Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**
Circulate to Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case no: 576/2025

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD
(Registration Nr: 1962/000738/06) First Applicant

SB GUARANTEE COMPANY (RF) (PTY) LTD
(Registration Nr: 2006/021576/07) Second Applicant

and

POJK MINING SOLUTIONS (PTY) LTD
(Registration Nr: 2017/035527/07) Respondent

THABISO GERALD KGOPODITHATA Intervening Party

Coram: MAMOSEBO J

Heard: 01 September 2025.

Delivered: 03 October 2025.

Summary: Court – Jurisdiction – Provisional liquidation granted in the Northern Cape Division – On the return date – Interested party applied for leave

to intervene – Intervening party having launched a business rescue application in the Local Division, South Gauteng High Court – Whether the business rescue proceedings suspend this liquidation proceedings as contemplated in s 131(6) of the Companies Act 71 of 2008 – Applicants object to the jurisdiction of the South Gauteng High Court – Respondent's registered office and principal place of business in Kuruman, Northern Cape – Respondent's indebtedness established – Final liquidation order granted.

ORDER

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1. The application by Thabiso Gerald Kgopodithata to stay the winding-up proceedings of the respondent company, pending the determination of an application before the South Gauteng High Court (Johannesburg) under Case Number 2025-092348 to place the respondent company under supervision and commencing business rescue proceedings, is dismissed with costs.
2. The respondent is placed under a final winding-up order in the hands of the Master.
3. Mr Thabiso Gerald Kgopodithata is liable for the costs of the adjournment application on the scale as between party and party.
4. The costs of the liquidation application are in the liquidation.

JUDGMENT

Mamosebo J

[1] This is an application brought in terms of schedule 5 of the Companies Act 71 of 2008 (the 2008 Act) read with s 344 and s 345 of the Companies

Act 61 of 1973 (the 1973 Act) for the liquidation of the respondent, POJK Mining Solutions (Pty) Ltd (POJK), on the basis that it is unable to pay its debts.

[2] On 13 March 2025 POJK was served with the notice of motion, founding affidavit and its annexures in which the applicants asked the court to place the respondent under provisional liquidation in the hands of the Master of the High Court. On 13 June 2025 this Court placed the respondent under provisional liquidation based on its failure to pay its underlying debt of about R12 000 000 (twelve million rand) which was admitted by the respondent. A rule *nisi* was also issued calling upon interested parties to furnish reasons on 25 July 2025 why the provisional liquidation order should not be made final.

[3] On 25 July 2025 the matter was postponed and the rule *nis*i extended to 29 August 2025 in the unopposed motion court. On the return day, Mr Richards, for the intervening party, sought an adjournment of the application in terms of s 347(1) of the 1973 Act.[1] The intervening party, Mr Thabiso Gerald Kgopodithata who is also a director of the respondent, sought an adjournment of the liquidation application pending the outcome of an application he brought before the South Gauteng High Court under Case Number 2025-092348 to place the respondent company under supervision and commencing business rescue in terms of s 131 (1) of the 2008 Act. Mr Els, for the applicants, opposed the adjournment application. I adjourned the matter until Monday, 01 September 2025 for argument.

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[1] Section 347 (1) of the 1973 Act provides:

347. Power of Court in hearing application.

(1) The Court may grant or dismiss any application under section 346, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other order it may deem just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

[4] Neither the respondent nor Mr Kgopodithata filed an answering affidavit in the liquidation application. Instead, Mr Kgopodithata deposed to the founding affidavit in the adjournment application to show cause why a final order of liquidation should not be granted. He explained as follows:

> '7. I am advised, which advise I accept as correct that in terms of the provisions of section 131 (6)(a) and (b) of the Companies Act 71 of 2008, once a business rescue application is successfully launched, it suspends the liquidation proceedings until the court has adjudicated on the said application.
>
> 8. On the 18th of June 2025, I launched a business rescue application in the High Court in Johannesburg under case number 2025-092348. A copy of the application is attached hereto as Annexure C.'

[5] The adjournment application pivots on whether the launching of an application by the respondent's director for business rescue suspends liquidation proceedings as contemplated in s 131 (6) of the 2008 Act which stipulates:

> 'If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until-
> (a) the court has adjudicated upon the application; or
> (b) the business rescue proceedings end, if the court makes the order applied for.'

[6] Of significance in the business rescue application, particularly focusing on the respondent's conduct, are the following:

(a) The business rescue application was launched in another division, the South Gauteng High Court.

(b) The applicant is Mr Kgopodithata; the first respondent is POJK; the second and third respondents are Standard Bank South Africa Ltd and SB Guarantee Company (RF) (Pty) Ltd, respectively.

(c) The second and third respondents were served with the business rescue application on 23 June 2025. The application was therefore launched three months after the launch of the winding-up application.

(d) There is an attached list of POJK creditors on "BR21" purportedly collectively owed an amount of R10 337 836.48. The list of creditors does not reflect the amount of R12 million claimed by the applicants and admitted by POJK in the liquidation application. Mr Richards made the submission that POJK is making repayments of R100 000 per month.

(e) It was contended that there is a possible source of payment from a third party, Mr Taunyane, a primary school principal, who has offered to pay an amount of R3 million but only attached a confirmatory affidavit to the papers. I cannot be expected to take this figure on face value without more.

(f) This leaves the respondent with a Services Supply Agreement with Afrimat Iron Ore (Pty) Ltd providing its source of income. Mr Richards contended that the agreement has potential for better conditions.

(g) Mr Richards further submitted that the respondent has two bonded properties emphasising their value of R10 million. But the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets.[2]

[7] Mr Els, for the applicants in the winding-up application, challenged the jurisdiction of the Johannesburg High Court to hear the business rescue application contending that both the registered office and principal place of business of POJK were in Kuruman in the Northern Cape. This contention was not disputed by Mr Richards whose response was that the Johannesburg High Court was clothed with the necessary jurisdiction by the fact that Standard Bank and SB Guarantee, who have an interest in the outcome of the matter, are domiciled in Johannesburg. The contention is that in such instances, there is concurrent jurisdiction and the business rescue application could be brought before this Court or the South Gauteng High Court.

[8] Mr Richards relied on this Division's judgments namely, *Lonsdale Commercial Corporation v Kimberly West Diamond Mining*[3] (*Lonsdale*) by Lacock J and *De Bruyn v Grandselect 101 (Pty) Ltd and Another*[4] (*De Bruyn*) by Phatshoane J. He further contended that not only *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd (Nedbank Ltd Intervening)*[5] (*Sibakhulu*), but also *PFC Properties (Pty) Ltd v Commissioner, South African Revenue Services and Others*[6] (*PFC Properties*) are authority for his contention that the Johannesburg High Court has jurisdiction to hear the business rescue application. The contention by Mr Richards is misplaced as neither of the mentioned authorities assist the intervening party's case as it shall be demonstrated in the analysis below.

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[2] Section 347 (1) of the 1973 Act.
[3] (312/2012) [2013] ZANCHC 11 (17 May 2013).
[4] (1961/2013) [2014] ZANCHC 3 (5 March 2014) para 13.
[5] [2011] ZAWCHC 439; 2013 (1) SA 191 (WCC).
[6] [2023] ZASCA 111; 2024 (1) SA 400 (SCA).

[9] In all the mentioned authorities, the point of departure for purposes of jurisdiction is the registered address or the principal place of business of the company under purported provisional liquidation.[7] Not once has it ever been the registered address of the interested parties or creditors in particular. In *Lonsdale* the respondents relied on *Sibakhulu* to argue that this Court had no jurisdiction to hear the liquidation application because the registered office of the company under liquidation was not within its area of jurisdiction. It is in this regard that the Court said the following pertaining to *Sibakhulu*[8]:

'A finding that the legislature intended the provisions of section 23(3) of the 2008 Act to be construed "for purposes of jurisdiction" (a phrase repeatedly used by Binns - Ward J in *Sibakhulu)* is, to my mind, tantamount to a finding that the legislature intended to limit or oust a local- and provincial division's jurisdiction derived from the common law and/or section 29 of the Supreme Court Act in respect of the liquidation and/or business rescue proceedings of a company that "resides" or has its principal place of business within the Court's area of jurisdiction, but not also its registered address. I am not persuaded that the reasons advanced by the learned judge justify such a drastic limitation of a Court's jurisdiction.

'... I fully agree with Binns-Ward J's finding that the provisions of section 23(3) of the Act[9] justify the inference that the legislature intended that a company's principal place of business and its registered address should be one and the same.'

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[7] See also *Wild and Marr (Pty) Ltd v Intratrek Properties (Pty) Ltd* (27814/2018) [2019] ZAGPPHC 613 (20 May 2019) and *Van der Merwe v Duraline (Pty) Ltd* (7344/2013) [2013] ZAWCHC 213 (23 August 2013). These two cases demonstrate the long-standing practice that jurisdiction in these matters is determined in relation to the company under purported liquidation and not the creditors or other interested parties.

[8] *Supra* fn 4 para 6.2 and 6.4.

[9] Section 23 (3) of the 2008 Act provides:

23. Registration of external companies and registered office

(3) Each company or external company must-
  (a) continuously maintain at least one office in the Republic; and
  (b) register the address of its office, or its principal office if it has more than one office-
    (i) initially in the case of-
      (aa) a company, by providing the required information on its Notice of Incorporation; or
      (bb) an external company, by providing the required information when filing its registration in terms of subsection (1); and
    (ii) subsequently, by filing a notice of change of registered office, together with the prescribed fee.

The Court in *Lonsdale* found that the respondent had its principal place of business on the farm situated within the area of jurisdiction of this Court and was therefore satisfied that it had the necessary jurisdiction to issue the provisional liquidation order and to finalise the application.

[10] In *De Bruyn,* the directors of Grandselect 101 (Pty) Ltd had resolved to voluntarily commence with business rescue proceedings by placing it under the supervision of a business rescue practitioner. The applicant approached the court on an urgent basis asking the court to set aside the resolution to initiate business rescue proceedings and to grant a provisional order followed by a final order winding-up Grandselect 101 (Pty) Ltd in the hands of the Master of the High Court. The respondent had argued that this Court lacked the necessary jurisdiction because both the registered address and the principal place of business of Grandselect 101 (Pty) Ltd were Cape Town. It was common cause that the registered office of the company was indeed in Cape Town. Therefore, the dispute was whether its principal place of business was situated in that same area or in the Northern Cape.

[11] Counsel for Grandselect 101 (Pty) Ltd had also relied on *Sibakhulu* and argued that in the wake of the 2008 Act, only a high court in the area where the registered office of the company is situated would have jurisdiction to entertain the liquidation application. This would be so that, even if the company's principal place of business is within this Court's area of jurisdiction, this Court would still not have jurisdiction over the liquidation application by virtue of the company's registered office being outside its area of jurisdiction. In that regard, this Court pronounced:

> 'There can be no doubt that the approach propounded by Binns-Ward J is commercially sound and brings about certainty. The examples of problematic situations that may arise if only one Court is intended to have jurisdiction in respect

of liquidations and business rescue proceedings highlighted by Binns-Ward J in para 24 of his judgment are compelling. Nevertheless, considerations of convenience as stated in *Dairy Board* should also be taken into account. I wish to add that in certain instances this may be decisive. I share the view expressed by Lacock J that the hurdles alluded to by Binns-Ward J are not insurmountable and sufficient to oust the Court's jurisdiction in respect of a company whose principal place of business is situated in its boundaries. *I am of the view that this Court would have jurisdiction to determine the liquidation or business rescue application of a company whose principal place of business and/or registered office is situated in its area of jurisdiction.*[10] (Emphasis added).

[12] For completeness' sake, I emphasise that even in *Sibakhulu*, one of the issues was that business rescue proceedings had been instituted in Gqeberha (Port Elizabeth) while the registered address of the company against whom liquidation was sought was Cape Town. Liquidation proceedings were pending in the Western Cape Division when the business rescue application was launched. It was common cause that the respondent company's only business enterprise at the time was in Port Elizabeth. Therefore, the point of departure on the issue of jurisdiction was the registered address and the principal place of business of the company under liquidation, not that of interested parties.[11]

[13] In *casu*, the intervening party is not arguing that the respondent's registered address or the principal place of business is in Gauteng. Indeed, such an argument would fly in the face of the undisputed fact that both the registered office and the principal place of business of POJK are in the Northern Cape and within this Court's area of jurisdiction. Unprecedentedly, the intervening party's argument seeks to establish jurisdiction in relation to the *domicilia* of interested parties, creditors in

[10] *Supra* fn 5 para 13.

[11] The issue having been raised in light of the 2008 Act having repealed most of the provisions of the 1973 Act of which s 12 (1) of the latter Act had expressly provided for concurrent jurisdiction in these matters.

particular. Mr Richards' contention lacks merit and is not supported by the authorities relied on. I am also not aware of any authority for such contentions. Standard Bank and SB Guarantee are creditors. It is settled that the address that forms the subject matter in applications of this nature is that of the respondent (POJK as the company that is the subject of liquidation).

[14] Accordingly, I find that the South Gauteng High Court would be competent to decide on the business rescue application if the respondent had either its registered office or principal place of business within that court's jurisdiction.[12] Evidently, the respondent's business is conducted in Kuruman. I am therefore of the view that the contention by Standard Bank and SB Guarantee that the business rescue proceedings have not been competently instituted in the court having jurisdiction is sound. This therefore means that the winding-up application has not been suspended by virtue of s 131(6) of the 2008 Act. I therefore proceed to decide the liquidation application.

[15] As already stated, POJK failed to file an opposing affidavit having been served with the provisional winding-up order. The only affidavit filed was by Mr Kgopodithata in the adjournment application which also attempted to show cause why the provisional winding-up order should not be made final. The only reason proffered in that affidavit, which is POJK's argument in a nutshell, is that the business rescue application in the Johannesburg High Court suspended the liquidation application as contemplated by s 131(6) of the 2008 Act. This, so the argument went,

[12] For example, see *X Pharm (Pty) Ltd v Emoyamed Hospital (Pty) Ltd* [2023] JOL 59331 (FB) where the company under provisional liquidation had its registered address in Bloemfontein while its principal office of business had been moved to Gauteng. There, the high court in Bloemfontein was seized with the liquidation application wherein the subsequent business rescue proceedings were brought in Pretoria. The court held that the liquidation proceedings were suspended by the business rescue proceedings because the company in question had its principal place of business in Gauteng which clothed the Pretoria High Court with the necessary jurisdiction to entertain the business rescue application.

placed a general moratorium on the liquidation application in accordance with s 133 of the 2008 Act.

[16] The Supreme Court of Appeal made these remarks in *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd*[13]:

'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 chapter 6 of the new Companies Act 71 of 2008. ...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 in special or unusual circumstances only**.' (Emphasis added.)

[17] In light of my findings on the incompetency of the business rescue application pending before the Johannesburg High Court, there remains no other reason proffered before this Court for it not to grant the final liquidation order.

[18] I am also mindful of the remarks by the Supreme Court of Appeal in *PFC Properties*[14]:

'From what is set out above, it is clear that the DRFT trustees have sought to use the legal process provided for companies, which may legitimately be rescued, for an ulterior purpose – to thwart the winding-up proceedings and the consequences for the De Robillards that may arise therefrom. This stratagem, as stated in *Villa Crop*, "subverts fundamental values of the rule of law". The conduct of the DRFT trustees

[13] [2017] ZASCA 24; 2022 (1) SA 91 (SCA) para 12.
[14] *Supra* fn 8 paras 36 – 38.

and PFC is so tainted by impropriety that this court must use the power it has to "safeguard the integrity of its process".

In so acting, the power of this court to non-suit the DRFT trustees is warranted. As a consequence, their ill-fated application should not have been entertained by reason of its use in a scheme of abuse. Although the application was correctly dismissed by the Pietermaritzburg High Court, it fails in this court, on appeal, for different reasons.

PFC sought to oppose the liquidation application on the basis of the moratorium provided for in s 131(6) of the Act. But the legislature could not have intended that a business rescue application, tainted by abuse, would have that effect. In essence, because the DRFT trustees were non-suited for the reasons set out above, the doomed business rescue application was not "made", as envisaged in s 131(6). Thus, the moratorium did not come into operation and did not suspend the winding-up proceedings. That being so, there was no impediment to the winding-up proceedings.'

[19] Despite the business rescue application not being before me and pending in the South Gauteng High Court, I still find that it was used as an abuse of the court process. This is in light of the fact that the respondent was meant to file opposing papers in May 2025 but instead, its director instituted business rescue proceedings in June 2025 in Johannesburg. It appears to me that the respondent's director might have known that the respondent had no defence against the liquidation application hence the institution of business rescue application first, and then reliance on same to oppose these liquidation proceedings.

[20] Moreover, the business rescue application seems to have been specifically brought in the Johannesburg High Court than this Court as means to further the stratagem to confuse and delay the liquidation proceedings. This is so because the applicants, whose convenience the respondent's director would ostensibly accommodate by approaching the Johannesburg High Court, have themselves brought the liquidation application in this

Court. This Court must use its power to safeguard the integrity of its process. The moratorium did not come into effect. There is therefore no impediment to granting the final winding-up order as prayed for.

[21] In the result, the following order is made:

1. The application by Thabiso Gerald Kgopodithata to stay the winding-up proceedings of the respondent company, pending the determination of an application before the South Gauteng High Court (Johannesburg) under Case Number 2025-092348 to place the respondent company under supervision and commencing business rescue proceedings, is dismissed with costs.

2. The respondent is placed under a final winding-up order in the hands of the Master.

3. Mr Thabiso Gerald Kgopodithata is liable for the costs of the adjournment application on the scale as between party and party.

4. The costs of the liquidation application are in the liquidation.

[redacted]

MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:	Adv. J Els
Instructed by:	Phatshoane Henney Attorneys c/o Van de Wall Inc
For the Respondent and The Intervening Party:	Mr F Richards
Instructed by:	Richards Inc Attorneys c/o Motlhamme Pino Attorneys