



**IN THE HIGH COURT OF SIERRA LEONE**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**FAST TRACK COMMERCIAL COURT**

Case No: MISC.APP. 022/15

**THE HUMBLE PETITION OF CCS COMSERVICE (SL) LIMITED**

**REPRESENTATION**

Tejan-Cole, Yillah & Bangura

Solicitors for the Petitioner

**BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.**

**RULING DELIVERED ON THE JANUARY 2016**

1. This is a petition filed by the Firm of Tejan-Cole, Yillah and Bangura dated the 2<sup>nd</sup> day of October, 2015 praying for the following orders:
  1. The CCS Comservice (SL) Limited be wound up by this Honourable Court pursuant to the Companies Act, No 5 of 2009.
  2. That an Order be directed to the Registrar of Companies, Corporate Affairs Commission that the Company, CCS, Comservice (SL) Limited be struck off the Registrar of Companies.
  3. That any Order (s) that this Honourable Court deems fit and just.
  4. No Order as to costs.
2. The Petition is supported by the Affidavit of Ibrahim Sorie Yillah Esq. sworn to on the 2<sup>nd</sup> day of October, 2015. The relevant portions of the said Affidavit are paragraphs 9, 10 and 11 thereof.
3. The Deponent in paragraph 9 deposes as follows:-"that since its incorporation in 2012, the company has been facing financial breakdown and has not yielded profits as anticipated. However, the situation worsened as a result of the out break of the Ebola epidemic in Sierra Leone.
4. In paragraphs 9 and 10, he deposes that the Directors of the Petitioner intend to voluntarily wind-up the company and in that regards passed a resolution authorizing the winding up of the company. The said Resolution is exhibited and marked "ISY5."
5. Section 402 of the Companies Act, No 5 of 2009 provides for the circumstances in which a company may be wound up voluntarily. The relevant provision here is Section 402 (1) (b) which provides that, a company may be wound up voluntarily if it resolves by special resolution that the company be wound up. This has been done by the company through Exhibit ISY 5.
6. Section 403 provides that within 14 days after the passing of a resolution for voluntary winding up of the company shall give given notice of the resolution by advertisement in the Gazette and also in a local newspaper, if any circulating in the district where the registered office of the company is situated. This has been complied with as exhibited in the Supplemental Affidavit of Ibrahim Sorie Yillah, Esq. sworn to on the 29<sup>th</sup> October, 2015 marked ISY 6 and ISY 7 respectively.
7. Where a company voluntarily winds up, the company shall, from the commencement of the winding up, cease to carry out its business, except so far as may be required for the beneficial winding up; but the corporate status and powers of the company shall, notwithstanding anything to the contrary in its articles continue until it is dissolved.
8. There is however an important component of the process that has not been carried out by the Petitioner. Section 407 deals with Statutory Declaration of solvency by the Petitioner. In a



members' winding up, the directors swear a declaration of solvency to the effect that they have made a full inquiry into the company's affairs and they have formed the opinion that the company will be able to pay its creditors in full within such a period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration. The declaration must be made within the 5 weeks immediately preceding the date of the resolution or on that date but before passing of the resolution (Section 407(2)). The said declaration must embody a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration and it is delivered to the Corporate Affairs Commission before the expiration of 15 days immediately following the date on which the resolution for the winding up is passed or such further date as may be determined by the Commission. In the absence of a statutory declaration of insolvency, this Court cannot grant the petition for members' voluntary winding up as the winding up can only be regarded as a creditors "voluntary winding up".

In the circumstances, this Court Orders as follows:-

1. That the Petition for the winding up is hereby refused at this stage.
2. There shall be liberty to apply.
3. No Order as to costs.



.....  
**Hon. Mr. Justice Sengul M. Koroma J.**