤት አብይ ደገፌ የተረጋገጠለት ኦዲት ፈርም ተመድቦ ስራ የሚሰራበትን ገንዘብ መጠን በ24/04/2016 ዓ.ም ለ1ኛ አመልካች አሳውቋል፡፡ ይህ የኦዲት ድርጅት የተመረጠው በመሠረት ኃላፊነቱ የተወሰነ የግል ማህበር እንጂ አመልካቾች በምርጫው ሂደት አልተሳተፍንም፡፡ በዚህም መሰረት እንዲከፈለው የጠየቀው ብር 161,000 በቶፎጋ ጀነራል ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር ውስጥ የለም፡፡ ይህ የማህበር ዕዳ መሆን ያለበት ሲሆን እኔን በግል ሊያስጠይቀኝ የሚችለው የማህበሩ ገንዘብ በእጄ ቢኖር ነው፡፡ በዚህ ጉዳይ አመልካች የሆነው መሠረት ኃ/የተ/የግ/ማህበር ይህንን ገንዘብ መክፈል ያለበት ሲሆን በእኔ በግሌ የመክፈል ኃላፊነት የለብኝም፡፡ በሌላ በኩል በማህበር ውስጥ ይህ ገንዘብ ካለ የሂሳብ ድርጅቱ ሂሳብ ሰርቶ መውሰድ የሚገባው እንጂ የማህበሩ እዳ እኔን ሊመለከተኝ አይችልም፡፡ በሌላ በኩል ኦዲት ክፍያ የተባለው እጅግ የተጋነነ ሲሆን ተጀምሮ ማጠናቀቂያ ለቀረው ኦዲት ይህን ልዩነት ገንዘብ መጠየቁም ተገቢ አይደለም፡፡ ስለዚህ ተጋኖ የቀረበን ኦዲት

ገንዘብ ክፍያ የመክፈል ኃላፊነት ያለበት ቶፎጋ ጀነራል ትሬዲንግ ኃ/የተ/የግ/ማህበር እንጂ እኔ 1ኛ አመልካች ልሆን የማይገባኝ ሲሆን ይህ ድርጅት ደግሞ ገንዘብ በአሁኑ ጊዜ የሌለው በመሆኑ የኦዲት ክፍያ ገንዘቡ ተስተካክሎ መሠረት ኃ/የተ/የግ/ማህበር እንዲሸፈን እንዲታዘዝ በማለት ጠይቀዋል።

የአሁን አመልካች በጥር 16 ቀን 2016 ዓ/ም በተፃፈ አስተያየት አመልካቾች በአቤቱታቸው ላይ ገንዘብ ጠያቂ አመልካች መሰረት ሃላፊነቱ የተወሰነ የግል ማህበር ይክፈል እያሉ እስካሁን ድረስ ንብረት ለማስረከብ ፈቃደኛ ሳይሆኑ ያዘገዩት ጊዜ ሳያንሳቸው ሆነ ብለው ጊዜ ለመግዛት የሚጠቀሙት ዘዴ እንደሆነ ፍ/ቤቱ እንዲረዳልን፤ አመልካች ስራ አስኪያጅ ሆነ ብለው የፍ/ቤቱን ጊዜም እየተጋፉ ስለሆነ ይህን በቂ ያልሆነ ምክንያት እየደረደሩ ማቅረባቸውን ትተው የተመደበው ሂሳብ አጣሪ ኦዲተር ስራውን በአግባቡ እንዲሰራ ጥብቅ ትዕዛዝ ተሰጥቶልን የሂሳብ አጣሪ ማስሪያ ሂሳብ ከሚሰራው ሂሳብ ይዘት እና የሰነድ ብዛት አኳያ የስራ ዝርዝር ከሚፈጀው ጊዜ እና የገንዘብ መጠን በዝርዝር ሂሳብ አጣሪው እንዲያቀርብ ተደርጎልን እንዲሁም ችሎቱ በራሱ በሚያስማማ መልኩ ተወስኖ ሂሳብ እንዲጣራ እንዲጣራ፣

ገንዘብ ጠያቂ አመልካች መሰረት ኃላፊቱ የተወሰነ የግል ማህበር በፌደራል ከፍተኛ ፍ/ቤት በመዝገብ ቁጥር 125403 ላይ በፍ/ቤት የተረጋገጠ ውሳኔ መሰረት ገንዘብ ጠያቂ ነን። ቀድሞ የተሾመው ሂሳብ አጣሪ ለመስራት ፈቃደኛ ባለመሆኑ ምክንያት ሂሳብ አጣሪው የማያጣራበት ምክንያት ተጠይቆ እንዲሻር በጠየቅነው መሰረት አሁን የተሾመው ኦዲተር ሂሳቡን እንዲያጣራ በትዕዛዝ ተሾመ እንጂ እኛ የምንፈልገው ሂሳብ አጣሪ ይሾምልን ብለን አልጠየቅም። በአቤቱታቸው እንዳመኑት ችሎቱ ባዘዘው መሰረት በሬጅስትራር የተሾሙ ናቸው። ገንዘብ ጠያቂ እስካሁን ድረስ የደረሰብን በደል ሳያንሰን ለሂሳብ አጣሪ ገንዘብ ከፍሎ ሂሳቡን የሚያስራበት የህግ አግባብ የለም።ሂሳብ አጣሪው የተጋነነ ዋጋ ቢያቀርብ እንኳን ቀርበው ሳይደራደሩ የተሰጣቸውን ደብዳቤ ብቻ ወደ ፍ/ቤት ይዘው መቅረባቸው ትክክል አለመሆኑን፤ ፍ/ቤት ከመጀመሪያም ማህበሩን በስምምነት እንዲፈርስ ያደረጉት የገንዘብ ጠያቂን የፍርድ ውሳኔ ላለመክፈል ነው። አሁንም የማህበሩ ሂሳብ እንዳይጣራ ሆነ ብለው ስራ አስኪያጁ መሰናክል እየፈጠረ ስለሆነ ችሎቱ ጥብቅ የሆነ ትዕዛዝ ተሰጥቶ ሂሳቡ እንዲጣራልኝ።

ይፍረስ የተባለው ማህበር በቂ የሆነ ገንዘብ አለው። ጉዳይ ማህበሩ ላይ በነበረ ክርክር የባንክ እስተትመንት ቀርቦ ስለነበረ ገንዘብ እንዳለ እናውቃለን። የተሻረው ሂሳብ አጣሪ ማህበሩ ሂሳቡ

ቢጣራ ሊከፍለው የሚችል ገንዘብ እንዳለው አስረድቶናል፡፡ ከቀድሞው ሂሳብ አጣሪም ጋር ሂሳቡ አጣርቶ እንዳያቀርብ እንደምክንያት የሆነው ጉዳይ አመልካች ለኦዲተሩ ሂሳብ ለመክፈል ቀርቦ ለመዋዋል ፈቃደኛ ባለመሆኑ ነው፡፡ ስለዚህ አሁንም አመልካች ስራ አስኪያጅ ሆነ ብለው ለማጉላላት እና ጊዜ ለመግዛት የሚጠቀሙት ዘዴ መሆኑን ችሎቱ እንዲገነዘብንል እያሳሰብን ጥብቅ የሆነ ትዕዛዝ እንዲሰጥልን በማለት አስተያየት ሰጥተዋል፡፡

የሂሳብ አጣሪው በጥር 16 ቀን 2016 ዓ/ም በተፃፈ አስተያየት ፍ/ቤቱ በጉዳዩ ላይ የተመስከረለት ኦዲተር ባለሙያ እንዲመደብ በሰጠው ትዕዛዝ መሰረት አብይ ደገፈ ቻርተርድ ሰርቲፋይድ አካውንታንትስ እና አውቶራይዝድ ኦዲተሮች ድርጅት ሂሳብ ማጣራት እንድናደርግ መመደባችን የሚታወቅ ነዉ፡፡ በመሆኑም ድርጅታችን የደረሰንን ትዕዛዙ መሰረት በማድረግ ከተከራካሪ ወገኖች ጋር ውይይት በማድረግ፣ አስፈላጊ የሰነድ ማስረጃዎችን ሰብስበን በማጥናትና በመመርመር ዋጋ ላይ ተፅእኖ የሚያደርጉ ነጥቦችን ማለትም የስራው ስፋት፣ ስራው የሚፈጀው ጊዜ፣ ለስራው የሚያስፈልጉ የባለሙያዎች ቁጥር እና ደረጃ ከግምት በማስገባት የአገልግሎት ክፍያችንን አስልተናል፡፡ በቀጣይም የአገልግሎት ክፍያ መጠኑን ለተከራካሪ ወገኖች በደብዳቤ አሳውቀናል፡፡ የአገልግሎት ክፍያው በማን ሊሸፈን እንደሚገባ ፍ/ቤቱ ብይን እንዲሰጥበት፡፡፡

የአገልግሎት ክፍያ መጠኑን በተመለከተ ስራው ከሚፈጀው ጊዜ፣ ስራው ለመስራት የሚያስፈልጉ የባለሙያዎች ቁጥር እና ደረጃ እንዲሁም አሁን ካለው የገበያ ዋጋ አንጻር ድርጅታችን የጠየቀው የክፍያ መጠን የተጋነነ አለመሆኑን እና ድርጅታችን ስራውን ለማከናወን ከዚህ ባነሰ ዋጋ አገልግሎት መስጠት የማንችል መሆኑን ፍርድ ቤቱ ተገንዝቦ ያሰናብተን በማለት አስተያየት አቅርበዋል፡፡

ፍርድ ቤቱም የቀረበው አቤቱታ እና አስተያየት ከሕግ አንፃር በማገናዘብ እንደሚከተለው መርምሯል፡፡

በመሰረቱ አንድ የንግድ ማህበር በፍርድ ቤትም ሆነ ከፍርድ ቤት ውጪ እንዲፈርስ መወሰኑን ተከትሎ የሂሳብ አጣሪ /Liquidator/ ተደርጎ የተመደበ ሰው የማህበሩ ሰነዶች እና ንብረቶች እንዲሁም የሂሳብ መግለጫዎች ከማህበሩ ዋና ሥራ አስኪያጅ የመረከብ ግዴታ ይኖርበታል፡፡ ይህን ሰነዶች ተረክቦ የማህበሩ ሂሳብ አስቀድሞ ከተሰራ በአግባቡ መሰራት አለመሰራቱ በሂሳብ አጣሪነት የተመደበው ግለሰብ ከቻለ በራሱ ካልቻለ የኦዲት እና የሂሳብ ሥራ የሚሰራ ሌላ

አካል ዘንድ በመውሰድ የማህበሩ ሂሳብ መመርመር ወይም ማስመርመር ከሚገኘው ውጤት አንፃር ከሦስተኛ ወገኖች የሚሰበሰብ ንብረት እና ገንዘብ መሰብሰብ፣ የማህበሩ ንብረት ከሥራ አስኪያጅ ተረክቦ ሽጦ ወደ ገንዘብ መለወጥ፣ የሚከፈለው ዕዳ የጋዜጣ ጥሪ በማድረግም ሆነ በሂሳብ ሰነድ ምርመራ ለይቶ እንደቅደም ተከተላቸው መክፈል፣ ተራፊ ገንዘብ ካለ ለባለአክሲዮኖቹ እንደ የአክሲዮን ድርሻቸው ሊከፋፈሉት የሚገባውን ገንዘብ መጠን ለይቶ ለመክፈል ሂሳቡ ማጣራት ከተጀመረበት ቀን ጀምሮ ሂሳብ ሚዛኑ እስከሚዘጋጅበት ቀን ድረስ ያለውን የመጨረሻ የሂሳብ ሚዛን ማዘጋጀት፣ የሂሳብ ሚዛኑም በንግድ መዝገብ እንዲገባ በማድረግ ተቃውሞ ካልቀረበበት በሪፖርቱ መሰረት ለባለአክሲዮኖቹ ማከፋፈል ማህር መፍረስን ተከትሎ የሚሾም ሂሳብ አጣሪ /Liquidator/ ኃለፊነት መሆኑ ከቀድሞ የንግድ ሕግ ቁጥር 500 እና ተከታዮቹ ድንጋጌዎች እንዲሁም በተሻሻለው የንግድ ሕግ አዋጅ ቁጥር 1243/2013 አንቀጽ 533 እና አንቀጽ 475 እና ተከታዮቹ ድንጋጌዎች ይዘት መረዳት የሚቻል ነው:: ይህ ማለት በፍርድ ቤት ማህበር መፍረስን ተከትሎ የሚሾም የሂሳብ አጣሪ የሚሰራው ሥራ የማህበር ሂሳብ በሕግ አግባብ ከመመርመር በተጨማሪ ንብረት የመሸጥ፣ የማስተዳደር እና የማህበሩ ሥራ ሲፈርስ ተጀምረው ያልተጠናቀቁ መቋረጣቸው አግባብ አይደሉም የሚባሉት ሥራዎች ማስቀጠልን የሚያካትት ነው::

አሁን በተያዘው ጉዳይ 1ኛ እና 2ኛ አመልካቾች ባለአክሲዮን የሆኑበት ቶፊጋ ጀነራል ትሬዲንግ ኃላፊነቱ የተወሰነ የግል ማህበር በጋራ እንዲፈርስ ጠይቀው በፍርድ ቤት እንዲፈርስ ተወስኖ በስምምነት የመረጡት ሂሳብ አጣሪ የሂሳብ አጣሪ አድርጎ የተሾመ ቢሆንም የሂሳብ ማጣራቱ ስራ በአግባቡ ባለማከናወኑ ከሂሳብ አጣሪነቱ በፍርድ ቤቱ ተነስቷል::በምትኩ በፍርድ ቤቱ ሬጅስትራር በኩል ካሉት ኦዲተሮች መካከል በሂሳብ አያያዝ እና ኦዲት ቦርድ ለፍርድ ቤት ከላከው ዝርዝር ላይ አንዱን የሂሳብ አጣሪ አድርጎ በመመደብ ሂሳብ ማጣራት ሥራው እንዲሰራ ትዕዛዝ መስጠቱን ከመዝገቡ ሂደት መረዳት የሚቻል ነው::ይህ ከሆነ ደግሞ ሂሳብ አጣሪው የተመደቡት በመሰረት ኃላፊነቱ የተወሰነ ግል ማህበር ምርጫ የተመደበ አድርጎ 1ኛ እና 2ኛ አመልካቾች በጠበቃቸው አቤቱታ ማቅረባቸው በመዝገቡ ላይ ያለውን እውነታ መሰረት ያደረገ አይደለም::

የሂሳብ ማጣራት ሥራ ሲከናወን ቅድሚያ ሰጥቶ ሊሰራው የሚገባው ጉዳይ የገንዘብ ጠያቂዎችን መብት ማስከበር ነው::ይህን ሥራው ለመስራት የሚያስፈልገው የአገልግሎት ክፍያ ከማህበሩ ንብረት ወይም ገንዘብ ሊከፈል ይገባል:: የንግድ ማህበር በፍርድ ቤት ፈርሶ

ሂሳቡ አጣርቶ ከንግድ መዝገብ ለማሰረዝ ለሂሳብ አጣሪው የሚከፈል ገንዘብ ወይም ተሸጦ ክፍያ ሊፈፀምበት የሚያስችል ንብረት ከሌለው የአገልግሎት ክፍያ ለሂሳብ አጣሪ ማን ሊሸፍን እንደሚገባ በሕግ በግልፅ የተመለከተ ድንጋጌ አናገኝም፡፡ እንዲህ ዓይነት ጉዳይ ሲያጋጥም ሊሸፈን የሚያስችል ነፃ አገልግሎት ሊሰጥ የሚቻልበት አግባብ በኦዲተር እና በሂሳብ አዋቂዎች በኩል ግዴታ መጣል እንደሚያስፈልግ ክፍተቱን ሊሞላ ይችላል፡፡ ይህ ደግሞ ሊፈፀም የሚችለው በሂሳብ አያያዝ እና በኦዲት ቦርድ በሚወጣው የሥነ ምግባር ደንብ ላይ ነው፡፡

አሁን ከተያዘው ክርክር አንፃር መሰረት ኃላፊነቱ ተወሰነ የግል ማህበር የፈረሰው ማህበር ሂሳብ ማጣራት ማህበሩ በፍርድ የተረጋገጠው ግዴታዉ እንዲወጣ ማድረግ ሂደትንም ስለሚያካትት አበሉ ሊሸፍኑ ይገባል፡፡1ኛ አመልካች ማህበሩ ስራ አስኪያጅ ቢሆኑም ማህበሩ በስሙ የተመዘገበ ንብረትም ሆነ ገንዘብ አለመኖሩ ከተረጋገጠ ወደ ፊት የሂሳብ ማጣራት ሥራው ሲከናወን የማህበሩ ገንዘብ እና ንብረት አጠቃቀም በተመለከተ 1ኛ አመልካች ተጠያቂነት ባለው መልኩ ማህበሩ በመምራት ለግል ጥቅማቸው ወይም አለአግባብ ወደ ሦስተኛ ወገን እንዲተላለፉ አድርገው ከሆነ ተጠያቂ የሚሆኑ ሆኖ አሁን ባለበት ሁኔታ የማህበሩ ሂሳብ እንዲጣራ አበል በግላቸው ክፍያ መፈፀም አለበት ለማለት የሚቻል አይሆንም፡፡

ሲጠቃለልም መሰረት ኃላፊነቱ ተወሰነ የግል ማህበር የሂሳብ ማጣራቱ ሥራ ለመስራት የሚያስፈልገው የገንዘብ መጠን ለሂሳብ አጣሪ እንዲከፍል በማለት ተከታዩ ትዕዛዝ ተሰጥቷል፡፡

<u>ት ዕ ዛ ዝ</u>

1. መሰረት ኃላፊቱ የተወሰነ ግል ማህበር የ3ኛ አመልካች የሆነ ቶፈጋ ጀነራል ትሬዲንግ ኃለፊነቱ የተወሰነ ግል ማህበር ሂሳብ ማጣራት ሥራ ለማከናወን የሚያስፈልገው የሂሳብ አጣሪው አበል እንዲከፍሉ ታዟል፡፡ ይህ ትዕዛዝ የማህበሩ ንብረት ወይም ገንዘብ ከተገኘ በማህበሩ ንብረት ወይም ገንዘብ እንዲከፈል የመጠየቅ መብት የሚገድብ አይደለም ተብሏል፡፡
2. የሂሳብ አጣሪው አበሉ ሲከፈል ሥራ ተሰርቶ ከሚገኘው ንብረትና ገንዘብ ከማህበሩ ዕዳዎች ቅድሚያ ተሰጥቶት እንዲመለስ ታዟል፡
3. ሂሳብ ማጣራቱ ተጠናቆ ሪፖርት ሲቀርብ መዝገቡ ለችሎት የሚቀርብ ሆኖ ለጊዜው ተዘግቷል፡፡ለመዝገብ ቤት ይመለስ

የማይነበብ የዳኛ ፊርማ አለበት፡፡

የኮ/መ/ቁ 257006

ታህሳስ 06 ቀን 2015 ዓ/ም

ፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

ንግድና ኢንቨስትመንት ምድብ 2ኛ ንግድ ችሎት

ዳኛ፡- መካ ነስሩ

አመልካቾች፡- 1 - ወ/ሮ አዳነች በጋሻው አየለ
2 - ወ/ሮ ሰብለ በጋሻው አየለ
3 - ወ/ሪት ክበበ በጋሻው አየለ
4 - ወ/ሮ ገነት በጋሻው አየለ — ጠበቃ ክፍሌ ታደሰ ቀረቡ
5 - ወ/ሮ ሕይወት በጋሻው አየለ
6 - ወ/ሮ ትዕግስት በጋሻው አየለ
7 - አቶ ቴዎድሮስ በጋሻው አየለ

ተጠሪዎች ፡- 1 - ማሞ ካቻ ኃላፊነቱ የተወሰነ የግል ማህበር - ጠበቃ ፋንታሁን አባተ ቀረቡ
2 - አቶ ደረጀ በጋሻው አየለ - ቀረቡ
3 - በጋሻው ሽታዬና ልጆቻቸው ኃላፊነቱ የተወሰነ የግል ማህበር /ሂሳብ በመጣራት ላይ ያለ/ ሂሳብ አጣሪ አቶ አብዱራህማን መሐመድ - ቀረቡ

የጨረታ አሸናፊ - አቶ ሬድዋን ስርጉ ኑሪ - ጠበቃ መከተ ተፈሪ ቀረቡ

መዝገቡ ተመርምሮ ተከታዩ ብይን ተሰጥቷል፡፡

ብ ይ ን

የሂሳብ አጣሪው በህዳር 02 ቀን 2015 ዓ/ም በተፃፈ አቤቱታ ፍርድ ቤቱ በሰኔ 21 ቀን 2011 ዓ/ም በዋለው ችሎት በመፍረስ ላይ ያለውን በጋሻው፣ ሽታዬ እና ልጆቻቸው ኃላፊነቱ የተወሰነ የግል ማህበር ንብረት በሚመለከት የሂሳብ አጣሪው የ3ኛ ተጠሪን ንብረት በመሸጥ ሲከፈሉ

የሚገባቸውን ዕዳዎች በመክፈል የ3ኛ ተጠሪን የማፍረስ ሂደት እንዲያከናውኑ ታዟል በሚል ኃላፊነት ተሰጥቶኝ ነበር። በተሰጠኝ ኃላፊነት መሰረት ንብረቱን ለመሸት ጨረታ አውጥቼ ሰኔ 16 ቀን 2014 ዓ/ም በተካሄደ ጨረታ በአዳማ ከተማ ቀበሌ 03 የሚገኘውን የ3ኛ ተጠሪ የማይንቀሳቀስ ንብረት በብር 118,000,000 ተሸጧል።የጨረታው አሸናፊ አቶ ሬድዋን ስርጉ ኑሪ ብር 6,800,000 አስቀድሞ በጨረታ ዋስትናነት የከፈሉ ሲሆን ቀሪውን ብር 11,200,000 (አንድ መቶ አስራ አንድ ሚሊዮን ሁለት መቶ ሺህ ብር) አዋሽ ባንክ እንደሚከፍልለት ዋስትና ወይም ክፍያ ማረጋገጫ አቅርቧል።ባንኩ ገንዘቡን ለባለመብቶቹ የሚከፈለው የንብረቱ ስመ ሐብት ወደ ገገርው ተዛውሮ ይኸው ንብረት በዋስትና በባንኩ ከተያዘ በኃላ እንደሆነ ባንኩ በሰጠው የክፍያ ዋስትና ተገልጿል።ስለዚህ በአዳማ ከተማ ቀበሌ 03 የሚገኘው እና በካርታ ቁ.167A/85፣167B/85 እና 167C/85 የተመዘገበ የማይንቀሳቀስ ንብረት በሚሰራበት ህግ መሰረት ወደ ገገር እንዲዛወር ለሚመለከተው የመንግስት አካል ትዕዛዝ እንዲሰጥልኝ በማለት አመልክተዋል።በማስረጃነትም አዋሽ ባንክ በጥቅምት 30 ቀን 2015 ዓ/ም የተፃፈ ደብዳቤ አያይዘው አቅርበዋል።

የአመልካቾች ጠበቃ በህዳር 20 ቀን 2015 ዓ/ም በተፃፈ አስተያየት ባንኩ ያቀረበው የዋስትና ገንዘብ አስተማማኝ መሆኑ በፍርድ ቤት እስከተረጋገጠ ድረስ ሂሳብ አጣሪው ባቀረበው መሰረት ፍርድ ቤቱ ትዕዛዝ ቢሰጥ ተቃውሞ የለንም የሚል አስተያየት አቅርበዋል።

2ኛ ተጠሪ በህዳር 22 ቀን 2015 ዓ/ም በተፃፈ አስተያየት አብዱራህማን መሐመድ የተፈቀደለት የሂሳብ ሥራ ድርጅት ለፍርድ ቤቱ ህዳር 02 ቀን 2015 ዓ/ም በፍርድ ቤቱ ዕገዛ እንዲደረግልኝ በማለት ጨረታው አሸናፊ ለሆነው አቶ ሬድዋን ስርጉ አቤቱታ አቅርበውላቸዋል። ሆኖም ይህን አቤቱታ ማቅረብ ያለባቸው ራሳቸው የጨረታ አሸናፊ የሆኑት መሆን ሲገባቸው ሂሳብ አጣሪው ያቀረቡ በመሆኑ ፍርድ ቤቱ ይህንን ግምት ውስጥ በማስገባት አቤቱታቸው ውድቅ እንዲያደርግልኝ፣ ክርክር እየተካሄደበት ያለው በአዳማ ከተማ ቀበሌ 03 የሚገኘው ይዞታ የጨረታው አሸናፊ የሆነው ከሂሳብ አጣሪው ጋር በመሆን እስከ ጥቅምት 30 ቀን 2015 ዓ/ም ድረስ የሽያጩን ገንዘብ እንዲከፍል ስምምነት ያደረጉ በመሆኑ እስከ ጥቅምት 30 ቀን 2015 ዓ/ም የሽያጩን ገንዘብ ካልከፈሉ የሁሉም ባለአክሲዮኖች እና ገንዘብ ጠያቂዎች ስምምነት ከሌላ ንብረቱን ሌላ ጨረታ አውጥተው በመሸጥ የሂሳብ ማጣራት ሥራው እንዲጠናቀቅ በጥብቅ ታዟል በማለት ፍርድ ቤት ጥቅምት 10 ቀን 2015 ዓ/ም በዋለው ውሳኔ ሰጥቷል።ይህ ውሳኔ ተሰጥቶ እያለ በተሰጠው ውሳኔ በጨረታ ሂደቱ መሰረት ጥቅምት 30 ቀን

2015 ዓ/ም ያለፈ ስለሆነ ጨረታው እንዲሰረዝ አመልካቾች እና ተጠሪዎች በስምምነት ሽጠን ለመጨረስ አስዚያ ወደፊት በሐራጅ እንዲሸጥ በማለት 2ኛ ተጠሪ ህዳር 07 ቀን 2015 ዓ/ም በቃለ መሐላ ለፍርድ ቤቱ አቤቱታ አቅርቤ ፍርድ ቤቱ ጉዳዩን በ22-03-2015 ዓ/ም አስተያየት እንዲያቀርቡበት ትዕዛዝ ሰጥቷል፡፡

ሂሳብ አጣሪው በዚህ ችሎት ጥቅምት 10 ቀን 2015 ዓ/ም በተሰጠው ውሳኔ መሰረት ፈፅሞ መቅረብ ሲኖርበትና ፍርድ ቤቱም እንደውሳኔው ለምን እንዳልተፈፀመ መጠየቅ ሲገባው የቸረታው አሸናፊ ገንዘብ ባልከፈለበት ሁኔታ ለቀሪው ገንዘብ አዋሽ ባንክ እንደሚከፍል ዋስትና ወይም ክፍያ ማረጋገጫ የሰጠ በመሆኑ ስመ ሐብት ወደ ገገርው እንዲዛወር በማለት ያቀረበውን አቤቱታ መቀበሉ ሕግን የተከተለ ባለመሆኑ ውድቅ ሊደረግ ይገባል፡፡

በጨረታ ሕግ መሰረት አንድ ንብረት ጨረታ መውጣት የሚገባው ለሁለት ጊዜ ብቻ ሲሆን ይህ ክርክር የተነሳበት ንብረት ለሦስተና ጊዜ ጨረታ ወጥቶ እያለ እና ፍርድ ቤቱ ይህንን እያወቀና እየተረዳ የጨረታው አሸናፊ በስሙ በሌላ ንብረት በአዋሽ ባንክ ዋስትና ይያዝ በማለት ገንዘብ የመክፈያ ጊዜው ባለፈና በሕግ ሂደት በተሰረዘ ጨረታ የጨረታው አሸናፊ ሳይሆን ሂሳብ እንዲያጣራ በታዘዘ ሂሳብ አጣሪ የቀረበው አቤቱታ ተቀብሎ አስተያት እንደንሰጥበት የተደረገበት ሂደት ሕግን የተከተለ አካሄድ ባለመሆኑ ውድቅ እንዲደረግ በማለት አስተያየት አቅርበዋል፡፡

የጨረታው አሸናፊ ጠበቃ በህዳር 20 ቀን 2015 ዓ/ም በተፃፈ አስተያየት የሐራጅ ጨረታ አሸናፊ በሐራጅ የተሸጠውን ንብረት የገዛ ግለሰብ ፍርድ ቤት የሚመለከተው የሂሳብ አጣሪው አቤቱታው ተገቢነት ያለው ስለሆነ እና የመንግስት አካላት ስመ ሐብቱን ለማዞር የፍርድ ቤት ትዕዛዝ የሚጠይቁ ስለሆነ ፍርድ ቤቱ ስመ ሐብቱ ወደ ገገር ስም እንዲዞር ሂሳብ አጣሪው ባመለከቱት መሰረት ትዕዛዝ እንዲሰጥ በማለት ጠይቀዋል፡፡

የ1ኛ ተጠሪ ጠበቃም በቃል በሰቱት አስተያት ባንኩ ለጨረታ አሸናፊው ብድር ፈቅዶ እንደሚከፍል ዋስትና ስለሰጠ በዚህ ዋስትና መሰረት ገንዘብ መክፈል ስለሚቻል ፍርድ ቤት ስም እንዲዛወር ትዕዛዝ እንዲሰጥ ጠይቀዋል፡፡

ፍርድ ቤቱም የሂሳብ አጣሪው ያቀረቡት አቤቱታ እና ግራ ቀኙ የሰጡት አስተያየት ከሕግ አንፃር በማገናዘብ መርምሯል፡፡

የሂሳብ አጣሪዎች በመተዳደሪያ ደንቡ መሰረት ወይም በሾማቸው ጉባኤ ሥልጣናቸው የሚቀንሱ ውሳኔዎች ካልተደረጉ በቀር የሂሳብ ማጣራቱን ተግባር በመላካም ለማካሄድ ሙሉ የሆነ ሥልጣን እንደሚኖራቸው እና በተለይም የማህበሩን ሐብት በጅምላ ለመሸጥ ነገሩንም በስምምነት ለመጨረስና በመግባባት ለመዋዋል እንደሚችሉ በቀድሞ የንግድ ሕግ ቁጥር 500 ንዑስ ቁጥር 1 ሥር ተደንግጓል። አሁን በተያዘው ጉዳይ የሂሳብ አጣሪው የማህበሩ ንብረት በሐራጅ ሽጠው ለሐራጅ አሸናፊው ጨረታውን በብር 118,000,000 ማሸነፋቸውን በመግለፅ ለጨረታ ማስከበሪያ በባንክ ካስያዙት ብር 6,800,000 ወጪ ያለውን ብር 111,200,000 ከሐምሌ 16 ቀን 2014 ዓ/ም ጀምሮ በሚቆጠር 45 ቀናት ውስጥ ክፍያ እንዲከፍሉ በ19-11-2014 ዓ/ም ደብዳቤ ከሰጧቸው በኃላ በነሐሴ 30 ቀን 2014 ዓ/ም በተፃፈ ደብዳቤ የክፍያው ጊዜ ለሁለት ወራት እንዲራዘም የሂሳብ አጣሪው የፈቀዱላቸው በመሆኑ የሂሳብ አጣሪው ከጨረታው አሸናፊው ጋር ባደረጉት ስምምነት መሰረት እስከ ጥቅምት 30 ቀን 2015 ዓ/ም ድረስ የሽያጭ ገንዘቡን ካልከፈሉ የሁሉም ባለአክሲዮኖች እና ገንዘብ ጠያቂዎች ስምምነት ከሌለ ንብረቱን ሌላ ጨረታ አውጥተው በመሸጥ የሂሳብ ማጣራት ሥራው እንዲያጠናቅቁ የሚል ይዘት ያለው ትዕዛዝ ይህ ችሎት በጥቅምት 10 ቀን 2015 ዓ/ም መስጠቱ ከመዝገቡ ሂደት መረዳት የሚቻል ነው።

አሁን የሂሳብ አጣሪው ለፍርድ ቤት አቤቱታ ያቀረቡት የጨረታ አሸናፊው ለጨረታ ማስከበሪያ በባንክ ካስያዙት ገንዘብ ውጭ ያለው ከአዋሽ ባንክ ብድር ሊሰጣቸው ስለተስማሙ ባንኩ ገንዘቡን እንዲከፍል በጨረታው የተሸጠው ንብረት ከፈረሰው ማህበር ወደ የጨረታ አሸናፊው ስመ ሐብት እንዲዛወር ይህ ችሎት ትዕዛዝ እንዲሰጥ የሚል ነው። በሐራጅ የተሸጠ ንበረት ገገር የሆኑት አቶ ሬድዋን ስርጉ ኑሪ ሂሳብ አጣሪው ያወጡት የሐራጅ ጨረታ ማስታወቂያ በጨረታ ተወዳድረው ያሸነፉበት ገንዘብ በ45 ቀናት ገቢ ሊያደርጉ እንደሆነ የተመለከተ ቢሆንም ሂሳብ አጣሪው ገንዘቡ ገቢ የሚደረግበት ጊዜ ለሁለት ወራት በመስማማት አራዝመዋል። አንድ ተጫራች በሐራጅ የሚሸጠው ንብረት ሲገዛ የጨረታ ያሸነፈበት ገንዘብ ጨረታው ማሸነፉ በተረጋገጠ በአስራ አምስት ቀናት ውስጥ መክፈል እንዳለበት በፍትሐ ብሔር ሥነ ሥርዓት ሕግ ቁጥር 441 ሥር ተደንግጓል። በዚህ ጊዜ ውስጥ ገንዘቡን የቸረታው አሸናፊ ካልከፈለ አሸናፊው በንብረቱ ላይ ማንኛውንም መብት እንደማይኖረውና ንብረቱን ድጋሚ ጨረታ በማውጣ እንደሚሸጥ በፍትሐ ብሔር ሥነ ሥርዓት ሕግ ቁጥር 442 ሥር ተመልክቷል። ከእነዚህ ድንጋጌዎች አንጻር በጨረታ የሚሳተፍ የንብረት ገገር ጨረታው

አሸንፎ የንብረቱ ባለቤትነት ሊፈጠርለት የሚችለው በጨረታ ያሸነፈበት ገንዘብ በሙሉ ለሻጩ አካል ገቢ ማድረጉ ሲያረጋግጥ መሆኑን ሲሆን አሁን በቀረበው ጉዳይ የጨረታ አሸናፊው ለጨረታ ማስከበሪያ ካስያዙት ገንዘብ ውጪ ሂሳብ አጣሪው በማስታወቂያው ላይ ባስቀመጡት አርባ አምስት ቀናትም ሆነ በስምምነት በሰጡት ተጨማሪ ሁለት ወራት ጊዜ ውስጥ ጨረታውን ያሸነፉበት ገንዘብ ብር 111,200,000 (አንድ መቶ አስራ አንድ ሚሊዮን ሁለት መቶ ሺህ ብር) ክፍያ አልፈፀሙም፡፡ ይህን ለመፈፀም ንብረቱን በስማቸው ተዛውሮ ባንክ የመያዣ መብት ከተፈጠረለት በኃላ ገንዘቡን ለሂሳብ አጣሪው ለመልቀቅ ደብዳቤ ፅፏል በሚል ደብዳቤው በማስረጃነት ቀርቧል፡፡ ይህን መስረት ባደረገ መልኩ ፍርድ ቤት የተሸጠው ንብረት ወደ ገገር ስመ ሐብቱ ሊዛወርም ሆነ ንብረቱ ሂሳብ አጣሪው ለጨረታ አሸናፊ ሊያስረክብ የሚችለው የተሸጠበት የገንዘብ መጠን ሲከፈል እንጂ ይህ ባልተፈፀመበት ሁኔታ ስመ ሐብቱ በጨረታ አሸናፊ እንዲዛወር በሚል የቀረበው የሂሳብ አጣሪው አቤቱታ ተቀባይነት ያለው አይደለም፡፡

ሂሳብ አጣሪው ከቸረታ አሸናፊው ጋር ባደረጉት ስምምነት መሰረት የሽያጭ ገንዘቡ እስከ ጥቅምት 30 ቀን 2015 ዓ/ም ድረስ ካልተከፈለ ሌላ ጨረታ ወጥቶ ንብረቱ እንዲሸጥ ፍርድ ቤቱ በጥቅምት 10 ቀን 2015 ዓ/ም ትዕዛዝ ሰጥቶ እያለ የማህበሩ ባለአክሲዮኖች እና ሦስተኛ ወገኖች መብታቸው ሊነካ በሚችልበት መልኩ የፈረሰው ማህበር ንብረት በሦስተኛ ወገን ስም ምንም ዓይነት ክፍያ ሳይፈፀም የባንክ ሰራተኛ ተራ ደብዳቤ ላይ እምነት ጥሎ ፍርድ ቤት ትዕዛዝ እንዲሰጥ አቤቱታ ማቅረቡ ሲታይ ወደ ፊት ጨረታው በሂሳብ አጣሪው ወጥቶ ንብረቱ መሸጡ ሕግን ተከትሎ ከማስፈፀም እና ተቋማዊ ከመሆን አንጻር በአግባቡ መወጣት የሚችሉ ስለመሆኑ ማረጋገጥ አልቻለም፡፡ ስለሆነም በ3ኛ ተጠሪ በሆነው ማህበር ስም በአዳማ ከተማ ቀበሌ 03 አካባቢ የሚገኘው ንብረት በፌዴራል ፍርድ ቤቶች ፍርድ አፈፃፀም ዳይሬክቶሬት በኩል እንዲሸጥ ማድረጉ ግልፅነት ባለው መልኩ ሽያጩ ማጠናቀቅ የሚያስችል ስለሆነ ተከታዩ ትዕዛዝ ተሰጥቷል፡፡

ት ዕ ዛ ዝ

1. የጨረታ አሸናፊው በጨረታ ያሸነፈበት ገንዘብ ፈርሶ ሂሳቡ በሚጣራው ማህበር ስም ገንዘብ ባልከፈለበት ሁኔታ የተሸጠው ንብረት ስመ ሐብት ከ3ኛ ተጠሪ ማህበር ወደ የጨረታ አሸናፊው እንዲዛወር የቀረበው አቤቱታ ፍርድ ቤቱ አልተቀበለውም፡፡

2. የፌዴራል ፍርድ ቤቶች ፍርድ አፈፃፀም ዳይሬክቶሬት ከክፍሉ ፖሊስ ጋር በጋራ በመሆን በኦሮሚያ ብሔራዊ ክልላዊ መንግስት በአዳማ ከተማ ቀበሌ 03 የቤት ቁጥሩ 369 የሆነው እና በካርታ ቁጥር 167A/85፣167B/85 እና 167C/85 በጋሻው፣ ሽታዬ እና ልጆቻቸው ኃላፊነቱ የተወሰነ የግል ማህበር /ፈርሶ ሂሳቡ በመጣራት ላይ ያለ/ ስም ተመዝግቦ የሚገኘው ቤት በሐራጅ በመሸጥ የሽያጭ ገንዘቡ አስፈላጊውን ወጪ ተቀናሽ ከተደረገ በኃላ ፈርሶ ሂሳቡ በመጣራት ላይ ባለው በጋሻው፣ ሽታዬ እና ልጆቻቸው ኃላፊነቱ የተወሰነ የግል ማህበር ስም በሚታወቅ የባንክ ሂሳብ ገቢ እንዲያደርግ ታዟል፡፡
3. የሐራጅ ሽያጩ በማከናወን ሂደት ላይ ቤትና ይዞታው ለመጎብኘትም ሆነ ለመረከብ ሁከት የሚፈጥር ሰው ካላ ፖሊስ በቁጥጥረ ሥር በማዋል የተዘጋ በር ካለም በጥንቃቄ በመክፈት /በመስበር/ እንደ ፍርድ ቤቱ ትዕዛዝ በአጭር ጊዜ ውስጥ ተገቢውን ትኩረት በማድረግ እንዲፈፀም በጥብቅ ታዟል፡፡
4. የሂሳብ አጣሪው የሐራጅ ሽያጭ ሂደቱ በአግባቡ በመከታተል ሌሎች የሚቀሩት ሥራዎች ጎን ለጎን አጠናቀው የፈረሰው ማህበር የሂሳብ መዝጊያ መግለጫ/ የመጨረሻ የሂሳብ ሚዛን/ በማዘጋጀት እንዲያቀርቡ ታዟል፡፡

የመጨረሻው የሂሳብ ሚዛን ሲቀርብ መዝገቡ ለችሎት የሚቀርብ ሆኖ ለጊዜው ተዘግቷል፡፡ለመዝገብ ቤት ይመለስ፡፡

የማይነበብ የዳኛ ፊርማ አለበት፡፡

የኮ/መ/ቁ፡ 286934

ሚያዝያ 16 ቀን 2016 ዓ/ም

ፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት

የንግድ እና ኢንቨስትመንት ምድብ 2ኛ ንግድ ችሎት

ዳኛ፡- መካ ነስሩ

አመልካች፡- የአዲስ አበባ ዩንቨርስቲ ቢዝነስ ኢንተርፕረራይዝ ኃላፊነቱ የተወሰነ ግል ማህበር - ሂሳብ አጣሪ ወ/ሮ አለምፀሐይ አብርሃም ቀረቡ

ተጠሪ፡- የለም

መዝገቡ ከተዘጋ በኃላ ለችሎት ሊቀርብ የቻለው ሂሳብ አጣሪዋ በሚያዝያ 07 ቀን 2016 ዓ/ም የተፃፈ አቤቱታ እና ማስረጃ በማቅረባቸው ሲሆን አቤቱታው ተመርምሮ ተከታዩ ትዕዛዝ ተሰጥቷል፡፡

ት ዕ ዛ ዝ

1. የሂሳብ አጣሪ ሊከፈላቸው የሚገባ ገንዘብ ካለ ከፈረሰው ማህበር ንብረትና ገንዘብ ከሚከፈል በቀር የአዲስ አበባ ዩንቨርስቲ የማህበሩ ባለአክሲዮን ስለሆነ ማህበሩ ሲመሰረት ያልከፈለው ገንዘብ ካለ ሂሳብ አጣሪዋ ገቢ እንዲያደርግ ከመጠየቅ በዘለለ ለሂሳብ አጣሪዋ አበል ክፍያ በጀት እንዲይዝ ትዕዛዝ እንዲሰጥ ያቀረቡት ጥያቄ የንግድ ህግ ቁጥር 499(4) ይዘትን የተከተለ ስላልሆነ ፍርድ ቤቱ አልተቀበለውም፡፡
2. የአዲስ አበባ ዩንቨርስቲ ቢዝነስ ኢንተርፕራይዝ ኃላፊነቱ የተወሰነ የግል ማህበር በዚህ ፍርድ ቤት በህዳር 04 ቀን 2013 ዓ/ም በተሰጠ ውሳኔ መፍረሱን ተከትሎ ማህበሩ ይሰራው ከነበረ የንግድ ሥራ የሚከፈለው ገንዘብ ካለ ከሚመለከተው አካል የመሰብሰቡ ሥራ ለማከናወን የሂሳብ አጣሪዋ በንግድ ሕግ ቁጥር 500 መሰረት ክስ ማቅረብ ካለባቸው ክስ አቅርበው ከሚከፈላቸው በቀር የገንዘብ ጠያቂው የመሰማት መብት በሚያጣብብ መልኩ ለማህበሩ የሚከፈል ገንዘብ ተመላሽ እንዲያደርግ ፍርድ ቤቱ ትዕዛዝ እንዲሰጥ ያቀረቡት ጥያቄ ፍርድ ቤቱ አልተቀበለውም፡፡

3. የፌዴራል ፍርድ ቤቶች ፍርድ አፈፃፀም ዳይሬክቶሬት የፈረሰው የአዲስ አበባ ዩንቨርስቲ ቢዝነስ ኢንተርፕራይዝ ኃላፊነቱ የተወሰነ ግል ማህበር ንብረት የሆነ ንብረት በፍርድ ቤት ትዕዛዝ መነሻነት በሀራጅ ተሸጦ የተገኘው ገንዘብ እና ለገንዘብ ተያቂዎች የተከፈለው የገንዘብ መጠን እና የሚቀራቸው ገንዘብ መጠን ካለ እንዲሁም ሌሎች ማህበሩን የሚመለከቱ መረጃዎች በማህበሩ ሂሳብ አጣሪነት ወ/ሮ አለምፀሐይ አብርሃም ሲጠይቁ ተገቢው መረጃ እንዲሰጣቸው ታዟል፡፡
4. የሂሳብ አጣሪዋ የማህበሩ ሂሳብ ማጣራት ማህበሩ ከፈረሰበት ጊዜ አንፃር እጅግ የዘገየ መሆኑን አውቀው በንግድ ሕጉ መሰረት የሂሳብ ማጣራቱ ሥራ አጠናቀው ሪፖርት እንዲያቀርቡ ታዟል፡፡የሂሳብ ማጣራቱ ሥራ ተጠናቆ የመጨረሻ ሂሳብ ሚዛን ለፍርድ ቤት ሲቀርብ መዝገቡ ለችሎት የሚቀርብ ሆኖ ለጊዜው ተዘግቷል፡፡ለመዝገብ ቤት ይመለስ፡፡

የማይነበብ የዳኛ ፊርማ አለበት፡፡