

REPUBLIC OF SOUTH AFRICA



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

Case Number: **145534/24**

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: No
10/10/2025	
DATE	SIGNATURE

In the matter between:

**SIYAKHULA SONKE EMPOWERMENT
CORPORATION (PTY) LTD**

First Applicant

TRAIN THE NATION AND ASSOCIATES (PTY) LTD

Second Applicant

and

BARBROOK MINES (PTY) LTD
(in business rescue)

First Respondent

**MAKONJWAAN IMPERIAL MINING
COMPANY (PTY) LTD**
(in business rescue)

Second Respondent

VANTAGE GOLDFIELDS (PTY) LTD
(in business rescue)

Third Respondent

ROBERT CHARLES DEVEREUX N.O.

Fourth Respondent

ARQOMANZI (PTY) LTD

Intervening Party

GOLD STREAM (PTY) LTD

Intervening Party

JUDGMENT

MANOIM J:

Introduction

- [1] This is an application for the provisional liquidation of three companies presently in business rescue. The companies are Barbrook Mines (Pty) Ltd (in Business Rescue) the first respondent, Makonjwaan Imperial Mining Company (Pty) Ltd (MIMCO) (in Business Rescue) the second Respondent, and Vantage Goldfields Pty Ltd (in Business Rescue), the third respondent. For convenience I will from now on refer to the three as the respondents. The respondents are all related to one another through a common shareholding.
- [2] The two applicants, Siyakhula Sonke Empowerment Corporation (Pty) Ltd (SSC) and Train the Nation and Associates (Pty) Ltd, (TTN) are creditors of the various respondents.¹
- [3] The application is opposed by the fourth respondent, Robert Deveraux, the business rescue practitioner (BRP), as well as two other parties, Gold Stream (Pty) Ltd and Arqomanzi (Pty) Ltd, who are also creditors of the respondents. The latter two firms were not joined in the application, but at the time of the hearing they applied for leave to intervene in the case, which I granted.

¹ SSC is a post-commencement financier of Barbrook and Vantage Goldfields, and TTN is a creditor of MIMCO. SSC is owed a total amount (including interest calculated up to 30 November 2024) of: R26 650 806.63 by Vantage Goldfields for PCF; and R1 834 630.42 by Barbrook for PCF. TTN is owed a total amount of R689 814.00 by MIMCO, which claim has been accepted by the BRP. TTN's claim is in respect of training services rendered to MIMCO prior to the business rescue.

- [4] Although the application was argued before me on 22 April 2025, I have only delivered judgment now. This is because at various times since then I was requested by the BRP, to delay my judgment because of developments that happened since the case was argued. Specifically, I was told that there was a buyer for the three companies waiting in the wings. I acceded to these requests and held several case management meetings with the parties waiting for anticipated development to take place. Up until the last case management meeting held on 30 September 2025, the buyer had not taken any conclusive steps.
- [5] But simultaneously at the same case management meeting another prospective intervenor emerged to assert the claims of another potential buyer for the assets. At that stage that prospective suitor looked no more certain than the one advanced by the BRP. Since that date, the attorneys for the intervenor have suggested that their suitor has taken further steps to indicate the seriousness of its prospects.
- [6] The history of this case illustrates two contradictory features. It has remained unresolved after the elapse of 9 years since the first of the three respondent companies was placed in business rescue. That might suggest passivity by the BRP. Yet during this period there has been a constant flux. Litigation has ensued on several occasions and candidates to buy the companies have come and gone. Granted the BRP has been accused by his critics at best of vacillation and at worst of placing his own interests ahead of those of the creditors. But I can make no finding in this respect because the record which is confined to the papers is inconclusive on this important point.

- [7] At the same time, the creditors themselves are not ad idem. The applicants are creditors seeking provisional liquidation. Argomanzi the largest creditor, appears, up until now, to back the efforts of the BRP to conclude an agreement with a Chinese based firm called Ultra Concepts Limited (UCL).
- [8] Gold Stream, the second largest, whilst opposing liquidation, has changed its position on what outcome it wants several times. When it intervened, it sought to promote another possible buyer, Macquarie Metals (Pty) Ltd (Macquarie). Then it allowed the UCL bid to be given a chance. Now that the bid has resulted in a stalemate, it seeks the removal of the BRP.
- [9] Then another creditor, Salamander Mining (Pty) Ltd (Salamander), applied at the last minute to intervene in order to promote the interest of another potential buyer, Lions Bay Resources (Pty) Ltd from Canada.
- [10] In short, this matter has been plagued by both a lack of resolution and continual moving parts. For this reason, I consider it premature to give any other remedy except to adjourn the application. This might seem anomalous given the history of the case which cries out for resolution, but I go on to explain why.

Essence of the application

- [11] The applicants' case is premised on section 132(2)(a) of the Companies Act, 71 of 2008 (the Act), which grants the court the power to convert business rescue proceedings into liquidation proceedings. The applicants advance two reasons why such a conversion is justified. First, the length of time the business rescue has taken without resolution, and secondly, the conduct of the BRP, which is described in unflattering terms by the applicants as animated by

“unmeritorious, speculative tactics.” Put in less emotive language the complaint is that the BRP has persisted in supporting a bid for the respondents’ assets that has failed to progress, when it should have been clear to him that this course of conduct was futile.

[12] The applicants make the point that the business rescue has now taken over 9 years without success. While the Act does not prescribe how long business rescue should last it does give a strong interpretive steer in section 132(3) where it states that if a company’s business rescue has not ended within three months of the start the BRP must prepare a progress report.

[13] In *South Cables and Electrical (Pty) Ltd and Another v Walro Flex (Pty) Ltd and Others* 2021 JDR 3408 (GJ) both issues that arose in this case (duration and the conduct of the BRP) were considered relevant by the court which ordered that the business rescue proceeding be converted into liquidation proceedings. The court there stated:

“When the purpose of placing a company under business rescue is not achieved, or there is prima facie evidence of abuse of the proceedings, thereby prolonging the proceedings when winding up would better benefit creditors, or where the BRP has failed in his/her duties and functions as an officer of the Court, a conversion of the proceedings into liquidation proceedings may be appropriate. Importantly, the rights of third parties to enforce their rights against the subject company have to be guarded.”

In *Van Staden NO & Others v Pro-Wiz Group (Pty) Ltd*, Wallis JA said:

"It has repeatedly been stressed that business rescue exists for the sake of rehabilitating companies that have fallen on hard times but are capable of being restored to profitability or, if that is impossible, to be employed where it will lead to creditors receiving an enhanced dividend. Its use to delay a winding-up, or to afford an opportunity to those who were behind its business operations not to account for their stewardship, should not be permitted. When a court is confronted with a case where it is satisfied that the purpose behind a business rescue application was not to achieve either of these goals, a punitive costs order is appropriate."

It may be added that even in the absence of a deliberate use of these proceedings to delay a winding-up the inability to conclude proceedings expeditiously is itself a cause to call for the halting thereof.

- [14] In seeking to make its case on these two grounds – the duration of the process and the conduct of the BRP - the applicants rely on the history of the business rescue process as it unfolded both before the hearing in April 2025 and then subsequently. Hence, I deal with the history separately.

History

a. Pre-April 2025

- [15] The events leading to this case start in February 2016 when a collapse at the Lily Mine in Barberton causing the death of three miners, led to operations at the mine ceasing. In June 2016, MIMCO, the respondent which owned the mine, was placed into business rescue. But the closure also had a domino effect on the fortunes of the other two respondents. Barbrook lost crucial processing income from the Lily Mine, and it was placed into business rescue in December 2016. At the same time Vantage also felt the strain of the loss of Lily Mine and was also placed in business rescue on the same day in December 2016. This

is when the BRP entered the picture. The current BRP, Robert Deveraux had been first appointed as the BRP of MIMCO, and in December 2016, he was appointed the BRP of the other two firms.

[16] Two years later in November 2018, Daniel Terblanche was appointed as a joint BRP with Deveraux for all the respondents. He served in this position for about five years until he resigned in November 2023. He gave various reasons for his resignation inter alia a breakdown in his relationship with Deveraux. This led to Deveraux resuming as the sole BRP for the three respondents, a situation which pertains till the present day.

[17] Nevertheless, business rescue plans were adopted for all three respondents on the following dates: MIMCO: 25 May 2016; Barbrook: 6 August 2018; and Vantage Goldfields: 16 February 2017.

[18] From sometime in 2019 and until at least the end of 2023, the BRP was embroiled in litigation with creditors. At least two matters went as far as the Supreme Court of Appeal. The details of this litigation are not relevant to this case. What is relevant is that from the BRP's perspective these cases have delayed the finalisation of the business rescue process and hence what seems an alarmingly long timeline requires some context. The applicants are willing to concede that the litigation may have retarded the process, but they argue that since November 2023 there has been no further litigation.²

[19] Noteworthy in the one SCA judgment is the following clamant plea to the parties from the court:

² As it turns out this was only the case when these proceedings were launched. As I discuss other proceedings from other parties have been either threatened or launched.

“The delay in the finalisation of the business rescue proceedings is most regrettable. The matter cries out for finality to be reached.”³

[20] In the course of 2024, much correspondence was exchanged between the applicants and the BRP, with the former expressing their frustration with what they considered was the vacillation of the latter.

[21] Eventually the applicants brought this application for the conversion of the business rescue to liquidation in December 2024. The succinct basis at that time for their case was expressed as follows:

It is evident from the history of this matter that Barbrook, MIMCO and Vantage Goldfields are not capable of being rescued under the current or any contemplated proposed amended business rescue plans (which are yet to be forthcoming) and there is no prospect that they can be rescued through business rescue proceedings. The first to third respondents should therefore be liquidated in terms of section 132(2) of the Companies Act.

And the applicants went on to add that:

No reasonable BRP, on an objective view of the facts set out above, could in good faith hold a view that the BR Companies are capable of being rescued and ----- that they should not be liquidated

a. Post April 2025

[22] This was the state of play when I heard the application on 22 April 2025, and I reserved judgment. But then the situation changed.

³ *Vantage Goldfields SA (Pty) Ltd and Others v Arqomanzi (Pty) Ltd* 2023 (4) SA 568 (SCA)

- [23] Before I had delivered judgment, I was requested by the BRP on 9 June 2025 to file a supplementary affidavit. I allowed this. In the supplementary affidavit the BRP updated the court on certain new events that had taken place since I had heard argument.
- [24] First the BRP had attempted to arrange a new meeting of creditors in May 2025. However, before he could do so he had to deal with two challenges. First, Salamander had brought an application to get recognised as a creditor of Barbrook. A settlement was reached with Salamander, and they were recognised as a creditor. Then Gold Stream brought an urgent application to get the right to vote despite being a post commencement creditor. Gold Stream's application however was struck off the roll. With these threats of further litigation averted the BRP then organised a meeting of creditors which was held on 2 June 2025.
- [25] At this meeting, an amended business rescue plan for all three respondents was voted on with the following outcomes: Barbrook: 100% of creditors in attendance; MIMCO: 94.13% of creditors in attendance; and Vantage: 99.94% of creditors in attendance. According to the BRP, the applicants were one of the few creditors who voted against the adoption of the plans. The BRP then met with the Department of Mineral Resources where he told them of UCL's interest. According to him the Department received the news enthusiastically.
- [26] At this stage it seemed that the UCL offer was imminent. In his supplementary affidavit, the BRP nevertheless offered a cautionary note about when the offer could cross the finishing line. This was because the funding, which was to exceed \$40 million, required Reserve Bank clearance and he had no control

over that process. Nevertheless, the court was told that a firm of attorneys had been appointed to oversee this process. Secondly, the approval of the Minister of Mineral and Energy was required for the mining licence to be transferred to the successful buyer in terms of section 11 of the Mineral and Petroleum Resources Development Act, 28 of 2002.

[27] At this point in time the case for the BRP was the strongest it had been in the history of the business rescue, plagued as it had been by litigious delays. Nevertheless, with the consent of the parties I arranged a further case management meeting to get a report back from the BRP on progress with the Reserve Bank.

[28] But on the arranged date there was no further progress. Case management meetings were held over the months of June, July, August and September 2025. Each time the report back from the BRP was that the finish line had not yet been crossed. Different reasons were given for the failure of UCL to come up with the money, until eventually the report was that there had been an impasse. UCL was reportedly not willing to come up with money until the section 11 transfer approval had been obtained, but the Ministry was not willing to approve the transfer until the money was in the country.

[29] Eventually even Gold Stream and Arqomanzi, which had thus far allied themselves with cause of the BRP rather than the applicants, began to lose patience. At a September case management meeting, Gold Stream, with the support of Arqomanzi, proposed I issue a much tighter directive. I acceded to the request and issued the directive. Its terms were that the BRP had to meet two conditions to be considered to have crossed the finish line. They were:

(i) an unconditional bank guarantee from HSBC or BOCOM (two offshore banking institutions UCL had been dealing with) in favour of Investec and an Investec credit-approved term sheet for the full USD 40 million; and (ii) written confirmation from the Department of Minerals and Energy (DME) that the Minister is prepared to accept the funding arrangements for the pending section 11 applications.

[30] The BRP was not able to meet either of these conditions. The most he could produce were the applications to the DME for section 11 approval. But proof of an application is not evidence of confirmation. Nor was there any explanation for why the bank guarantee could not be produced. I indicated to the parties that I would no longer postpone the matter and I would deliver a judgment. I was requested by the parties to allow them an opportunity for further written submissions which I agreed to.

[31] But then there was a further twist. At the hearing, an attorney representing Salamander appeared. That same afternoon Salamander had filed an application to intervene in the proceedings. The basis was that Salamander, latterly recognised as a creditor of Barbrook, had found a potential buyer. The buyer was a Canadian company called Lions Bay Resources (Pty) Ltd.

[32] The offer had just come in and there was no response yet from the BRP as to whether the offer was worthy of consideration. I advised Salamander that this was too late in the day, and I would not delay writing the judgment any further. Since that date I received a further letter from Salamander. Two points were made in this letter. The security company responsible for protecting the mines was no longer able to do so and was itself in business rescue. Nevertheless,

Salamander was willing to continue paying the costs of the security contract and had already done so for the month of October. Enclosed was a proof of transfer from Lions Bay Capital Inc in Vancouver to the order of Circufin Financial Brokers (Pty) Ltd in Nelspruit.

[33] The upshot of the letter was that Salamander was seeking a direction of when to bring an urgent application. In other words, this was a repeat of the request made at the September case management meeting but fortified by alleged evidence of further developments.

[34] In summary then at the time of the writing of this judgment the following parties seek the following remedies:

- a. The applicants continue to seek an order of conversion to place the respondents into provisional liquidation.
- b. Arqomanzi seeks dismissal of the application, and in the alternative that the liquidation proceedings be adjourned or stayed pending finalisation of the process envisaged in the BRP's business rescue plan. Put differently Arqomanzi appears to be the only creditor left willing to let the UCL bid continue.
- c. Gold Stream, which had once backed a bid from Macquarie, now seeks a postponement in order to bring a further remedy – the removal of the BRP. Thus, Gold Stream and Arqomanzi are no longer *ad idem* on the way forward.
- d. The BRP now no longer seeks the dismissal of the application at this stage. Instead, he seeks a suspension for a period of three months (12 weeks), to

afford him a final opportunity to attempt to rescue the respondents *by “implementing the Ultra Concepts offer as embodied in the amended (and adopted) business rescue plans.”*

- e. Salamander is waiting the wings (it has not yet been recognised as an intervenor) to bring an intervention application to put forward its proposal involving a potential purchase by Lions Bay.

[35] I turn now to discuss these remedies.

Remedies

[36] The two planks of the applicants’ case for provisional liquidation appear at first blush unassailable. First, is the length of time that the business rescue process has endured without finality, for more than nine years, in respect of MIMCO, and approaching that in respect of the two others. Business rescue should never take this long. Second, the BRP, despite the many hurdles he has encountered along the way, is still not forthcoming about why the UCL bid, for which he has justified the requests for several delays, has become becalmed. Four months have passed since his optimistic indications in June 2025 that the deal was close to finality.

[37] Nevertheless, a court is not obliged to grant a conversion even on these facts. As pointed out in the case of *E Sacks Futeran and Co (Pty) Ltd v Linorama (Pty) Ltd; Ex parte Linorama (Pty) Ltd* 1985 (4) SA 686 (C) where the court was faced with two options, one by a creditor for a winding up order and the other for the approval of a scheme of arrangement:

“The principle that an unpaid creditor is entitled to an order ex debito justitiae applies, however, only as against the company and not as between creditors (Joubert (op cit para 387 at 364)). The Court therefore, in the exercise of its discretion, should take the views of creditors into account, where the majority of those creditors consider that a winding up should not be granted. The views of the majority are not conclusive and they cannot fetter the Court's discretion but they must be given great weight.”

Consideration for the views of the majority is also emphasised in cases going back for many years. In *Ex Parte Power NO: In re Amato Consolidated Industries Ltd* 1959 (2) SA 547 (W) at 548, Kuper J noted that:

“It is clear that the power given to the Court may be exercised when the H petition for a winding-up order is before the Court, but before it has been granted, and the Court has a complete discretion to direct the petition to stand over in order that the wishes of creditors might be obtained. In the case of In re Great Western (Forest of Dean) Coal Consumers Company, (1882) 21 Ch.D. at p. 773, Mr. JUSTICE FRY said:

“That the Court may have regard to the wishes of creditors in the matter of a winding-up is part of the statutory enactments which regulate the Court in this jurisdiction. That it ought so to have regard to those wishes is apparent from the statute itself, as well as from a series of decisions. As 1959 (2) SA p549 Kuper J against the company, I conceive that, prima facie, a person who is shewn to have a debt which the company does not satisfy has a right ex debito justitiae to a winding-up order. But that prima facie right may be rebutted, and especially as against other creditors, the moment it is shown that there is a large mass of other creditors who are opposed to the winding-up. And, in my judgment, the Court ought to consider, not merely the number of

the opposing creditors and the value of their debts, but ought to have some regard to the reasons which they adduce for the conclusion at which they have arrived."

[38] In the present case as I indicated earlier, the votes in favour of the amended business rescue plan in June this year were overwhelming. The applicants do not dispute this but argue that that is because one creditor, Arqomanzi, has a disproportionate share of the vote given its size in value as the largest creditor. This may be so but no other creditor apart from the applicants (who in value terms are minor creditors) seeks liquidation. Gold Stream which now has reservations about the BRP, seeks his removal, not liquidation, whilst lurking in the background is Salamander's promotion of its bidder in the form of Lions Bay.

[39] But this is more than an issue of creditor democracy by value. It is likely that someone is going to provide the finances to take the respondents out of business rescue.

[40] At this stage it is not clear who that will be. The BRP points out that a provisional liquidator is no more than a caretaker of the assets. These powers, limited as they are, can be extended but this requires the approval of the Master introducing another imponderable into an already uncertain and protracted situation. If the liquidation becomes final the mining rights will be lost and hence the most valuable assets of the respondent companies.⁴ No meeting of creditors can take place because this can only happen after final liquidation. In short no case is made out that the avenue of liquidation is likely to bring more

⁴ Section 56 of the Minerals and Petroleum Resources Development Act.

expeditious finality to the present impasse. It would appear that the BRP possesses greater flexibility than would a provisional liquidator in this situation.

[41] Nor are the prospects of rescue hopeless. The Lily mine may have its challenges and history of tragedy but it still has gold. According to the BRP *“To the best of my understanding, it is estimated that the gold reserve vesting in the BR companies is in the region of 4 million ounces of gold, making it one of the largest remaining gold reserves in the world.”*

[42] In a time of historically rising gold price, suitors are likely to come forward and even the current ones have yet to walk away.

[43] It is also not appropriate for me to consider at this stage the new relief sought by Gold Stream to have the BRP removed. As the BRP’s representatives have argued the basis for this application needs to be made out before that can be considered. At present it has not been made out on the papers by Gold Stream.

[44] Finally, I need to explain why I have not dismissed the application although by now, that voice from the BRP and other creditors is less clamant than it was in April. Simply put, it has taken this application to hold all the other players in this drama’s feet to the fire. While progress has been modest in the business rescue there is little doubt that this pending application has focussed the minds of all the significant players. The case for liquidation may still remain if in three months’ time progress to cross the finishing line, has either not been made, or if it has, it has not been adequately explained.

- [45] I have left till last, the two points in limine which were argued by Arqomanzi during the April hearing. Both points involve joinder. Firstly, misjoinder and secondly non-joinder.
- [46] The mis-joinder point was that it was unusual to have three legally separate entities being the subject of a winding up order in a single application. Expanding on this Arqomanzi argued that the shareholdings of all three companies differ. However, this is a point of form without substance. Although the shareholdings of the firms are not identical, they are all subject to the control of the same shareholder. Secondly, the same BRP has been appointed for all three companies. Creditors meetings have taken place at the same time. Thirdly, the fate of all these firms is interdependent. The collapse of the Lily Mine as I explained earlier not only affected MIMCO, but it also had a knock-on effect on the two others. Therefore, all the factors concerning the one are inextricably linked to the others. Fourthly, all those seeking to buy out the firms from business rescue have taken the approach that all three companies are linked. Arqomanzi is a creditor of all three. Does it seriously contend it would be better off if all three were considered separately? Legally separate they may be, but they are part of the same economic family. The misjoinder point falls to be dismissed.
- [47] The joinder point is more complicated. Arqomanzi argues that there should have been joinder of all the creditors. It relies on cases where the courts have held that the failure to join creditors to legal proceedings post-adoption of a

business rescue plan is fatal to an application relating to the business rescue proceedings.⁵

[48] The applicants argue that these cases are distinguishable as they are not seeking to set aside a business plan. This is not a point I need to decide now and can be reconsidered if the matter comes back for consideration. In the meantime, the applicants have time to consider whether they need to join the creditors if they consider *ex abundante* that the point is good.

[49] I have therefore decided to grant the request for the adjournment of the application in terms of section 347(1) of the Act for a period of three months from date of this judgment.

Costs

[50] Given the order I have made, it is appropriate that costs stand over to a later time. Costs of the application are reserved.

ORDER

The following order is granted:

1. The application for conversion in terms of section 132(2)(a) of the Companies Act, (the Act), is adjourned for a period of three months from the date of this order in terms of section 347(1) of the Act; and
2. The costs of this application are reserved.

⁵ Most recently in *Kransfontein Beleggings (Pty) Ltd v Corlink Twenty Five (Pty) Ltd*, (624/2016) [2017] ZASCA 131 (29 September 2017)(See paragraph 16.



MANOIM J
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

For the Applicants:	CHJ Badenhorst SC and K Naidoo
Instructed by:	Stein Scop Attorneys Inc.
For the Respondents:	J Vorster SC and R De Leeuw
Instructed by:	Barnard Incorporated Attorneys
For Arqomanzi:	L Acker
Instructed by:	Fluxmans Incorporated
For Goldstream:	L Hollander
Instructed by:	Mendelsons Attorneys
Date of hearing:	22 April 2025
Date of last submission:	3 October 2025
Date of Judgement:	10 October 2025