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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

Case No: 2023/080710

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
23.10.2024	_____
DATE	SIGNATURE

IN THE MATTER BETWEEN:

NEDBANK LIMITED

APPLICANT

AND

SANA DEVELOPERS (PTY) LTD

1st RESPONDENT

MAHOMED MAHIER TAYO N. O

2nd RESPONDENT

JUDGMENT

SIWENDU J

Introduction

[1] The applicant, Nedbank Limited (Nedbank) brings this application to set aside a resolution adopted by the directors of the first respondent, initiating business rescue proceedings in terms of section 130(1)(a) (ii) or (iii)¹, alternatively section 130(5)(a) (ii) of the Companies Act 71 (the Act).

[2] In terms of the above provisions, at any time after the adoption of a resolution in terms of section 129, until the adoption of a business rescue plan in terms of section 152, an affected person may apply to a court for an order setting aside the resolution, on the grounds that there is no prospect for rescuing the company or it is just and equitable to do so. In the application before me, if successful, the applicant seeks an order declaring that the business rescue proceedings have terminated or come to an end in terms of section 132(2)(a) of the Act and asks the court to order a final, or alternatively provisional liquidation of the respondent.

[3] The applicant also prayed for leave to institute the application in terms of section 133(1)(b). At the hearing, there was an antecedent question whether the applicant requires a substantive application to do so.

[4] The first respondent, Sana Developers (Pty) Ltd (Sana Developers) is a property-owning company in business rescue. It derives its income from rental of its properties, and operates from 207 Utrecht Avenue, Clubview, Centurion.

[5] On 17 April 2023, the directors of Sana Developers adopted a resolution placing the company under business rescue in terms of Section 129 of the Act. On 19 April 2023, they appointed the third respondent, Mr Mahomed Mahier Tayob N.O (Mr Tayob), as the business rescue practitioner.

[6] Nedbank instituted the application in August 2023 and set it down on the unopposed motion court roll on 11 October 2023. By agreement, the application was removed from the unopposed roll to allow Mr Tayob to deliver an answering affidavit, due on 7 September 2023. Mr Tayob did not honour that agreement. He claims a

¹ Subject to subsection (2), at any time after the adoption of a resolution in terms of section 129, until the adoption of a business rescue plan in terms of section 152, an affected person may apply to a court for an order setting aside the resolution, on the grounds that there is no prospect for rescuing the company.

creditor, City of Tshwane, was on strike and this prevented his office from obtaining “outstanding figures and to solicit a claim.” Ultimately, he utilised “alternative audit procedures” to compute and verify that claim.

[7] Mr Tayob now opposes the application and seeks condonation for the late filing of the answering affidavit. The business rescue plan on which the prospects of a successful rescue of Sana Development hinge is annexed to answering affidavit. I say more about this later, but it bears mentioning that Nedbank had to apply to compel the respondents to file their heads of argument.

[8] Although Nedbank challenged the facts advanced for the late filing of the answering affidavit, it did not hotly contest the condonation application. Condonation has a bearing on the merits, the prospect of success and the viability of the business rescue plan prepared by Mr Tayob and ought to be granted.

Jurisdiction

[9] Mr Tayob contested this court’s jurisdiction to determine the application on the grounds that Sana Developers is based Centurion. He submits that Nedbank ought to have launched the application before the Gauteng Division of the High Court, Pretoria. Mr Tayob also impugns the judgment granted by this court in favour of Nedbank on 7 September 2022 in terms of which certain property, the subject of the business rescue proceedings was declared executable on the same jurisdictional basis.

[10] This court need not be detained by the preliminary challenge to its jurisdiction nor traverse the well-known provisions of section 21 of the Superior Courts Act 10 of 2013² (Superior Court Act). Under section 6(3)(c) of the Superior Court Act, the Minister must, after consultation with the Judicial Service Commission, by notice in the *Gazette*, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice. The Gauteng Division of the High Court, Johannesburg which was previously referred to as the Local Division forms

² Section 21 of the Superior Court Act contains provisions which seeks to explain persons over whom and matters in relation to which Divisions of the High Court of South African have jurisdiction.

part of the Gauteng Division and has concurrent jurisdiction with the Gauteng Division of the High Court, Pretoria as determined by the Minister.³ The objection lacks merit and is dismissed. The attack on the default judgment secured by Nedbank must follow the same fate for the same reason.

[11] It is also prudent at this stage to dispose of the antecedent question whether Nedbank requires a substantive application for the Court's leave in terms of section 133(1)(b)⁴ to institute this application. It is correct that an enforcement or execution of the judgment falls under the purview of the section granting a moratorium against the institution or enforcement of legal proceedings to a company under business rescue.⁵ That debate was put paid in *BP Southern Africa (Pty) Ltd v Intertrans Oil SA (Pty) Ltd and Others*⁶ where the court held that:

“Where the main relief to be sought goes to the very status which invokes the moratorium protection, it seems overly technical to insist on two distinct applications as opposed to one application with two (sets of) prayers: one for permission, and one for the substantive relief.”

This is what Nedbank did and I align with the practical approach in the above decision which has been followed in other judgments in this Division.

Background

[12] Nedbank is an “affected person,” and a creditor defined in section 128 (1)(a)(i) of the Act⁷. Its standing as a creditor is premised on loan (s) advanced to Sana Developers in August 2017. The loan(s) are not in dispute.

³ Superior Court Act, 2013 (Act No 10 of 2013) Determination of Areas under the jurisdiction of Divisions of the High Court of South Africa No. 39601 Government Gazette, 15 January 2016

⁴ 133 (1)(b) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except -.... (b) with the leave of the court and in accordance with any terms the court considers suitable.

⁵ *Murray NO and Another v FirstRand Bank Ltd t/a Wesbank* 2015 (3) SA 438 SCA para 32. The court held that ‘enforcement action’ relates to formal proceedings ancillary to legal proceedings, such as the enforcement or execution of court orders by means of writs of execution or attachment.

⁶ 2017 (4) SA 592 at 27

⁷ “affected person”, in relation to a company, means—

(i) a shareholder or creditor of the company

[13] It is also common cause that Sana Developers defaulted on its payment obligations. On 7 September 2022 Nedbank obtained a judgment before Mahomed AJ in the amount of R34 527 119.34 plus interest at the then current lending rate of 7% (plus 1%) and a further sum of R3 862 443.59 plus interest at the rate of 7% (plus 1.40%).

[14] Certain properties belonging to Sana Developers, mortgaged in favour of Nedbank were simultaneously declared executable. The court suspended the execution of the sale of the property for a period of six months. The implication of the suspension granted Sana Developers an opportunity to pay the outstanding debt. It failed to do so, consequently, on 23 March 2023, Nedbank attached the properties. On 17 April 2023, the directors of Sana Developers adopted the business rescue resolution, after the attachment of the properties.

[15] At the hearing, Nedbank's attorney, Ms Warren who attended the creditor meetings convened by Mr Tayob sought the court's leave to admit a supplementary affidavit. She submits that Nedbank was advised that Mr Tayob intends to bring a separate application in terms of section 153 of the Act. That section empowers Mr Tayob prepare and present a revised business rescue plan to creditors, failing which, apply to a court to set aside a vote against the plan as inappropriate.

[16] Ms Warren informed the Court that in view of the above, Nedbank attorneys anticipated that Mr Tayob would seek a postponement of the hearing the matter. Mr Tayob opposes the admission of the supplementary affidavit and seeks a postponement to be afforded an opportunity to reply. His counsel submitted the supplementary affidavit was filed the night before the hearing when Mr Tayob was in Indonesia. He has not been given an opportunity to reply.

[17] Given the view I take in this judgment; it is essential to say something about the nub of the supplementary affidavit. It reveals that between 10 and 20 May 2024, Mr Tayob purported to amend the business rescue plan and called on creditors to vote on the amended plan. The reason for the application to admit this supplementary affidavit is to bring these developments to the court's attention and for the matter to be determined on full information.

Admission of the Supplementary Affidavit

[18] In addition to setting the period for filing a replying affidavit in application proceedings, Rule 6(5)(e), provides that “the court may in its discretion permit the filing of further affidavits.” The court must exercise its discretion, judicially, having regard to the reasons for the late filing and consideration of fairness to the other party.⁸ An explanation why it is out of time must be made and satisfy the court that in all the circumstances of the case it should be received.⁹

[19] I find that the supplementary affidavit is relevant and must be admitted. Its contents are linked inextricably with (a) the merits of the application, (b) the conduct of the business rescue proceedings, (c) the opinion that there are reasonable prospects to rescue Sana Developers and (d) the merits of the opposition mounted by Mr Tayob. As will be seen from the judgment, the prejudice weighs against Nedbank than Mr Tayob were the supplementary affidavit not admitted. The prejudice can be ameliorated in the nature court order. It is apposite to deal with conduct of the business rescue proceedings first.

Business Rescue Proceedings

[20] Nedbank holds security by way of a covering mortgage bond over Sana Developers’ properties, namely:

- Portion 4 of Erf 8[...] Waterkloof Glen Extension 2 Township and Portion 2 of Erf 82 Menlyn Extension 3 Township, Local Authority: City of Tshwane Metropolitan Municipality exclusive use area described as Parking P1 -53 (Portion 4 of Erf 8[...] Waterkloof)
- Erf 3[...] Irene Extension 72 Township Division J, R Province of Gauteng Measuring 2598 (Two Thousand Five Hundred and Ninety-Eight) Square Metres (Erf 332 Irene Extension)

⁸ Erasmus Superior Court Practice, RS 23, 2024,

⁹ *Afric Oil (Pty) Ltd v Ramadaan Investments CC* 2004 (1) SA 35 (N) at 38J–39A

- Remaining Extent of Erf 4[...] Faerie Glen Township, Registration Division JR, Province of Gauteng Measuring 8070 (Eight Thousand and Seventy Square Metres. (Remaining Extent of Erf 41 Faerie Glen Township)
- Section No 1 as shown and more fully described on Sectional Plan No. SS 297/2009 ('the sectional of the land and building or buildings situate at ERF 6[...], Tijger Vallei Township, Local Authority: City of Tshwane Metropolitan Municipality of which section the floor area, according to the said sectional Plan is 550 (Five Hundred and Fifty) square metres in extent.

[21] Sana Developers ceded to Nedbank *in securitatem debiti* present and future rights, title and interest in, under and to all rentals, fruits and income becoming due to it arising from any and all present and future leases including, but not limited to, all leases detailed in the schedule of Leases, in respect of the following properties:

- Erf 3[...] Irene Extension 72 Township situated at 2[...] V[...] U[...], Irene, Pretoria.
- Section 1 in the Sectional Title Scheme number 297/2009 known as Heron View, together with all exclusive use areas relating thereto, situated at 667 Silver Lakes Road.
- Section 2 in the Sectional Title Scheme number 297/2000 known as Heron View, together with all exclusive use areas relating thereto, situated at 687 Silver Lakes Road.
- Remaining Extent of Erf 4[...] Faerie Glen Township situated at 2[...] S[...] Avenue, Faerie Glen.

[22] The above properties are the subject of the judgment granted by the court to Nedbank. Upon his appointment on 19 April 2023, Mr Tayob wrote to Nedbank purporting to suspend Sana Developers' obligations to Nedbank in terms of the loan agreements based on the powers conferred in section 136(2) of the Act. The section permits Mr Tayob to suspend contracts entirely, partially or conditional in certain circumstances.

[23] Nedbank objected to the purported suspension, advising Mr Tayob that the agreements were "terminated and our client obtained Judgment against for the full

amount of its claim on 22 September 2022.” Nedbank also advised Mr Tayob that it had not received the documentation as required in terms of Section 129 (3) and Section 129 (4) of the Act and reserved its rights thereto.

[24] Broadly, the above complaint relates to the notification and publication of the adopted resolution and the appointment of Mr Tayob to affected persons. The complaints were the first indication of a multiple instances of non-compliance with the provisions of the Act. Nonetheless, it is not the mainstay of the current application. The undeniable position is that Nedbank got wind of the proceedings and participated at the meetings convened by Mr Tayob.

[25] The first meeting of creditors, convened in terms of section 147(1) of the Act, took place on 2 May 2023. The minutes of the meeting record that the business rescue practitioner’s view was that a “reasonable prospect of rehabilitation exist[s].... prima facie there exists a reasonable prospect of steering the company back to competitive vitality. Financial losses will be stopped, costs reduced, disposal of non-core assets and a proper management system will be installed...” Despite opposition from Nedbank, the meeting approved the extension of the publication of the business rescue plan to 5 July 2023.

[26] It is common cause that despite the undertaking, the business rescue plan was not published on 5th of July or the 25 days prescribed by the Act. Nedbank launched this application simultaneously seeking the liquidation of Sana Developers on 15 August 2023, before the submission of the business rescue plan. In Nedbank’s view, the business rescue is a stratagem to prevent the execution of its judgement. On 15 August 2023, Mr Tayob wrote to the only two known creditors, Nedbank and SARS, seeking an extension for a further 90 days. The request was declined.

[27] Despite the refusal of the extension, the supplementary affidavit filed by Nedbank’s attorneys shows that on or about 10 May 2024, Mr Tayob purported to issue a notice in terms of Section 151 of the Act, calling for a meeting of creditors to be held on the 17 of May 2024 for the purposes of considering an amended business rescue plan.

[28] The meeting was adjourned to 20 of May 2024 to enable certain amendments to the plan. On the 20 of May 2024, Nedbank attended the creditors meeting. It says it elected to participate *ex abundante cautela*. Creditors were called upon to vote for the business rescue plan. Nedbank voted against the plan. On this basis it contends that the plan failed, and business rescue proceedings came to an end, hence it seeks an order for termination of the business rescue proceedings.

Applicable Legal principles

[29] Mr Tayob persists that Sana Developers can be restructured to trade on a solvent basis and there would be a better return for creditors than would be the case were the company to be liquidated. As I can discern, the argument relies on the two permissible grounds for business rescue, namely either (a) to return Sana Developers to trade on a solvent basis and or (b) the secondary ground to realise a better return for shareholders than would have been the case if Sana Developers were liquidated.

[30] The first ground for opposition in section 130(1)(a) (ii) of the Act¹⁰, is that there is no prospect for rescuing Sana Developers. The jurisdictional requirement for assessing whether there are reasonable prospects to rescue Sana Developers is the objective test in *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd*¹¹ where the court held that:

“...it is a lesser requirement than the 'reasonable probability' which was the yardstick for placing a company under judicial management in terms of s 427(1) of the 1973 *Companies Act* (see e.g. *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd* 2012(2) SA 423 (WCC) para 21). On the other hand, I believe it requires more than a mere prima facie case or an arguable possibility. Of even greater significance, I think, is that it must be a reasonable prospect — with the emphasis on 'reasonable' —

¹⁰ Subject to subsection (2), at any time after the adoption of a resolution in terms of section 129, until the adoption of a business rescue plan in terms of section 152, an affected person may apply to a court for an order setting aside the resolution, on the grounds that there is no prospect for rescuing the company.

¹¹ 2013(4) SA 539 (SCA) para 29 at page 552

which means that it must be a prospect based on reasonable grounds. A mere speculative suggestion is not enough.”

[31] The business rescue plan presented by Mr Tayob, makes generic references to the known provisions of the Act. However, it acknowledges that Sana Developers has:

- A high gearing ratio and “weak liquidity position” with a debtor’s book of approximately R10m.
- The properties identified in the plan are identical to the properties which are subject to the covering mortgage bond and the cession of rental income in favour of Nedbank and the high court judgment.

[32] Although the business rescue plan recognises Nedbank as a secured creditor, it is silent about the rights accruing the bank flowing from its security in respect of the bond and the cession *in securitatem debiti*. It says nothing of the reasons for the existing the debtor’s book and whether in its crux, it is made up of the rental due to Nedbank under the cession. It appears from the founding affidavit that the business rescue practitioner undertook to manage the collection of the rental.

[33] At the first meeting of creditors, Nedbank rightly requested an investigation of the payments of the rental. It complained that Mr Tayob refuses to pay over or account to Nedbank the rental income due. If I were to give Mr Tayob’s conduct any credence, which I do not, it would be that the refusal is based on a misguided view that the contracts albeit with the underlying security were lawfully suspended.

[34] The business plan proposes a “structured auction” and asserts that a liquidation will give rise to an inference of a “distressed sale fire sale bargain sale which are all commercially challenging.” It states that the secured creditors could demand a reserve price as a condition for sale, and the “structured auction” such a sale would be of a shorter duration compared with the liquidation process. This will result in a better return for employees, creditors and shareholders of the company.

[35] Nedbank who is by far the single largest creditor, is adamant that “it does not and will not consent to the disposal of its property and intends to, and will, vote against the adoption of the plan, because a business rescue predicated on the plan is doomed to fail.” There is no dispute that Nedbank holds the majority voting rights in the business rescue process and has a judgment over the secured assets of Sana Developers. As of October 2023, the amount due to Nedbank had escalated to R 45.7m.

[36] The purported suspension of the obligations under the loan(s) is not competent. It overlooks the judgment granted to Nedbank before the institution of the proceedings.

[37] Materially, the intimation of a disposal of the mortgaged property to Nedbank without its consent is a breach of section 134(3)(a)¹² of the Act. The section prohibits the disposal of property over which another has security or title interest. In *Louis Pasteur Holdings (Pty) Ltd and others v Absa Bank Ltd and others*,¹³ the Supreme Court of Appeal dealing with the precondition in the absence of a consent by the security holder stated that:

“....in the absence of consent by the person holding security over the property, before it may be disposed of by the company, is that the proceeds of its disposition must be sufficient to fully discharge the indebtedness of the company to the holder of the security. If this requirement is not satisfied, the company may not dispose of the property.”

[38] This court in *BP Southern Africa (Pty) Ltd v Intertrans Oil SA (Pty) Ltd and Others*¹⁴ (*BP Southern Africa*) considered the position of a creditor (BP) who, like

¹² 134(3) If, during a company's business rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company must—

(a) obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest and

(b) promptly —

(i) pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person; or

(ii) provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.

¹³ 2019 (3) SA 97 (SCA)

¹⁴ 2017 (4) SA 592 (GJ)

Nedbank, was a holder of security by way of book debts. The court in *BP Southern Africa* held that ‘a security cession of future book debts is, in our law, complete and effective by the mere initially agreement.’¹⁵ As such, the court held that any debts which arose during the business rescue proceedings were also ceded to BP and could not be disposed of without the BP’s consent as provided for in section 134 of the Act, as such book debt constituted security held by BP.¹⁶ In line with the reasoning of the court in *BP Southern Africa*, I therefore agree that withholding of the rental income due to Nedbank by way of a cession of book debts is impermissible.

[39] Although at the heart of it, Nedbank seeks to enforce its judgment, Mr Tayob appears to have ignored that if he suspends an agreement relating to the security granted by Sana Developers, the provisions of section the provisions of section 136 (2A) (c) of the Act would continue to apply to such contracts. His opinion that there are reasonable prospects to rescue Sana Developers formulated backed by assets over which Nedbank holds security is unsustainable. Nedbank’s scepticism and refusal to consent to the suspension of its contracts and its stance to vote against the business rescue the plan cannot be faulted in these circumstances.

[40] A second option proposed in the business rescue plan is that the directors have agreed to provide post commencement finance to remedy the arrears to secured creditors, and an amount of R50 000.00 a month will be provided to pay all other affected persons. Other than this, it is lacking in the detail about viable sources of liquidity to turn around the business of Sana Developers outside of the secured assets belonging to Nedbank.

[41] It was pointed that Mr Khoza, or its attorneys, indicated between 23 March 2023 to 4 April 2023 that Sana Developers cannot meet its obligations to Nedbank in terms of the judgment debt. In so far as the alternative proposal, the source or promise of the post commencement finance by the directors of Sana Developers is not convincing and fully disclosed. Reliance is instead placed on an amorphous contract in the future, which is not fully supported by documentation about their

¹⁵ *Id* at para 45

¹⁶ *Id* at para 47

fruition. Nedbank is not obliged to accept this proposal which will lead to an extension of its debt.

[42] Mr Tayob denies that the business plan is predicated on the rental income ceded to Nedbank. The denial that Sana Developers failed to pay the judgment debt is a bare and without proof of the payment. Mr Tayob failed to account to it in terms of the cession of book debts. I agree that Nedbank's prejudice is manifest and inordinate in that as a judgment creditor it is precluded from executing the judgment because of the pending business rescue proceedings.

[43] What is striking about the conduct of the business rescue proceedings is that Mr Tayob only published a business rescue plan on 9 October 2023, some months after the adoption of the resolution, well after the institution of these proceedings. He failed to do so within 25 days as mandated by the Act. He did not apply to court for an extension of the time provided for in section 150(5)(a) of the Act or obtain the permission from the majority of creditors to extend the period as envisaged in section 150(5)(b) (past the already extended date of 5 July 2023). I need not pronounce on the legality of the meeting held on 20 May 2024. It is beyond the scope of the orders sought in this judgment and may be the subject of the pending application should Mr Tayob persist with it.

[44] As Nedbank contends, the only conceivable way that Sana Developers can settle its indebtedness to Nedbank, which is presently due and payable in terms of the aforesaid judgment, and which has been since September 2022, is for its immovable properties to be sold without delay. I agree that does not require business rescue or business rescue proceedings and is something which a liquidator chosen by Nedbank can and must now do. The latter sentiment is consistent with that expressed in *Oakedene*¹⁷.

[45] On the facts before me, the jurisdictional requirement that there must be reasonable prospects to rescue Sana Development have not been met. Nedbank is entitled to the order both under section 130(1)(a) (ii) or (iii) and on the alternative

¹⁷ *Oakedene* at para 35

ground in section 130(5)(a) (iii) on the basis that having regard to the evidence, it is just and equitable to set aside the resolution.

[46] I am minded that Professors Patrick O'Brien and Juanitta Calitz express the view that the requirement of a reasonable prospect for rescuing the company is a continuous one that applies to business rescue from birth to death.¹⁸ By implication Mr Tayob can present facts pointing to the availability of post commencement finance to answer Nedbank's supplementary affidavit. Pending that, and without pronouncing on the correctness of the application, under section 153, or the right of an affected person to bring the business rescue proceedings, that right is not a bar to the provisional order Nedbank seeks as a security holder nor a legitimate basis for a postponement of this application.

[47] Both the business rescue plan and the facts before me *prima facie* points to Sana Developer's inability to pay its debts contemplated in sections 344(f) and/or (h) and 345(1) of the Companies Act 61 of 1973 (which, by virtue of Item 9 of Schedule 5 to the Act, continues to be of application to the winding-up of insolvent companies). There is no basis in law to withhold a liquidation provisional order.

[48] In the result, I make the following order:

- a. Leave is granted to the applicant in terms of section 133(1)(b) of the Companies Act 71 of 2008 (Act) to institute this application against the first respondent.
- b. The applicant's supplementary affidavit dated 21 May 2024 is admitted into evidence.
- c. The resolution taken by the board of directors of the first respondent on 17 April 2023, placing the first respondent under supervision and in business rescue, is set aside in terms of sections 130(1)(a)(ii) and/or (iii) of the Act.
- d. It is declared that the business rescue proceedings of the first respondent have come to an end in terms of section 132(2)(a) of the Act.
- e. The provisional order for liquidation of the respondent is granted.

¹⁸ "A reasonable prospect for rescuing a company as a requirement for business rescue: a decade later" by Patrick O'Brien and Juanitta Calitz 2021 TSAR 688

- f. All persons who have a legitimate interest in this matter are called upon to put forward their reasons why the Court should not (i) order the first respondent to be placed under final liquidation and (ii) order the second respondent to pay the costs of this application *de bonis propriis* on an attorney and client scale on a date to be determined by the Registrar.
- g. The applicant is directed to approach the registrar for the purpose of the order paragraphs (e and f) above and notify the respondents and all other affected persons of that date.
- h. The respondents are ordered to file their response to such affidavit, if any, within 10 days from notification of the date of the hearing.
- i. The applicant is granted leave to reply to the respondents affidavit, only to the extent that new matter which does not already form the subject of these papers is raised.
- j. A copy of this order shall be served on the first respondent at its registered address
- k. A copy of this order shall be published forthwith once in the Government Gazette.
- l. A copy of this order shall be forwarded to each known creditor by prepaid registered post or electronically receipted telefax transmission.
- m. A copy of this order shall be served on:
- i. every known trade union representing employees of the first respondent, if any;
 - ii. the employees of the first respondent, if any, by affixing a copy of the order to any notice board to which the employees have access inside the first respondent's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the first respondent conducted any business at the time of the presentation of the application; and
 - iii. the South African Revenue Service.

NTY SIWENDU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This Judgment is handed down electronically by circulation to the Applicants' Legal Representative and the Respondent by email, publication on Case Lines. The date for the handing down is deemed 23 October 2024

Date of appearance: 22 May 2024

Date Judgment delivered: 23 October 2024

Appearances:

For the Applicant: Advocate De Oliveira

Instructed by: KWA Attorneys

For the Respondent: Advocate Kakaza

Instructed by: Mothilal Attorneys