

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2024-055804

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

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H. LOUW AJ 03 November 2025

In the matter between:

HYCHEM (PTY) LTD

Applicant

And

NALEK SECURITY (PTY) LTD

Respondent

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 11h00 on 03 November 2025

JUDGMENT

LOUW H AJ:

Introduction

- [1] This application has its origin in a liquidation application launched during May 2024, which application was withdrawn at the hearing of the matter on 22 October 2025 because of the payment of the outstanding capital amount.

- [2] The respondent filed its answering affidavit on or about 8 October 2024, requiring it to seek condonation which was, considering the papers, opposed and which condonation application was not pursued, because of the withdrawal of the liquidation application.
- [3] The replying affidavit dated 5 March 2025 was subsequently filed followed by the Respondent's first supplementary affidavit filed on Thursday, 16 October 2025 reflecting the payment of the outstanding indebtedness of that day, with the filing of an affidavit in response thereto by the Applicant on 21 October 2025, and the filing of a further supplementary affidavit by the Respondent on 22 October 2025.
- [4] The Registrar of this Court was informed by way of courtesy email on Friday, 17 October 2025 at 10:43 a.m., received from counsel acting on behalf of the applicant, Mr B Pye SC that the Respondent had made payment and that the matter would proceed on the issue of costs only.
- [5] The parties argued the issue of costs at the hearing of the application, the applicant seeking costs of the application on Scale C and the respondent seeking an order that it is to pay the costs associated with the application on Scale A, only until 1 October 2025, a date when the respondent offered make payment, referred to later in the judgment.

Factual Matrix

- [6] During August 2019, the applicant and the respondent entered into a written credit account application agreement ("the agreement"), whereafter the applicant sold and delivered goods to the respondent with a remaining account balance during December 2021 in the amount of R 3,036,797.15.
- [7] Due to the high demand for sanitiser during the COVID-19 pandemic the respondent, on its version of events, acted as a middleman for the applicant to sell its products to a specifically identified third party, the Department of Education, increasing the respondent's credit limit with the tacit understanding that once the products were sold to the end-customer and the respondent received payment, it would make payment to the applicant, with this in apparent conflict with the Conditions of Sale.

- [8] The respondent further alleged that due to the unforeseen upliftment of the state of disaster in South Africa during 2022 the demand for sanitiser came to an end, also admitting the amount outstanding to the applicant with apparent unsuccessful attempts to enter a payment plan with the applicant whilst waiting for payment from its debtors.
- [9] By way of the answering affidavit during October 2024, some two years after the upliftment of the state of disaster and its admitted obligations to the applicant, the respondent tendered payment of the outstanding amount on monthly instalments to be agreed to between the parties, also requesting the applicant to negotiate in good faith in circumstances where the respondent was owed a large amount of money by its debtors. However, that did not materialise and did not absolve the respondent from its obligations to the applicant.
- [10] Over time, and sporadically, the respondent made payment against its obligations in the amounts of R 50,000.00 during February 2023 with the unacceptable payment proposals, resulting in the issue of a letter of demand during July 2023 on the subsequent issue of a section 345 letter of demand in terms of the provisions of the Companies Act¹ during February 2024. Subsequent thereto the liquidation application was launched during May 2024.
- [11] The respondent made further payments on 6 August 2024 in the amount of R100,000.00, on 1 April 2025 in the amount of R 800,000.00 and on 5 June 2025 in the amount of R 1,000,000.00 with a capital indebtedness at the time of the hearing of the matter in the amount of R 1,146,797.50, excluding interest and costs.
- [12] During the week prior to the hearing of the matter the respondent filed supplementary affidavits confirming that it owed the amount of R 1,146,797.50, that on 1, 2 and 10 October 2025 a tender was made to pay the full amount claimed in the liquidation application without addressing the issue of costs and without making payment of the admitted indebtedness, which was only paid on Thursday, 16 October 2025, prior to the hearing of the opposed liquidation

¹ Act 71 of 2008.

application, which was received by the Applicant on Friday, 17 October 2025 thereby extinguishing the capital indebtedness.

[13] The Respondent further alleged that the late payment of the indebtedness that arose in December 2021, with the three aforementioned payments was not deliberate, but arose from the timing of payments received from its undisclosed creditors which then enabled the respondent “*to marshal the necessary funds*” in circumstances where “*the respondent was at all times intent on setting its indebtedness as soon as practically possible, and it is only now that full payment could be affected.*”

[14] The respondent consequently formed the view that because of its offer on 1 October 2025 to settle the capital indebtedness it was not liable for the costs of the liquidation application from then, notwithstanding the admitted inability to effect payment until 16 October 2025, and that costs should only be ordered on Scale A.

[15] The applicant’s legal representatives by way of responding affidavit dated 21 October 2025 confirmed that the capital amount was received into their trust account on Friday, 17 October 2025 whereafter the respondent’s legal representatives were informed that the liquidation application would not be proceeded with and that the issue of costs would require argument in circumstances where the issues regarding outstanding interest on the capital amount was discussed, without resolve. In confirmation thereof, Adv B Pye SC informed the Registrar of this Court that payment had been made with the only issue outstanding being costs, requesting a hearing of the matter on Monday, 20 October 2025.

Considerations

[16] Notwithstanding various expressions of either undertakings, offers or intention to make payment of the capital amount over time, including on 1, 2 and 10 October 2025, the respondent could not do so in circumstances, where on its own version, the respondent only marshalled the necessary funds on 16 October 2025 enabling it to effect payment.

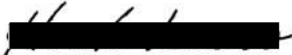
- [17] Neither the offers nor undertakings in the absence of actual payment obliged the applicant to prematurely withdraw, or agree to postpone the liquidation application on 1, 2 or 10 October 2025, or to lose its place on the court roll.
- [18] Consequently, in the absence of actual payment the applicant was entitled to proceed with the liquidation application with an entitlement to its costs, it eventually being a successful party on receipt of payment of the capital amount.
- [19] As to the scale of costs, Rule 67A – Costs provides in subrule (3)(a) that the costs order shall indicate the scale in terms of Rule 69 under which the costs have been granted, considering also the complexity of the matter; and the value of the claim or importance of the relief sought, with Rule 69 reflecting on the tariff of fees for legal practitioners who appear in the Superior Courts, the choice of scale being an objective assessment of the matter's complexity, importance and value, with Scale A as the default if no clear directions given by the Court.
- [20] The criteria of complexity of the matter, the importance and value, also considering to the delay in payment of the capital amount, justify costs on Scale C.

ORDER

In the result the following order is made:

1. It is recorded that the application for the winding-up of the Respondent is withdrawn by the Applicant.

- 2.



H. LOUW

Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: 22 October 2025
Judgment: 03 November 2025

Appearances

For Applicant: WB Pye SC
Instructed by: Harris Billings Attorneys

For Respondent: R Blumenthal
Instructed by: Schultz Wiskin Incorporated