



P. N. Kourtellos & Associates LLC sets landmark precedent; Winding Up of Orphanides Public Company Ltd

By Dr. Pavlos Neofytou Kourtellos

Employing some 2,000 drivers and packers on the supply end and 1,250 for the company, the supermarket chain was deemed the largest one in Cyprus, once considered too big to fail. Orphanides Public Company Ltd has now been declared insolvent.

The District Court of Larnaca following 2 years of litigation fight, the fierce opposition of the debtor company and its secured creditors, namely the banks, finally issued on the 23rd of April 2015 a winding up order against Orphanides Public Company Ltd. The judgment constitutes a landmark precedent for Cyprus insolvency law. It is actually the first time that a Cyprus Court finds in favor of the applicant/creditor, establishing the respondent company's inability to pay its debts solely based on the company's *future* and *contingent* liabilities.

Our law firm representing the petitioning creditor proved that the company was at the time of filing of the corporate petition and still is insolvent without the creditor having served a statutory notice demanding payment of its debt which up until now was the norm dealt with by the Cyprus Courts. The Honorable presiding judge, P.D.C. M. Papamichael considered that a company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its *contingent* and *prospective* liabilities.

The company, that embarked on a very aggressive expansion plan since 2007 opening supermarkets throughout Cyprus, claimed that its property assets, which alone worth 340 million Euros, more than cover the debts. At the same time it was the argument made by the company that the filing of the winding up petition was abusive and serving ulterior motives. An order will not generally be made if the purpose of the application is to enforce payment of a debt which is *bona fide* disputed. This was not the case.

The company accumulated debts of about 400 million Euros after a 26-year journey that saw the flagship store in Larnaca expanding to a chain of nearly 30 large supermarkets and small express outlets around the island. However the company has been dropped from the Cyprus Stock Exchange Main Market and was placed in the Special Category last year.



Deriving guidance from the respective English authorities the Court found that it is clearly evident that Orphanides Plc is in severe financial difficulties and currently it has insufficient working capital to pay for its accrued trading liabilities. Moreover it is not an absolute requirement that a creditor must serve a statutory demand giving the debtor company an extra three weeks' grace in which such assets as the company may have may be dissipated in attempting to keep an insolvent business afloat, or may be absorbed into the security of a debenture-holder bank. So there are practical reasons for not allowing extra time, particularly where commercial conditions and competition require promptness in the payment of companies' debts.

Many people today seem to think that they are lawfully entitled to delay paying their debts when they fall due or beyond the agreed period of credit, if there is one. Alternatively they may think that no remedy is in practice available to the creditor if they do delay payment. There is a greater degree of truth in the second belief than the first. Legal remedies are in themselves slow and expensive. A creditor will often tolerate late payment, rather than incur further expense. But this can cause great hardship to honest traders. Anything which the law can do to discourage such behaviour should be done and the Honorable Court has now verified this approach.

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