



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
29/08/2025 DATE	
 SIGNATURE	

Case Number: 2024/107143

In the matter between:

EEW TRADING ENTERPRISE (PTY) LTD

Applicant

and

DDD DIESEL DELIVERIES (PTY) LTD

Respondent

JUDGMENT

H G A SNYMAN AJ

INTRODUCTION

- [1] The applicant brings this application for the winding up of the respondent.
- [2] The applicant trades as a distributor of petroleum products and derivatives.

It purchases diesel and offers it for resale to wholesalers and end users. The applicant supplies the same product it purchases from its suppliers, to wholesalers and end users and does not change the product in any manner whatsoever.

- [3] The respondent was one of the applicant's customers.

BACKGROUND

- [4] During about January 2024 the applicant supplied the respondent with petroleum products, mainly diesel. The total invoice at the time amounted to R780,000.00. The applicant also entered an acknowledgement of debt agreement with the respondent, which agreement regulated the business arrangement between the parties going forward.
- [5] The applicant continued to supply the respondent with diesel. By or approximately 24 May 2024, the respondent was indebted to the applicant in the amount of R1,394,686.25.
- [6] Since the amount remained unpaid, the applicant's attorneys on 15 July 2024 caused a notice in terms of section 345 of the Companies Act 61 of 1973 (*"the notice"* and *"the Companies Act 1973"* respectively) to be served at the respondent's place of business.
- [7] The respondent did not comply with the notice. By 19 September 2024 the applicant launched this application for the winding up of the respondent. The

application was presented to court on 20 September 2024. Should the applicant be successful with this application, 20 September 2024 would in terms of section 348 of the Companies Act 1973 be the deemed date on which the winding up of the company commenced.

- [8] The applicant is bringing this application in terms of section 344(f) and (h) of the Companies Act 1973. This is that the respondent company is unable to pay its debts as described in section 345 and that it would be just and equitable that the respondent be wound up. For purposes of section 345(1)(a) of the Companies Act 1973, i.e. that the respondent is unable to pay its debts, the applicant relies thereon that the respondent neglected to pay the sum demanded from it in terms of the notice within a period of three weeks. It also relies thereon that it has proven to the satisfaction of this court that the respondent is unable to pay its debts.
- [9] The applicant complied with the formal requirements insofar as service of the application is concerned, provided for in section 346 of the Companies Act 1973.
- [10] The applicant also obtained a certificate by the Master as envisaged in terms of section 346(3) of the Companies Act 1973, albeit that it was only procured and handed up from the bar on the day when the matter came before me. It is trite that this suffices.
- [11] The respondent opposed the application and entered a notice of its intention

to oppose on 15 October 2024. It appointed CAWR Incorporated as its attorneys of record.

[12] The respondent filed its answering affidavit on 4 November 2024. It denied that it was insolvent or indebted to the applicant. In disputing the debt, the respondent alleged that the quality of the diesel that the applicant supplied to it was lacking.

[13] The applicant's replying affidavit was filed on 3 December 2024.

[14] As part of the reply the applicant denied that it delivered diesel of inferior quality to the respondent. In any event, the applicant contended that the regulations relating to the quality of the diesel on which the respondent relied, were not yet in force and effect. The applicant also pointed out that the respondent on two occasions provided it with fake and fraudulent proof of payments for the diesel. The applicant never received the funds into its bank account.

[15] The matter was set down for hearing on 18 August 2025. The notice of set down was dated 9 April 2025.

[16] On 11 August 2025, the applicant filed a supplementary affidavit. The aim of the supplementary affidavit was to provide this court with new facts and information concerning the respondent, that transpired in the meantime. Based on the new facts and information the applicant sought to apply for

alternative relief. The new information was first, that the applicant obtained information that the respondent initiated voluntary liquidation proceedings under section 345 and 351 of the Companies Act 1973, through a special resolution dated 16 April 2025. This was approximately a week after the notice of set down. The resolution was registered under the provisions of section 200 of the Companies Act 1973 on 14 May 2025.

[17] When it obtained this information, the applicant's attorneys of record approached the liquidators who were appointed in terms of the voluntary liquidation ("*the liquidators*"). Amongst other things, the liquidators presented the applicant with copies of the CM26 LIQ and CM100 statement of affairs documents as part of the voluntary winding up. This included a statement of affairs by Mr Willem Kok ("*Mr Kok*"). Ms Marné Kok ("*Ms Kok*") was the deponent to the respondent's answering affidavit. It appears from CM100 that Mr Kok completed it in the capacity as director of the respondent on 4 April 2025. According to the CM100, the respondent's liabilities exceeded its assets in the amount of R3,348,606.97.

[18] In addition to being furnished with the documentation referred to above, the liquidators advised the applicant's attorneys that they were waiting on the Master of the High Court to convene the first creditors meeting. Moreover, that they are currently in the process of selling the respondent's assets. They are awaiting confirmation from the Master for an extension of their power to proceed with this.

- [19] The applicant points out in the supplementary affidavit that the attorneys of record who represent the respondent in this application, are also those who initiated the voluntary liquidation proceedings on behalf of the respondent.
- [20] In addition to the above, it is set out in the supplementary affidavit that the applicant discovered that another creditor of the respondent, namely Triken Tyres (Pty) Ltd ("*Triken Tyres*"), launched an application for the respondent's winding up in February 2025 in the High Court of South Africa Gauteng Local Division, Johannesburg. The matter was due to be heard on 22 May 2025 on an unopposed basis. The resolution to voluntarily wind up the respondent was registered days before this date.
- [21] The applicant attached a copy of the notice of motion and founding affidavit in the Triken Tyres matter to the supplementary affidavit. It appears from the founding affidavit in that matter, that the respondent followed the same *modus operandi* in respect of Triken Tyres, namely that it provided Triken Tyres with a proof of payment, which then actually turned out to be fake in that the funds never reflected in the account of Triken Tyres.
- [22] It was stated in the supplementary affidavit that in view of the above, the respondent had abandoned any hope of opposing the present application and that the respondent is hopelessly indebted and unable to settle its debts. As part of the supplementary affidavit the applicant also included copies of screenshots of advertisements published by the respondent in which it offered for sale some of its assets.

[23] As I see it the supplementary affidavit is highly relevant to the present proceedings and ought therefore to be allowed.

[24] Taking the above developments into account, the applicant relies on section 346(1)(e) of the Companies Act 1973, which provides that a creditor may make an application to court for the winding up of a company that is in voluntarily liquidation. It therefore asked that the voluntary liquidation be converted to a winding up by the court. In this regard, the applicant also relies on section 354(2) of the Companies Act 1973, which provides that the court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or members as proved to it by any sufficient evidence.

[25] To give effect to the alternative relief that it sought, the applicant gave notice on 14 August 2024 that it would apply for its notice of motion to be amended. This was served on the respondent, the liquidators, SARS and the Master on 15 August 2025. The applicant subsequently proceeded to effect the amendment.

[26] On 31 July 2025 a complete set of papers in this application, together with the supplementary affidavit and the notice of amendment were served on the liquidators.

DISCUSSION

[27] It is trite that a company already in voluntary liquidation may be wound up by

the court. This follows from section 346(1)(e) of the Companies Act 1973. This is also exactly what happened in the matter of *King Tyre Holdings (Pty) Ltd v King Pie (Pinetown) (Pty) Ltd; King Pie Holdings (Pty) Ltd v King Pie (Durban) (Pty) Ltd* 1998 (4) SA 1240 (D).

- [28] This was referred to with approval by the Supreme Court of Appeal in *Afrisam (South Africa) Proprietary Limited v Maleth Investment Fund Proprietary Limited* (651/2018) [2019] ZASCA 139 (01 October 2019) where the court held as follows at paragraphs 28 and 29:

"[28] The decision of the court in King Pie is consistent with the provisions of the Act, which allude to the granting of a winding-up court order in the context of a pending voluntary winding-up. The wide discretion which the court has when considering that application was described in Ward & another v Smit & others: In re Gurr v Zambia Airways Corporation Ltd as follows:

'The language of the section is wide enough to afford the Court a discretion to set aside a winding-up order both on the basis that it ought not to have been granted at all and on the basis that it falls to be set aside by reason of subsequent events.'

As shown above, the wide discretion of a court when considering an application for winding-up is specifically given under s 347(4)(a), that the court 'may in the winding-up order or by a subsequent order confirm all or any of the proceedings in the voluntary winding-up.' (Emphasis supplied)

[29] Were it necessary for the voluntary winding-up to be set aside before granting an order of compulsory winding-up, confirmation of the proceedings under the voluntary winding-up would be an anomaly. The setting aside of Cemlock's voluntary winding-up was therefore not necessary. Those proceedings could be set aside if the court, in the exercise of its discretion, found that it was necessary to do so."

- [29] It does not appear from the papers whether Triken Tyres proceeded with its

application for liquidation of the respondent before the High Court, Johannesburg. I, therefore, requested the applicant to clarify this aspect. The matter stood down for this purpose. When the matter resumed, an affidavit by Ms Karike Huijstek ("*Ms Huijstek*"), an attorney employed by the applicant's attorneys of record, was presented to court. From this it appears that Ms Huijstek contacted Triken Tyres' attorneys of record, Mr Peter Payne of Payne Steynberg Inc ("*Mr Payne*") on 18 August 2025. She inquired from Mr Payne whether Triken Tyres proceeded with their liquidation application against the respondent. Mr Payne confirmed that Triken Tyre did in fact not pursue the Johannesburg application on its "*return date*", because the effective date of the liquidation in the Johannesburg application is later in time than the effective date of the present application for the respondent's winding up. However, he confirmed that Triken Tyres has not withdrawn the application.

[30] As I see it, the reference to "*return date*" is not correct. According to the notice of motion in that matter, what was at stake on 22 May 2025 (which was also described in the supplementary affidavit as the return date) was the date on which the notice of motion signalled that the matter would be brought before court, if the matter was not opposed. It is therefore clear that no winding up order, albeit provisional or final, has been granted yet in the Triken Tyres matter.

[31] As I see it, the respondent passed the resolution placing it in voluntary

liquidation in an attempt to circumvent the consequences of both the present and the Triken Tyres liquidation applications. Under the circumstances, it did not serve a legitimate purpose. The liquidators and the respondent with full knowledge of the alternative relief the applicant would seek before this court, also did not appear and place anything before me based upon which I could exercise my discretion not to set the voluntary winding up aside.

- [32] Under the circumstances I am satisfied that the applicant has made out a case for the winding up of the respondent company by court order. There are clearly many benefits for the applicant rather for the respondent to be wound up by this Court, as opposed to being in voluntary liquidation. The latter for instance does not afford the applicant the same mechanisms to conduct inquiries in terms of section 417 and 418 of the Companies Act 1973.
- [33] During the course of the argument, I inquired from Mr Ferreira who appeared on behalf of the applicant whether a final order as opposed to a provisional order ought to be granted. Mr Ferreira moved for a final order. I pointed out to him that in the *King Pie* matter, the court granted a provisional winding up order calling upon all interested parties to show cause why on the return date, why the voluntary winding up should not be set aside in terms of section 354 of the Companies Act 1973. Mr Ferreira left it in the court's hands to determine whether a provisional, or final order are to be granted.
- [34] After considering the matter, I am of the view that no purpose will be served to grant a provisional order. It is apparent that liquidators in the voluntary

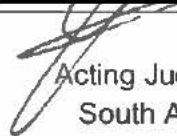
winding up have taken active steps to wind up the respondent and is intent to continue to do so. Under the circumstances, it is urgently necessary for that process to be stopped and to be set aside, and for a final order to be granted.

- [35] In the result, I grant the following orders, which orders in the main accords with the notice of motion as amended, and the draft order that was handed up on behalf of the applicant at the hearing:

ORDER

- [1] Leave is granted for the filing of the applicant's supplementary affidavit, and the supplementary affidavit is accepted as properly filed and part of the record of these proceedings;
- [2] The respondent company is placed under final winding-up;
- [3] The voluntary winding-up of the respondent, as initiated by special resolution dated 16 April 2025 and registered on 14 May 2025, is set aside.
- [4] The effective date of the liquidation order is 20 September 2024.
- [5] The cost of this application, including the filing of the supplementary affidavit, is hereby included as costs in the administration of the respondent's insolvent estate. The costs to be on Scale B.




H G A SNYMAN
Acting Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

Heard in court: 18 August 2025

Delivered and uploaded to CaseLines: 29 August 2025

Appearances:

For the applicant: PP Ferreira
 Instructed by Du Plessis Myburg Verbeek
 Attorneys

For the respondent: No appearance