

REPUBLIC OF SOUTH AFRICA



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

CASE NO : **2025-011864**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE NO
- (2) OF INTEREST TO OTHER JUDGES NO
- (3) REVISED

SIGNATURE

DATE 26 August 2025

In the matter between:

PREGASON PADAYACHEE

Applicant

and

OCEANS PRIVATE SCHOOL (PTY) LIMITED

Respondent

JUDGMENT

THERON AJ:

- [1] This is an application where the Applicant seeks the final winding-up of the Respondent on the grounds that the Respondent company is commercially insolvent in the sense that it is unable to pay its debts as and when they become due as contemplated in Section 344(f) read with Section 345(1)(c) and (h) of the Companies Act 61 of 1973 as read with item 9 of Schedule 5 of Act 71 of 2008.
- [2] The defence initially raised in the answering affidavit was destroyed by the replying affidavit to which was attached a settlement agreement in which the Respondent admitted an amount then due and rate of escalation in terms of a lease agreement between the Applicant and the Respondent.
- [3] Shortly before the hearing of the application, the parties filed supplementary affidavits, without seeking the leave of the court, dealing with settlement negotiations between them.
- [4] The settlement negotiations between the parties were disclosed to the court in annexures to the supplementary affidavits.
- [5] Even if the settlement negotiations were without prejudice, which they

clearly are no longer, the negotiations would have been admissible.¹

- [6] During the negotiations, the Respondent agreed that it was lawfully liable and indebted to the Applicant in the amount of R713 652,48 which offered to pay by effecting an initial payment of R100 000,00 on or before the close of business on the 30th of July 2025. It further offered to contribute towards an amount of legal fees which was to be agreed between the parties on or before the close of business on 30 July 2025.
- [7] The Respondent further offered to effect payment on or before the last day of each month in the amount of R50 000,00 until such time as the full indebtedness was settled.
- [8] The parties could not agree to the amount of the principal debt, the Applicant insisting that an outstanding amount of R60 077,64 in respect of the utilities was also outstanding and should form part of the capital amount outstanding.
- [9] The parties could not agree on the capital amount outstanding as they could not agree on the amount in respect of the City of Johannesburg

¹ *ABSA Bank Limited v Hammerle Group* 2015 (5) SA 215 (SCA) at paragraph [13]; *ABSA Bank Limited v Chopdat* 2000 (2) SA 1088 (W) at 1092 H to 1094 F and *Lynn & Main Inc v Naidoo and Another* 2006 (1) SA 59 (N) at paragraphs [23] to [24]

account for utilities.

[10] The parties could not reach a settlement, and the matter came before me on 19 August 2025.

[11] The concept of winding up companies based on commercial insolvency (a state of inability to pay debts as they fall due) is well recognised.²

[12] The Respondent is clearly unable to pay its debts as and when they fall due.³

[13] The Applicant is an unpaid creditor and has a right, *ex debito justitiae*, to a winding-up order.⁴

[14] This court is not sitting under a palm tree, and no particular reason was advanced why, despite making out the requirements for liquidation, I should withhold such an order.⁵

² *Boschpoort Ondernemings (Pty) Limited v ABSA Bank Limited* 2014 (2) SA 518 (SCA) at paragraphs [16] to [17] and paragraphs [23] to [24] and *ABSA Bank v Rhebokskloof (Pty) Limited and Others* 1993 (4) SA 436 (C) at 440 F – 441 A

³ *Rosenbach & Co (Pty) Limited v Singh's Bazaars (Pty) Limited* 1962 (4) SA 593 (D) at 597 D-F and *De Waard v Andrew & Thienhaus, Limited* 1907 TS 727 at 733

⁴ *Afgri Operations Limited v Hamba Fleet (Pty) Limited* 2022 (1) SA 91 (SCA) at paragraph [12]

⁵ *Orestisolve (Pty) Limited t/a Essa Investments v NDFT Investment Holdings (Pty) Limited and Another* 2015 (4) SA 449 (WCC) at paragraph [18]

In the result I make the following order:

1. The Respondent, Oceans Private School (Pty) Limited, is placed under final winding-up in the hands of the Master of the High Court, Johannesburg.
2. The costs of the application are costs in the liquidation.



THERON AJ
Acting Judge of the High Court

Date of hearing: 19 August 2025

Date of judgment: 26 August 2025

Appearances:

Counsel for Applicant :
Attorneys for Applicant : SP Attorneys Incorporated

Counsel for Respondent :
Attorneys for Respondent : Strydom & Associates