REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 13001/2024

(1) REPORTABLE: YES/**NO**
(2) OF INTEREST TO THE JUDGES: YES/**NO**
(3) REVISED.
……………………
……………………

DATE: 11 / 11 / 2025 SIGNATURE…………………

In the matter between:

TEEMANE HEAVY HAULAGE (PTY) LTD Applicant

(Registration No: 2022/857173/07)

And

GEARS TECHNOLOGIES (PTY) LTD Respondent

(Registration No: 2004/027284/07)

REGISTERED HEAD OFFICE SITUATED AT
[…] V[…] W[…] STREET
PHALABORWA

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **11 November 2025**.

JUDGMENT

Makoti AJ

Introduction

[1] The applicant is **Teemane Heavy Haulage (Pty) Ltd** (Teemane). It has approached the court for an order for the final winding up of the respondent, **Gears Technologies (Pty) Ltd** (Gears). The essence of the application is that the respondent has failed to heed or satisfy the demand that was issued in terms of section 345 of the Companies Act. I will at a later stage deal with the substance of the demand and the legislative provisions.

[2] Teemane is asking the court to grant it relief with a specific order that reads as follows:

> **"This is an application for the winding up of the Respondents on the grounds that is unable to pay its debts as is contemplated in sec 344(F), as read with sec 345(1)(A) and on the grounds that it is just an equitable to do so, as envisaged in sec 344(H) of the Companies Act, 61 of 1973 (as amended) as read with clause 9 od schedule 5 of the Companies Act, 71 of 2008 (the 2008 Companies Act)."**

[3] Gears opposes the application on grounds that I shall traverse in the course of this judgment.

Issue for determination

[4] The sole question that stands for determination is whether the circumstances that the parties find themselves in warrant Gears' final winding up. To expand briefly, the real issue is whether Gears is unable to pay its debts and therefore liable to be wound up.

[5] I have earlier indicated that Teemane has indicated that it has served Gears with a written demand in terms of section 345(1) of the Companies Act,[1] and that the latter has failed to satisfy the demand. Further, one will have to decide whether Gears has a genuine or *bona fide* defense to the case made by Teemane.

[6] Gears opposes the application on the grounds that:

[a] it was not served with a notice in terms of section 345(1)(a) of the Companies Act;

[b] Teemane has not established a *prima facie* case for its final winding up; and

[c] it has a *bona fide* defense to the claimed made by Teemane.

[7] The facts will reveal which of the parties' case should succeed, backed by the law of course.

Summary of the facts

[8] The parties are companies in a contractual relationship in which Teemane rents out heavy trucks and equipment to Gears. The agreement which started on or about 15 March 2024 is common cause. It terms of the agreement Teemane rented three trucks to Gears, and at determined and

1 Act No. 61 of 1973.

agreed rates. During or about 19 June 2024 Teemane claimed that it was owed by Gears an amount of **R1 157 684-08** for rental of trucks. It then issued the demand in terms of section 345(1)(a) of the Companies Act against Gears.

[9] Subsequent to the issuance of the written demand in terms of the statute, Gears addressed a letter to Teemane to propose a settlement of the debt dispute. In its proposed settlement is dealt with the terms for payment the outstanding debt. It also proposed continued terms for continued business between the parties.

[10] In the letter Gears, duly represented by its then legal representatives, denied liability for the debt claimed by Teemene. It instead acknowledged indebtedness for two of the trucks for the period of May 2024. Despite the denial of liability, Gears tendered payment for rental of two of Teemane's trucks for the month on May 2024. At paragraph 9 of the letter of 8 June 2024 the following was stated:

> **"Our client is willing to pay what is owed to your client in terms of the agreement on the following basis:-**
>
> **9.1 Your client provides our client with the invoice for May 2024 for the rental of two trucks as agreed upon.**
>
> **9.2 Your client removes the 3 trucks immediately and release the goods loaded on all its trucks.**
>
> **9.3 Your client confirms in writing that the two trucks will be made available to use for June 2024 and provide our client with the invoice for June 2024 (minus the days that the trucks were not working), which will be paid on receipt of the confirmation.**
>
> **9.4 The parties proceed to work as per the original agreement from month-to-month payments to be made upfront per month and a written agreement to be put in place."**

[11] What I deduce from this is an acknowledgement of debt, and willingness to pay what the respondent has called *'…what is owed to your client.'* Both the

acknowledgement and willingness to pay belie the denial by Gears that it is not indebted to Teemane. It follows then that Gears needed to have shown that it has settled what in promised to do.

[12] The letter was not the last document in which Gears had acknowledged its indebtedness to Teemane. On 19 June 2024 a demand was made in a letter to Gears' lawyers in which it was indicated that Teemane was not willing to hold further negotiations unless payment of two amounts were made to the latter. The amounts in question were **R726 434-08** (for May 2024 invoice) and **R431 250-00** (for June 2024 invoice). The May invoice had still not been paid on the date in question even though Gears had called for it in the letter that I have quoted above.

[13] In a letter dated 28 June 2024 Gears made a 'without prejudice offer' stating amongst others that:

> **"3.1 Our client pays the amounts as set out in Annexure "A" and "B" of your letter dated 19 June 2024 as well as attorney and own client costs in the amount of R45 000-00 with immediate effect. Moneys will be paid directly to your client in the usual account."**

[14] Resultant from the said payment offer, the parties on the same date of 28 June 2024 concluded agreement. At paragraph 1 of the document the parties agreed about Gears' indebtedness and that the amounts as mentioned in paragraph 12 above were to be settled immediately. They also agreed about the continued relationship in terms of which Gears hired two lowbed trucks from Teemane for the months of July, August and September 2024 and at the monthly rental of **R171 000-00** excluding VAT. The settlement was signed by representatives of the parties.

[15] On 17 October 2024 Teemane addressed a letter to Gears, through legal representatives, demanding payment of an amount of **R433 325-00**. This

amount was accounted for in accordance with the terms of the settlement agreement that the parties had reached. In the letter it was specifically made known to Gears that an application for its liquidation will be instituted should it persist with its failure to make the payment of the said amount. The threat of this litigation was made again on 21 October 2024.

[16] Payment of the said amount was not done as at 21 October 2024 hence this application was ultimately initiated. In its answering papers Gears denies indebtedness. Not only that, it alleges that it was not served with a demand as contemplated in section 345(1) of the Companies Act. Even by 28 October 2024 there was still no payment and no response from Gears' legal representatives.

[17] The facts canvassed above are largely common cause between the parties.

Legislative framework

[18] The grounds for the final winding-up of a company are regulated in terms of statute. A party seeking forced winding-up of a company may rely on the provisions of section 345 of the 1973 Companies Act. It is the same in this case in that Teemane relies on a demand that was issued in terms of section 345(1)(a) of the Companies Act, which is dated 30 May 2024. Based on the demand and the discussions which followed in the weeks after, a settlement agreement was concluded on 28 June 2024 which set out full contractual terms to govern the parties relationship.

[19] The statutory provision reads:

> **"(1) A company or body corporate shall be deemed to be unable to pay its debts if-**
>
> ***(a)* a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred rand then due-**

(i) **has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or**

(ii) **in the case of any body corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the Court may direct, and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;"**

[20] An unpaid creditor has a right to a winding-up order against the company that has failed to honour its debt obligations.[2] How the provisions of section 345(1) of the Companies Act operate was explained by Malan J (as he then was) in *Body Corporate of Fish Eagle v Group Twelve Investments*[3] as follows:

> **"The deeming provision of s 345(1)(a) of the Companies Act creates a rebuttable presumption to the effect that the respondent is unable to pay its debts (*Ter Beek*'s case *supra* at 331F). If the respondent admits a debt over R100, even though the respondent's indebtedness is less than the amount the applicant demanded in terms of s 345(1)(a) of the Companies Act, then on the respondent's own version, the applicant is entitled to succeed in its liquidation application and the conclusion of law is that the respondent is unable to pay its debts."**

[21] On the facts that I have considered Gears is indebted to Teemane in the amount of **R433 325-00**. I have also dealt with facts which revealed where that amount of indebtedness came from. Despite the unequivocal terms of the settlement agreement, which terms were proposed by Gears, it has not complied with its obligations. It remains indebted to Teemane.

Was a letter in terms of section 345(1) of the Companies Act was served?

[22] This is a fact based inquiry. And the facts are not difficult to decode. On 19 June 2024 a statutory letter was sent to Gears demanding payment of the

2 Afgri Operations Limited v Hamba Fleet (Pty) Ltd [2017] ZASCA 24; 2022 (1) SA 91 (SCA) at para 12.
3 2003 (5) SA 414 (W) at 428B-C.

amount contained in it. Gears denied liability for any indebtedness. The latter then proposed a settlement of the debt. Not only did it propose terms for payment of the debt, it also proposed terms for continuing the relationship with Teemane.

[23] The question is whether, upon the settlement agreement being reached and new debt arising due to new invoices, Teemane ought to have issued another letter or updated its demand. It will be recalled that when the demand was first made in June 2024 the amounts involved were different to what is being demanded at this stage. The amounts in question totaled **R1 157 684-08**. In the present instance Teemane is claiming for new debt which arose after the settlement agreement was reached. It is for invoices which were issued for the continued rental of the trucks.

[24] The amount of debt that Teemane is pursuing came as a result of the settlement that was proposed by Gears. It cannot deny that it was part of the demand which formed part of the section 345(1) letter of 19 June 2024. In *Nathaniël & Efthymakis Properties v Haartebeestspruit Landgoed CC*[4] it was said that service of the demand in terms of section 345(1) of the Companies Act was peremptory, but not the form of service.

[25] In my mind, service intended in the statutory provision should disclose the nature and value of the debt claimed. It will afford an alleged debtor an opportunity to consider its position in relation to the debt and to either make payment or to dispute it. I find that to be the purpose of the provision, which is to tell the alleged debtor what the debt is about. That can hardly be achieved if the debt is not spelt out.

4 [1996] 2 All SA 317 (T).

[26] As I indicated, Teemane has based this application on new debt, not the one that was owed when demand was made on 19 June 2024. The debt came about as a result of Gears renting two trucks from Teemane for the months of July to September. I accept that the settlement agreement lay the ground for continued contractual relationship. But Teemane would not have issued the invoices had the rucks not been rented out to Gears for those months. I therefore find that Teemane ought to have issued a new section letter of demand as contemplated in section 345(1) of the Companies Act.

[27] On 17 and 28 October 2024 Teemane issued demands for payment of the new debt. In the letters issued on those dates it was indicated that liquidation proceedings may follow should Gears fail to settle the amount of **R433 325-00**, which figure is based on the new invoices that were issued. At paragraph 3 of the letter it was written:

> **"Given the above, our instructions are, that if the amount of 433 325-00 is not paid into our trust account by close of business, on the 21st of October 2024, we will file the liquidation application against your client."**

[28] Before getting to that paragraph Teemane had indicated to Gears that it was in breach of the settlement agreement that the parties had reached on 28 June 2024. The said amount was based on an invoice that was issued on 02 September 2024. To rely on section 345(1) the applicant must show that it has issued the demand which set out the claim and has allowed the respondent a period of 21 days to pay the debt.

[29] In *Imobrite (Pty) Ltd v DTL Boerdery CC*,[5] in which the Supreme Court of Appeal summarized the principles to be applied in cases where a debt is disputed, as follows:

[5] Imobrite (Pty) Ltd v DTL Boerdery CC (1007/20) [2020] ZASCA 67 (SCA) at para 14.

> **"It is trite that, by their very nature, winding-up proceedings are not designed to resolve disputes about the existence or non-existence of a debt. Thus, winding-up proceedings should not be resorted to enforce a debt that is bona fide (genuinely) disputed on reasonable grounds. That approach is part of the broader principle that the court's processes should not be abused.”**

[30] The trite principle that liquidation may not be used to enforce disputed debt payments was repeated in a number of authorities. Also that a liquidation application is not suitable to resolve complex factual disputes.[6] Based on the full facts that I have already canvassed, the purported dispute of indebtedness is not genuine. It is contrived. I am of the view that Gears attempted to create a factual disputes with the intention to defeat the winding-up application.

[31] It will be recalled that when it was confronted with the new demand Gears’ new lawyers promised to revert upon taking instructions. Gears failed to dispute the debt and to provide the reasons for doing so. I therefore find that a demand was indeed submitted which unequivocally detailed the debt and the details for it.

Whether Gears should be wound-up

[32] I have reflected on the fact that the claim for payment was for an amount that was invoiced to Gears on 02 September 2024. It was for rental of two trucks for that month, meaning that the debt had not arisen when the parties concluded a settlement agreement on 28 June 2024. What the parties agreed about in that case were the terms for their continued relationship, most importantly the rate applicable for hiring of the trucks.

---

[6] Trinity Asset Management (Pty) Ltd v Grindstone Investments (Pty) Ltd 2017 (12) BCLR 1562 (CC); 2018 (1) SA 94 (CC) at para 154.

[33] Then, also, there is a question whether Teemane was entitled to levy fees for the month of September 2024, given the messages exchanged via WhatsApp between the companies' representatives, Riaan and Daisy. Gears attempted to terminate the agreement, a step which was not accepted by Teemane which sought to hold the former to the terms of the agreement. In *Imorbrite*, *supra*, the court held further that:

> **"[16] In this matter, it can hardly be disputed that the respondent had no valid defence against the appellant's claim. First, not a single instalment had been paid in repayment of the debt. Second, the indebtedness in respect of the capital amount was not disputed at any stage; instead, the respondent's claim that the debt was incorrectly calculated was based on the alleged miscalculation of interest and the facility fee. Notably, despite remaining in default beyond the 21-day period stipulated in the statutory demand, the respondent failed to tender to pay what is considered to be the correct amount, nor did it make any suggestions regarding how to discharge its indebtedness, …, there can be no merit in the suggestion that the appellant was attempting to enforce payment of a debt which was bona fide disputed. That being the case, it cannot be accepted that the appellant's application was predicated on any reason other than the bona fide bringing of winding-up proceedings. Therefore, the respondent has not shown that the winding-up proceedings constituted an abuse of the court's process. Counsel for the respondent's concession on this aspect was therefore correctly made." [Emphasis added]**

[34] On the facts, the indebtedness that existed on 28 June 2024 appears to have been discharged. There is no indication as to when that was done. My view in this regard is fortified by the fact that the debt that Teemane has raised for this application is new and arose in September 2024, after passage of two months. The dispute now between the parties is whether that amount of **R433 325-00** was due and payable.

[35] Bokako AJ had the following to say in *Van Veluw Beheer BV v Maxxliving (Pty) Ltd and Another*:[7]

7

> **"20. A winding-up order will not be granted where the sole or predominant motive or purpose of seeking the winding-up order is something other than the bona fide bringing about of the company's liquidation. It would also constitute an abuse of process if there is an attempt to enforce payment of a debt that is bona fide disputed or where the motive is to oppress or defraud the company or frustrate its rights."**

[36] It is also trite that where the court finds that a debt is disputed bona fide, it may not grant liquidation order. On the facts Gears disputes the debt on the basis that Teemane ought not to have charged fees for the month of September 2024. The parties should go to battle over that question in my view.

[37] I find that liquidation is not appropriate in this case, also because the demand in terms of section 345(1) of the Companies Act did not afford Gears a period of 21 days to discharge the debt.

Order

[38] I make the following order:

[a] The application for the winding-up of the respondent is dismissed with costs.

M. Z. MAKOTI

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION

APPEARANCES:

FOR APPLICANT	**:**	**JF MOOLMAN** **N BARNASCHONE ATTORNEYS** **C/O PRATT LUYT & DE LANGE ATT** **POLOKWANE**
FOR RESPONDENT	**:**	**ADV K MAGAGULA** **THOMSON WILKS INC** **C/O DDKK ATTORNEYS** **POLOKWANE**
DATE HEARD:		**03 JULY 2025**
JUDGMENT DELIVERED:		**11 NOVEMBER 2025**