REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2024-134408**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

31 July 2025 [redacted]

DATE SIGNATURE

In the matter between:

ENGEN PETROLEUM (PTY) LTD Applicant

and

LINK OIL AND LUBRICANTS (PTY) LTD Respondent

JUDGMENT

HA VAN DER MERWE, AJ:

[1] This is an opposed application for the liquidation of the respondent on the basis that it is unable to pay its debts.

[2] The respondent did not deliver an answering affidavit; instead, it delivered only a notice in terms of rule 6(5)(d)(iii). The notice takes its aim at an acknowledgement of debt referred to in the founding affidavit. The point of substance so far as the notice is concerned, is that the acknowledgement of debt is concluded, according to its terms, on 27 June 2024, yet it provides for payment

to be made by the respondent some three months earlier on 1 March 2024 and 15 March 2024 respectively. This peculiar feature of the acknowledgement of debt however does not enter the picture for the reasons that follow.

[3] Annexed to the founding affidavit is an email dated 14 May 2024, from the respondent to the applicant in which it is written: "[a]ccording to our records, we owe [the applicant] 90,000 and adding interest and legal fees we can sign an AOD of 20,000 per month commencing 31 May 2024". In context, the two figures are R90 000 and R20 000 respectively. In an email dated 23 September 2024, it is written on behalf of the respondent that the respondent has sold some of its assets and is in the process of selling some of its other assets, coupled with a plea for more time to pay. As there is no answering affidavit, the allegations made in the founding affidavit to the effect that the respondent failed to pay the applicant, that allegation stands as established fact.

[4] These undisputed facts show not only that the respondent acknowledges that it is indebted to the applicant, but also that the respondent is unable to pay its debts. As such it is commercially insolvent and therefore liable to be wound up. As Willis JA found in *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) at para [12]:

> "Notwithstanding its awareness of the fact that its discretion must be exercised judicially, the court a quo did not keep in view the specific principle that, generally speaking, an unpaid creditor has a right, *ex debito justitiae*, to a winding-up order against the respondent company that has not discharged that debt. Different considerations may apply where business rescue proceedings are being considered in terms of part A of ch 6 of the new Companies Act 71 of 2008. Those considerations are not relevant to these proceedings. The court a quo also did not heed the principle that, in practice, the discretion of a court to refuse to grant a winding-up order where an unpaid creditor applies therefor is a 'very narrow one' that is rarely exercised and then in special or unusual circumstances only." (footnotes omitted)

[5] On the affidavits before me, the respondent has vacated its once principal of business and, unsurprisingly, no employees of the respondent were to be found

at that address. There is therefore no reason why a final winding-up order should not be granted.[1]

[6] I make the following order:

(a). The respondent is placed in final winding-up;

(b). Costs are in the winding-up.

[redacted]

H A VAN DER MERWE

ACTING JUDGE OF THE HIGH COURT

[1] *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) at para [19]; *EB Steam Co (Pty) Ltd v Eskom Holdings SOC Ltd* 2015 (2) SA 526 (SCA)

Heard on: 30 July 2025

Delivered on: 31 July 2025

For the applicant: Adv N S H Ali instructed by Govender Patel Dladla Inc

For the respondent: Adv M F Phalane instructed by Sethunyane Attorneys