REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-072740

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

06/03/2026 [redacted]

DATE SIGNATURE

In the matter between:

ROYTEC GLOBAL (PTY) LTD	Applicant
and	
LMAI (PTY) LTD	Respondent

JUDGMENT

HORN AJ

Introduction

[1] The applicant and the respondent each claim to be a creditor of the other. During August 2023, the respondent launched an application for the winding-up of the applicant. The applicant alleged, in that application, that it had a counter claim

against the respondent, which is the subject matter of action proceedings in this Court.

[2] By agreement, the respondent withdrew its winding-up application to pursue its claim as a counter claim in the action proceedings. This agreement is embodied in an order of Court dated 24 November 2023.

[3] During July 2024, the applicant launched the present application for the winding-up of the respondent based upon its claim which is the subject of the aforesaid action proceedings. On 24 October 2024, the respondent was finally wound-up at the instance of the applicant.

[4] Thereafter, the respondent's director, Mr Padayachi, launched an urgent application for the rescission of the final winding-up order under section 354 ("the section 354 application") of the Companies Act, 1973 ("the 1973 Act"). The respondent claimed that it had left its registered address where the application was served and, consequently, the application did not come to its knowledge. The matter was struck from the roll for lack of urgency.

[5] In due course, the rescission application was enrolled in the ordinary motion court. On 25 October 2025, the final winding-up order was set aside by De Beer AJ and substituted with an order placing the respondent under provisional winding-up. Interested parties were called upon to show cause on 2 March 2026 why the provisional order should not be made final. The matter was allocated to me for hearing during the week of 2 March 2026.

[6] The order of De Beer AJ also reserved the question of the costs of the section 354 application for determination on the return day.

The Applicant's Claim

[7] In the founding affidavit, the applicant alleges that the parties had entered into an agreement pursuant to which the respondent accepted certain purchase orders from the applicant. In terms thereof, the respondent would render services related to the design, supply, delivery, construction, installation, testing,

commissioning and remedying any defects of a "DMS thickener" at a plant of Mafube Coal Mining (Pty) Ltd ("Mafube") in Middelburg, Mpumalanga.

[8] On 13 January 2023, says the applicant, the respondent rendered an interim account in the amount of R3 740 478.44. Upon receipt thereof, the applicant recorded that the agreement provided for services in terms thereof to be provided at a fixed price. According to the applicant, it adjusted the amounts for services claimed in accordance with actual work carried out.

[9] The applicant then presented the respondent with what it calls a corrected interim statement. It requested the respondent to issue a credit note in the amount of R4 931 852.42. The applicant claims in its founding affidavit that it had been impoverished in this amount due to having paid for work that the respondent had not performed and for additional costs of having had to employ another contractor to complete the work.

[10] In reply, the applicant alleges that certain misrepresentations by the respondent induced it to pay a combined amount of R1 509 204.42. This allegation is followed by an allegation that there were overstated claims pertaining to certain individual staff members of the respondent in the amount of R963 054.80. The latter allegation is made with reference to "clock-in data" obtained from Mafube.

[11] It is unclear whether the amounts mentioned in the preceding paragraph are included in the amount of R4 931 852.42 mention in the founding affidavit or whether they are in addition thereto. Be that as it may, an applicant should make out its case in the founding papers. I will therefore confine this judgment to the claimed overpayment of as stated in the founding affidavit.

The Respondent's Answer

[12] In its answering affidavit, the respondent alleges that payment to it by the applicant was linked to payment to the applicant by Mafube. Elsewhere in its affidavit, the respondent claims that it was consistently understood that payment to the respondent would follow payment to the applicant by Mafube.

[13] The aforesaid allegations were met in reply by the applicant stating the allegations are denied insofar as they are inconsistent with the contents of paragraphs 38.1 to 38.22 of the replying affidavit. The allegation that the respondent would only be paid by the applicant once the applicant received payment from Mafube, is not inconsistent with anything contained in paragraphs 38.1 to 38.22 of the replying affidavit. It therefore stands uncontested on the papers.

[14] In relation to the alleged overpayment by the applicant to the respondent in the amount of R4 931 852.42, the respondent denies that there was any overpayment. The respondent further alleges that, in any event, the applicant had been paid that amount by Mafube and, thereafter, made a corresponding payment to the respondent.

[15] The averment that the applicant has been paid by Mafube in the amount of the alleged overpayment is repeated elsewhere in the answering affidavit. The allegations have been met with the same qualified denial with reference to paragraphs 38.1 to 38.22 of the applicant's replying affidavit. There is nothing inconsistent with the allegation of payment to the applicant in those paragraphs.

Discussion

[16] In terms of section 346(1)(b) of the 1973 Act, an application for the winding-up of a company may be made by one or more of its creditors. The onus is on the applicant to show, on a balance of probabilities, that it is a creditor of the respondent.[1]

[17] Winding-up proceedings should not be employed where there is a bona fide dispute on reasonable grounds in respect of the claimed indebtedness.[2] This is known as the *Badenhorst* rule.

[18] When an application for winding-up reaches the stage where a final order is sought, the test is different. Where there is a dispute of fact, the court is not

[1] Commonwealth Shippers Ltd v Mayland Properties (Pty) Ltd (United Dress Fabrics (Pty) Ltd and Another intervening) 1978 (1) SA 70 (D) at 72E-F.

[2] Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T) at 347-348.

permitted to determine the balance of probabilities on the affidavits. Instead, it must apply the *Plascon-Evans* rule.[3] This entails that final relief in motion proceedings will be granted only if the facts stated by the applicant and admitted by the respondent, together with the facts stated by the respondent, justify final relief. An exception is where the respondent's denials are so far-fetched or untenable that a court will be justified to reject them on the papers.[4]

[19] During argument, Mr van Staden, for the applicant, at first conceded that the claim contended for by the applicant constitutes an enrichment claim but did not commit to any of the traditional *condictiones* upon which such a claim may be founded. Later, Mr van Staden intimated that the applicant's claim may also be premised on breach of contract, although this was not expressly pleaded.

[20] The elements common to all enrichment claims are that the defendant must have been enriched, the plaintiff must have been impoverished, the defendant's enrichment must have occurred at the plaintiff's expense and the enrichment must have been unjustified.[5] The quantum of an enrichment claim is the amount in which the plaintiff has been impoverished or by which the defendant has been enriched, whichever is the lesser.[6]

[21] The applicant claims to have been impoverished in the amount of R4 931 852.42. The difficulty with that contention is the respondent's averment that the applicant only made payment to it once the applicant had received payment from Mafube. The respondent also expressly alleges that Mafube had, in fact, made payment of the amount of R4 931 852.42 to the applicant. As stated, the applicant did not deny these allegations by the respondent. Therefore, even if the respondent were enriched (I make no finding on this issue), it does not follow, on the papers, that the applicant was impoverished or that the respondent's enrichment occurred at the expense of the applicant.

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[3] Orestisolve (Pty) Ltd t/a Essa Investments v NDTF Investment Holdings (Pty) Ltd and Another 2015 (4) SA 449 (WCC) at para [8] to [10]. See also Afgri Opertations Ltd v Hamba Fleet (Pty) Ltd 2022 (1) SA 91 (SCA) at para [9].

[4] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634H-635C.

[5] Kudu Granite Operations (Pty) Ltd v Caterna Ltd 2003 (5) SA 193 (SCA) at para [17].

[6] Glenrand MIB Financial Services (Pty) Ltd v Van den Heever NO 2012 JDR 2303 (SCA) at para [38].

[22] The respondent's case is not premised on a bare denial of the applicant's alleged impoverishment. It made positive allegations that the applicant had not been impoverished. It cannot be said that the respondent's allegations on this score are far-fetched, and the applicant did not contend that they were.

[23] Even if the matter were to be approached on the basis that the applicant's claim is founded in breach of contract, no damages have been pleaded in the founding affidavit other that the alleged impoverishment referred to above. If that amount had been paid to the applicant by Mafube, as I must accept based on the *Plascon-Evans* rule, the applicant has not established that the alleged breach has caused it to suffer any damages.

[24] The inescapable conclusion is that the applicant has failed to establish a claim against the respondent which justifies final relief in motion proceedings. The provisional winding-up order therefore stands to be discharged.

Costs

[25] There is no reason why the costs of the present application should not follow the result.

[26] The reserved costs of the section 354 application stand to be determined. The final winding-up order that was set aside came about as result of the application having been served at the respondent's registered address after it had departed from that address. The respondent did not update the records of the Companies and Intellectual Property Commission, as it should have done. The applicant was therefore at liberty to serve the winding-up application at that address.

[27] On the other hand, the respondent achieved some measure of success in the section 354 application, in that the final winding-up order was set aside and a return date fixed for it to argue its case. Mr Steyn, for the respondent, submitted that, in these circumstances, each party should pay its own costs in the section 354 application. Taking the outcome of the present application into account too, I agree with Mr Steyn's submission.

[28] Counsel for the parties both contended for costs of counsel on scale C. In my view the matter was not of sufficient complexity to warrant costs on that scale. Costs of counsel will be awarded on scale B.

Order

[1] The provisional winding-up order of the respondent dated 25 October 2025 is discharged.

[2] The application for the winding-up of the respondent is dismissed.

[3] The applicant is ordered to pay the costs of the application (excluding the costs of the section 354 application), including the costs of counsel on scale B.

[redacted]

N J HORN

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant:	M M van Staden Instructed by Van Zyl Johnson Inc
For the Respondent:	G Steyn Instructed by DLBM Attorneys Inc
Date of hearing:	3 March 2026
Date of judgment:	6 March 2026