

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 2025-186285

Date of hearing: 19 November 2025

Date delivered: 5 December 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/ NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/ NO	
(3) REVISED	
5/12/25	
DATE	SIGNATURE

In the application between:

ROIHC INVESTMENTS (PTY) LTD

Applicant

and

GIDEOTECH INVESTMENTS HOLDINGS

(PTY) LTD (IN BUSINESS RESCUE)

First Respondent

JOHAN NEL N.O.

Second Respondent

TECHNOLOGY AND MINERAL SOLUTIONS

LTD (IN BUSINESS RESCUE)

Third Respondent

NDINGENI MOSES SINGO N.O.

Fourth Respondent

MATIMU MANDHLAZI N.O.

Fifth Respondent

**THE AFFECTED PERSONS OF TECHNOLOGY
AND MINERAL SOLUTIONS LTD
(IN BUSINESS RESCUE)**

Sixth Respondent

**THE AFFECTED PERSONS OF
GIDEOTECH INVESTMENTS HOLDINGS
(PTY) LTD (IN BUSINESS RESCUE)
THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

Seventh Respondent

Eighth Respondent

This judgment is handed down electronically by the Judge whose name is reflected herein, and is submitted to the parties or their legal representative by email. This order is further uploaded to the electronic file of CaseLines by the Judge or his Registrar. The date of this order is deemed to be 5 December 2025.

JUDGMENT

SWANEPOEL J:

INTRODUCTION

[1] This application concerns the first respondent's ("Gideotech") 60% shareholding in the third respondent ("Solutions"). The applicant is the owner of the remaining 40% shareholding. Both Gideotech and Solutions have been placed under business rescue in terms of Chapter 6 of the Companies Act, 71 of 2008. The second respondent is cited in his capacity as appointed business rescue practitioner of Gideotech. The fourth and fifth respondents are the appointed business rescue practitioners for Solutions. The sixth and seventh respondents are those

persons affected in the business rescue of Gideotech and Solutions respectively. Relief is only sought against the first, second, third, fourth, fifth and eighth respondents, the remaining respondents only being cited inasmuch as they may have an interest in the matter.

[2] The applicant seeks an order that the matter be heard urgently. Secondly, the applicant seeks leave to sue Gideotech in terms of section 133 (1) (b) of the Companies Act, 71 of 2008 ("the Act"). The substantive relief that the applicant seeks is a declaratory order that an event of default has occurred, which entitles the applicant to purchase Gideotech's shareholding in Solutions, in accordance with clause 18 of a shareholders' agreement entered into by the applicant and Gideotech during January 2025. The applicant also seeks ancillary relief relating to the implementation of the sale of shares in terms of clause 18.

[3] The relevant clauses in the shareholders' agreement read as follows:

"Insolvency event means in relation to a specific person, any of the following:

3.23.1...

3.23.5. A shareholder is, or takes steps to be placed under business rescue in terms of the Act.

18.1 For the purposes of this clause 18 (Default Option) an **'Event of Default'** in relation to a shareholder means the occurrence of any of the following:

18.1.1....

18.1.5 an Insolvency Event occurring in relation to it;....

18.2 If an Event of Default happens to a shareholder (**'the defaulting shareholder'**) it shall give notice to the other shareholders (the **'Non-Defaulting Shareholders'**) as soon as possible and, if it does not, is deemed to have given notice of it on the date upon which any of the Non-Defaulting shareholders becomes aware of the Event of Default.

18.3 The Non-Defaulting shareholders shall have the option, within thirty (30) Business Days of receiving the notice or deemed notice of an Event of Default to require the Defaulting Shareholder either to purchase all (but not some only) of the Shares and Loan accounts held or beneficially owned by the Non-Defaulting Shareholders or to sell to the Non-Defaulting Shareholders all (but not some only) of the Shares and Loan accounts held or beneficially owned by the Defaulting Shareholder. The option may be exercised by delivering written notice of default to the Defaulting Shareholder, which option it wishes to exercise (**'Option Notice'**).

18.4 The Non-Defaulting Shareholders shall within thirty (30) Business Days of the Option Notice agree the Prescribed

Price, failing which any of them may refer the matter to an expert who shall determine and certify the prescribed Price in accordance with the provisions of (Schedule 5 Valuation by Expert), acting as independent expert and not arbitrator.”

[4] Clause 18.8 provides for the Non-Defaulting shareholder to deliver a Disenfranchisement Notice to the defaulting shareholder which essentially strips the defaulting party of its rights to attend general meetings and to appoint or remove directors. It prevents directors appointed by a defaulting party from exercising their rights as directors.

URGENCY

[5] The first matter for determination is whether the application is urgent. Rule 6 (12) of the Uniform Rules of Court provides that in an urgent application the Court may dispense with the forms and service provided for in the rules. In each case the applicant must fully set out the reasons why the matter should be heard urgently, and each case will be considered on its own facts.

[6] Relevant to urgency in this case is that the parties recognized that if there were to be an event of default, it may hamper Solutions’ affairs, and they agreed that in such an event, (which includes a shareholder being placed under business rescue), the other shareholders would acquire an entitlement to purchase the defaulting party’s shares. The purpose, applicant says, was to prevent prejudice to Solutions should one of its shareholders be placed in business rescue or otherwise default.

[7] The applicant became aware of the default on 14 August 2025, and on the same day it delivered an Option and Disenfranchisement Notice to the second respondent in terms of clause 18.8.

[8] Not only is Solutions in business rescue, its two subsidiaries are also in business rescue. The business rescue plans of these various companies are interlinked and are reliant upon the beneficiation of a 21.5 million ton stockpile of minerals that is owned by a Solutions subsidiary. The applicant says that if the business rescue plan succeeds, it would result in payment of 100% of creditors' claims. However, the implementation of the plan requires a capital investment of R 205 million.

[9] In order to raise the capital, the services of Moore Debt Advisory Johannesburg ("Moore") has been enlisted. On 22 September 2025 Moore wrote to the applicant. It advised that in order to successfully raise the capital, it was necessary to "*present a clean shareholding structure in which all business rescue processes through the ownership chain have been concluded....*". Moore expressed the view that the ongoing business rescue of Gideotech was a stumbling block to the raising of capital. It is this letter, the applicant says, that alerted it to the possibility that the Gideotech business rescue might sabotage the Solutions business rescue plan, and that of its subsidiaries.

[10] In short, the business rescue process in which Gideotech finds itself is, the applicant says, an impediment to the implementation of the Solutions business rescue plan, and that of its subsidiaries. The applicant

says that the Gideotech business rescue will result in the Solutions business rescue, and that of its subsidiaries being delayed, it would delay the settlement of creditor's claims, and ultimately may force the business rescue practitioners into converting the business rescue process into a liquidation. This might result in a loss in the order of R 255 million.

[11] Essentially Gideotech says that the applicant has known of the possibility that the proposed Gideotech business rescue plan might delay the process since August 2025, and that it has also been aware of the moratorium in terms of section 133 of the Companies Act since then. It says that any urgency that there might have been is self-created. It also says that the shareholders' agreement provides for the possibility of breach and that an alternative dispute resolution procedure is provided for in the agreement. Gideotech says that even if there were a delay in obtaining finance, it would not jeopardize the business rescue process.

[12] It has long been established that commercial interests may in appropriate circumstances establish urgency:

"In my opinion the urgency of commercial interests may justify the invocation of Uniform Rule 6 (12) no less than any other interests. Each case must depend on its circumstances."¹

[13] Business rescue proceedings are by their very nature urgent. They commence when the company files a resolution to place itself under supervision in terms of section 129 (3) or a court orders that the company be placed under supervision in terms of section 129 (5) (b).² A business

rescue plan must be published within 25 business days after the appointment of the practitioner.³ If the process has not ended within three months after its start, the practitioner must prepare a report for the court on the progress of the business rescue and update the report at the end of each subsequent month.

[14] It is therefore undesirable that the process be delayed. The triggering event for urgency in this case was the Moore letter on 22 September 2025, that warned of possible delays in obtaining capital if Gideotech continued to be a shareholder of Solutions. The applicant then pursued the matter with some urgency, issuing this application on 8 October 2025. I do not find that the two week delay in issuing the application was unreasonable given the complexity of the matter.

[15] It is also apparent that a delay may not only hamper, but might prevent the raising of capital. The business rescue plans cannot be implemented until the necessary capital has been raised. Given the fact that the successful rescue of three companies is at stake, and given the likely loss that may occur should the business rescue be unsuccessful, I believe that the matter is urgent.

THE SECTION 133 MORATORIUM

[16] Section 133 (1) (a) and (b) of the Act reads as follows:

133 General moratorium on legal proceedings against company

- (1) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except-
 - (a) with the written consent of the practitioner;
 - (b) with the leave of the court and in accordance with any terms the court considers suitable;...

[17] Section 133 contains other exceptions to the general principle that legal proceedings may not be brought against the company, but they are not relevant to this case.

[18] Two other provisions are relevant to an understanding of the moratorium. Section 134 (1) (c) provides that during business rescue proceedings, notwithstanding any agreement to the contrary, no person may exercise a right in respect of any property in the lawful possession of the company, save to the extent that the practitioner consents in writing. In terms of section 136 (2) of the Act, the practitioner may suspend the operation of any obligation under a contract entered into prior to the commencement of business rescue proceedings.

[19] On 20 August 2025 the second respondent wrote to the applicant invoking the protection of section 133. Gideotech argues that the

applicant is, consequently, prohibited from pursuing this application. Two questions arise:

[19.1] Is this the type of transaction that is hit by the moratorium?

[19.2] If the answer is in the affirmative to the first question, then, should the applicant be granted leave to bring the application in terms of section 133 (1) (b)?

[20] The purpose of the moratorium was explained in *Chetty v Hart*⁴ where the Court said:⁵

“The obvious purpose of placing a company under business rescue is to give it breathing space so that its affairs may be assessed and restructured in a manner that allows its return to financial viability. The requirement for the practitioner’s consent to be obtained is to give him the opportunity, after his appointment, to consider the nature and validity of any existing or pending claim and how it is to be dealt with, for example by settling it or continuing with the litigation. In particular, the practitioner’s concern is directed at assessing how the claim will impact on the well-being of the company and its ability to regain its financial health. A general moratorium on the rights of creditors enforcing their rights against the company is therefore crucial to achieving this objective.”

[21] The applicant has suggested that this claim is not hit by the provisions of section 133, on the basis that it is not a “*legal proceeding*

including enforcement action” as envisaged by the section. It says that the contractual mechanism, the provisions of Clause 18, trigger an obligation to transfer the Gideotech shares to the applicant. It argues that this type of obligation is distinct from the enforcement of a normal pre-commencement claim.

[22] The applicant has argued, on the basis of *Murray NO and Another v Firststrand Bank Ltd*⁶ that one must distinguish between enforcement and termination. It argues that if there is only a termination of a contract, such termination is not ‘enforcement’ and falls outside of the ambit of the moratorium.

[23] I do not agree with the applicant. *Murray* is distinguishable from this matter on the facts. In *Murray* the Bank cancelled an Instalment Sale Agreement, and then, with the consent of the practitioner, it repossessed the goods. The court held that the cancellation was a unilateral step not subject to the moratorium. In this case, the applicant says that it has terminated Gideotech’s shareholding by its election to acquire the shares. The distinction between these cases lies in the fact that the applicant not only seeks to terminate Gideotech’s shareholding, it also seeks the transfer of the shares. In that sense it is seeking to take ownership of Gideotech property, and it is hit by the moratorium. In my view the distinction that the applicant seeks to make is a distinction without a difference.

[24] The applicant has also argued that the moratorium operates only in relation to 'property' of the company in rescue, and does not extend to third party assets such as shares in another company.

[25] As for what is 'property' in our law, the Court in *African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd*⁷ held that the right to claim payment from a debtor and the right to vote at a statutory meeting constituted 'property' within the meaning of the Act. The Constitutional Court has cautioned that assigning a comprehensive meaning to the concept 'property' was not wise. The Court said⁸:

"In *Law Society of South Africa and Others Minister of Transport and Another* this court was faced with a right which is not universally enforceable but sourced in the law of obligations. The court assumed, without finding, that a claim for loss of earnings or spousal support is property.... It would be in accordance with developments in other jurisdictions where personal rights have been recognized as constitutional property.."

[26] In my view, there is no reason to depart from the ordinary meaning of the word 'property', which is "things owned"⁹, or "a thing that is owned by someone".¹⁰ It would be consonant with the approach taken by the Constitutional Court to regard the incorporeal rights arising from the shareholding to be property for purposes of section 133. The moratorium therefore applies to this application.

SHOULD LEAVE BE GRANTED UNDER SECTION 133 (1) (b)

[27] That is not the end of the matter. The next issue is whether the applicant should be granted leave to bring this application, and if so, the ultimate question is whether it is entitled, under the shareholders' agreement, to the transfer of the shares.

[28] The Courts have often repeated the principle that the moratorium is not an absolute bar to the commencement of legal action against a company under supervision.

[29] In *Chetty* it was argued that the practitioner's consent was a jurisdictional requirement to legal proceedings. The Court held that consent is not a jurisdictional fact that is required to be established, but rather a procedural bar to the initiation or continuation of legal proceedings. The point of the moratorium is to give the practitioner breathing space to consider whether or not to resist legal proceedings, and to prevent a company that is in financial distress from being dragged through litigation.

[30] As *Chetty* held though¹¹:

"...s133 (1) (a) is not a shield behind which a company not needing the protection may take refuge to fend off legitimate claims. Thus s 133 (1) (b), which is to be read conjunctively with s 133 (1) (a) because of the word 'or' in exceptions (a) to (e), permits a creditor to seek the court's imprimatur to initiate or continue legal proceedings against the company in the event of a practitioner's refusal to give consent, or directly, even without permission of the

practitioner having been sought. So s 133 (1) (a) is not an absolute bar to legal proceedings being instituted or continued against a company under business rescue.”

[31] In *African Bank*¹² the Court pointed out that business rescue proceedings were not intended to protect a company against all creditors at all costs.

“Section 7 (k) of the Act specifically states that one of the purposes of the Act is to ‘provide for the efficient rescue and recovery of financially distressed companies **in a manner that balances the rights and interests of all relevant stakeholders.**” (my emphasis)

[32] The need to find a balance between the interests of the company and the competing interests of the creditors was also emphasized in *Oakdene Square Properties (Pty) Ltd v Farm Bothasfontein (Kyalami) (Pty) Ltd*¹³. In summary therefore, the purpose of section 133 is to give the company an opportunity to regroup, for the practitioner to assess its financial affairs, and to devise a plan to bring the company to financial health. It is not intended to prevent a creditor from bringing a claim in circumstances where the claim would not prejudice the company financially nor the implementation of the business rescue plan.

[33] In attempting to strike a balance between the competing interests, one would have regard to the overall financial situation of the company; the company’s ability to settle, either partially or in full, the body of creditors’ claims; the nature of the applicant’s claim and the potential

impact of the claim on the claims of other creditors if the claim were to proceed; whether a business rescue plan has been devised, adopted or implemented, the general current state of the rescue proceedings, and the potential impact on the business rescue plan should leave to institute or continue proceedings be granted.

[34] I do not believe that the above are the only factors that would necessarily be relevant, and each case must, as always, be decided on its own facts. One would bear in mind, on the one hand, that the creditor who has a legitimate claim is in principle entitled to enforce that claim, and that the moratorium has a stifling effect on the claim. One would consider, on the other hand, the impact that the claim may have on the company and the practitioner's attempts to restore it to financial health.

[35] Gideotech's argument is essentially the following: It denies that an insolvency event occurred as defined in the shareholders' agreement, in that it denies committing an act of insolvency. It says, further, that even if there had been an insolvency event, the enforcement of the agreement is prevented by the moratorium. In other words, Gideotech's argument is that it agreed to sell its shares if it were to be placed under business rescue, but the moment it was placed under business rescue, it said that it could not be forced to sell its shares. The argument simply does not make sense.

[36] None of the allegations in the answering affidavit disclose prejudice to Gideotech or its creditors should the shares be sold to the

applicant. On the contrary, the sale would likely enhance Gideotech's liquidity once the sale has been completed. There is also no evidence that the implementation of the shareholders' agreement would impede the business rescue of either Gideotech or Solutions. Consequently, I will grant leave for the applicant to bring this application.

IS THE APPLICANT ENTITLED TO PURCHASE THE SHARES

[37] The respondent essentially raises two defences in relation to the agreement (save for the moratorium defence). Firstly, Gideotech says that the inception date of the agreement occurs once the agreement is executed and the Memorandum of Incorporation ("MOI") has been filed. It says that the MOI was never filed, and that the shareholders' agreement therefore never became effective.

[38] Gideotech's argument is incorrect for two reasons: Firstly, the "Completion/Effective Date" of the agreement is specifically stated as being 29 January 2025. Secondly, the parties, including Gideotech, have conducted themselves on the basis that the agreement is fully of effect. Gideotech has, for instance, appointed directors in terms of the shareholders' agreement, share certificates have been issued reflecting the respective shareholdings in the company, and Gideotech's attorneys have accepted payment of monies from the applicant in accordance with the terms of a settlement agreement that underlies the shareholders' agreement. Both parties have, therefore, given effect to the shareholders' agreement.

[39] The second defence is that there has not been an “insolvency event” as defined by the shareholders’ agreement. Gideotech avers that the agreement intended to provide for an insolvency event by a director, not by a shareholder. It says so because of a formatting error in the document. The document reads as follows:

“3.23 Gideotech Director” means a director (or directors) appointed by Gideotech in accordance with this Agreement
“Insolvency Event” means in relationship to a specified person any of the following:...

3.23.5 a Shareholder is, or takes steps to be placed under business rescue and/or is placed under business rescue in terms of the Act.”

[40] Gideotech advances the argument that “insolvency event” refers to an act of insolvency by a director. Perusal of the document makes it clear that the heading “insolvency event” was accidentally typed on the same line as, and at the end of the definition of, “Gideotech director”. It was a formatting error, and a mere reading of clause 3.23.5 shows that the words “insolvency event” referred to an insolvency event in respect of a shareholder, not a director. It specifically refers to ‘business rescue’, a process that cannot apply to an individual. If one reads clause 3.23 together with 3.23.5 the interpretation placed on the clause by Gideotech does not make sense.

[41] Gideotech raised two other defences: the first being misjoinder of Gideotech's shareholders, and the second, the fact that there are pending applications for the removal of Solutions' practitioners (the fourth and fifth respondents). These defences were not persisted with in argument, and I do not think that they have any merit. Gideotech's shareholders do not, in my view, have a direct and substantial interest in these proceedings. As far as the removal application is concerned, even if successful, the identity of the new practitioners has no impact on the merits of this application. Gideotech thus has no defence to the applicant's claim for transfer of the shares.

[42] I therefore make the following order:

[42.1] The applicant's non-compliance with the rules and forms of Court is condoned, and the matter is heard as one of urgency.

[42.2] The applicant is granted leave to bring this application in terms of section 133 (1) (b) of the Companies Act, 71 of 2008.

[42.3] It is declared that an event of default has occurred in respect of the first respondent, as a result of which:

[42.3.1] The applicant is entitled to exercise and execute its right to acquire the first respondent's 60%

shareholding in the third respondent, in accordance with clause 18 of the shareholders' agreement;

[42.3.2] The first and second respondents are ordered to give effect to clause 18 of the shareholders' agreement;

[42.3.3] The first and second respondents are ordered to take all reasonable actions to facilitate the exercise of the applicant's rights in accordance with clause 18 of the shareholders' agreement, including nominating a bank account for receipt of payment of the prescribed price;

[42.3.4] Upon the applicant providing proof to the fourth and fifth respondents of payment of the prescribed price in terms of clause 18 of the shareholders' agreement, the fourth and fifth respondents are ordered to give effect to the exercise of the applicant's rights in terms of clause 18 of the shareholders' agreement by:

[42.3.4.1] Amending the share register of the third respondent;

[42.3.4.2] Issuing a share certificate to the applicant reflecting the applicant's acquisition of

the first respondent's 60% shares in the third respondent.

[42.4] The eighth respondent is ordered to give effect to any changes in shareholding arising from this order.

[42.5] The first and second respondents shall pay the costs of the application on Scale C, jointly and severally, the one paying the other to be absolved.


**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

COUNSEL FOR THE APPLICANT:

**ADV. L SIYO
ADV. K GWAZA**

INSTRUCTED BY:

**JOUBERT GALPIN SEARLE
ATTORNEYS**

**COUNSEL FOR THE FIRST AND
SECOND RESPONDENTS:**

MR. W NIEDINGER

INSTRUCTED BY:

**DUVENHAGE & VAN DER MERWE
INC**

HEARD ON:

19 NOVEMBER 2025

JUDGMENT DELIVERED:

5 DECEMBER 2025

¹ Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W) at 586 G

² Section 132 of the Act.

³ Section 150 (5) of the Act.

⁴ Chetty v Hart 2015 (6) SA 424 (SCA)

⁵ At para 28

⁶ Murray NO and Another v Firststrand Bank Ltd 2015 (3) SA 438 (SCA)

⁷ African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd 2013 (6) SA 471 (GNP)

⁸ In *National Credit Regulator v Opperman and Others* 2013 (2) SA 1 (CC) at paras 61-63

⁹ Cambridge Dictionary

¹⁰ Oxford Dictionary

¹¹ At para [40]

¹² At para [39]

¹³ *Oakdene Square properties (Pty) Ltd v Farm Bothasfontein (Kyalami) (Pty) Ltd* 2012 (3) SA 273 (GSJ)