



**THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

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

Date: 03 December 2025

In the matter between:

Case no: 2025-024553

**INVESTEC BANK LIMITED**

Applicant

and

**SLAVA PROPERTY GROUP (PTY) LIMITED**  
(Registration number 2020/008670/07)

Respondent

In the matter between:

Case no: 2025-024599

**INVESTEC BANK LIMITED**

Applicant

and

**VALSA ENGINEERING (PTY) LIMITED**  
(Registration number 2022/511023/07)

Respondent

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## JUDGMENT

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DU PLESSIS J

### *Introduction*

[1] In both applications cited the creditor, Investec Bank Limited (“Investec”), is applying for the winding-up of each of the respondents, Slava Property Group (Pty) Limited (“Slava”) and Valsa Engineering (Pty) Ltd (“Valsa Engineering”) on the basis that they are unable to pay their debts, and is deemed to be unable to pay their debts in terms of section 344(f) read with section 345(1)(a) and (c) of the Companies Act 61 of 1973 (“the old Companies Act”), read with item 9 of schedule 5 of the Companies Act 71 of 2008 (“the new Companies Act”). Both applications arise from the same on-demand guarantee, and the respondents in both matters oppose the applications. The matters were heard together for reasons that will soon become apparent.

[2] Investec concluded an on-demand guarantee with each of the respondents in their favour in respect of the indebtedness of a related company, Valsa Trading (Pty) Ltd (“Valsa Trading”), pursuant to a Trade Finance Facility Agreement. It is through this on-demand guarantee agreement that Investec avers that it is the creditor of the respondents in an amount of R13 010 895,86 as of 30 June 2025, together with interest. The indebtedness in each application is the same: each respondent guaranteed as primary obligation in the Guarantee the indebtedness of Valsa Trading to the Investec under a Trade Finance Facility Agreement. Moreover, the extent of the indebtedness and the grounds for opposition are the same, meaning that the affidavits in both applications are substantively the same, apart from the identity of the parties and the averments as to why each respondent is unable to pay its debts.

[3] It should be noted from the outset that the respondents applied at the last minute to consolidate the matters. This is not necessary, as each application stands or falls on its own merits, although they were argued together for convenience. The respondents will collectively be called “the respondents”, and where a respondent is referred to separately, it will be either Slava or Valsa Engineering”.

### *Summary of claims and defences*

[4] Each respondent entered into an “on-demand” Guarantee, which, together with the Common Terms Agreement, governs the relationship between the parties. The underlying indebtedness relates to the related company Valsa Trading, for which each respondent guaranteed as a principal obligation, as set out in the Trade Finance Facility Agreement (read with the Common Terms Agreement). Clause 6 states:

“Notwithstanding anything to the contrary contained herein, this Guarantee does not constitute a suretyship but constitutes a primary undertaking, giving rise to a principal, independent and continuing obligation by the Guarantors in favour of IFB.”

[5] Investec performed its part of the bargain by advancing funds to Valsa Trading, which made Valsa Trading indebted to Investec. Valsa Trading then defaulted in terms of various agreements. When this happened, Investec perfected a general notarial bond over the movable goods of Valsa Trading (in July 2024).

[6] Investec (through its attorneys) made a written demand in terms of the Guarantee on each of the respondents (as guarantors) on 8 January 2025, followed by statutory demands in terms of section 345(1)(a) of the Companies Act 61 of 1973, which were served on each of the respondents at their registered offices on 18 January 2025. When no payment was made, this application was launched.

[7] The Guarantee that Investec relies on contains various clauses that require the respondents to pay Investec any amount claimed upon receipt of a written demand from Investec stating that the amount is due and payable to the applicant. This is without any other conditions or proof, and even if the respondents dispute the amount claimed, and/or Valsa Trading’s liability to make the payment. Clause 9 provides:

“The Guarantor agrees to pay IFB any amount claimed by IFB in accordance with the terms of this Guarantee and/or the Common Terms Agreement forthwith against receipt by the Guarantor of a written demand from IFB, stating that such amount is due and payable to IFB, and without any other conditions or proof, notwithstanding that it and/or the Client may dispute the amount claimed and/or the Client's liability to make such payment.”

[8] It further states that the respondents must pay the amount, irrespective of whether any demands, steps, or proceedings are taken against Valsa Trading or third parties, with clause 10 specifically stating:

“Demands for payment by IFB under this Guarantee may be made from time to time, and the Guarantors' liability and obligations under this Guarantee may be enforced, irrespective of whether any demands, steps and/or proceedings are being or have been made or taken against the Client and/or any other third party.”

[9] Moreover, these payment obligations are absolute and unconditional, meaning that the respondents do not have a right to defer, withhold, or adjust any payment due and payable to Investec under the Guarantee.<sup>1</sup> Furthermore, the Guarantee remains in full force and effect even if there is other enforcement or neglect to perfect or enforce any agreement concluded between Investec and Valsa Trading.<sup>2</sup>

[10] The respondents oppose this application, stating the following: Valsa Trading's indebtedness was extinguished when Investec took possession of the movable goods under the notarial bond, as the goods were valued at R65 million. They state that Investec will be unjustly enriched because it retained the stock, which is worth more than the indebtedness, and that seeking payment from the respondents may result in duplicate payments. Thus, what must first happen is that Investec must realise their security. The recovery from them as guarantors is thus premature. They also dispute the extent of the indebtedness.

[11] Investec submits that the grounds for opposition are invalid. The Guarantee means that each respondent's obligation to make payment arises once the conditions

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<sup>1</sup> Clause 14: “The Guarantors' payment obligations under this Guarantee are absolute and unconditional and accordingly, but without limitation, they shall have no right to defer, withhold or adjust any payment which is due and payable to IFB arising out of this Guarantee, nor, to obtain the deferment of any judgment for any such payment or part thereof nor to obtain deferment of execution of any judgment.”

<sup>2</sup> Clause 16: “This Guarantee shall remain in full force and effect notwithstanding –

16.1 any amendment to, rotation of, enforcement or neglect to perfect or enforce under any agreement concluded between IFB and the Client;

16.2 any fluctuation in or temporary extinction for any period whatever of the obligations; or 16.3 business rescue or liquidation proceedings being initiated against the Guarantors or the Guarantors suffering legal disability, until such time as the obligations have been discharged irrevocably and unconditionally in full.”

of clause 9 are met, meaning, once the respondent receives a written demand from Investec that the amount reflected is due and payable. They did this, and thus the respondents must pay the amounts.

[12] Furthermore, they submit that the claim that the debt has been extinguished by Investec taking control of and keeping the movable assets of Valsa Trading, and that Investec is thereby unjustifiably enriched, thus also extinguishing each respondent's debt as guarantor, is incorrect. This is because the perfection of the general notarial bond does not constitute a form of repayment and does not mean that the debt to Valsa Trading has been settled. It simply creates a real security interest in favour of Investec.<sup>3</sup> Since Valsa Trading was placed under provisional winding-up in November 2024, the movables will be realised by the liquidators through that process, and Investec may, in that process, receive a distribution as a secured creditor. Any amounts received are credited to the indebtedness, and any future payments made during the liquidation process will also be applied to reducing Valsa Trading's debts. In other words, the mechanism of realisation and distribution is the answer to any alleged "double payment" as it prevents enrichment, rather than causing it. Moreover, Investec maintains that the value of the movables is insufficient to cover the debt.

[13] That is largely irrelevant in any case, Investec submits that the movables must first be realised before the proceedings against the respondents can commence is not supported by the wording of the Guarantee. The respondents' obligation is a primary one, creating independent and ongoing obligations between them and Investec. It is not suretyship obligations that require Investec to first pursue Valsa Trading before resorting to the surety. The Guarantee makes it clear that the respondents' liability is not affected by any steps Investec takes (or does not take) against Valsa Trading.

[14] Regarding the extent of the indebtedness, clause 9 of the guarantee states that the amount is due and payable regardless of whether the respondents dispute the claimed amount or Valsa Trading's liability to pay. Clause 25.2 of the Common Terms Agreement states that any certification by Investec of a rate or amount under any Finance Document, including the Guarantee, serves as prima facie evidence of its

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<sup>3</sup> Relying on *Contract Forwarding (Pty) Ltd v Chesterfin (Pty) Ltd* 2003 (2) SA 253 (SCA), paras 4, 6 and 8.

accuracy in the absence of manifest error. This certification was issued on 18 November 2024 and 30 June 2025. The respondents' claim that there is a manifest error because Investec received R7,597,000 that was not credited to Valsa Trading, which Investec submits, does not assist their case. Part of this payment was already included in the November 2024 calculation, and some were conditional advance distributions made by the liquidators. Investec can only retain these funds once it proves a secured claim and Valsa Trading is finally wound up and confirmed. Furthermore, even if the R3 million is deducted, over R13 million remains owed. And even if the entire R7,597,000 is deducted, some debt remains outstanding.<sup>4</sup>

[15] Investec asserts that, having been served with a demand requiring the respondents to pay the sum due, and since they have not paid, they are deemed unable to pay their debts under section 345(1)(a) of the Companies Act 1973. Furthermore, there was no bona fide dispute regarding the indebtedness on reasonable grounds, which means that section 345(1)(a) is satisfied.

[16] Apart from that, Investec submits that the respondents are also factually insolvent in terms of section 345(1)(c) of the Act. Investec relies on what is set out in its founding affidavit, namely that Slava's only source of income is the rental of immovable properties it rents to related companies in the Valsa group, whose income has ceased since Valsa Trading was provisionally wound up on 23 July 2024. Slava has not genuinely provided evidence to the contrary and has merely issued bold denials. Additionally, Slava is further indebted to Valsa Trading for a loan. There is thus no genuine dispute that Slava is unable to pay its debts.

[17] Regarding Valsa Engineering, Investec submits that Valsa Trading's records indicate liabilities exceeding R23 million. They infer from this that Valsa Engineering relies on Valsa Trading for funding and is therefore in a similar situation as Slava, as Valsa Trading is currently being wound up. This issue was not adequately addressed in the answering affidavits by providing evidence to contradict it, aside from blaming the financial manager and business rescue practitioner for accounting errors.

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<sup>4</sup> Relying on *Badenhorst v Northern Construction Enterprises (Pty) Limited* 1956 (2) SA 346 (T) at 348B.

Consequently, Investec submits, based on these papers, Valsa Engineering has not demonstrated a realistic ability to settle its debts without Valsa Trading.

[18] The respondents take issue with Investec's interpretation of the evidence, stating that it is based on speculation and hearsay. In this regard, they referred the court to *Telimatrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*<sup>5</sup> dealing with pleadings and extraneous facts, and that a "measure of conjecture is undoubtedly both permissible and proper, but the shield should not be allowed to protect the respondent where it is composed entirely of conjectural and speculative hypotheses, lacking any real foundation in the pleadings or in the obvious facts". In short, courts should avoid speculation.

[19] The respondents further question Investec's deponent's direct knowledge of the facts and state that this issue was not addressed in the reply. This means that the respondent's version (of the contestation of knowledge) remains. And since the court in motion proceedings is limited to evidence in the affidavits, the court is bound by what is stated in the pleadings. In other words, the respondents submit that Investec's averments are not admissible, as they are uncorroborated hearsay evidence. This then means that on the respondents' construction of the evidence, there is no case capable of adjudication before the court,<sup>6</sup> as there is no prima facie case of the respondent's indebtedness.

[20] The respondents also dispute the cause of action for various reasons. Firstly, there is a dispute of fact. Secondly, winding-up should not be resorted to for purposes of enforcing payment of a debt, where a bona fide dispute has been raised,<sup>7</sup> in this case, what they regard as accounting errors relating to the R7 957 000 payment received, the bonded movables, and charges they regard as exorbitant (legal and other costs). This means that Investec failed to prove its claim to liquidate the companies.

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<sup>5</sup> [2005] ZASCA 73.

<sup>6</sup> Relying on *Badenhorst v Northern Construction Enterprises (Pty) Ltd* [1956] (2) SA 346 (T).

<sup>7</sup> *Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Limited* 1984 (3) SA 623 (A).

[21] The respondents state that they are solvent. They submit that Investec speculates about their insolvency based on their failure to adhere to the "so-called on-demand guarantee." They affirm that they have attested to their solvency in the supplementary affidavit, referencing their asset base, turnover, and growing business activities. The increasing revenue supports this assessment, along with the respondents' engagement with investors and the promise of international exports.

[22] This supplementary affidavit was uploaded onto CaseLines shortly before the hearing. Investec did not persist in its opposition to the admission of that affidavit, as it submits that the contents of the supplementary affidavit do not advance the respondents' case in any material respect. Investec states that, at best, for the respondents, the affidavit repeats the existing complaints about the accounting, the perfection of the notarial bond and their asserted solvency, without placing before the court any cogent factual material that would alter the analysis of indebtedness or ability to pay as set out below. After assessing the supplementary affidavit, this seems to be the case. In any event, due to the findings below, the supplementary affidavit does not materially assist them.

[23] These facts and submissions must be considered in light of the law on on-demand guarantees and insolvency law.

### *The law*

Section 345(1)(a) of the Companies Act 61 of 1973 provides that a company is deemed to be unable to pay its debts if a creditor to whom not less than R100 is owed has served on the company, at its registered office, a demand requiring payment of the sum due and the company has for three weeks thereafter neglected to pay, secure or compound for it to the reasonable satisfaction of the creditor. This deeming provision operates in addition to proof that a company is, in fact, unable to pay its debts as contemplated in section 345(1)(c).

[24] Still, in *Badenhorst v Northern Construction Enterprises (Pty) Ltd*<sup>8</sup> the court held that an application for liquidation should not be used to enforce payment of a debt that the company genuinely disputes. Put simply, winding-up proceedings are not intended to resolve genuinely contested debts and should not be used to enforce payment when the debt is bona fide disputed on reasonable grounds. The so-called Badenhorst -rule mandates that a court may refuse a winding-up order if the company demonstrates that the debt is genuinely and reasonably disputed, in which case the creditor must pursue legal action instead.

[25] To establish whether a genuine dispute exists, consideration must be given to rights and obligations arising from the agreements between the parties. An on-demand or demand guarantee is a written undertaking, typically by a bank or other financial institution, to pay the beneficiary a specified or ascertainable amount upon presentation of a demand in the form prescribed by the instrument. There are two types of guarantees: the primary, independent or direct guarantee, and the accessory, or secondary guarantee. Demand guarantees are structurally distinct from accessory guarantees or suretyships. In the case of a true demand guarantee, the guarantor's liability is primary and independent and does not depend on establishing default by, or enforceability of the obligation of the principal debtor under the underlying contract.<sup>9</sup>

[26] All of this suggests that the guarantor's duty to pay a compliant demand remains generally unaffected by any disputes between the beneficiary and the principal debtor under the original contract. This relies on the principle of contract autonomy – in other words, that parties are free to enter into agreements and determine their own terms. The guarantor is required to honour a demand that complies with the guarantee's terms, while any disagreements related to the underlying transaction should be settled separately between the parties. The main exception to this autonomy is when the beneficiary's demand involves fraud that the guarantor is aware of or has notice of.<sup>10</sup>

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<sup>8</sup> 1956 (2) SA 346 (T).

<sup>9</sup> Kelly-Louw, M, & Marxen, K. (2016). "General update on the law of demand guarantees and letters of credit" *Annual Banking Law Update* p 44 - 45 and Kelly-Louw "Construction of demand guarantees gone awry" 2013 25 *SA Merc LJ* 404 410.

<sup>10</sup> Kelly-Louw, M, & Marxen, K. (2016). "General update on the law of demand guarantees and letters of credit" *Annual Banking Law Update*, p 49.

[27] Whether a specific instrument is an independent demand guarantee or an accessory suretyship is a matter of interpretation, depending on the wording of the undertaking within its commercial context. Clauses that (a) describe the obligation as a primary, independent, and ongoing commitment, (b) require the guarantor to pay upon written demand “without conditions or proof”, and (c) state that liability remains unaffected by disputes under or enforcement of the underlying contract, are typical indicators of a primary demand guarantee rather than a secondary one suretyship.<sup>11</sup>

[28] A related feature is that such instruments are documental in nature. This means that where the guarantee states that a written demand confirming an amount is due and payable is enough for payment, the guarantor’s duty is to determine whether the documents and statements are presented in accordance with the guarantee, not to investigate the underlying dispute or to establish default by the principal debtor.<sup>12</sup>

[29] What is then the implication of this on the facts of this case?

[30] The starting point is the proper characterisation of the instrument in issue. On its wording, the Guarantee constitutes a primary and independent Guarantee, and not a suretyship. This is evident from Clauses 6, 9, 10, 14 and 16 as quoted above, that expressly provide that a) the obligation is a primary undertaking, b) payment must be made against receipt of a written demand stating that the amount is due and payable, without conditions or proof and notwithstanding any dispute, c) the respondents’ obligations are absolute and unconditional, and d) their liability is not affected by any enforcement, non-enforcement or perfection of securities or other agreements between Investec and Valsa Trading.

[31] Added to this are the common cause facts, namely that Investec advanced funds to Valsa Trading under the Trade Finance Facility Agreement, that Valsa Trading defaulted, which led to Investec perfecting its general notarial bond over Valsa

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<sup>11</sup> Kelly-Louw, M. (2013). “Construction of demand guarantees gone awry: Minister of Transport and Public Works v Zanbuild Construction: case note”. *SA Mercantile Law Journal*, 25(3) at 404.

<sup>12</sup> Kelly-Louw, M. (2016). “The Doctrine of Strict Compliance in the context of demand guarantees”. *Comparative and International Law Journal of Southern Africa*, 49(1) at 88 – 89.

Trading's movables. Investec, furthermore, through its attorneys, delivered written demands to each respondent under the Guarantee stating that the certified amount was due and payable. Lastly, statutory demands in terms of section 345(1)(a) were served on each respondent at its registered office on 18 January 2025, and neither respondent paid the amount demanded.

[32] The respondents' defences, as set out above, given the facts and the legal position of guarantees, cannot succeed. Perfection of the general notarial bond created real security by way of pledge. It did not constitute payment or extinguish the principal debt. The movables form part of Valsa Trading's insolvent estate to be realised by its liquidators, with Investec ranking as secured creditor in due course. Whatever distributions Investec receives in that process may then be applied in the reduction of Valsa Trading's indebtedness. There is no legal or factual basis for a plea of unjust enrichment or "double recovery".

[33] The submission that Investec cannot proceed against the respondents until the security has been fully realised is also inconsistent with the nature and wording of the Guarantee. The respondents committed to a primary, independent obligation to pay on demand, explicitly agreed that their liability would not be affected by steps taken or not taken against Valsa Trading or third parties, and accepted that the Guarantee would remain in force despite any enforcement or non-perfection of securities.

[34] The remaining defence, which disputes the amount, cannot stand either. Clause 9 of the Guarantee obliges the respondents to pay the amount specified as due and payable in the written demand, regardless of any dispute about the amount or Valsa Trading's liability. Clause 25.2 of the Common Terms Agreement further states that Investec's certification of any amount under a finance document, including the Guarantee, is, barring any clear error, prima facie evidence of the matters certified. Investec has provided such certificates as of 18 November 2024 and 30 June 2025. The respondents refer to payments made, but the evidence shows that approximately R4.6 million was already accounted for in the November 2024 certificate, and the three subsequent payments of R1 million each were conditional advance dividends in Valsa Trading's liquidation. All of this is irrelevant because even if all R7,597,000 were deducted, a significant debt would remain. On the available evidence, there is no clear

indication of error. Therefore, Investec has established, at least prima facie, the indebtedness in the certified amount.

[35] Lastly, the respondents' submission that the deponent lacks personal knowledge and that much of the material is hearsay can also not stand. In motion proceedings brought by a bank, a duly authorised officer who deposes to what appears from the bank's books and records gives direct, admissible evidence of those records, especially where the underlying contracts, certificates and payment advice are annexed.<sup>13</sup>

[36] The jurisdictional facts for section 345(1)(a) are thus satisfied: each respondent owes a substantial amount to Investec, valid statutory demands were served, three weeks have passed, and neither respondent has paid, secured, nor compounded the debt. Given that their defences do not meet the *Badenhorst* threshold, each respondent is deemed unable to pay its debts.

[37] The respondents have also failed to demonstrate that they are, in fact, able to pay their debts within the meaning of section 345(1)(c). Slava's financial information indicates that its income was derived from rentals to related companies in the Valsa group, specifically Valsa Trading, and that both the rental income and intra-group loan funding ceased once Valsa Trading entered business rescue and subsequently into provisional liquidation. Slava has not provided any current financial statements or management accounts to prove its ability to pay. Valsa Engineering, meanwhile, appears in Valsa Trading's records as owing millions on an inter-company loan and being heavily reliant on Valsa Trading as a major customer, but it merely offers unsubstantiated claims that the records are "wrong" without offering any concrete evidence of solvency.

[38] In their supplementary affidavit, the respondents submit that they are solvent, citing "asset base", "turnover", "investor interest", and projected exports. However, there are no primary financial or objective indicators, only speculative hopes for future survival. There is also no evidence to suggest they can survive independently from the

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<sup>13</sup> *Rees v Investec Bank Limited* [2014] ZASCA 38.

now-insolvent Valsa Trading. This does not constitute a genuine dispute regarding their ability to pay. Consequently, Investec has proved that each respondent is unable to pay its debts within the meaning of section 345(1)(a) and (c).

[39] This, even taking the supplementary affidavit into account, the respondents have not raised a bona fide dispute on reasonable grounds as to Investec's claim under the independent demand guarantees, nor have they demonstrated their ability to pay their debts.

[40] It follows that the requirements for the grant of final winding-up orders against both respondents are satisfied, and it is just and equitable that they be placed in liquidation. In this case, a final order is appropriate, since there is no *bona fide* dispute in light of what was set out regarding an independent demand guarantee. That fact will not change, and a provisional order will just delay the inevitable since the same legal conclusions will only be made on the return date.

[41] The applicant's counsel sought costs on Scale C, citing the prejudice caused by the late filing of the supplementary affidavit and the necessity to address it without preparation time. However, by counsel's own admission, the supplementary affidavit introduced little of substance to the proceedings. Given that the issues in dispute are not unduly complex and the late filing did not materially alter the nature of the argument, costs on Scale B are appropriate in this instance.

[42] Separate orders will be made in each application.

### *Order*

[43] The following order is made:

1. In case 2025-024553, the respondent is placed under final winding-up in the hands of the Master of the High Court, Johannesburg.
2. The costs of this application on scale B are the costs in the winding-up of the respondent.

3. In case 2025-024599, the respondent is placed under final winding-up in the hands of the Master of the High Court, Johannesburg.
4. The costs of this application on scale B are the costs in the winding-up of the respondent.

[REDACTED]

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**WJ du Plessis**

Judge of the High Court  
Gauteng Division,  
Johannesburg

Date of hearing: 18 November 2025

Date of judgment: 3 December 2025

For the applicant: BM Gilbert SC instructed by Rowe Taylor Inc

For the respondent: D Goosen instructed by C de Villiers Attorneys