

REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
3 February 2026	
DATE	SIGNATURE

CASE NUMBER: 2025-087617

In the matter between:

VERSATILE COMMODITY TRADERS (PTY) LTD

APPLICANT

AND

UPWARD SPIRAL FUELS (PTY) LTD

RESPONDENT

Heard: 29 October 2025

Delivered: 3 February 2026

Headnote: Company law – winding-up – provisional liquidation – debt not bona fide disputed on reasonable grounds – statutory demand not complied with – deemed inability to pay debts – discretion of court – no special circumstances shown – provisional winding-up granted.

JUDGMENT

WINDELL J:

Introduction

[1] This is an application for the provisional winding-up of the respondent, Upward Spiral Fuels (Pty) Ltd. The application is brought by the applicant, Versatile Commodity Traders (Pty) Ltd. The application is brought on the grounds that the respondent is deemed unable to pay its debts in terms of section 344(f) read with section 345(1)(c) of the Companies Act 61 of 1973 (the Act). The applicant also relies on the just and equitable ground in terms of section 344(h) of the Act.

[2] The application is supported by an affidavit deposed to by Caleb David, together with annexures thereto. The application was served on the respondent, its employees and relevant trade unions, the Master of the High Court, and the South African Revenue Service, in accordance with the applicable statutory requirements. The applicant has also given sufficient security in terms of section 346 (3) of the Act.

[3] The applicant is a wholesaler of fuel products. During or about May 2022, the respondent approached the applicant for the purchase and supply of fuel. On 16 May 2022 the parties concluded a written agreement in terms of which the applicant supplied fuel to the respondent on credit. The agreement regulated pricing, invoicing, payment terms and delivery, and provided that amounts reflected in tax invoices would be due and

payable within 14 days, failing which such amounts would be deemed to be correct and payable.

[4] Between 1 May 2022 and 14 March 2025 the respondent placed multiple orders for fuel, which were duly delivered and invoiced by the applicant. Over this period the applicant delivered fuel to the value of R148,681,415.40. It is alleged by the applicant that payments made by the respondent totalled R130,449,032.20, leaving an outstanding balance of R18,232,383.15. The last payment made by the respondent was on 1 April 2025.

[5] The applicant contends that the respondent's indebtedness is admitted and not genuinely in dispute. In support of this contention, it relies on a written acknowledgment by the respondent dated 17 May 2023, in which the respondent recorded that it was indebted to the applicant in an amount exceeding R20 million. Pursuant thereto, and in partial reduction of that indebtedness, the respondent transferred immovable property to the applicant at an agreed value of R1,662,344.05 and traded a vehicle, a KC Cobra, with the applicant to the agreed value of R500,000. These amounts were set off against the outstanding indebtedness, leaving a substantial balance still owing.

[6] Despite demand, the respondent failed to pay the outstanding amount. On 16 April 2025 the applicant caused a statutory demand in terms of section 345(1)(a) of the Act, read with item 9 of Schedule 5 to the Companies Act 71 of 2008, to be delivered to the respondent at its registered address, calling upon it to pay the amount of R18,232,383.15. The statutory demand was served by the sheriff on 25 April 2025. The respondent did not

respond to the demand, nor did it make payment, furnish security, or otherwise satisfy the applicant's claim within the prescribed period.

The applicant accordingly contends that, by reason of the respondent's failure to comply with the statutory demand and the absence of any evidence demonstrating an ability to pay, the respondent is unable to pay its debts as contemplated in section 345(1)(c) of the Act and is commercially insolvent. It is further alleged that the respondent has commenced disposing of its assets, including advertising a tanker for sale, and that it would be just and equitable in the circumstances for the respondent to be placed under provisional winding-up.

Issues in dispute

[7] The respondent opposes the application and disputes both the existence and quantum of the alleged indebtedness. The answering affidavit is deposed to by the respondent's managing director, Mr Zunur Mohammed (Mr Mohammed). Although the answering affidavit was delivered out of time, condonation for its late filing is granted and the affidavit has been taken into account. No prejudice arose.

[8] As a preliminary matter, the respondent raises a point in limine, namely a challenge to the applicant's locus standi on the basis that the deponent to the founding affidavit allegedly lacked a properly annexed resolution authorising him to institute the application.

[9] The respondent further contends that there was no valid or binding written credit agreement between the parties. It is alleged that the document relied upon by the applicant constituted no more than a credit application which was never accepted and did

not crystallise into an enforceable contract. On this basis, the respondent asserts that the applicant cannot rely on the terms of that document, including those relating to payment, interest, invoicing, or set-off.

[10] In amplification, the respondent avers that the parties conducted business on an informal and evolving basis over several years. It alleges that fuel transactions were structured in a manner whereby profits from resale were shared, and that payments and credits were effected through various mechanisms, including mutual set-offs, asset transfers, and other adjustments, rather than strict invoice-based settlement. The respondent maintains that no agreed terms existed in relation to interest or credit enforcement.

[11] The respondent disputes the accuracy of the applicant's transaction reports and invoices, contending that they contain inconsistencies, incorrect calculations, and discrepancies between invoices and delivery notes. It asserts that a proper reconciliation has not been furnished and that further documentation is required to determine the true state of accounts between the parties.

[12] Although the respondent admits having purchased fuel from the applicant and having made substantial payments, it denies that any amount remains outstanding. It asserts that the alleged indebtedness was settled in full by 2023, alternatively that the applicant's calculations are materially incorrect. The written acknowledgement of debt relied upon by the applicant is said to be outdated and no longer reflective of the parties' true financial position.

[13] The respondent also denies that it is commercially insolvent. It avers that its management accounts demonstrate solvency and an ability to pay its debts as they fall due. The respondent disputes that it has disposed of assets in a manner suggestive of insolvency and denies having advertised any of its assets for sale as alleged.

[14] On these grounds, the respondent contends that the statutory demand was unjustified, that the applicant has failed to establish an undisputed liquidated claim, and that the application constitutes an abuse of process. It accordingly seeks the dismissal of the liquidation application, together with a punitive costs order.

Bona fide and reasonable grounds

[15] Although the applicant seeks a provisional winding-up order, the enquiry remains whether the respondent has shown that the applicant's claim is bona fide disputed on reasonable grounds.

[16] In *Gap Merchant Recycling CC v Goal Reach Trading 55 CC*,¹ Rogers J explained that where the dispute concerns the respondent's liability to the applicant, and the applicant has shown, on a prima facie basis and with reference to all the affidavits, the existence of its claim, the onus shifts to the respondent to demonstrate that the debt is bona fide disputed on reasonable grounds. If such a dispute is shown, the application must be dismissed.

¹ *Gap Merchant Recycling CC v Goal Reach Trading 55 CC* 2016 (1) SA 261 (WCC). See also *Total Auctioneering Services and Sales CC v Consolidated Auctioneers v Norfolk Freightways CC* [2012] ZAGPJHC 211 (30 October 2012) para 13, with reference to *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (AD) at 979G-H. See also: *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) at 80G to 81A.

[17] The respondent has failed to meet that threshold. Its preliminary challenge to the applicant's authority is technical and misconceived. The founding affidavit is deposed to by the applicant's chief executive officer and sole director, Mr David, who has personal knowledge of the facts. It is well established that a deponent in motion proceedings need not be authorised by the litigating party to depose to an affidavit; it is the institution and prosecution of the proceedings that must be authorised.² In any event, the objection does not engage with either the existence of the debt or the respondent's ability to pay it.

[18] The respondent's denial of a binding agreement is equally untenable. The written agreement bears the signature of the respondent's managing director, Mr Mohammed, who also bound himself as surety. The sustained course of dealing between the parties — including the placement of orders, delivery of fuel, invoicing and substantial payments — is inconsistent with the assertion that no contractual relationship existed. This denial is further contradicted by the respondent's prior written acknowledgements of indebtedness and its continued performance under the agreement.

[19] The assertion that the indebtedness was settled in full is bald and unsupported. No proof of payment, reconciliation, or contemporaneous accounting is produced to explain how an admitted indebtedness exceeding R18 million was extinguished. The contention is raised for the first time in opposition to these proceedings and is inconsistent with the respondent's failure to dispute the debt when the statutory demand was served.

² *Ganes and Another v Telecom Namibia Limited* 2004 (3) SA 615 (SCA) para [19].

[20] The respondent's reliance on the *in duplum* rule also does not assist it. Even if applicable, the rule limits the recovery of interest and does not extinguish or reduce the underlying capital debt. On either party's version, a substantial capital indebtedness remains outstanding. The invocation of the rule therefore does not give rise to a bona fide dispute as to the existence of the debt.

[21] Nor do the alleged discrepancies in invoices and delivery notes advance the respondent's case. The allegations are made at a high level of generality, are unsupported by any coherent alternative reconciliation, and are not accompanied by evidence that fuel was not delivered or that invoices were disputed at the time. The respondent had not previously denied its liability and only sought to do so in its answering affidavit. That denial is neither reasonable nor bona fide.

[22] Considered cumulatively, the defences advanced are internally inconsistent, raised belatedly, and unsupported by objective evidence. The respondent's reliance on Rule 6 of the Uniform Rules and the Plascon-Evans principle is misplaced. Provisional winding-up proceedings are governed by the *Badenhorst* rule as explained in *Gap Merchant Recycling*,³ and not by the ordinary motion-proceedings approach to disputes of fact. The respondent has failed to demonstrate that the applicant's claim is bona fide disputed on reasonable grounds. In these circumstances, the applicant has established that it is a creditor of the respondent in an amount exceeding the statutory threshold.

³ *Ibid* footnote 1

Respondent's inability to pay its debts

[23] In terms of section 345(1)(c) of the Act, a company is deemed to be unable to pay its debts if it is proved to the satisfaction of the court that it is unable to do so. In the present matter, the respondent has not paid the admitted indebtedness to the applicant, despite demand, and has placed no evidence before the court demonstrating an ability to do so.

[24] In *African Global*,⁴ the court explained that a company is commercially insolvent when it cannot meet current demands or its day-to-day liabilities in the ordinary course of business, irrespective of whether its assets exceed its liabilities. The enquiry is therefore not directed at balance-sheet solvency, but at whether the company has liquid or readily realisable assets available to meet its obligations as they fall due.

[25] Measured against this standard, the respondent has failed to rebut its deemed insolvency. In *De Waard v Andrew & Thienhaus Ltd*,⁵ the court held:

'Now, when a man commits an act of insolvency, he must expect his estate to be sequestrated. The matter is not sprung upon him ... of course; the court has a large discretion in regard to making the law absolute; and in exercising that discretion the condition of a man's assets and his general financial position will be important elements to be considered. Speaking for myself, I always look with great suspicion upon and examine very narrowly the position of a debtor who says: "I am sorry that I cannot pay my creditor, but my assets far exceed my liability". To my mind

⁴ *Murray and Others NNO v African Global Holdings (Pty) Ltd and Others* 2020 (2) SA 93 (SCA), with reference to *LAWSA Vol 4(3)*, (2 ed, 2014), para 74.

⁵ *De Waard v Andrew & Thienhaus Ltd* 1907 TS 722, quoted with approval in *ABSA Bank Ltd v Rhebokskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C) at 440F-44 and 447C-F.

the best proof of solvency is that a man should pay his debts; and therefore I always examine in a critical spirit the case of a man who does not pay what he owes'.

[26] Nowhere in the answering affidavit does the respondent demonstrate that it is able to pay its debts as they fall due. Beyond a bare assertion of solvency, no evidence is provided of access to liquid or readily realisable assets sufficient to meet its obligations. The undertaking to produce management accounts at a later stage does not constitute evidence of solvency and falls well short of what is required to displace the statutory presumption.

[27] On the papers as a whole, the applicant has established that the respondent has not paid the debt because it is unable to do so and that the respondent is commercially insolvent within the meaning of section 345(1)(c) of the Act.

[28] Although the applicant also relied on the just and equitable ground in section 344(h) of the Act, it is not necessary to determine that ground separately. The applicant has established a basis for provisional winding-up on the statutory ground of inability to pay debts. In the absence of any independent factual basis requiring consideration under section 344(h), the matter is appropriately disposed of on the insolvency ground alone.

[29] Once these statutory requirements for a provisional winding-up order have been satisfied, the court retains a discretion whether to grant such an order. In the absence of special or unusual circumstances, and where a creditor has established a due and payable debt which the company is unable to satisfy, that discretion ordinarily falls to be exercised in favour of granting a provisional winding-up order. No countervailing considerations have been advanced. To permit the respondent to continue trading in

circumstances of commercial insolvency would serve only to prejudice creditors. There is accordingly no basis upon which this Court would be justified in refusing provisional relief.

[30] In the result the following order is made:

1. The respondent, Upward Spiral Fuels (Pty) Ltd, is placed under provisional winding-up in the hands of the Master of the High Court, Gauteng Local Division, Johannesburg.
2. A rule nisi is issued calling upon the respondent and all other interested parties to show cause, if any, on 16 March 2026 why a final winding-up order should not be granted.
3. Service of this provisional order shall be effected as follows:
 - 3.1 on the respondent at its registered address by the sheriff;
 - 3.2 on the employees of the respondent by affixing a copy of this order to a notice board or to the main gate at the respondent's registered address by the sheriff;
 - 3.3 on the South African Revenue Service;
 - 3.4 on the Master of the High Court;
 - 3.5 on creditors of the respondent by one publication in The Star newspaper.
4. The costs of this application shall be costs in the winding up.

L WINDELL

Judge of the High Court

Gauteng Division, Johannesburg

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 3 February 2026.

Appearances

For the applicant:	K Naidoo
Instructed by:	Shaheed Dollie Inc
For the respondent:	N K Ramsingh
Instructed by:	Ureesh Dorasamy Attorneys.
Date of Hearing:	29 October 2025
Date of Judgment:	3 February 2026