



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

(1) REPORTABLE: YES / <u>NO</u>	
(2) OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>	
(3) REVISED	
<u>03 November 2025</u>	
DATE	SIGNATURE

CASE NO.: 176802/2025

In the matter between:-

LETHWELE LISTER MAKATOANE N.O.

First Applicant

LAMELA NCUMISA NGEWANA N.O.

Second Applicant

[in their capacities as trustees of the Makatoane Family Trust
(IT002774/2023)]

V

MAHLOPI METALS GROUP (PTY) LTD
(in provisional liquidation)
(Registration Number: 2019/443992/07)

First Respondent

ELIZABETH MARGARET EDWARDSVAN ROOYEN N.O.	Second Respondent
COENRAAD LOUWRENS STANDER N.O. [in their capacities as the appointed joint provisional liquidators of Mahlopi Metals Group (Pty) Ltd (in provisional liquidation) Master's reference: T001088/2025]	Third Respondent
THE STANDARD BANK OF SOUTH AFRICA LIMITED	Fourth Respondent
FIRSTRAND BANK LIMITED	Fifth Respondent
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE	Sixth Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Seventh Respondent
GRADCO SOUTH AFRICA (PTY) LTD (Registration Number: 1999/026872/07)	Eighth Respondent
JOHCON GROUP (PTY) LTD (Registration Number: 2023/796170/07)	Ninth Respondent
THE FIRST RESPONDENT'S KNOWN AFFECTED PERSONS (LISTED IN ANNEXURE A HERETO)	Tenth Respondent

Heard on: 15 October 2025

Delivered: 03 November 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09:00 on 03 November 2025.

Summary:

1. The urgency in instituting this application was not self-created. The applicants will not obtain substantial redress in the normal course of court proceedings.
2. Applicants have to set out a factual foundation that there are reasonable prospects that business rescue can be achieved¹. The bar is not too high.

ORDER

It is ordered:-

1. The applicants' non-compliance with the Uniform Rules of Court is condoned in terms of Uniform Rule 6(12). The application is adjudicated upon as an urgent application.
2. The first respondent is hereby placed under supervision, and business rescue proceedings may commence in respect of the first respondent in terms of section 131(1), read with section 131(4)(a), of the Companies Act, No. 71 of 2008.
3. Zolani Prince Buba and Jo Mitchell-Marais are appointed as the interim business rescue practitioners of the first respondent in terms of section 131(5) of the Companies Act, 71 of 2008.

¹ Oakdene Square Prospectus Pty Ltd and others v Far Bothasfontein Kyalami Pty Ltd 2013(4) SA 539 SCA at paragraph 30

4. The appointment of Zolani Prince Buba and Jo Mitchell-Marais as interim business rescue practitioners is subject to ratification by the holders of the majority of the independent creditors' voting interest at the first meeting of creditors, as contemplated in Section 131(5) of the Companies Act, 71 of 2008.
5. The cost of the application are to be the cost in the business rescue proceedings except for the cost of the opposition thereof, which are to be paid by the fourth and eight respondents jointly and severally, such costs to include the cost of occasioned by the employment of two counsel to be taxed on scale C.

JUDGMENT

KOOVERJIE J

APPLICATION

[1] The applicants as trustees of the Trust launched this urgent application on 29 September 2025 and enrolled the matter for hearing on 14 October 2025. The opposition is premised mainly on the following factors, namely:

- 1.1 that the matter is not urgent. In fact, the urgency was self-created;
- 1.2 the application is an abuse of the process of court and used as a strategy to hinder the liquidation proceedings;

- 1.3 the business rescue proposal has no merit and further there is no case made out for placing the first respondent under supervision in commencing with the business rescue proceedings.

THE PARTIES

- [2] The first and second applicants, as trustees of the Makatoane Family Trust ("the Trust"), seek an urgent order placing the first respondent under business rescue in terms of Section 131(1) read with Section 131(4)(a) of the Companies Act No. 71 of 2008 (the act).
- [3] The first applicant, Lethwele Lister Makatoane, represents the Trust in his capacity as trustee. On the evidence presented, the Trust is the sole shareholder of the first respondent, Mohlopi Metals Group Pty Ltd (MMG).
- [4] This application is opposed by the fourth respondent, Standard Bank of South Africa Limited and the eighth respondent Gradco South Africa (Pty) Ltd. The employees as "affected persons" cited as the tenth respondent. They have filed papers and support this application. Presently, Standard Bank is a majority creditor of MMG with a standing debt of over R130 million. The applicants further dispute that Gradco is a creditor of MMG.
- [5] For the purposes of this judgment, the first respondent will be referred to as "MMG", the fourth respondent as "Standard Bank" and the eighth respondent as "Gradco". Rooderand Chrome Pty Ltd "Rooderand" and Phokathaba Platinum Pty Ltd "Phokathaba" will be referred to as the mining right holders.

BACKGROUND

- [6] MMG was established during 2019 commenced business in 2021 and conducted its business in the mining sector particularly specializing in mining and distribution of metals which includes unprocessed chrome.
- [7] Its operations were conducted at the Rooderand Mining Site until its business operations were ceased in September 2025.
- [8] MMG was placed under provisional liquidation due to Gradco alleging that MMG was unable to settle its debt owed to it in the amount of over R12 million. Gradco succeeded in obtaining a provisional liquidation order as MMG did not oppose such application. The applicants explained that they had not participated in the proceedings due to the advice of their legal representatives. They further dispute that any amount is due and owing to Gradco.

URGENCY

- [9] The first issue for determination is whether this matter warrants the urgent attention of this court. The principles on urgency have long been settled and tested in accordance with the guidelines set out in the **Luna Meubels** matter.² Urgent applications must, as far as practicable, be in terms of the Rules and deviation from the Rules must be commensurate with the urgency of the case.³

² Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin Furniture Manufacturers) 1977 (4) SA 135W (Luna Meubel matter)

³ Luna Meubels matter at paragraph 137 E-G the court stated:

“Practitioners should carefully analyse the facts of each case to determine, for the purpose of setting the case down for hearing, whether a greater or lesser degree of relaxation of the rules and the ordinary practice of the court is required. The degree of relaxation should not be greater than the exigency of the case demand. It must be commensurate therewith. Mere lipservice to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent

[10] The applicant crisply submitted that the urgency in this matter is premised on the following facts, namely:

10.1 business rescue proceedings are by their very nature considered to be urgent, hence the matter has to be dealt with expeditiously. The failure to do so will lessen or negate the prospect of effective rescue of a company that is in distress;

10.2 the first respondent and its employees will not obtain substantial redress if this application is not dealt with urgently;

10.3 the main reason for instituting this application as late as 29 September 2025, was due to the fact that the mining right holders threatened to cancel the sale of the mining rights agreements which were concluded with MMG. This would be the end of MMG's business.

[11] On 11 September 2025, MMG's right to conduct mining operations on the mining sites was suspended.

[12] On 29 September 2025 the mining right holders's legal representative acknowledged that meetings were held with the mining right holders on 18 and 23 September 2025. MMG was forewarned that if certain of the conditions are fulfilled within 30 days of the said letter the management agreements to permit MMG to manage and mine on the sites will be revived and reinstated until the mining rights

of the departure from the norm which is involved and the time and the day for which the matter be set down."

have been transferred to MMG. MMG was afforded an opportunity to remedy its breach in respect of the outstanding amounts it owed to them and undertook to do so within a prescribed time period.

[13] The applicants however pointed out that whilst MMG remains under provisional liquidation, it would not be able to remedy the said breaches. Hence the trigger for the application was that MMG's business was threatened.

[14] Both Standard Bank and Gradco argued that the urgency was self-created and tendered the following contentions, namely:

14.1 the applicants had ample time to have brought the business rescue application. Hence the timing of this application was self-created;

14.2 in addition, the application is voluminous (exceeded over 500 pages), involves complex issues for determination and versions of multiple litigants have to be considered. Surely the urgent court is not the appropriate court in such circumstances;

14.3 the abridgement of the time periods proposed were unreasonable and prejudicial. The respondents were constrained in preparing their papers.

[15] Ultimately the issue for determination before me is whether this matter deserves urgent attention. The enquiry is whether the applicants can attain substantial redress in the normal course of court proceedings. It is noted that the applicants had sought a special allocation from the office of the Acting Deputy Judge President for the matter to be heard within a short space of time. As this request was denied, I am seized with this matter.

[16] On the contention that urgency was self-created, the respondents argued that this application could have been instituted months before, if one has regard to the events that occurred prior, namely:

16.1 when the annual financial statements for the financial year 2025 was prepared and submitted. The said financials reflected that it was hopelessly insolvent;⁴ or

16.2 around 18 November 2024, when Standard Bank delivered its Section 345(1) notice, or;

16.3 on 17 December 2024 when it served MMG with a liquidation application;

16.4 on 24 January 2025 when MMG launched an urgent spoliation application which was dismissed with costs;

16.5 five months later, on 18 June 2025 when MMG was placed under provisional liquidation;

16.6 when the first respondent embarked on instituting a further incompetent interlocutory application on 13 July 2025;

16.7 on 29 August 2025 the first respondent filed its answering affidavit in the liquidation proceedings.

[17] It was further argued that:

⁴ The current liabilities are recorded as R105 513 864.00 and whereas the current assets recorded as only R8 187 170.00

- 17.1 the “mining rights issue” was clearly opportunistic and self-serving;
- 17.2 the conduct of the directors of MMG since the provisional order was granted was *mala fides*. This application is merely a further attempt to derail the liquidation proceedings. It was argued that the MMG Board conveniently “sat on their laurels” for months, ignored the provisional winding up proceedings, obstructed the liquidators from carrying out their tasks, and in particular MMG simply continued with its business ventures. Their attitude clearly illustrates that they approached this court with “unclean hands”. This application was intended to frustrate the liquidation process. The “unclean hands doctrine” has been espoused by our courts in numerous dicta. More recently, the Supreme Court of Appeal in **PFC Properties (Pty) Ltd**⁵ stated:

[27] Business rescue proceedings are aimed at restoring a company to solvency, and are not to be abused by a company with no prospects of being rescued but mainly to avoid a winding-up or to obtain some respite from creditors. In Van Staden and Others NNO v Pro-Wiz (Pty) Ltd this court stated:

‘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’.

⁵ PFC Properties (Pty) Ltd v Commisisoner for South African Revenue Services and Others 2024(1) SA 400 (SCA)

[28] *In Villa Crop the Court dealt with the fate of proceedings launched by a party with an ulterior motive. Unterhalter AJ espoused the position as follows:*

'An abuse of process can occur in a variety of ways. The litigation may be frivolous or vexatious. A litigant may seek to use the legal process for an ulterior purpose or by recourse to conduct that subverts fundamental values of the rule of law. The behaviour of the litigant may be so tainted with turpitude that the court will not come to such a litigant's aid. The unclean hands doctrine references this latter type of abuse. It is the abusive conduct of the litigant that, in a proper case, may warrant the exercise of the court's power to non-suit such a litigant. The court does so, even though the litigant claims a right that they would vindicate in the court proceedings. For this reason, the power is to be exercised with great caution. Put simply, the court enjoys the power to safeguard the integrity of its process. The court will only exercise this power upon a careful consideration of the prejudice that this may cause to the abusive litigant, and, in particular, the harm that may be occasioned to a litigant whose claim of right will not be decided by the court....

[36] *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 and PFC is so tainted with impropriety that this Court must use the power it has to 'safeguard the integrity of its process'.*

[37] *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.”

17.3 The Board of MMG was obstructive and failed to cooperate with the joint provisional liquidators. The report of the joint provisional liquidators recorded that they refused to disclose any information pertaining to its business affairs, the finance, debtors, creditors, employees' contracts, assets and, in general, the business of MMG. Even when they consulted with the provisional liquidators on 25 August 2025, no information or cooperation was forthcoming. The following was stated at paragraph [34] of the report:

“34. It became manifestly apparent from the tenor and conduct of the meeting that the erstwhile directors in concert with their legal representatives, engaged in an deliberate, calculated and systematic stratagem to conjure disputes of every conceivable nature. These artifices were devised not with the bona fide intent to advance the administration of the estate, but rather with the singular purpose of derailing, obstructing and frustrating the orderly execution of their statutory duties incumbent upon the joint provisional liquidators.”

[18] The applicants disputed this aforesaid version and maintained at all relevant times they sought advice from their erstwhile legal representatives and accordingly acted on such advice. They later conceded that their conduct was not aligned to the law, particularly in continuing its business operations. This is evident from the unmeritorious applications instituted shortly after the provisional liquidation order was granted. The respondents pointed out that if these facts were true, the

applicants were duty bound to give a full and true statement of the facts setting out the nature of the advice and who gave the advice and when such advice was given.⁶

[19] The evidence clearly portrays that MMG opposed the provisional liquidation order by instituting the incompetent applications and then belatedly filed its answering papers, whilst their erstwhile legal representatives were on board.

[20] It cannot be further disputed that during that period, the applicants/MMG were represented by their former attorneys. Their version was always that before their new attorneys came on board, they acted on the advice of their erstwhile legal representatives including senior counsel.

[21] I cannot merely ignore the applicant's version on the evidence presented. The erstwhile attorney was on board until the end of August 2025. Mr Tlou Makatoane arranged the meeting with the liquidators on 26 August 2025 and assisted them in filing their opposing papers in the liquidation application, (which was filed on 29 August 2025).

[22] It seems that when the new attorneys, Cox Yeats, came on board in September 2025, the stance of the applicants changed.

[23] In their replying affidavit, the applicants affirmed that they acted on the advice of their legal representative at the time. During the former period there is no record of

⁶ Samancor Chrome Ltd v Bila Civil Contractors (Pty) Ltd and Others 2022 JDR 3192 (SCA) at paragraph 61: where the Supreme Court observed that a litigant was obliged to state the full details of the alleged advice, which facts would include the ordinary cause, the nature of the advice, when and by whom it was given, in order to enable the court to assess whether it was given on a full and true statements of facts as postulated by the prior decision of Abrahams.

salvaging MMG via business rescue processes. Clearly the focus was to challenge the provisional liquidation order, albeit through incompetent applications.

- [24] The applicants also pointed out that discussions began more recently "it dawned on them that MMG could be saved through business rescue proceedings". The 11 September 2025 letter clearly threatened MMG's business. They applicants do not dispute that MMG was always in distress but argue that the trigger for launching this application was when its business was threatened. On the facts before me, I conclude that a case for urgency has been made I will therefore proceed on the merits.

A CASE FOR BUSINESS RESCUE

- [25] It is permissible for an affected person, in this case the Trust, to apply to court for an order in terms of Section 131 of the Act, placing MMG under supervision and commencing the business rescue proceedings provided that the court is satisfied that either:

25.1 the company is financially distressed, or;

25.2 the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation or contract or with respect to employment-related matters; or

25.3 it is just and equitable to do so for financial reasons and there is a reasonable prospect of rescuing the company or the court may dismiss the application together with any further necessary and appropriate order.⁷

[26] It is also not in dispute that MMG is financially distressed. An entity is considered to be financially distressed if it appears that it is unlikely that it will be able to pay all of its debts as they become due and payable within six months or if it appears that the company would become insolvent within the immediately ensuing 6 months.⁸

[27] The respondents persist with their view that MMG is hopelessly insolvent. The applicants submitted that even if it accepts the respondents' contention that MMG is insolvent, this fact is not an obstacle to business rescue processes. Reference

⁷ Section 131:

“(1) Unless a company has adopted a resolution contemplated in Section 129, an affected person may apply to a court at any time from the order placing the company under supervision and commencing business rescue proceedings ...

(4) After considering an application in terms of subsection (1) the court may:

- (a) make an order placing the company under supervision and commencing business rescue proceedings, if the court is satisfied that:
 - (i) the company is financially distressed;
 - (ii) the company has failed to pay over any amount in terms of an obligation under or in terms of the public regulations or contractor with respect to employment-related matters; or
 - (iii) it is otherwise just and equitable to do so for financial reasons and there is a reasonable prospect for rescuing the company; or
- (b) dismiss the application together with any further necessary and appropriate order, including an order placing the company under liquidation.”

⁸ Section 228(1)(f) of the 2008 Companies Act defines financially distressed as follows:

“Financially distressed- in reference to a particular company at any particular time, means that:

- (i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing 6 months; or
- (ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing 6 months.

was made to the **Tyre Corporation** matter⁹ where the court cited the finding in **Oakdene Square Properties**¹⁰ with approval:

“That Brand JA regarded current commercial insolvency and constituting financial distress. I see no reason why factual insolvency should be treated differently though it would not matter for present purposes where the factual insolvency was outside the scope of the definition because the two legs of the definition are disjunctive, one or other suffices. Naturally the existence and extent of commercial and/or factual insolvency may have an important bearing on the prospect of rescuing the company but they cannot be a bar to a rescue application.”

- [28] Section 128(1)(b) of the Act envisages that business rescue proceedings serve to facilitate the rehabilitation of a company that is financially distressed by providing for a plan to rescue the company by restructuring its affairs, business, property, debt or other liabilities in a manner that maximises the likelihood of the company continuing in existence on a solvent basis. If it is not possible for the company to continue in existence then it must determine if a better return for the company's creditors and shareholders can be gained when compared to liquidation proceedings. In these circumstances, the applicant proposed a plan to rescue the company by restructuring the business affairs.

⁹ Tyre Corporation Cape Town (Pty) Ltd and Others v GT Logistics (Pty) Ltd 2017 (3) SA WCC at 16

¹⁰ Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others 2013(4) SA 539 (SCA) [2013] ZASCA 68 at paragraph 7 and my underlining

[29] The end goal is that business rescue proceedings are meant for the efficient rescue and recovery of financially distressed companies in a manner that balances the rights and interests of all relevant stakeholders¹¹.

[30] Ultimately for the applicant's case to pass muster, a factual foundation must be bid that there is a reasonable prospect that business rescue can be achieved. Moreover, the standard is not high.¹²

[31] The Supreme Court of Appeal in **Oakdene Square Properties**¹³ agreed with the sentiments expressed by the court in **Propspec**:

"I believe it requires more than a mere prima facie case with an arguable possibility. Of even greater significance, I think that it must be a reasonable prospect with emphasis on "reasonable" – which means that it must be a prospect based on reasonable grounds. A mere speculative suggestion is not enough. Moreover because it is the applicant who seeks to satisfy the court of the prospect, it must establish at least reasonable grounds in accordance with the rules of motion proceedings which, generally speaking, require that it must do so in the founding papers."

¹¹ Section 7 k of the Companies Act

¹² Propspec Investment (Pty) Ltd v Pacific Coast Investment 97 Ltd and Another 2013 (1) SA 542 F (B) at paragraph 11

¹³ Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others 2013(4) SA 539 (SCA) at paragraph 30

- [32] **Oakdene** further agreed with court in **Propspec** that requiring proof of objectively determinable details would unjustifiably limit the availability of business rescue proceedings¹⁴ :

“... as a minimum, concrete and objectively ascertainable details of the likely costs of rendering the company able to commence or resume its business, and the likely availability of the necessary cash resource in order to enable the company to meet its day-to-day expenditure, of concrete factual details of the source, nature and extent of the resources that are likely to be available to the company, as well as the basis of terms on which such resources will be available, is tantamount to requiring proof of a probability, and unjustifiably limits the availability of business rescue proceedings.”

STANDARD BANK’S CONTENTIONS

- [33] Standard Bank is totally opposed to this application. Its main contentions were that MMG had not made the relevant material disclosures that were necessary, thus breaking the relationship of trust. The applicants, in their response however clarified this issue and furnished evidence that in fact such disclosures were made.
- [34] In addition, Standard Bank held the view that the liquidators are best equipped to deal with the affairs of MMG and would be able to determine if the business rescue proceedings are viable. They can, through the extension of their powers, carry on with the business of the company and salvage the business.

¹⁴ Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others 2013(4) SA 539 (SCA) at paragraph 30

[35] Again in response, the applicants correctly argued that the duties of provisional liquidators are to safeguard and preserve the assets of the company pending the appointment of the final liquidators whereas the primary role of a business rescue practitioner is ultimately to restructure the business affairs of the entities in order to determine if it can continue trading. The focus of the business rescue practitioner is to ultimately achieve a better return for the creditors.

[36] The applicant has nevertheless, in its proposed business plan, and despite Standard Bank's attitude, made provision to honour the lease agreements. Out of caution, alternative provisions have been built into the plan. Two service providers, BIC Rentals and Kazaga, have undertaken to provide the necessary equipment to MMG. As things stand, Standard Bank remains the largest creditor of MMG, with a claim over R130 million. It was alleged that if Standard Bank cancels the lease agreements in respect of the equipment it would only be able to claim the shortfall after selling the said equipment. It was further submitted Standard Bank's current debt would be set off against the post commencement funding (PCF) funding. I am of the view, that the final word would be expressed when business rescue practitioners approach Standard Bank in light of the undertakings made.

GRADCO

[37] Gradco's main gripe is that MMG would never surface from its hopelessly insolvent position. Counsel extensively referred to the financial statements disclosed and advanced arguments inter alia such information is inaccurate. This court was cautioned not to accept the applicant's financial position, particularly that MMG is solvent, or that its assets exceeds its liabilities.

[38] The further contention raised was that as they stand, MMG cannot continue with its business operations. The mining rights approval is speculative. MMG can only acquire the mining rights if ministerial approval is given in terms of Section 11 of the Mineral and Petroleum Development Act 28 of 2002. It is only upon such consent can the mining rights be transferred to MMG.

[39] In response the applicants, pointed out the acquisition of these mining rights are not merely speculative. There are reasonable prospects, in light of the unequivocal undertakings made by the mining rights holders to assist MMG. In particular, that:

39.1 the mining right holders undertook to conclude mining right management agreements and reinstate the mining rights, and further attain and implement the transfer of the mining rights;

39.2 they are satisfied that an amount of R7 778 220.06 was paid into the Trust Account of the applicant's attorneys, Cox Yeats, which funds was allocated to settle the debt with them;

39.3 they undertook to provide support to the business rescue process, provided that the conditions imposed are complied with;

39.4 the amount of R4 million owing to Phokathaba would be settled;

39.5 they would support the business rescue proceedings subject to the undertakings made by MMG;

39.6 they undertook to negotiate and revive, reinstate including appropriate conditions and arrangements for the compliance within the performance by

MMG of all rehabilitation and environmental obligations attached to the mining rights and undertook to sign any documentation required in order to give effect thereto.

- [40] Gradco also persisted with its version that MMG remains indebted to Gradco in an amount of over R12 million. The applicants' version at all relevant times was that it had an agreement with Johcon and not Gradco. Payments for the services rendered were made to Johcon at all relevant times. It was only later that the applicants learnt that the equipment in fact belonged to Gradco. Johcon did not disclose this fact. Thereafter the parties agreed that going forward MMG would pay Gradco. MMG in fact made payment to Gradco and took into account the advanced payments made to Johcon. This advanced payment had to offset from the remaining debts. MMG claims that it paid around R11.4 million to Johncon as advanced payments between 26 January 2024 to 12 March 2024. It is on this basis that the applicants claim that Gradco is not a creditor.

THE BUSINESS PLAN

- [41] A proposed business rescue plan is attached to the founding affidavit. The applicants submitted that there is a reasonable possibility that MMG can be rescued under circumstances where:

41.1 the management agreement in terms of MMG and the mining rights holders would be reinstated;

- 41.2 the instalment sale agreements concluded with Standard Bank in respect of the finance machines can either be reinstated or restructured so that MMG can continue to use the machinery;
- 41.3 external funding by way of post-commencement finance would be provided by the Trust, particularly in respect of acquiring the additional machinery from entities such as BLC Rentals (Pty) Ltd and Kazaga;
- 41.4 if MMG's operations continue there would be monthly cashflow that would be utilized for operational expenses.

[42] Notably the proposed business plan recorded why MMG fell into trouble previously. It inter alia addressed these issues, namely that:

- 42.1 it disputes the Gradco claim;
- 42.2 the breach notices were issued due to the outstanding R7.7 million owed to the mining right holders;
- 42.3 the SARS liability had escalated due to poor tax advice and unresolved audits. It conceded that its tax affairs have not been in place due to the consultants not doing their work;
- 42.4 it had suffered a profit loss in July 2025 and continues to suffer loss since the business operations have ceased In September 2025;
- 42.5 MMG acted on the incorrect advice from its erstwhile attorneys of record regarding the provisional liquidation proceedings;

42.6 It could not pay Standard Bank's installments recently due to MMG not having access to its bank accounts.

[43] It further paved the way forward by presenting the following that:

- 43.1 the amount due to Phokathaba of R4 million would be settled immediately;
- 43.2 engagements with the Department of Mineral Rights and Energy in terms of Section 11 status would be held; and
- 43.3 Olila Resources with regard to the off-take agreement makes provision for income in an amount of R18.4 million. Olila Resources has been promptly paying for the chrome in terms of the offtake agreement. With Olila alone, it has demonstrated that its gross profit was in the region of R13 million;
- 43.4 the employee salaries would be paid from the operation costs and provision has been made therefore;
- 43.5 the outstanding amount to Rooderand would be paid;
- 43.6 there would be immediate engagement with SARS in respect of the VAT PAYE and COT returns. In fact it has been in communication with SARS already;
- 43.7 post-commencement funding would be made available to fund working capital care and maintenance, payroll arrears due to Standard Bank. The Trust has agreed to provide a facility of R18.5 million over a period of 13 weeks.

[44] The applicants in the founding papers further set out the following:

- 44.1 its profits have exponentially grown since 2023 to over R15 million and its revenue to over R400 million in 2025;
- 44.2 the sale of chrome on a monthly basis averages out to R36 million, It was illustrated that the sale between March 2025 to June 2025 averaged to R36 million;
- 44.3 it also disclosed that its current assets are around R255 million whereas its liabilities being over R219 million ss for the financial statements for the 2025 financial year;
- 44.4 its largest creditor is Standard Bank with the amount owed in terms of the lease agreements is over R136 million and its debt to SARS over R60 million;
- 44.5 The rest of the creditors were also identified on the papers with Standard Bank being the largest creditor;

THE EMPLOYEES

[45] Undisputedly over 400 employees' livelihood are at stake. An attempt to salvage MMG will be for the benefit of the employees as well. The employees explained that before September 2025, they were working on site and received their full salaries.

GOING FORWARD

- [46] Ultimately the proposed plan would have to be voted upon by creditors as to whether MMG should be placed under business rescue and in terms of what plan if they wish to amend same. The business rescue practitioners would take over the reins once an order is granted in favour of business rescue and are required to investigate MMG's financial status and business affairs in order to determine if business rescue is viable.
- [47] In terms of Section 150(1) of the Act, the business rescue practitioners would be required to consult with the creditors, other affected persons and management of the company in finalising the business rescue plan.
- [48] It is their duty to present all the figures which will be set out in the balance sheet and the statement of income and expenses before the plan is adopted. It is accepted, that upon their appointment, they would take over control over the company's affairs, including the decisions of the Board of Directors. They remain the nominal figureheads responsible for the rehabilitation of the company.
- [49] A critical element in the business rescue plan is the allocation of existing funding and post-commencement funding in the implementation of the plan. The process would therefore provide for an all-inclusive process where not only the creditors shareholders would benefit but the employees as well.

- [50] In these circumstances, on the test set out in Propspec, I am satisfied that a factual foundation for the existence of a reasonable prospect that the desired objects can be achieved, has been placed before me.¹⁵

NOMINATION OF THE BUSINESS RESCUE PRACTITIONER

- [51] In terms of Section 131(5) of the Act, this court is entitled to grant an order in appointing an interim practitioner who complies with the requirements of Section 138.

- [52] The applicants have nominated two practitioners, Mr Buha and Ms Mitchell-Marais to be the joint business rescue practitioners for MMG. There appears no opposition to these nominations. Under the circumstances they are for the time being appointed as the business rescue practitioners.

COSTS

- [53] Since the applicants are successful on both urgency and on the relief sought, a draft costs order was proposed by this court. Same has not been disputed by the respondents. Upon considering the submissions made on costs, I see no reason why it should not be granted. In conclusion, the application is granted with the fourth and eight respondents to pay the costs of opposing this application.

¹⁵ Oakdene at paragraph 30


H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the first applicant: Adv. J Vorster SC
Adv. N Davis, Pretoria
Instructed by: Jaco Roos Attorneys Inc

Counsel for the fourth respondent: Adv. M Jacobs, Pretoria
Instructed by: Vezi & De Beer Inc. Attorneys

Counsel for the eighth respondent: Adv. JG Smit
Instructed by: Gothe Attorneys Inc.

Counsel for the employees: Adv. Sevenster
Instructed by: Matthys Krog Attorneys

Date heard: 15 October 2025
Date of Judgment: 03 November 2025