THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 979/2012

In the matter between:

EB STEAM COMPANY (PTY) LTD Appellant

and

ESKOM HOLDINGS SOC LTD Respondent

Neutral citation: *EB Steam Company (Pty) Ltd v Eskom Holdings Soc Ltd* (979/2012)[2013] ZASCA 167 (27 November 2013)

Coram: MTHIYANE AP, CACHALIA, WALLIS, PILLAY and WILLIS JJA

Heard: 6 NOVEMBER 2013

Delivered: 27 NOVEMBER 2013

Summary: Winding-up application – requirement that application papers be furnished to employees in terms of s 346(4A) of the Companies Act 61 of 1973 – requirement peremptory – what is necessary for compliance explained – time when papers to be furnished – mode of furnishing papers discretionary and under control of court.

ORDER

On appeal from: South Gauteng High Court, Johannesburg (Tsoka J sitting as court of first instance):

1 The appeals are upheld to the extent that the final winding-up orders granted in cases 8303 to 8312/2012 and 8381 to 8390/2012 are set aside and replaced by provisional winding-up orders returnable eight weeks from the date of this order.

2 The appellants are directed by no later than five weeks from the date of this order to furnish to the employees of the respondent in each application a copy of the application papers in that application and within one week thereafter to deliver an affidavit setting out details of when and in what manner they have complied with this order.

3 The respondent's costs in this appeal, including the costs of two counsel, are to be costs in the liquidation of the appellant companies, unless the provisional winding-up orders are discharged on the return date, in which event the appellants are ordered jointly and severally to pay the respondent's costs, including the costs of two counsel.

JUDGMENT

WALLIS JA (MTHIYANE AP, CACHALIA, PILLAY and WILLIS JJA concurring)

[1] These appeals arise from final winding-up orders made by Tsoka J in relation to twenty companies, all of which are apparently subsidiaries of EB

Steam Holdings (Pty) Ltd.[1] The winding-up applications arose out of their failure to satisfy arbitration awards in varying amounts made against each of them on 1 November 2011. After the awards were made, a notice in terms of s 345(1)*(a)* of the Companies Act 61 of 1973 (the 1973 Act) was delivered to each company – conveniently they all have the same registered address – but did not result in payment. Thereafter application was made for winding-up orders against all twenty companies in terms of s 346(1), read with s 344*(f)*, of the 1973 Act. Notwithstanding the repeal of the 1973 Act these provisions remain in force, by virtue of the provisions of s 9 of Schedule 5 to the Companies Act 71 of 2008.

[2] The applications were not opposed on the merits but solely on the grounds that there had not been proper service on the employees of the companies as required by s 346(4A) of the 1973 Act. That section provides that:

'(4A)*(a)* When an application is presented to the court in terms of this section, the applicant must furnish a copy of the application—

(i) to every registered trade union that, as far as the applicant can reasonably ascertain, represents any of the employees of the company; and

(ii) to the employees themselves—

(aa) by affixing a copy of the application to any notice board to which the applicant and the employees have access inside the premises of the company; or

(bb) if there is no access to the premises by the applicant and the employees, by affixing a copy of the application to the front gate of the premises, where applicable, failing which to the front door of the premises from which the company conducted any business at the time of the application;

(iii) to the South African Revenue Service; and

[1] In the heading to this judgment the twenty companies are compendiously referred to as EB Steam Company (Pty) Ltd.

(iv) to the company, unless the application is made by the company, or the court, at its discretion, dispenses with the furnishing of a copy where the court is satisfied that it would be in the interests of the company or of the creditors to dispense with it.

(b) The applicant must, before or during the hearing, file an affidavit by the person who furnished a copy of the application which sets out the manner in which paragraph (a) was complied with.'

[3] The applications for winding-up were duly served on the companies at their registered office. Each application cited the employees of that company as a 'third party'. It is by no means clear on what basis this was done, as they were not third parties in terms of rule 13 of the Uniform Rules, but it is immaterial. The founding affidavit did not give any indication of whether the companies had any employees or their number or whether, in relation to companies the business of which was to supply steam at various locations around South Africa to large industrial concerns, any employees were in fact employed at the registered office, which is in an office building in Melrose Arch, Johannesburg. Information was limited to an affidavit from a candidate attorney in the employ of the applicant's attorneys that he had been told by the lady upon whom the application papers were served that none of the employees belonged to a trade union. Against that factual background the sheriff purported to serve the applications on the employees of each subsidiary company by affixing a copy of the application for winding-up in relation to that company to the front door of the registered office, which in his return is described as being 'the 3RD PARTY'S place of EMPLOYMENT'.

[4] The appellant companies argued that this form of service was defective for two reasons. First, the sheriff had obtained access to the registered office, because he had served the applications on the companies at that office upon an

employee apparently over the age of 16 years and in charge of the premises. In the absence of any explanation that it was not possible for him to do so, s 346(4A)*(a)*(ii)*(aa)* required service to be effected by affixing the application papers to a notice board within the premises to which the employees had access. Service in the manner he adopted was accordingly defective. Second, it was submitted that it was obvious from the names of the companies and the nature of their business that they operated at locations throughout the country and that in those circumstances the court should not have accepted the correctness of the sheriff's return. It was argued that compliance with s 346(4A) was peremptory and accordingly that non-compliance was fatal to the applications.

[5] In order to place this objection in context it is necessary to have regard to the circumstances in which s 346(4A) came to be introduced into the 1973 Act. It came not by way of a general amendment to the 1973 Act, but was introduced as a result of amendments effected to the Labour Relations Act 66 of 1995 (the LRA). It is necessary therefore to start with that Act which is the primary vehicle through which effect is given to the right to fair labour practices enshrined in s 23(1) of the Constitution.

[6] The Labour Relations Amendment Act 12 of 2002 effected substantial amendments to the LRA particularly in relation to the issue of security of employment. Among these was the introduction of s 197B, which dealt with the employer's obligation to disclose information concerning insolvency. The section obliges an employer facing financial difficulties that might reasonably result, if it is a corporate body, in its winding-up, or, if they are a natural person or unincorporated entity, in their sequestration, to advise any consulting party with which the employer is obliged to consult over employment issues in terms

of s 189(1) of the LRA of that fact. Furthermore if an employer applies to be wound-up or sequestrated they are obliged at the time of making the application to provide a consulting party with a copy of the application. Conversely if they receive an application for winding-up they are obliged to supply a copy of the application to any consulting party within two days of receipt, or if the proceedings are urgent, within 12 hours. Similarly, if the employer is a natural person or unincorporated entity and receives an application for their sequestration, the same notice must be given. Bearing in mind that parties facing winding-up or sequestration may be in a state of administrative disarray the legislature, at the same time and in the same amending Act, introduced the provision quoted above into the 1973 Act and similarly worded provisions into the Insolvency Act 24 of 1936. This was done with a view to ensuring, so far as reasonably feasible, that employees become aware of an application for the winding-up of a company or an application for the sequestration or voluntary surrender of a natural person or unincorporated entity's estate.[2]

[7] These provisions were introduced simultaneously into the LRA, the 1973 Act and the Insolvency Act, by way of a statute directed at the topic of labour relations and protecting the interests of employees. It must therefore be accepted that their purpose was to ensure, so far as reasonably feasible, that applications for winding-up, voluntary surrender or sequestration come to the attention of the employees of the employer in question and their representatives so that the interests of the employees can be protected.[3] Their purpose is to enable the employees of an employer, facing winding-up or sequestration, or their representatives, to engage the employer and possibly the creditors with a view

---

[2] The relevant provisions are contained in s 346(4A)(*a*) and s 346A of the Companies Act 61 of 1973 and ss 4(2)(*b*) and 9(4A)(*a*) of the Insolvency Act 24 of 1936.

[3] *Gungudoo v Hannover Reinsurance Group Africa (Pty) Ltd* 2012 (6) SA 537 (SCA) para 41.

to protecting the position of the employees, insofar as it is reasonably possible to do so. They must be construed in the light of that purpose.[4]

[8] The corollary to this conclusion about legislative purpose is that s 346(4A) is not directed at providing a technical defence to the employer, invoked to avoid or postpone the evil hour when a winding-up or sequestration order is made. However, experience in motion courts hearing these applications around the country suggests that complaints that notice has not been given under these provisions are usually made by the employer facing winding-up or sequestration, not one of the parties to whom notice must be given. In the present case, this is the only defence raised and no attempt has been made to advance any factual basis upon which the companies can avoid being wound-up. Whether the defence should succeed depends upon the proper construction of the section and the powers of the court hearing an application for a winding-up order.

[9] It is helpful to examine the provisions of s 346 more generally in regard to the requirements for applications for winding-up in order to understand the role that s 346(4A) plays. The starting point is s 346(3) which requires that every application 'shall be accompanied by a certificate by the Master, issued not more than ten days before the date of the application' to the effect that sufficient security has been given for the prosecution of the winding-up proceedings and the costs of administering the company in liquidation. It is well established that the section is peremptory; that a provisional order cannot be issued in the absence of such a certificate; and that the ten days is calculated from the date of the notice of motion. However, the certificate does not have to accompany the application at the time that it is lodged, but only when it is

[4] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

heard, and may be furnished to the court at any time prior to the issue of a provisional order. The cases that lay this down[5] were decided under the corresponding provisions of the Insolvency Act, but they are of equal application to applications for winding-up.

[10] Section 346(4)*(a)* provides that '[b]efore an application for the winding-up of a company is presented to the Court' a copy of the application shall be lodged with the Master or, in certain circumstances, with another officer in the public service designated for that purpose. There is a significant body of authority that holds that an application is presented to the court when it is lodged with the Registrar[6] and there is no need for us to review it in this case. The effect then of s 346(4)*(a)* is that it is peremptory for the applicant to lodge the application with the Master before lodging the application with the Registrar. The Master then furnishes a report to the court before the hearing of the application.

[11] Section 346(4A) requires that the application papers be furnished to various people, namely, every registered trade union that represents the employees; the employees themselves; SARS[7] and the company itself, unless there are grounds for the court to dispense with the last of these. Unlike the previous sub-section, which requires that the papers be lodged with the Master 'before' lodging with the Registrar of the high court, s 346(4A) only requires that the application papers be furnished to these persons 'when' the application has been presented to the court. That difference in terminology is significant as

[5] *RSA Factors Ltd v Hansen* 1983 (4) SA 873 (D) and *Court v Standard Bank of SA Ltd; Court v Bester NO & others* 1995 (3) SA 123 (A).
[6] See the note on s 348 in *Henochsberg on the Companies Act* Vol 1, 5 ed (Consulting editor Justice B Galgut) p 740(1) and 740(2), Issue 28. The contrary view by KJ Douglas 'Backdating of Windings-Up' (1987) 104 *SALJ* 616 at 617-625 does not appear to have found favour with our courts.
[7] The South African Revenue Service.

it conveys that the application papers do not have to be furnished to the specified persons until after the application has been lodged with the Registrar.[8] There is a good reason for this. It is only once the papers have been lodged that a case number will have been allocated and a date of set-down determined in the event of there being no opposition and these will be reflected in the notice of motion. If the application is to be heard as a matter of urgency the grounds therefor and the date of hearing will then appear from the application papers, which would not be the case if they had to be served before lodging them with the registrar of the court that will hear the application.

[12] The contrary conclusion in *Corporate Money Managers (Pty) Ltd & others v Panamo Properties 49 (Pty) Ltd*[9] overlooked the difference in wording between ss (4) and (4A), and is incorrect. The application papers can be furnished to the named persons at any time after lodging with the Registrar provided that they have been furnished to the identified persons prior to the grant of a final order. That ensures that the purpose of the section will be fulfilled. It is unnecessary to determine finally what a court should do if the papers are furnished to one such person on the day of the hearing or only shortly before. The court should in general satisfy itself that the persons who are entitled to be furnished with the papers have had an adequate opportunity to consider the application and decide whether to intervene. It is also unnecessary to spell out the circumstances in which a court should be prepared at the stage when a provisional winding-up order is sought to grant an order notwithstanding the fact that the application papers have not yet been furnished to employees. Ordinarily this should be done before a provisional order is granted but reasons of urgency or logistical problems in furnishing them with

---

[8] This is to understand 'when' in the sense of 'after which', as in 'When you have completed your work, you may play with your friend.' *Concise Oxford English Dictionary* 12 ed (2011) 1643.

[9] *Corporate Money Managers (Pty) Ltd & others v Panamo Properties 49 (Pty) Ltd* 2013 (1) SA 522 (GNP).

the application papers may provide grounds for a court to allow them to be furnished after the grant of a provisional order.

[13] Like the earlier sub-sections, there can be little doubt that the section imposes an obligation on the applicant to furnish the application papers to the persons named in the section. That accords with the section's purpose. For example the inclusion of SARS in the list is dictated by its role in protecting South Africa's tax base and ensuring that in the public interest all taxes properly levied are collected. There are obvious reasons why it should know about applications for winding-up or sequestration. The reasons for requiring that the application papers be furnished to employees and their representatives have already been mentioned. The section says that the application papers 'must' be furnished to the named persons. In the traditional language of the law that is peremptory.[10]

[14] It cannot, however, be the case that courts are hamstrung and precluded from dealing with applications for winding-up or sequestration because they are uncertain whether the application has in fact come to the attention of all employees. That is not a sensible construction of this requirement.[11] Were that the case the statutory methods of placing the application papers on a notice board to which the employees have access, or fastening them to the gates of premises where the employees work, could never be accepted as sufficient. The usual way of achieving certainty in regard to the receipt of documents is by requiring service in accordance with the rules of court, but that is not what the section demands. In my view the proper interpretation of the requirement that

[10] *Nkisimane & others v Santam Insurance Co Ltd* 1978 (2) SA 430 (A) at 433H-434E.
[11] *Ekurhuleni Municipality v Germiston Municipal Retirement Fund* 2010 (2) SA 498 (SCA) paras 12-14; *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

the application papers be 'furnished' to the identified persons is that they must be made available in a manner reasonably likely to make them accessible to the employees. It is not a requirement that the court must be satisfied that the application papers have as a matter of fact come to the attention of those persons. It is in that sense that I refer hereafter to furnishing the application papers to employees.

[15] Section 346(4A)*(b)* is of considerable significance because it reinforces the proposition that the papers must be furnished to the relevant persons only after the application has been lodged with the Registrar. Additionally it requires the applicant to provide an affidavit, which may be presented to the court at the hearing itself, setting out the manner in which paragraph *(a)* was complied with. It necessarily follows that, if for any reason it has not been possible to comply with those requirements, or compliance has taken an unusual form, the affidavit must spell this out. That raises the question of the court's powers in the event of such non-compliance.

[16] The type of problem posed in complying with the section neatly emerges from the facts in one of the cases to which we were referred, namely *Hendricks NO v Cape Kingdom (Pty) Ltd*.[12] There the evidence showed that none of the employees were still at the premises of the company or any other premises where it had carried on business. Three employees had been served personally with copies of the application papers. The point was then taken by the company that there had not been service at the places or in any of the forms specified in s 346(4A)*(a)*(ii) and that other employees had not been served. The applicant then caused another person to be personally served and in relation to three employees at a farm, who were not present when an attempt was made to serve them, the application papers were left with another employee who was present.

[12] *Hendricks NO v Cape Kingdom (Pty) Ltd* 2010 (5) SA 274 (WCC).

The court held that the requirements of the section had been satisfied. In my view it was correct to do so. All that could reasonably have been done to make the application papers available to the employees had been done.

[17] The point has already been made that it is obligatory for the applicant for a winding-up order (or a sequestration order) to furnish a copy of the application papers to the persons mentioned in s 346(4A). When dealing with employees the section refers to three possible ways of doing this. The one is by placing the papers on a notice board at the premises where they work and to which they have access. The second and third are by affixing a copy of the application papers to the front gate of the premises where the employees work, if access to the premises cannot be obtained, or to the front door of the premises from which the business was conducted at the time of the application. Manifestly none of these methods may result in the application papers actually coming to the attention of the employees. If the business has closed down none of them may serve to inform the employees of the application for winding-up. However, there may be other means of doing so, as in *Hendricks*, where personal service on the employees was feasible. What this suggests is that, whilst the obligation to furnish the application papers to the employees is peremptory, the modes of doing so indicated in the section are directory and alternative effective means may be adopted. In other words the methods for furnishing employees with the application papers as set out in s 346(4A)*(a)*(ii) are no more than guides. If other more effective means are adopted and reflected in the affidavit filed in terms of s 346(4A)*(b)* then, provided the court is satisfied that the method adopted was reasonably likely to make the application papers accessible to the employees, there has been compliance with the section.

[18] The fallacy in the first contention advanced on behalf of the appellants lies in treating not only the obligation to furnish the application papers to the specified persons as peremptory, but also, in the case of the employees, the methods for doing so. There is no logical connection between the two and no need to turn a helpful indication by the legislature of the ways in which the application papers can be furnished to the employees into a peremptory requirement, non-compliance with which affords the company a ground for defeating the winding-up application. In my opinion the modes of achieving compliance mentioned in the section are merely directory and it is permissible for an alternative mode to be adopted.

[19] It follows that when the court is satisfied that the method adopted by the applicant to furnish the application papers to the employees is satisfactory and reasonably likely to make them accessible to the employees, there is no reason to refuse a winding-up order, whether provisional or final, merely because they were not furnished to the employees in one of the ways indicated in s 346(4A)*(a)*(ii). Nor should the court refuse an order merely because it is not satisfied that the application papers have come to the attention of all employees. That is not what the section requires.

[20] That conclusion does not address the converse situation that arises in this case of the application papers having been served by the sheriff in one of the ways indicated by s 346(4A)*(a)*(ii), but the circumstances of the case are such that the court is left in doubt whether this achieved the statutory purpose. Nor does it resolve the problem confronting an applicant that is aware that none of the statutory methods will serve to bring the application papers to the attention of the employees, but has no other certain method of doing so. For example the

applicant may be unaware of whether there are employees or may not know where they work. The business may have closed and it may be uncertain whether there are employees. In today's modern world employees often work from home and there are those, such as sales representatives or financial advisers, who may have no need to work in an office and only rarely need to attend at the employer's premises. Then there is the problem of the employer conducting its business at a number of different premises and having employees at each.

[21] Once it is accepted that the purpose of the section is, so far as reasonably feasible to bring the application to the attention of the employees, the answer to these problems is clear. If the court hearing the application is not satisfied that the method adopted to furnish the application papers to the employees is appropriate to achieve the statutory purpose, even if it complies with one of the methods specified in s 346(4A)*(a)*(ii), then it should, as in all other cases where courts are not satisfied with the adequacy of service, require a different and more effective method to be adopted.[13] Similarly if the applicant in its affidavit dealing with these matters indicates that it has been unable to furnish the application papers to the employees by following the methods indicated in that section, the court should direct the manner of service to be followed in order to achieve the statutory purpose. This approach secures compliance with the statutory purpose and places the court in control of the issue of the adequacy of the service of documents relating to the institution of court proceedings, which is consistent with the proper function of courts. It is also consistent with the provisions of the Constitution that, in s 173, vests in the

[13] There have been cases over the years where, for example, courts have refused to accept service at a *domicilium* as adequate to inform the defendant of the action. See *FirstRand Bank Ltd v Gazu* 2011 (1) SA 45 (KZP). The position may be different in relation to service of contractual notices. See *Amcoal Collieries Ltd v Truter* 1990 (1) SA 1 (A) at 5I.

high courts the inherent power to regulate their own procedures. Control over service and the requirement that application papers and other forms of judicial process are brought to the attention of those potentially affected by them falls squarely within this constitutional mandate.

[22] In order for the court to perform this function properly it will be necessary for applicants, in the founding affidavit or the affidavit in terms of s 346(4A)*(b)*, to deal with whether the respondent has employees and if so where those employees are working or are likely to be found. It is only in the light of this information that the court hearing the application can decide whether there has been compliance with the requirements of the section. If there is reason to believe that the respondent does not have employees then this and the grounds for it must be stated.

[23] To sum up thus far the position is as follows. The requirement that the application papers be furnished to the persons specified in s 346(4A) is peremptory. It is not however peremptory, when furnishing them to the respondent's employees, that this be done in any of the ways specified in s 346(4A)*(a)*(ii). If those modes of service are impossible or ineffectual another mode of service that is reasonably likely to make them accessible to the employees will satisfy the requirements of the section. If the applicant is unable to furnish the application papers to employees in one of the methods specified in the section, or those methods are ineffective to achieve that purpose and it has not devised some other effective manner, the court should be approached to give directions as to the manner in which this is to be done.[14] Throughout the

[14] In the course of argument the example of a retail business having several hundred stores throughout South Africa was put to counsel. Manifestly service in any of the ways set out in the section would not be effective to bring the application to the attention of the employees of such a business and it would be an exercise in pointless formalism, subversive of the statutory purpose, to say that an order could be granted because service had formally been effected in one of the ways set out in the section.

emphasis must be on achieving the statutory purpose of so far as reasonably possible bringing the application to the attention of the employees.

[24] That leaves one final question, namely whether the inability of the applicant, for whatever reason, to furnish the application papers to the employees before the hearing precludes the court from granting any relief. Certainly the failure to provide a security certificate in terms of s 346(3) or the failure to lodge the papers with the Master in terms of s 346(4) is fatal to the grant of immediate relief. However, that is because of the nature and purpose of these requirements. To permit an application for winding-up to proceed without security having been furnished may result in costs being incurred, including by public officials, without any means of recouping them. As the Master is the person who will have to oversee the winding-up there are obvious reasons for ascertaining in advance whether the Master is aware of reasons why a winding-up order should not be granted. The position in regard to the notification provisions in s 346(4A) is different. Their purpose is to ensure that certain specified persons, who may have an interest in the winding-up, in order to protect their own interests, are, so far as reasonably possible, furnished with the application papers in order to assess their own position in the light of the case made by the applicant. They may well applaud and support the application as did some of the employees in *Hendricks*.

[25] The fact that the requirement that these persons be furnished with the application papers is peremptory means that it is not permissible for the court to grant a final winding-up order without that having occurred. Does that mean that it is equally impermissible for the court to grant a provisional winding-up order? In my view it does not. The position may well be that an overwhelming case is made on the papers for the grant of a winding-up order and that any

delay will allow assets to be concealed or disposed of to the detriment of the general body of creditors and particularly the employees and SARS, who may have preferential claims. It would be absurd to hold that the court was disabled from granting a provisional order merely because it had not been feasible, possibly as a result of the conduct of the employer, to furnish a copy of the application papers to the employees or a representative trade union or even SARS, although the latter is unlikely to be a practical problem.

[26] This case provides a clear example of the absurdity of holding that the fact that an applicant has failed to furnish the application papers to the employees in an effective manner precludes the court from granting a provisional winding-up order. Indeed, counsel for the appellants accepted that even if the point regarding service of the papers on the employees had substance it would not in any way prejudice his clients if a provisional winding-up order was substituted for the final order granted by Tsoka J. There are advantages that may flow from following this procedure. The court will be able to place the company in the hands of a provisional liquidator and the *concursus creditorum* will commence, so that assets may be preserved and the company is shielded from litigation. At the same time an appropriate order may be granted, returnable on the same day as the rule *nisi*, directing how the application papers are to be furnished to employees. One of the obvious ways in which this can be achieved, where the company is, as here, represented, is by directing it to perform its statutory obligations in terms of s 197B of the LRA. After all the company should know who its employees are, where they are situated and what the best way is in which to inform them of the application and make the application papers available to them.

[27] Turning to the present case, the application papers are silent about the existence of employees or their location. The different companies operate in a number of different locations around South Africa. There is no indication in the sheriff's return of service that he made any enquiries as to the existence of employees of the companies or their place of work. In those circumstances the court below should not have been satisfied that there had been compliance with the requirements of s 346(4A) insofar as the employees were concerned. For that reason it was inappropriate to grant final winding-up orders in relation to these companies. Whilst that is permissible in certain cases[15] the well-established rule that, save in clear cases, a provisional winding-up order should be issued,[16] should have been followed here and directions given for the employees to be identified and the application papers to be furnished to them. It is appropriate in this case to achieve that by directing the appellants to fulfil their obligations under the LRA. (In the light of the approach they have taken to this litigation I assume that they have not already done so.) The directions embodied in the order set out below will not preclude the respondent from placing evidence before the court hearing the application on the issue of furnishing the application papers to employees of the companies.

[28] An order in those terms will not bring the appellants any significant degree of success in this appeal. Accordingly it should not carry with it a favourable order for costs. By contrast the respondents will largely have defended their position and preserved the position where the companies are still subject to winding-up. They should recover their costs.

[29] The following order is made:

[15] *Johnson v Hirotec (Pty) Ltd* 2000 (4) SA 930 (SCA) para 9.
[16] *Kalil v Decotex (Pty) Ltd & another* 1988 (1) SA 943 (A) at 976A-B.

1 The appeals are upheld to the extent that the final winding-up orders granted in case 8303 to 8311/2012 and 8381 to 8390/2012 are set aside and replaced by provisional winding-up orders returnable eight weeks from the date of this order.

2 The appellants are directed by no later than five weeks from the date of this order to furnish to the employees of the company in each application a copy of the application papers in that application and within one week thereafter to deliver an affidavit setting out details of when and in what manner they have complied with this order.

3 The respondent's costs in this appeal, including the costs of two counsel, are to be costs in the liquidation of the appellant companies, unless the provisional winding-up orders are discharged on the return date, in which event the appellants are ordered jointly and severally to pay the respondent's costs, including the costs of two counsel.

M J D WALLIS

JUDGE OF APPEAL

Appearances

For the Appellants:	I Miltz SC (with him J J Bitter)
Instructed by:	Webber Wentzel, Johannesburg;
	Honey Attorneys, Bloemfontein
For the Respondent:	D M Fine SC (with him F S Nalane)
Instructed by:	Bowman Gilfillan Inc, Sandton;
	Webbers Attorneys, Bloemfontein.