IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NUMBER: **2025-120753**

In the matter between:

A1 CAPITAL (PTY) LTD	**APPLICANT**
(Reg. No. 2007/019683/07)	
and	
URBAN LIFESTYLE INVESTMENT HOLDINGS (PTY) LTD	**FIRST RESPONDENT**
(Reg. No 2017/512579/07)	
THE COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION	**SECOND RESPONDENT**
AFFECTED PARTIES	**THIRD RESPONDENT**

Coram: MOSSOP J

Heard: 28 and 29 January 2026

Delivered: 20 March 2026

ORDER

The following order is granted:

1. The application to place the first respondent under supervision and to commence business rescue proceedings is dismissed with costs. As regards the payment of those costs:

(a) The costs of the affected parties, Nedbank Limited and the Unemployment Insurance Fund, shall be paid by the applicant on the attorney and client scale and shall include the costs of two counsel where so employed; and

(b) The affected party, RSA Boss Protection (Pty) Ltd, shall pay its own costs.

2. The counter-applications brought by the affected parties, Nedbank Limited and the Unemployment Insurance Fund, are granted and a rule nisi issues, calling upon the first respondent, and any other interested party, to show cause to this court on 24 April 2026 at 09h30, or so soon thereafter as counsel may be heard, why the first respondent should not be finally wound-up.

3. This order shall operate as an order provisionally winding-up the first respondent with immediate effect.

4. A copy of this order shall be published on or before 10 April 2026, once in the *Government Gazette* and once in a newspaper published in Durban and circulating in KwaZulu-Natal.

5. The costs of the liquidation application shall be costs in the winding-up and the costs of Nedbank Limited and the Unemployment Insurance Fund shall be paid on the attorney and client scale and shall include the costs of two counsel where so employed.

6. Identical orders shall simultaneously issue, *mutatis mutandis*, in the following matters:

(a) Case number 2025-120714: Homii Lifestyle (Pty) Ltd v K2017659127 (SA) (Pty) Ltd.

(b) Case number 2025-120725: Homii Lifestyle (Pty) Ltd v K2017659651 (SA) (Pty) Ltd;

(c) Case number 2025-120731: Homii Lifestyle (Pty) Ltd v K2018043790 (SA) (Pty) Ltd;

(d) Case number 2025-120738: Homii Lifestyle (Pty) Ltd v Umbulumko Knowledge Services (Pty) Ltd; and

(e) Case number 2025-120747: A1 Capital (Pty) Ltd v Uli Props (Pty) Ltd.

JUDGMENT

MOSSOP J:

Introduction

[1] Initially, what was intended to be argued before me were seven applications in which the commencement of business rescue proceedings was sought against seven companies. Each of the seven applications had its own case number and each was brought in terms of the provisions of s 131(1) of the Companies Act 71 of 2008 (the Act). However, only six of the seven applications were actually capable of being argued.

[2] All of the seven companies sought to be placed under supervision and in business rescue are members of a group of companies that I will henceforth refer to as 'the A1 Group'.[1]

A snapshot of the A1 Group

[3] The applicant in this application, A1 Capital (Pty) Ltd, stands atop a hierarchy of two groupings of private companies. In the first grouping:

(a) Immediately beneath it are two companies, Uli Props (Pty) Ltd, which I will refer to as 'UProps', and Urban Lifestyle Investment Holdings (Pty) Ltd, which is the first respondent in this application;

(b) Immediately beneath the first respondent is a company called Homii Lifestyle (Pty) Ltd, which I shall refer to as 'Homii'.

(c) Homii, for all intents and purposes, is the holding company of four other companies, which are ranked directly below it in the A1 Group hierarchy, namely K2017659651 (SA) (Pty) Ltd (K1), K2017659127 (SA) (Pty) Ltd (K7), K2018043790 (SA) (Pty) Ltd (K0) and Umbulumko Knowledge Services (Pty) Ltd (Umbulumko).

[1] The A1 Group is a 'group of companies' as defined in s 1 of the Act, with the applicant being the holding company of that group.

[4] The second grouping of companies that fall under the applicant is headed by Educor Holdings (Pty) Ltd, which is a wholly owned subsidiary of the applicant. Beneath Educor Holdings (Pty) Ltd is its subsidiary, Educor Property Holdings (Pty) Ltd (EPH). Falling under EPH are Lococo 3 (Pty) Ltd (Lococo 3), Lococo 4 (Pty) Ltd (Lococo 4), Old iStudy 4 (Pty) Ltd (Old iStudy) and a company called Vaxobuzz (Pty) Ltd (Vaxobuzz).

The applicants and the companies sought to be placed in business rescue

[5] The applicant has brought two of the seven business rescue applications itself, namely this application against the first respondent, and the application in which UProps is the company sought to be placed in business rescue.[2] Homii has brought four of the five remaining applications against K1,[3] K7,[4] K0[5] and Umbulumko,[6] respectively.

[6] The seventh, and final, business rescue application was brought by EPH against Vaxobuzz.[7] This application was the application mentioned at the commencement of this judgment that could not be argued. The reason for that was that EPH itself had been put into provisional liquidation.

[7] Thus, only six applications were before me for adjudication, and this explains why I shall henceforth stop referring to the seven applications mentioned at the commencement of this judgment, and I shall now only refer to six applications.

The affected parties

[8] Six affected parties have exercised their rights in terms of s 131(3) of the Act to participate in the six business rescue applications.[8] Two of those affected parties oppose the granting of business rescue proceedings and four support such orders being granted.

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[2] Case number 2025-120747: A1 Capital (Pty) Ltd v Uli Props (Pty) Ltd.
[3] Case number 2025-120725: Homii Lifestyle (Pty) Ltd v K2017659651 (SA) (Pty) Ltd.
[4] Case number 2025-120714: Homii Lifestyle (Pty) Ltd v K2017659127 (SA) (Pty) Ltd.
[5] Case number 2025-120731: Homii Lifestyle (Pty) Ltd v K2018043790 (SA) (Pty) Ltd.
[6] Case number 2025-120738: Homii Lifestyle (Pty) Ltd v Umbulumko Knowledge Services (Pty) Ltd.
[7] Case number 2025-120704: Educor Property Holdings (Pty) Ltd v Vaxobuzz (Pty) Ltd.
[8] Section 131(3) of the Act reads as follows: 'Each affected person has a right to participate in the hearing of an application in terms of this section'.

[9] The two affected parties who have opposed the business rescue applications are Nedbank Limited (Nedbank) and the Unemployment Insurance Fund (the UIF) and they are involved in all six of the business rescue applications. There is no dispute that they are affected parties, as each was notified of the business rescue applications as is required by the provisions of s 131(2)(*b*) of the Act.[9]

[10] Nedbank and the UIF assert that they are substantial creditors of all six of the companies sought to be placed under business rescue; indeed, that they are the largest creditors of those six companies. They have both delivered affidavits resisting the granting of the business rescue applications in all of the business rescue applications and have brought counter-applications in each seeking orders of liquidation in terms of the provisions of s 131(4)(*b*) of the Act in the event of the business rescue applications being unsuccessful.

[11] The four affected parties who adopt a contrary view, and who support the commencement of business rescue proceedings, are private companies called FCMB (Pty) Ltd (FCMB), Infinity Group SA (Pty) Ltd (Infinity), Siyaya Project Management (Pty) Ltd (Siyaya) and RSA Boss Protection (Pty) Ltd (RSA Boss). These four companies, which I will collectively refer to as the 'pro rescue companies', all appear to be service providers to the companies sought to be placed under business rescue.

[12] Each of the pro rescue companies has delivered affidavits in which they expressed what can only be described as their fervent support for the granting of the business rescue applications. Each of them has largely echoed what the applicant has stated in its founding affidavit in various permutations. Each believe that the companies sought to be placed in business rescue can all be saved for the reasons expressed by the applicant.

[13] All of the pro rescue companies feature as affected parties in all of the business rescue applications, except for this application. In this application, only RSA

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[9] Section 131(2) of the Act reads as follows:
'An applicant in terms of subsection (1) must -
(a) serve a copy of the application on the company and the Commission; and
(b) notify each affected person of the application in the prescribed manner.'

Boss claims to be an affected party. This claimed status is, however, disputed by Nedbank.[10] I shall assume, without deciding, that RSA Boss is an affected party.

[14] In summary, RSA Boss has submitted in its affidavit that there are no deficiencies in the applicant's papers, that there are reasonable prospects that the first respondent may be restored to solvency or that being placed in business rescue may result in a better return for its creditors, and asserts, further, that the application is not vexatious or an abuse of the processes of the court. So close does the case presented by RSA Boss dovetail with the applicant's case that its fate is inextricably linked with the fate of the applicant's application.

[15] Only two of the pro rescue companies were initially represented on the first day of the two-day hearing, namely Infinity and Siyaya. On the second day of hearing, counsel for RSA Boss appeared, apparently having been unable to attend the first day of the hearing due to the financial constraints of his client. Despite delivering an affidavit in support of the business rescue applications, FCMB was not present when the matter was argued and consequently played no part in the hearing.

The agreed approach

[16] When the six business rescue applications were called, it was agreed between all counsel then present that only this application would be argued, as the issues in it are common to the five other business rescue applications. As Mr *Harpur SC*, who appears for all of the applicants together with Mr *Gevers*, submitted, there are 'themes' in this application that resonate in the five other applications that accordingly permitted the arguing of only one of the applications.[11]

[17] It was, finally, expressly agreed that the order that would issue in this application would then be deemed to have also been granted in each of the other five business rescue applications.

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[10] I assume that Nedbank has taken this position because the applicant did not cite RSA Boss as an affected party when launching the business rescue application against the first respondent and did not give it the required notice.

[11] Mr *Harpur* indicated on the morning of the second day of argument that he now wished to deal with the business rescue plan relating to a property owning company, the first respondent not being such a company. Despite the agreement reached the previous morning, he was granted the opportunity to do so.

The history of the Nedbank litigation

[18] This history is a labyrinthine one. It must, unfortunately, be discussed in some detail in order to properly frame the backdrop against which the business rescue applications are presented, and it will also help to provide the context for Nedbank and the UIF's argument that the business rescue applications are nothing but a further manifestation of an ongoing strategy of delay employed by the A1 Group. That strategy has, according to Nedbank (and the UIF), allegedly been devised and implemented in order to thwart the hearing of ten liquidation applications that Nedbank has brought against companies forming part of the A1 Group (the ten liquidation applications).

[19] The ten liquidation applications brought by Nedbank sought to liquidate the following companies:

(a) The first respondent in this application;

(b) UProps;

(c) Vaxobuzz;

(d) K1;

(e) K7;

(f) K0;

(g) Umbulumko;

(h) Lococo 3;

(i) Lococo 4; and

(j) Old iStudy (collectively referred to as 'the ten companies').

[20] The history of this matter commences in 2018, when Nedbank loaned large sums of money directly to eight of the ten companies:

(a) The first respondent was loaned an amount of R410 million;

(b) UProps was loaned R45.6 million;

(c) K0 was loaned 49.5 million;

(d) Umbulumko was loaned R81.5 million.

(e) Lococo 3 was loaned R46.06 million;

(f) Lococo 4 was loaned R106 million;

(g) Old iStudy was loaned R20.5 million; and

(h) Vaxobuzz was loaned R47.4 million.

[21] The sum of the loans made by Nedbank to these eight companies was thus in excess of R800 million. No loans were made by Nedbank directly to K1 and K7, the two other companies that make up the ten companies, but those two companies provided guarantees to Nedbank in respect of the loan advanced to the first respondent. Their liability was each fixed at a maximum amount of R410 million.

[22] UProps, K1, K7, K0 and Umbulumko are all property owning companies, unlike the first respondent. When referring specifically to them, I shall refer to them collectively as 'the property owning companies'. As security for their obligations to Nedbank, the property owning companies all passed mortgage bonds, or sectional mortgage bonds where appropriate, over the immovable properties that they owned in favour of Nedbank. The existence of these mortgage bonds has considerable significance, as will be discussed later. In addition, each of the mortgage bonds contained a cession in favour of Nedbank of all rentals and other revenues of whatsoever nature as might accrue from time to time from the mortgaged properties. This, too, has significance.

[23] For reasons that need not be explored, none of the companies that received loans from Nedbank were able to repay them as had been agreed. Numerous addenda to the original loan agreements were concluded over the period from April 2020 to March 2023, in which Nedbank repeatedly agreed to extensions of the time periods within which the loans had to be repaid. For example, the period for the repayment of the loan advanced to Lococo 3 was extended on no less than seven occasions through the conclusion of seven addenda to the original loan agreement.

[24] Ultimately, however, Nedbank granted no further extensions and demanded repayment of all the loans that it had advanced. When the demanded repayments were not forthcoming, Nedbank caused formal demands in terms of s 345 of the Companies Act 61 of 1973 (the Old Companies Act) to be delivered to the ten companies at their respective registered addresses in July 2023. No attempts were made by the addressees of those demands, including the first respondent, to pay the amounts demanded of them or to secure or compound those amounts to the reasonable satisfaction of Nedbank.

[25] The natural consequence of this indifference by the companies of which demand was made was the preparation of the ten liquidation applications by Nedbank. They were launched on 3 October 2023.

[26] Despite the inherent urgency that attaches itself to liquidation applications,[12] Nedbank has not yet been able to complete its argument for interim orders of liquidation in the ten liquidation applications, notwithstanding the passing of more than two years since they were first launched. This is because:

(a) When initially set down, the ten liquidation applications were adjourned by the judge then presiding for the filing of further affidavits and heads of argument.

(b) The ten companies each then delivered notices in terms of Uniform rule 35(13), calling for discovery to be made by Nedbank in each of the ten liquidation applications.[13]

(c) Nedbank was not inclined to comply with the discovery notices and that led to a full opposed motion being argued before me on 13 May 2024, in which the ten companies endeavoured to persuade me to order the discovery that they demanded. As in this application, only one of the ten discovery applications was argued (the discovery application), and the decision arrived at in that matter was deemed to have been handed down in the other nine liquidation applications. I delivered judgment on 22 May 2024 in which I dismissed the discovery application.

(d) The ten liquidation applications were then set down for argument over the period from 18 to 21 June 2024 in the High Court, Durban. The first day of that hearing was consumed by an application for leave to appeal against my judgment dismissing the discovery application. A written judgement was prepared overnight and was delivered the next morning, 19 June 2024, refusing the application for leave to appeal.

(e) Counsel for the ten companies, Mr *Harpur*, then asked for the matters to stand down in order for him to prepare an application for an adjournment pending an application to the Supreme Court of Appeal for leave to appeal the dismissal of the discovery application. I permitted this to occur, but fixed truncated times for the delivery of the application. That application was argued on the afternoon of 20 June 2024 and was, again, dismissed by a written judgment delivered the following morning.

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[12] *Van Greunen v Sigma Switchboard Manufacturing CC* [2003] ZAECHC 12 para 9.

[13] Uniform rule 35(13) provides as follows: 'The provisions of this rule relating to discovery shall mutatis mutandis apply, in so far as the court may direct, to applications.'

(f) Despite the fact that the two judgments delivered during that session were prepared overnight and in great haste in an attempt to maximise the available time, the period assigned for the hearing of the ten liquidation applications was consumed by these two applications and the ten liquidation applications were then, finally, adjourned to 19 to 22 August 2024, for argument before me in the High Court, Pietermaritzburg.

(g) The ten companies then applied to the Supreme Court of Appeal for leave to appeal my refusal of the discovery application.

(h) On 19 August 2024, being the first day of the period allocated for the argument of the ten liquidation applications in the High Court, Pietermaritzburg, the outcome of the ten companies' application to the Supreme Court of Appeal for leave to appeal was not yet to hand and I felt that it was prudent to await that decision before proceeding with the ten liquidation applications.

(i) There were, however, three other applications that were not affected by the pending decision of the Supreme Court of Appeal, and they were enrolled for argument before me on 19 August 2024. These applications involved applications by the Public Investment Corporation (PIC)/Government Employees Pension Fund for leave to intervene in three of the pending ten liquidation applications, namely those involving Lococo 3, Lococo 4 and Old iStudy. If granted leave to intervene, those applicants also sought orders of liquidation against the three companies just mentioned. Argument in the intervention applications commenced on 20 August 2024 and proceeded until mid-morning on 21 August 2024. Mr *Harpur*, who acted for Lococo 3, Lococo 4 and Old iStudy, was on his feet at about 10h45, when he enquired if I would be amenable to take the short adjournment a little earlier than normal. The purpose behind this request, so I was told, was that Mr *Harpur* wanted to take instructions from his attorney and his junior as to whether he had addressed me on all the issues that he needed to cover. I, naturally, agreed to his request. But when the court reconvened 15 minutes later, Mr *Harpur* handed up business rescue applications that he ultimately conceded he had prepared in respect of the three companies to which the intervention application related. The reason given to me for the matters standing down was palpably not the reason advanced by Mr *Harpur*.

(j) The existence of the three business rescue applications was thus first disclosed on 21 August 2024 in the High Court, Pietermaritzburg. Those business rescue applications were, however, not set down before that court, but rather before the High Court, Durban. They were also not set down as matters of urgency, nor was a preferential date of hearing sought when enrolling them. They were simply set down in the ordinary course.

(k) On 4 September 2024, the Supreme Court of Appeal dismissed the application for leave to appeal the judgment in the discovery application.

(l) That decision was not accepted and thus an application for leave to appeal was made to the Constitutional Court.

(m) The three business rescue applications involving Lococo 3, Lococo 4 and Old iStudy, first mentioned in the High Court, Pietermaritzburg before me, were allocated to my sister, Singh J, for hearing, and she eventually heard them in the High Court, Durban on 5 and 6 December 2024 and dismissed them in a judgment delivered on 19 February 2025.

(n) Inevitably, an application for leave to appeal the judgment of Singh J was heard by the learned judge but was dismissed by her.

(o) On 11 April 2025, the Constitutional Court refused leave to appeal the judgment in the discovery application.

(p) An application for leave to appeal the dismissal of the three business rescue applications by Singh J was made to the Supreme Court of Appeal but was also refused by it.

(q) The Judge President of this division then directed that the seven liquidation applications be heard by me in the High Court, Durban on a preferential basis on 23 and 24 July 2025.[14]

(r) Pursuant to that direction by the Judge President, I convened a virtual pre-argument conference to ensure, given the immediate history of the matters, that the argument proceeded smoothly and without further obstacles on 23 and 24 July 2025. At that conference, I was informed by Mr *Harpur* that his clients might seek an adjournment of the seven liquidation applications. In the event of that being what the seven respondents decided to do, I accordingly issued directives on the filing of affidavits and heads of argument. There was no mention whatsoever of any pending business rescue applications.

[14] There were now seven liquidation applications because three of the ten liquidation applications were before Singh J in the form of business rescue applications.

(s) Applications to stay the seven liquidation applications were duly delivered on 11 July 2025 and were met with answering affidavits delivered by Nedbank on 17 July 2025.

(t) I heard the applications to stay the seven liquidation applications on 23 July 2025 and dismissed them all with costs.

(u) Finally, I began to hear argument in the seven liquidation applications later in the day on 23 July 2025. Mr *Rood SC*, who appeared for Nedbank with Mr *Bester*, addressed me until the afternoon session, when Mr *Harpur* then commenced his argument. He advised me that seven business rescue applications were in the process of being issued. The next morning, 24 July 2025, the seven business rescue applications were duly handed up. The provisions of s 131(6) of the Act dictated that I hear no further argument and the seven liquidations applications were all consequently adjourned *sine die*.

[27] All of these facts have combined to preclude Nedbank from completing its argument in support of provisional orders of liquidation. I shall have more to say about these events later in this judgment.

The history of the UIF's litigation

[28] In March 2019, the UIF concluded a loan facility with Homii, described as being a 'Mezzanine Facility Agreement' (the Mezzanine agreement). In terms of that agreement, it advanced a loan to Homii in an amount of R410 million. Homii then breached its obligations in terms of the Mezzanine agreement in that it did not repay the loan or any interest on the loan amount, nor did it provide the UIF with its annual financial statements. It presently owes the UIF an amount of approximately R845 million.

[29] As security for the Mezzanine agreement, the first respondent delivered to the UIF a cession agreement, in which its shares were ceded as continuing general covering collateral security and as a pledge. The first respondent further secured Homii's indebtedness to the UIF by providing the UIF with a written guarantee. Because of Homii's default relating to the Mezzanine agreement and by virtue of the guarantee provided, it is alleged that the first respondent is now indebted to the UIF in the same amount owed by Homii.

[30] The UIF is, in addition, the owner of 42 percent of the shareholding in the first respondent. The PIC acquired this interest in May 2018 and advanced a R90 million shareholder loan to the first respondent as part of this transaction. While the shareholding is in the name of the PIC, the beneficial owner of the 42 percent shareholding is the UIF. There is no dispute over this.

[31] While it has no direct bearing on the issues in this matter, it is prudent to mention the unhappy relationship between the PIC and the UIF on the one hand, and the first respondent and Homii on the other. The relationship has been both fractious and litigious.

[32] Upon default by the first respondent of its obligations in terms of the Mezzanine agreement, the UIF perfected the cession of the first respondent's shares and then considered asserting its rights by convening a general meeting of shareholders and appointing a new board of directors. Seemingly as a precautionary measure, the UIF and the PIC brought motion proceedings in the High Court, Pretoria, in which they sought declaratory relief confirming their entitlement to exercise voting rights over the first respondent's shares in Homii and directing the convening of a shareholders meeting. That relief was granted to it on 30 July 2024.

[33] The first respondent and Homii attempted to secure leave to appeal that decision, which was initially unsuccessful in the court of first instance. However, the Supreme Court of Appeal granted leave to appeal on 3 December 2024. The PIC and the UIF thereafter brought an application in terms of s 18(3) of the Superior Courts Act 10 of 2013 to render the declaratory order of 30 July 2024 immediately enforceable pending the appeal. That application was granted on 13 December 2024. The first respondent and Homii appealed this order, which appeal was dismissed by the full court. The first respondent and Homii have now approached the Constitutional Court for leave to challenge the full court's dismissal of the appeal against the execution order.

[34] The UIF also regards the bringing of this application as a further attempt by the A1 Group to frustrate its enforcement of its already perfected rights.

[35] And so, on to the business rescue application.

The business rescue application

Introduction

[36] A court may grant an application for business rescue if, inter alia, it is satisfied that the juristic entity sought to be placed under supervision and subject to business rescue proceedings is financially distressed, if it is just and equitable to rescue it for financial reasons and if there is a reasonable prospect of successfully rescuing the entity.[15]

[37] Such proceedings are not to be approached in a leisurely fashion by an applicant. They are to be approached with the maximum possible expedition and at the first possible opportunity.[16] They must, accordingly, be initiated when the company in question first begins to show signs of distress and preferably before that distress morphs into actual insolvency.[17] As was stated in *DH Brothers Industries (Pty) Ltd v Gribnitz NO and Others*:[18]

'Business rescue proceedings are geared at providing a window of opportunity to restore an ailing company to financial health and functionality ... The window of opportunity does not remain open indefinitely. It follows, therefore, that the legislature will impose and retain such a moratorium only where, in addition to there being a reasonable prospect of rescuing the company, the provisions concerning business rescue proceedings are timeously complied with.'

[38] An important consideration when assessing a business rescue application is to recognise that such proceedings are not intended to be utilised simply as an informal, alternative, winding-up procedure that has the effect of bypassing the long-established liquidation procedures, and accountability provisions, that exist in our law.[19]

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[15] Section 131(4) of the Act. See also: *Diener NO v Minister of Justice and Correctional Services and Others* [2018] ZACC 48; 2019 (4) SA 374 (CC) para 54.
[16] *Koen and Another v Wedgewood Village Golf & Country Estate (Pty) Ltd and Others* 2012 (2) SA 378 (WCC) (*Wedgewood Village*) para 10.
[17] *Schipper v Tirisano Property Group (Pty) Ltd and Others* [2024] ZAWCHC 125 para 96.
[18] *DH Brothers Industries (Pty) Ltd v Gribnitz NO and Others* 2014 (1) SA 103 (KZP) para 27.
[19] *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* [2013] ZASCA 68; 2013 (4) SA 539 (SCA) (*Oakdene (SCA)*) para 33.

Financial distress

[39] The applicant submits that the first respondent is financially distressed. It seems to me that this must be the case, and I do not believe that any of the affected parties have expressed views to the contrary. Nedbank and the UIF, in fact, allege the existence of financial distress of the most extreme kind, namely, insolvency.

[40] If there was a need for further proof of financial distress, it is to be found in a document entitled:

'Business Rescue Plan Prepared for:

Urban Lifestyle Investment Holding (Pty) Ltd',

compiled by Dr Karl Gribnitz (Dr Gribnitz), which is attached as an annexure to the founding affidavit in this application and which constitutes the fulcrum around which this application rotates. I shall refer to this document henceforth as 'the Gribnitz plan'.

[41] Contained within the Gribnitz plan is, inter alia, a narration of the assets possessed by the first respondent. As Dr Gribnitz records, the first respondent had at the time that his plan was prepared, but R1 600 in its bank account, at a time when its liabilities exceeded its assets by over R300 million. It is unquestionably financially distressed.

[42] As to why this should be the case, the Gribnitz plan is singularly unhelpful. Under a heading that reads 'Reasons provided by the Directors as to why the Company is in Distress', the following appears:

'The Directors have considered the financial affairs of the Company and reasonably believe the Company to be financially distressed within the meaning of section 128(1)(f)(i) of the Act, as it will be unable to pay its debts as they become due and payable within the immediately ensuing six months for the following reasons:

a. The Company is unable to pay its debts as they fall due and its operations need to be restructured.'

[43] No explanation at all is accordingly provided for the existing financial distress. I am, nonetheless, satisfied that it is real, and it exists.

[44] Thus, the true issue in the business rescue application is whether there is a reasonable prospect of the first respondent being successfully rescued. The applicant bears the onus of establishing this.[20]

The Gribnitz plan

[45] The applicant chose to discharge the onus that it bears through the presentation of the Gribnitz plan. That plan, says the applicant, and RSA Boss, demonstrates that there is a reasonable prospect that the first respondent might yet be saved.

[46] The deponent to the applicant's founding affidavit, Mr Melvin Munsami (Mr Munsami), presently a director of the first respondent, makes it plain that the applicant relies entirely upon the Gribnitz plan to establish the essential requisites for an order of business rescue. Mr Munsami puts it this way:

'34. In support thereof I annex hereto marked "C1" a draft proposed business rescue plan prepared by an independent expert Dr Karl Gribnitz and his qualifications and experience evidencing his ability and fitness to provide expert evidence, marked "C2" and a Supporting Affidavit by him confirming this.

35. The draft proposed business rescue plan furnishes further details as regards the financial distress of the First Respondent and the related companies and proposes a viable solution which reflects that there is a reasonable prospect for rescuing the First Respondent, or, as contemplated by Section 128(1)(h)[21] if that is not possible, providing a plan that will achieve a better return for the First Respondents creditors and the payment that they would receive as compared with whether the first respondent had simply been liquidated immediately.'

[47] Mr Munsami did not deal thoroughly with the contents of the Gribnitz plan in the founding affidavit but simply referred to it in general terms. This is undesirable, because, as Koen JA put it in *Selective Empowerment Investments Ltd v Companies*

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[20] *Propspec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd and Another* 2013 (1) SA 542 (FB) (*Propspec*) para 11; *Wills v Seed to Plant Properties (Pty) Limited and Others* [2025] ZAGPJHC 1337 para 15.

[21] It seems to me that this is an erroneous reference and should, perhaps, be a reference to s 128(1)*(b)*(iii). Section 128(1)(*h*) refers to the definition of 'rescuing the company'.

and Intellectual Property Commission:[22]

'… a party to litigation is not required to trawl through annexures to an affidavit to identify what might or might not possibly be relevant and relied upon.'

[48] That is, regrettably, what has had to be done in order to distil which parts of the Gribnitz plan are relied upon by the applicant.

[49] The Gribnitz plan is the basis upon which the applicant's business rescue application rests. Confusingly, it is, however, unlikely to be the business rescue plan that will be implemented if the business rescue application succeeds, this notwithstanding its title that it is a business rescue plan prepared for the first respondent. This is because Dr Gribnitz will not be the business rescue practitioner who will be appointed if the application is granted. The business rescue practitioner who will be appointed is Mr Karunagaren Naidoo (Mr Naidoo) and he appears not to have been involved at all in the preparation of the Gribnitz plan. He may, presumably, have different views on the way forward if he is appointed.

[50] It appears to me that in adopting this strategy, the applicant seeks to claim the benefits of the best of both worlds. If the Gribnitz plan establishes a point that advances the prospects of business rescue, then that ought to be accepted by this court. If, however, the Gribnitz plan does not establish an essential fact or is found wanting on an issue, then it is to be ignored because the Gribnitz plan is not intended to be the actual business plan that will finally be put into operation if the business rescue application succeeds. This argument was employed liberally by Mr *Harpur*, who indicated at different stages that the Gribnitz plan was simply 'illustrative'.

[51] The Gribnitz plan is difficult to comprehend because it refers to events that have allegedly occurred, when it is common cause that they have not occurred. A single example will suffice:

'The Minutes and a recording of the First Meeting of Creditors held on Friday, 15 August 2025

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[22] *Selective Empowerment Investments Ltd v Companies and Intellectual Property Commission* [2025] ZASCA 71; 2025 (6) SA 495 (SCA) para 23, with reference to *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* [2007] ZASCA 153; 2008 (2) SA 184 (SCA) para 43.

is available. This recording may be transcribed in future if so required. The appointment of the Practitioner was ratified by the Creditors present and voting at the meeting.'

[52] No such meeting has occurred and therefore no recording can exist. There are several similar statements in the Gribnitz plan. It is not clear to me why this approach was adopted.

[53] Putting this misgiving to one side, if the Gribnitz plan does establish what Mr Munsami says it establishes, then it appears to me that the application for business rescue ought to be granted. The protection and rehabilitation of viable companies is, after all, what the Act favours.[23] The converse argument obviously also applies: if the Gribnitz plan does not establish what Mr Munsami claims it does, then the business rescue application has no prospects, and the counter-applications of liquidation move from the background to the foreground.

[54] The Gribnitz plan is thus of cardinal importance in establishing the reasonable likelihood of the salvation of the first respondent. It must, therefore, of necessity, be carefully considered to see if it does offer any reasonable hope of rescue or whether what it proposes is merely a fantasy presented as reality.

[55] Dr Gribnitz commences his plan on a cautionary note, which reads as follows:
'The proposals in this Plan are based on the information provided by management, and, due to time constraints, no independent verification thereof could be undertaken. Therefore, the estimates and projections in the Plan are based on information provided by the management and experience of the drafter here of, Dr Karl J Gribnitz.'

[56] Accepting this to be correct, it appears to me that all that Dr Gribnitz knows of the state of the first respondent's business is therefore what its management has told him. Logically, what he was told by the management of the first respondent may be accurate, or it may be inaccurate, or it may be a mixture of both. Dr Gribnitz does not know himself which of these alternatives may apply to what he has been told because

[23] *Cape Point Vineyards (Pty) Ltd v Pinnacle Point Group Ltd and Another (Advantage Projects Managers (Pty) Ltd Intervening)* 2011 (5) SA 600 (WCC) (*Cape Point Vineyards*) para 6.

he has not personally verified the information that he has received. This, at the very outset, is problematic.

[57] The Gribnitz plan is therefore not constructed upon any independent, objective, verified data or information. All the information that has been provided to Dr Gribnitz emanates from the very people who had plotted the course of the first respondent and who had their hands on the tiller when the first respondent initially ran aground. Their objectivity may legitimately be open to question.

[58] Moving on to the substance of Dr Gribnitz's plan, it has, in its essence, but two component parts which are:

(a) a proposal to restructure 'the group'; and

(b) the development of a business rescue plan.

[59] Each of these components will be considered.

Component one: Restructuring the group

[60] Dr Gribnitz summed up the first component of his plan as follows:

'This Business Plan forms part of a restructure of the affairs of the entire group. Once the assets and certain liabilities held by the subsidiaries are transferred to the Company, a further restructure of the group will occur.' [24]

[61] What 'group' Dr Gribnitz was referring to is not defined by him, and I am obliged to cautiously assume that he was referring to the A1 Group as I have defined it. But I may very well be wrong in this assumption, given the vagueness of the Gribnitz plan on this issue.

[62] The proposed restructuring requires the first respondent to acquire the assets held by its 'subsidiaries,' which can only be a referral to the property owning companies, and for them to be:

'… amalgamated into the Company via an acquisition of the properties from its subsidiaries. In addition to moving the assets (properties and other assets) into the Company, the liabilities

[24] The reference to 'the Company' in this extract, and in the other extracts cited, is a reference to the first respondent.

owing to the creditors of the subsidiaries will also be transferred, either in part or in whole, to the Company.' (Underlining added)

[63] Dr Gribnitz goes on to state that:

'The Practitioner is of the opinion that if all the assets (land and buildings) and debt of the subsidiaries are acquired by the Company under the business rescue plans of the subsidiaries, the resulting amalgamation of the assets and debt in a single company will resolve the section 45 issues.' [25]

[64] As regards the mechanics of how the immovable properties are to be acquired by the first respondent, Dr Gribnitz proposes that:

'The Company will make an offer the acquire (sic) the properties of the subsidiaries, where the value of the properties has been reduced by 25% across the board, and where the Business Rescue practitioner will determine the values all the properties in conjunction with professional property practitioners.'

[65] Dr Gribnitz proposes two distinct ways of treating the indebtedness of the first respondent to Nedbank and the UIF. As regards Nedbank, he states that the first respondent's facility with it would have to be restructured. What would happen is that the debt would be reduced to only reflect the capital portion of the debt owed to Nedbank, said by Dr Gribnitz to amount to the sum of R385 million, and would, at least initially, exclude any interest, and which amount would be repaid as follows:

'Nedbank provides a six-month repayment holiday, where the proceeds of the properties are used to pay dividends to all the creditors other than Nedbank and the UIF as set out in the subsidiaries; The Nedbank loan is restructured over ten years at the same interest rate as set out in the original loan agreement dated December 2018. All the Nedbank securities in terms of bonds will remain in place, and a cession on the securities can be noted.'

[66] Concerning the UIF, Dr Gribnitz proposes the following:

'To restructure the UIF Mezzanine loan owed by Homii to being only the capital amount: the loan will be moved from Homii to the Company as a shareholder loan that will total R500 million; The shareholder loan will be converted into a convertible preference share that will be redeemed equal to seventy-five percent of the retained profits with a zero dividend; The

[25] Despite not being the person who is to be appointed as the business rescue practitioner if the application succeeds, Dr Gribnitz, confusingly, continues to refer to himself as 'the Practitioner'.

preference shareholder will have the right to appoint two directors to the board of the Company.'

Component two: The development of a business rescue plan

[67] The second part of the Gribnitz plan was the development by the appointed business rescue practitioner who, as already mentioned, is not to be Dr Gribnitz, of a turnaround plan. It bears repeating that the Gribnitz plan, styled by its author as being a 'Business Rescue Plan' is, in fact, not the business rescue plan that will be implemented if this application succeeds.

[68] As Mr *Rood* pithily submitted, all that the Gribnitz plan amounted to in this regard was a proposal that a plan be devised to develop a plan.

The opposition to the Gribnitz plan

[69] Both Nedbank and the UIF oppose the granting of an order permitting the first respondent to be placed under supervision and in business rescue. I do not intend to deal separately with their submissions in this regard but shall deal with the principal points of objection when analysing the Gribnitz plan.

[70] But, summarised, their objection is that the business rescue application has been brought in bad faith and that the Gribnitz plan fails to establish the necessary grounds that would permit supervision and business rescue proceedings to be ordered for the first respondent. In particular, both assert that there is no reasonable prospect of the first respondent being rescued and that liquidation is called for in the circumstances.

[71] Mr *Rood* advised me from the bar that Nedbank would not agree to Dr Gribnitz's plan but so much is also stated by the deponent to Nedbank's answering affidavit. Likewise, Mr *Wasserman SC*, who appears together with Mr *Msomi* for the UIF, also indicated from the bar that the UIF would not accept such a proposal.

Analysis

[72] In analysing the Gribnitz plan, I acknowledge that there is no requirement at all at this stage of proceedings that such a business rescue plan should exist. Mr

Harpur argued forcefully, and repeatedly, that it was for the business rescue practitioner appointed to perform the task of putting together the actual business rescue plan. I accept that to be the case, for s 140(1)(*d*)(i) of the Act states that this is one of the responsibilities of the business rescue practitioner appointed.[26]

[73] It would be foolhardy to attempt to lay down how an applicant should go about presenting its case to demonstrate the existence of a reasonable prospect of rescue of a distressed company. However, it is safe to state that the founding papers in the business rescue application must contain sufficient factual details to enable the court to determine whether the business rescue practitioner will probably have a viable basis to rescue the company.[27] Thus, a party cannot simply present an application for business rescue to the court on flimsy grounds and:[28]

'… in the hope that the practitioner will provide the panacea to its problems. The application must set out sufficient facts, if necessary augmented by documentary evidence, from which a court would be able to assess the prospects of success before exercising its discretion.'

In other words, before there is a business rescue practitioner in place, this court must be satisfied that such a person should first be appointed.

[74] The applicant has chosen to attempt to satisfy the court that business rescue proceedings should be ordered through the presentation of the Gribnitz plan. It, therefore, does not assist it to assert that there is no need for a business rescue plan to now exist, as it has done, repeatedly. The fact of the matter is that this is the method that the applicant has chosen to persuade this court that business rescue proceedings are appropriate and should be ordered. Conceivably, the applicant could have presented its case in another way that did not rely on the Gribnitz plan, for example, by putting up audited financial records, or current financial documents, all supported by affidavits, but it chose the form of the Gribnitz plan as the way to achieve its aims.

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[26] Section 140(1)(*d*)(i) of the Act reads as follows:

'(1) During a company's business rescue proceedings, the practitioner, in addition to any other powers and duties set out in this Chapter -

…

(d) is responsible to -

(i) develop a business rescue plan to be considered by affected persons, in accordance with Part D of this Chapter…'

[27] *Wedgewood Village* para 17.

[28] *Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd and Others* 2012 (5) SA 497 (WCC) para 41.

Thus, it is that document that must bear the strain of scrutiny and it serves no purpose for the applicant to state that such a plan need not now exist. Given the choice made by the applicant, if it did not exist, its application would be stillborn. It is accordingly the Gribnitz plan that must convince me that business rescue proceedings should be ordered.

[75] It seems to me that to authoritatively motivate for business rescue for the first respondent, the person recommending that solution should have fairly considered the first respondent's financial position and should be able to provide information on the true state of the first respondent's current financial position and how it arrived at that point. A natural starting point to acquire that essential information would be the company's financial statements. This was emphasised by the Supreme Court of Appeal in *African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd and Others,*[29] where the court observed that:

'[33] The fact that both the resolution to commence business rescue and the business rescue plan were based on financial statements which were more than five years old, presented a fundamental difficulty for a proper assessment of prospects of business rescue. Generally, the factual basis for assessment of the true financial position of a company is its (latest) financial statements (and, where necessary, its management accounts). And the business rescue plan must conclude with a certificate by the practitioner that the actual information provided appears to be accurate, complete and up to date. Although the business plan had the required certificate, it was clearly not correct. For obvious reasons the 2005 financial statements could not, on their own, in January 2012, form a proper basis for an assessment of reasonable prospects of rescuing Kariba.

[34] The true state of Kariba's affairs as at January 2012 and its anticipated operations could not be established without an update of the books of account, conducted on sound accounting principles, proper valuation of the company assets, and substantiated prospective income and expenditure. All these were lacking and no cogent case was made to support an opinion of reasonable prospects of rescue. Consequently the resolution to commence business rescue was taken without a proper basis and falls to be set aside.' (Footnotes omitted.)

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[29] *African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd and Others* [2015] ZASCA 69; 2015 (5) SA 192 (SCA) (*Kariba*).

[76] The court referred to 'financial statements' in *Kariba*. The financial statements of a company are the product of a systematic process of recording, summarising, and presenting its financial transactions. The financial statements provide an accurate picture of the company's financial position over a specific period of time and are considered to be reliable by virtue of the fact that they are ordinarily not prepared by the company itself, but by an independent, professional, third party that specialises in such work. Those statements are intended to allow an outsider to the company an insight into its financial health. They are compiled using clearly defined rules and must be delivered to the registrar of the Companies and Intellectual Property Commission annually.

[77] Another form of financial documentation was also mentioned in *Kariba*, namely, management accounts. As that judgment makes clear, they are to be considered only 'where necessary'.[30] Management accounts are financial reports prepared for internal use only, unlike audited financial statements. They are not intended to be considered by outsiders to the company. No formality attaches to them, and they may be prepared weekly, monthly, or quarterly or for any other period deemed necessary. They are designed to assist the management of the company to gauge its ongoing financial condition. They are not audited accounts and are not part of a legally-mandated reporting pattern. They may, therefore, be tailored to take on any form that is desired.

[78] The applicant is acutely aware of the importance of accurately capturing and portraying the true financial position of the first respondent, for it stated in its founding affidavit that:

'The legal position is that the court must assess the company's financial position at the time the application is heard and not when it is launched. That assessment is not confined to historical data and must be informed by the most current and reliable financial information available at the time of the hearing. This includes management accounts and updated operational information where audited financials are not yet finalised or are no longer reflective of the prevailing conditions.'

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[30] *Kariba* para 33.

[79] This is a notable statement, but it is not a complete or accurate one. While the statement mentions management accounts, it does not mention audited financial statements. The applicant has simply not presented any original, objective financial information pertaining to the first respondent to this court. All information presented comes through Dr Gribnitz's plan and that, on his own version, is based upon unverified information.

[80] In *Kariba*, there were financial statements, although they were hopelessly out of date. In this matter, there are simply no audited financial statements at all. Not even hopelessly outdated ones. Dr Gribnitz reveals that he had no recourse to any audited financial statements of the first respondent in preparing his plan. It appears that none exist. Mr Munsami confirmed this under oath when he stated that:

'There are no current annual financial statements and the draft business rescue plan was prepared from the most current management accounts provided.'

[81] Mt Munsami leaves it there. He does not say why this should be the case or when the last audited financial statements for the first respondent were prepared. I am afraid that is not good enough. It is not clear when the first respondent last had audited financial statements prepared for it. The lack of audited financial statements appears to be endemic throughout the A1 Group.[31] The issue of audited financial statements has simply been ignored by the applicant in the founding affidavit, and no explanation has been tendered for the fact that none exist. The issue is brushed away with the repeated mantra that the Act does not require them.

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[31] On the second day of argument, Nedbank handed in an extract from the *Government Gazette* of 16 January 2026 (notice no 6999, *GG* 53956). It contained a notice issued by the Director General of Higher Education indicating his intention to deregister three companies that provide private educational services that form part of the Leo Chetty Group of Companies, of which the A1 Group forms part, namely, City Varsity (Pty) Ltd, Damelin (Pty) Ltd and Icesa City Campus (Pty) Ltd, for a failure to comply with s 57(2)(*b*) of the Higher Education Act 101 of 1997. That section provides that a private higher education institution must, within the period determined by the registrar (currently on or before 30 April of each year (reg 27(1) of the Registration of Private Higher Education Institutions, 2016)), provide to the registrar of private higher education institutions a certified copy of an auditor's report in respect of its financial statements. Subsequently, on 27 February 2026, the cancellation of the registration of Damelin (Pty) Ltd as a registered private higher education institution was published in notice 7171, *GG* 54218 of that date. The reasons cited for such cancellation included a failure to supply the auditor's report previously mentioned. Mr *Harpur* pointed out that a previous deregistration in 2025 had been reversed and, as a consequence, it was argued by the applicant in its replying affidavit that what occurred in 2025 is distinguishable from the current events. But by virtue of what occurred on 27 February 2026, that distinction, if it did exist, can no longer be sustained.

[82] That mantra was the source of Mr *Harpur's* repeated assertion in argument that the Act does not require audited financial statements to be considered when bringing a business rescue application. He is, again, undoubtedly correct in saying that for, indeed, the Act makes no mention in its wording of the presentation and consideration of audited financial statements. But that does not mean that they do not need to be considered or should not be considered. The Supreme Court of Appeal stated in *Kariba* that audited financial statements are essential in determining these types of applications. They are the obvious starting point when attempting to understand and define the distressed company's condition. Audited financial statements are obviously essential for they would authoritatively define the extent of the financial difficulties facing the distressed company and would be able to authoritatively identify when those difficulties commenced and would allow for a proper consideration as to whether those difficulties could realistically be overcome. If the problem is not defined and explained, how can its solution be proposed and be considered to offer a reasonable prospect of rescue?

[83] Thus, the rocky foundation upon which the Gribnitz plan is premised is even rockier than first appreciated. But, in my view, that foundation becomes even more questionable when Dr Gribnitz states that he did, in fact, have access to some financial documentation. This may appear to be paradoxical reasoning: why should the position be considered to be even more detrimental if financial records were, indeed, considered by Dr Gribnitz? Let me explain.

[84] Dr Gribnitz states in his plan that he, in fact, had access to the first respondent's management accounts for an undefined period ending on 31 May 2025. I can only assume that he was referring to the management accounts when he stated the following:[32]

> 'Based on investigations into the affairs of the Company, the Business Rescue practitioner determined that the accounts of the Company were an accurate reflection of the financial position of the company and/all of the debts owing by the company.'

[32] As no business rescue practitioner has in fact been appointed, Dr Gribnitz can only be referring to himself in this extract. If he is not, then the statement is entirely meaningless.

[85] Given that Mr Munsami has confirmed that there are no current annual financial statements, the reference to 'the accounts of the Company' can only be a reference to the management accounts, which apparently do exist, and which Dr Gribnitz acknowledges consulting. I am not certain how Dr Gribnitz could come to the conclusion about the accuracy of the management accounts, given his earlier admission that he did not verify any information that he was given. Moreover, it is not Dr Gribnitz's function to pronounce upon the reliability of the only financial documents that appear to exist. That is the function of this court.

[86] What makes the position for the applicant parlous, and renders Dr Gribnitz's opinion questionable, is that the management accounts do not form part of the application. They are not attached to the Gribnitz plan, nor are they attached to the founding affidavit.

[87] No explanation whatsoever for this unsatisfactory state of affairs has been provided. The position is exacerbated by the affidavit delivered by the affected party, RSA Boss, where its deponent states the following:

'It is denied that the alleged non-disclosure of management accounts renders the application defective. The management accounts and supporting documentation are available to the business rescue practitioner and will be disclosed to affected persons in accordance with section 150 of the Act, which governs the preparation and publication of the business rescue plan. Infected persons with sufficient information arises at the stage of Considering and voting on the plan, not at the stage of adjudicating on the application for business rescue.'[33]

[88] From this, it emerges that the management accounts will be disclosed to the affected parties, but not to the court. It is almost impossible to escape the conclusion that the withholding of the management accounts has been done purposefully. If they would have unequivocally established the desirability of business rescue proceedings being ordered, there can be no doubt that they would have been disclosed by the applicant in a heartbeat. The fact that none of the persons who deposed to affidavits in the applicant's case was prepared to allow Nedbank or the UIF or this court to see the management accounts invites the inference that they have been purposefully

[33] Answering affidavit of RSA Boss, page 015-17, para 7.7.

withheld, as they would not support the proposition of business rescue. I can think of no other reason why they were not disclosed, given the admission that there are no audited financial statements.

[89] At the centre of the Gribnitz plan is the proposal that the property owning companies transfer their immovable assets to the first respondent. If this were to happen, Dr Gribnitz predicts that the resulting amalgamation of the assets and debts into a single company 'will resolve the section 45 issues'. I confess, again, that I do not understand the logic of this statement. I shall deal with the s 45 issue shortly in more detail, but for now, it bears mentioning that the point mentioned by Dr Gribnitz, which is narrated in a quote referred to earlier in this judgment,[34] refers to whether there was compliance with s 45(3) of the Act by the directors of the first respondent at the time that the loans were negotiated, and concluded, with both Nedbank and the UIF. This is the principal defence that the companies who are the targets of the ten liquidation applications raise in resisting their liquidation: s 45(3) of the Act was not complied with in 2018 and thus the loans of over a billion Rand received collectively from Nedbank and the UIF are all void *ab initio*.

[90] What I fail to grasp is how a future event, namely the acquisition by the first respondent of the immovable properties from the property owning companies, can resolve an issue that allegedly happened eight years ago, which is relied upon by the applicant and first respondent to avoid liquidation, and which allegedly relates to non-compliance with a statutory requirement existing eight years ago.

[91] That, however, is not the only thing that I do not understand. Fundamentally, I do not understand how Dr Gribnitz proposes that the immovable properties are to be acquired by the first respondent. They cannot simply be taken by the first respondent. They would have to be acquired from the property owning companies, and for value, even if the value is reduced by 25 percent, as proposed by Dr Gribnitz. But the first respondent has no cash with which to acquire them. The extraordinary barrenness of its coffers was mentioned earlier. It seems that the answer to this is to be found in Dr

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[34] Mentioned in paragraph 62 of this judgment.

Gribnitz stating that the business rescue practitioner would have to seek funding from a third party.[35]

[92] During the hearing, Mr *Harpur*, perhaps anticipating the beginning of the pinch on this point, attempted to hand up a supplementary affidavit which explored the possibility of the first respondent receiving financial assistance from two third parties. The supplementary affidavit was prepared considerably out of time. Initially, Mr *Rood* resisted it being handed up, but on the second day of the hearing, he relented and allowed it to be handed in without objection.

[93] The supplementary affidavit, again deposed to by Mr Munsami, explained that two financial institutions, namely TUHF Ltd (TUHF) and Paragon Capital Raising (Pty) Ltd (Paragon), had:

'13. … provided written confirmations recording their intention, to provide financing for the immovable properties as proposed in the business rescue plan of the First Respondent.

14. The aforesaid confirmations are contained in two written letters furnished by the respective funders, which letters confirm an intention to advance funding in an aggregate amount of R312,000.000 (three hundred and twelve million rands only) in support of the First Respondent's business rescue proceedings.'

[94] As far as I can make out, no definitive offer of funding is contained in either TUHF's letter or that of Paragon and Mr Munsami's representation as to what the two letters state is a gross distortion of their contents. Both letters are dated 27 January 2026 and were clearly prepared in haste and to accommodate the commencement of the hearing of this application.[36]

[95] TUHF indicates in its letter that because of the current financial distress of the first respondent, the conditions upon which it might be willing to assist are:

'… by necessity, more onerous than our standard lending terms.'

TUHF goes on to state that any final arrangement would be subject to credit approval in terms of its normal credit approval process. There was, therefore, no agreement captured in that letter.

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[35] Founding affidavit, page 001-81, para b.

[36] This application commenced on 28 January 2026.

[96] As regards Paragon's letter, it records that it had apparently been requested to make available an amount of R250 million. Its letter, however, was not to be construed as constituting a binding obligation on Paragon. The letter records that:

'4. A1 Capital (Pty) Ltd has informed Paragon that the properties are in entities currently subject to business rescue proceedings in terms of the Companies Act 71 of 2008 ("the Seller"). The funding would only be available after the commencement of Business Rescue and is intended to be implemented pursuant to a duly adopted business rescue plan.

5. In these circumstances, the validity, enforceability, and implementation of the funding are dependent upon the approval and implementation of business rescue plan(s) in accordance with the Companies Act.

6. Accordingly, and as a material consideration for the provision of a Facility, Paragon and/or its funding partners require the approval and implementation of a relevant business rescue plan(s).'

[97] The wording of the Paragon letter makes it clear that its potential involvement demands the existence of a business rescue plan. If it was told, as it appears to have been, that the entities in question were already subject to business rescue proceedings, then it was misled. If business rescue is not ordered, then, on the plain meaning of the Paragon letter, it will not be in a position to offer any form of funding.

[98] The two letters do not demonstrate an intention to lend an aggregate amount of R312 million, as Mr Munsami claimed. Far from it. Neither of the letters was definite in their intentions nor did they offer the funding claimed by Mr Munsami. Mr *Harpur* correctly conceded that both the letters were 'heavily conditional'. I agree with that assessment.

[99] After considering their contents, I am of the view that the two letters did not constitute an unequivocal commitment to the provision of financial assistance to the first respondent and they, consequently, do not advance the applicant's position.

[100] Without the likelihood of a financial injection being established, it appears to me that there cannot be the acquisition of the immovable properties from the property owning companies. This acquisition is fundamental to the Gribnitz plan.

[101] However, I am prepared to consider that I may be wrong and that, perhaps, finance can be found. If finance is found and the properties are acquired from the property owning companies, then I also do not understand how that acquisition changes the financial prospects of the first respondent or the property owning companies. On a purely simplistic level, it appears to me to be a classic example of the deck chairs being rearranged on the Titanic.[37] I do not understand how the acquisition by the first respondent of all the immovable properties will provide a solution that has not already presented itself when the immovable properties were individually owned by their original owners. Such a series of transfers, as contemplated, does not appear to me to create any new value but will, rather, consume value.

[102] I pointed out to Mr *Harpur* that if the property owning companies are obliged to sell their only assets at 75 percent of their true value, as proposed by Dr Gribnitz, but are only partially released from their liabilities, as appears to also be possible according to Dr Gribnitz, their future did not appear to be improved by what was being proposed. Mr *Harpur* conceded that if this occurred, the property owning companies inevitably would have to be liquidated.

[103] I enquired further from Mr *Harpur* as to what would happen to the immovable properties acquired by the first respondent if a capital injection was found that permitted their acquisition. Mr *Harpur* unequivocally stated that they would be sold. I began to form the impression that what was actually being intended by the Gribnitz plan was a private liquidation of the A1 Group.

[104] My understanding that this was what was actually being proposed through the Gribnitz plan was fortified by the very wording that Dr Gribnitz employed in his plan. He commenced the introductory summary of his plan with the following words:

'This document sets out the proposed Business Rescue Plan that may result in a better return for Affected parties as contemplated in section 128(1)(b) of the Act.'

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[37] A description first used in print in the Canadian publication, *The Times Colonist*, in December 1972 (https://www.phrases.org.uk/meanings/rearranging-the-deckchairs-on-the-titanic.html).

[105] This is not an isolated instance of Dr Gribnitz inadvertently, or mistakenly, using these words. He repeats those exact words at the end of his summary of his plan.[38] And he then repeats them a third time.[39]

[106] The words 'better return' feature in s 128(1)(*b*) of the Act, and read as follows: '**"business rescue"** means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for—

(i) the temporary supervision of the company, and of the management of its affairs, business and property;

(ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

(iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, <u>if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company</u>…' (Underlining added.)

[107] The Act thus presents the possibility of a better return for creditors and shareholders as an alternative to the successful rescue of a company and it continuing to remain in business. Put differently, the better return is the alternative available if it is not possible for the company to keep going.[40] Dr Gribnitz appears, therefore, in making the statement, to accept that the first respondent actually cannot be rehabilitated, but that a better return could be achieved for the affected parties if the business rescue practitioner attended to the liquidation of assets owned by the first respondent rather than a liquidator.

[108] There is no real evidence before me to establish that this will offer a better return. What is before me are submissions based upon allegedly 'well-known' perceptions of winding-up procedures in general. For example, Mr Munsami makes submissions on the range of commissions charged by auctioneers, without indicating

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[38] The last sentence on indexed page 001-34 reads as follows: 'This document sets out the proposed Business Rescue Plan that may result in a better return for Affected parties as contemplated in section 128(1)(b) of the Act.'

[39] Indexed page 001-142.

[40] *Oakdene (SCA)* para 23.

the basis of his knowledge. In *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others*, the court observed that:[41]

'I have difficulty in understanding why a liquidator will be less successful in realising a proper market value for the immovable property than a business rescue practitioner. Provided a sale of the properties is effected at market-related prices, whether by private treaty or at an execution sale, I can see no reason why a liquidator would not be equally successful in obtaining the best price for the immovable property. Despite the negative connotations surrounding liquidations, they are not per se negative, since they may, in certain cases, yield a better financial return for creditors. No factual evidence was placed before me by the applicants which justifies a different conclusion.'

I am in respectful agreement with this reasoning.

[109] Brand JA in *Oakdene (SCA)* stated that:[42]

'My problem with the proposal that the business rescue practitioner, rather than the liquidator, should sell the property as a whole, is that it offers no more than an alternative, informal kind of winding-up of the company, outside the liquidation provisions of the *1973 Companies Act* which had, incidentally, been preserved, for the time being, by item 9 of sch 5 of the 2008 Act. I do not believe, however, that this could have been the intention of creating business rescue as an institution. For instance, the mere savings on the costs of the winding-up process in accordance with the existing liquidation provisions could hardly justify the separate institution of business rescue. A fortiori, I do not believe that business rescue was intended to achieve a winding-up of a company to avoid the consequences of liquidation proceedings, which is what the appellants apparently seek to achieve.'

I am, again, in respectful agreement with this reasoning.

[110] While a so-called 'forced sale' may not achieve an optimal value for an immovable property sold, there is no reason why a sale conducted by a liquidator should be a forced sale. There is no obvious reason why a liquidator should not achieve the same results as a business rescue practitioner might achieve.[43]

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[41] *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2012 (3) SA 273 (GSJ) *(Oakdene (Gauteng))* para 49.1. Brand JA in *Oakdene (SCA)* para 34 shared the same difficulty identified by the court a quo.

[42] *Oakdene (SCA)* para 33.

[43] *Propspec* para 26.

[111] In preparing his plan, Dr Gribnitz chose to walk a fine, and difficult, line. Given the defence to liquidation raised by the first respondent, namely that there had not been compliance with s 45 of the Act, he appears not to have been prepared to acknowledge that either Nedbank or the UIF were, in fact, creditors of the first respondent, despite the enormity of their respective loans to the companies in the A1 Group. If he had accepted them as secured creditors, he would have had to acknowledge that, by being by far the largest creditors of the first respondent, they would have the ability to veto any proposed business rescue plan when it was presented if they did not support its adoption. Both Nedbank and the UIF have unequivocally expressed views in their affidavits in this application that this is what they would do: they would not approve the Gribnitz plan if it was presented as the formal business rescue plan.

[112] The only way to attempt to avoid this unhelpful scenario for the applicant, and the first respondent, was for Dr Gribnitz to totally embrace the defence of the applicant and the first respondent in denying the status of the first respondent's two largest creditors and their power to veto a business plan. This he did with seeming alacrity. He stated the following:

'There is a challenge in terms of the validity of the sureties, bonds, pledges and cessions that were provided by the various entities of the group in terms of Section 45 of the Act. The validity of Section 45 affects not only the securities provided to Nedbank by the subsidiaries but also those provided to the UIF by the Company. The loans provided between the companies also became void, as all the entities in the group failed to conclude the proper resolutions and solvency and liquidity tests…'

[113] In amplification of this general proposition, Dr Gribnitz states that he investigated the affairs of the first respondent to ensure that it complied with the requirements to provide financial assistance. This, despite his earlier assertion that he did not have time to verify anything. As regards the UIF's claim, he indicates that:

'… the claim is unenforceable for the following reasons:

(i) No proof could be found of any consideration having been given to the company's liquidity and solvency at the stage when the guarantee was accepted, the board resolution nor special shareholder resolutions exist wherein the guarantee was approved.'

[114] As regards the Nedbank claim, identical wording was used.

[115] Dr Gribnitz does not appear to have critically assessed the merits of the first respondent's position and appears to have had no regard at all to the arguments of Nedbank and the UIF. He does make mention of a legal opinion which he apparently considered on this issue, and which was allegedly attached to the papers.[44] But there is no such opinion attached.

[116] In my view, presentation of a plan such as the Gribnitz plan requires impeccable objectivity.[45] Such a plan is intended to guide the court to a just solution for an existing problem. In simply adopting the applicant's argument, it appears to me that Dr Gribnitz compromised whatever objectivity he had and gives me further cause to be critical both of his plan and his conclusions.

[117] The Gribnitz plan is a weighty document. In boxing terms, it is in the super heavyweight category. It is 132 pages long and it is filled with tables and figures. On the face of it, it is an impressive-looking document. But it seems to me that the numbers that fill its pages are limited by the quality of the data upon which they are based, none of which is independently verified, and by the context within which the numbers are employed. As Lord Steyn stated in his famous aphorism, 'In law, context is everything'.[46]

[118] Professor Wainer, an expert who has commented on the Gribnitz plan in an affidavit delivered on behalf of the UIF, observed as follows:

'In summary, although a lot of paper has been provided in the Plan, the Plan is remarkably bereft of detail and basic information required to make reasonable assessment as to whether the plan is realistic and credible, and better than a liquidation - and taking into account inter alia, the extraordinary assumptions in the Plan and the vast insolvency referred to in the Plan.'

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[44] Allegedly attached and marked as 'Appendix 9'. Appendix 9 is, in fact, entitled 'Methodology of Investigation as Contemplated in Section 141 of the Companies Act'.

[45] *Kariba* para 37.

[46] *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26; [2001] 3 All ER 433 (HL) para 28. Cited with approval in *Aktiebolaget Häsle and Another v Triomed (Pty) Ltd* 2003 (1) SA 155 (SCA) para 1.

[119] In this, I share Professor Wainer's views.

[120] However, while there is much to be critical about in the Gribnitz plan, and much that is unclear from it, certain of Dr Gribnitz's findings appear to me to be unassailable:

(a) Dr Gribnitz stated that the current business operations of the first respondent do not make a profit. That seems to me to be correct. He, however, does not state for how long this has been the case.

(b) He stated, further, that:

'The Company is under capitalised and requires an injection of capital to continue in business.'

The sourcing of capital is accordingly crucial to the continued longevity of the first respondent. The importance of loan capital was acknowledged in *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd*, where the court stated:[47]

'If the company will be reliant on loan capital or other facilities, one would expect to be given some concrete indication of the extent thereof and the basis or terms upon which it will be available…'

There has been no such disclosure in the Gribnitz plan, nor can there be, for there is no evidence of the first respondent acquiring any loan capital. The TUHF and Paragon letters have already been considered and have been found to be wanting.

(c) Dr Gribnitz also disclosed that:

'The Company is unable to pay its debts as they fall due and its operations need to be restructured.'

An inability to pay debts as and when they fall due is a classic indication of commercial insolvency.[48]

(d) Finally, in a possible nod to reality, Dr Gribnitz indicated that in the event that the shareholder (a reference, I believe, to the UIF) and the Bank (which I assume to be Nedbank):

'… do not approve the turnaround plan and the practitioner fails to obtain funding from a third-party, the properties will be sold, and the proceeds will be paid to the creditors as set out in the approved business rescue plan.'

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[47] *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd* 2012 (2) SA 423 (WCC) para 24.2.

[48] *Boschpoort Ondernemings (Pty) Ltd v Absa Bank Ltd* [2013] ZASCA 173; 2014 (2) SA 518 (SCA) (*Boschpoort*) para 16.

This seems to be what is envisioned by Dr Gribnitz for the reasons previously mentioned.

[121] As was mentioned earlier, both Nedbank and the UIF hold the view that the applicant, in bringing this application (and the other five business rescue applications), is purposefully attempting to delay what they view as the inevitable liquidation of the first respondent and the other companies targeted for liquidation. They point to the history of the matter, previously mentioned in this judgment, in support of this submission.

[122] A similar argument was advanced before Singh J in the business rescue applications relating to Lococo 3, Lococo 4 and Old iStudy. Singh J made the following observation in response to that argument:[49]

'The intervening applicants went into great detail regarding why the BR applications have been an abuse of the process of court and nothing more than a means to prevent the ultimate winding up of the respondents. I am satisfied that even on EPH's own version the BR applications were brought to prevent provisional orders of winding up being granted against the respondents. There can be no bona fides in this. On that ground alone, the BR applications fall to be dismissed.'

[123] The observations of Singh J in the matters that she dealt with coincide entirely with mine in this matter. The applicant, naturally, denies that bringing the business rescue application amounts to an abuse. In its replying affidavit, Mr Munsami states the following:

'The very purpose of business rescue is to prevent liquidation. It cannot therefore be an abuse to invoke the remedy at the point when liquidation is imminent.'

[124] To my thinking, that is a telling statement, but it is at the same time an inaccurate one. It is inaccurate in simply stating that the purpose behind a business rescue application is to prevent liquidation. The purpose, expressed more accurately, is to prevent liquidation in deserving cases. Not every business rescue application is deserving and not every business rescue application is granted. But it is an accurate

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[49] *Educor Property Holdings (Pty) Ltd v Lococo 3 (Pty) Ltd and Others* (KwaZulu-Natal Division of the High Court, Durban, unreported case no 2025-242163, dated 19 February 2025) para 122.

statement insofar as the imminence of liquidation is concerned. Even Mr Munsami discerns its spectral presence.

[125] It appears to me that the entire dispute between the A1 Group and Nedbank and the UIF has been carefully and impeccably choreographed by the A1 Group and its advisors. The strategy employed to resist the ten liquidation applications is not at odds with the recently much mentioned strategy in our law of the 'Stalingrad defence', based upon the street-by-street defence strategy employed by the Red Army in the Second World War when defending the city of Stalingrad during Operation Barbarossa. That there is evidence of such a strategy in this matter, and in all of the ten liquidation matters, brooks of no doubt.

[126] The initial defences raised were the applications for discovery. Those applications were taken all the way to the Constitutional Court, thus buying time. Then there were applications for adjournments. The fallback position was business rescue proceedings but not initially in respect of all the companies in the A1 Group. Only three such applications were initially attempted because only three companies were affected by the intervention application brought by the PIC and if intervention had then been allowed, there was a very real prospect that provisional orders of liquidation may have followed, given that such relief was specifically claimed in the event of the intervention applications succeeding. If that had occurred, the survival of the A1 Group house of cards would have been put at risk. When, finally, the stage was set for the provisional orders of liquidation to be heard, business rescue proceedings were then conjured up in respect of the next seven companies.

[127] None of this happened simply by chance. It happened by design and the design was intended to frustrate Nedbank and the UIF in their intentions to seek the liquidation of the ten companies. Mr *Harpur,* with a strong, but totally unjustified, sense of outrage, has repeatedly aggressively argued that it is defamatory of Nedbank and the UIF to suggest that a Stalingrad strategy has been adopted by the applicant. How that allegation could be defamatory is not entirely clear to me. But perhaps it is.

[128] Mr *Harpur* argued further that it would have been improper for this application, and the other business rescue applications, to have been brought earlier. With the

greatest of respect, that argument is a weak one and it fails to persuade, because the applicant, as already mentioned, has put up no original documentation to demonstrate its true financial history and its present financial condition. It appeared to be submitted by the applicant that the financial condition of the first respondent gradually worsened to the position where business rescue proceedings became imperative. No attempt was made to explain how all six of the companies sought to be placed under business rescue reached the same critical position at the identical moment in time. Indeed, the applicant directly contradicts itself on the issue of the necessity for business rescue when it states at paragraph 40 of its founding affidavit that:

'The launching of this business rescue application is not the result of delay or avoidance. It has not been delayed for tactical purposes. The application is brought appropriately at this time due to:

40.1 the result of a combination of material considerations including complex litigation previously launched across multiple jurisdictions

40.2 negotiations with creditors and institutional shareholders, and

40.3 <u>recent stabilisation in operational performance of the company</u>.' (Underlining added.)

[129] The contradiction that arises from this statement is the wording to be found in paragraph 31 of the same founding affidavit:

'The financial distress precipitated in the first place by the Covid-19 pandemic, has recently increased in intensity by virtue of the said liquidation applications …'

The underlined statement in the preceding paragraph and the statement in this paragraph both cannot be correct.

[130] As mentioned earlier in this judgment, business rescue proceedings are required to be brought with expedition. That has clearly not occurred in this instance. The applicant has delayed for months, perhaps even years, in moving this application since the launching of the ten liquidation applications. The business rescue applications have been deployed only when other applications, introduced in order to delay the advancement of the ten liquidation applications, have borne no fruit. The production of financial statements, or even management accounts, would have borne out when the clamant need for business rescue protection, now proclaimed as being essential and deserving, first arose. The first mentioned documents do not exist for an

unexplained reason and while the second mentioned documents apparently do exist, they have been kept from this court.

[131] In *Van Staden NO and Others v Pro-Wiz Group (Pty) Ltd*,[50] the court unanimously stated that:

'All of that constituted an abuse of the process of the court and an abuse of the business rescue procedure. It has repeatedly been stressed that business rescue exists for the sake of rehabilitating companies that have fallen on hard times but are capable of being restored to profitability or, if that is impossible, to be employed where it will lead to creditors receiving an enhanced dividend. Its use to delay a winding-up, or to afford an opportunity to those who were behind its business operations not to account for their stewardship, should not be permitted. When a court is confronted with a case where it is satisfied that the purpose behind a business rescue application was not to achieve either of these goals, a punitive costs order is appropriate.'

[132] Those words are equally of application to the facts of this matter.

But in any event …

[133] There is, in any event, a significant difficulty, not yet mentioned, that the applicant would face even if the Gribnitz plan was capable of being accepted.

[134] The Gribnitz plan is founded on the movement of immovable properties from the property owning companies to the first respondent. I have already mentioned the financial difficulties that exist in implementing the transfer of those properties. There is also a legal difficulty.

[135] All of the immovable properties intended to be acquired by the first respondent from the property owning companies are bonded to Nedbank as security for the loans taken by the companies that own them. Nedbank argues that s 134(3) of the Act finds application to the facts of this matter and that, it says, is the end of the matter and the end of the Gribnitz plan.

[50] *Van Staden NO and Others v Pro-Wiz Group (Pty) Ltd* [2019] ZASCA 7; 2019 (4) SA 532 (SCA) (*Pro-Wiz*) para 22.

[136] Section 134(3) of the Act reads as follows:

'If, during a company's business rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company must-

(a) obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest; and

(b) promptly-

(i) pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person; or

(ii) provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.'

[137] Thus, if a company in business rescue wishes to dispose of property which has been put up as security, then it may do so if the security holder consents to the disposal, or the proceeds of the sale would discharge the secured debt, and the security holder is promptly paid the full amount of the secured debt.[51]

[138] It is not in dispute that Nedbank does, indeed, hold mortgage bonds over all the immovable properties owned by the property owning companies, although the applicant argues that they are void by virtue of the alleged non-compliance with s 45 of the Act. But the physical existence of the mortgage bonds is conceded. All of those bonds are covering bonds and cover the indebtedness of the company passing them in respect of any future indebtedness from whatsoever cause arising. In order for the property owning companies to transfer them to the first respondent, the consent of Nedbank is required,[52] which, according to the deponent to Nedbank's answering affidavit, will not be given by Nedbank.

[139] Section 134 of the Act does, however, offer a work around to such an impasse: provided the proceeds of the disposal fully discharge the indebtedness owed to the holder of the security and the holder is promptly paid all that is owed to it from the proceeds of the disposal, the consent of the holder of the security need not be first obtained.

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[51] *Louis Pasteur Holdings (Pty) Ltd and Others v Absa Bank Ltd and Others* [2018] ZASCA 163; 2019 (3) SA 97 (SCA) paras 22-23.

[52] *Energydrive Systems (Pty) Ltd v Tin Can Man (Pty) Ltd and Others* 2017 (3) SA 539 (GJ) para 19.

[140] There is no prospect of this occurring because:

(a) The Gribnitz plan requires the immovable properties to be offered to, and acquired by, the first respondent at 75 percent of their true value. It appears unlikely that this will be sufficient to fully discharge all amounts owing to Nedbank; and

(b) There is no likelihood of Nedbank being promptly paid what is owed to it. Dr Gribnitz proposes that Nedbank would be paid what is owed to it in instalments over a period of ten years.

[141] Nedbank's stated intention to refuse to approve this scheme and to refuse to allow the acquisition of the immovable properties by the first respondent is accordingly entirely understandable and is not, in my view, unreasonable and must be considered, for, as was stated in *Oakdene (SCA)*:[53]

'As I see it, the applicant for business rescue is bound to establish reasonable grounds for the prospect of rescuing the company. If the majority creditors declare that they will oppose any business rescue scheme based on those grounds, I see no reason why that proclaimed opposition should be ignored. Unless, of course, that attitude can be said to be unreasonable or mala fide.'

[142] Why should Nedbank permit its security to be realised, then be sold, but not be allowed to participate in the proceeds of that sale, and then be required to wait for ten years before being fully repaid? The proposition simply has to be stated to be rejected. As Olsen J remarked, in a similar vein, in *JVJ Logistics (Pty) Ltd v Standard Bank of South Africa Ltd and Others*:[54]

'The business plan postulates the first respondent capitalising the company and for the achievement of that purpose being kept out of its lawful entitlement to possession of its property for over three years. The plan did not propose merely to compromise the first respondent's existing claim as a creditor, but sought to compel the first respondent to fund the company, and against its will to submit to a regime of risks, and infringements of its own future rights represented by its proprietary interest in the vehicle. I cannot discern any basis upon which a court could burden the first respondent with these obligations against its will by declaring its vote 'inappropriate', and in effect thereby giving the plan the requisite approval.'

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[53] *Oakdene (SCA)* para 38.

[54] *JVJ Logistics (Pty) Ltd v Standard Bank of South Africa Ltd and Others* 2016 (6) SA 448 (KZD) para 57.

[143] The reality of s 134(3), and the expressed attitude of Nedbank, will accordingly prevent the Gribnitz plan, or any other plan that involves the transfer of immovable properties from the property owning companies, from being implemented.

[144] The applicant attempts to overcome this apparently insurmountable obstacle by arguing that, by virtue of the alleged non-compliance by the directors of the companies constituting the A1 Group, including the directors of the first respondent, with the provisions of s 45 of the Act, the loan agreements concluded by each of those companies with Nedbank (and the UIF) are void *ab initio*. It is further submitted that because of this, the mortgage bonds are also void. There is, thus, on this argument, no security held by Nedbank and consequently the provisions of s 134(3) of the Act are irrelevant.

[145] I do not accept the correctness of this proposition. In *Bay Loan Investment (Pty) Ltd v Bay View (Pty) Ltd*,[55] Van Winsen J held that a:

'… Court would not readily hold that a registered mortgage bond, regular on the face of it, was in fact a nullity. To do so in the absence, *inter alia*, of fraud or error could lead to greater inconvenience or impropriety than to allow it to retain its validity.'

[146] There is no suggestion of fraud or error in this instance.

[147] While it is so that a mortgage bond is always accessory to an obligation, that does not necessarily mean that a principal obligation must exist before a mortgage bond is concluded, for it may be given as security for a future debt or as a covering bond.[56] And if the obligation that underpinned the granting of the mortgage bond is found to be void, as the applicant urges this court to find in raising the s 45 defence, it does not mean that there is no obligation secured by the mortgage bond.[57]

[148] The mortgage bonds were passed to provide Nedbank with additional security for the amount in excess of R800 million that it loaned to the A1 Group. The mortgage

[55] *Bay Loan Investment (Pty) Ltd v Bay View (Pty) Ltd* 1972 (2) SA 313 (C) at 315H-316A.
[56] *Panamo Properties 103 (Pty) Ltd v Land and Agricultural Development Bank of South Africa* [2015] ZASCA 70; 2016 (1) SA 202 (SCA) (*Panamo*) paras 24 and 25.
[57] *Panamo* para 29.

bonds are all covering bonds. As Gorven AJA (as he then was) stated in *Panamo*:[58]

'A covering bond may provide security for more than one specific debt. The bond may therefore afford security for more than obligations arising under the loan. It is not necessarily extinguished merely because the loan is void. It complies with the formalities required by s 51 of the Deeds Registry Act for those covering future indebtedness. The nature of the bond thus does not exclude the possibility that an enrichment claim may be covered.' (Footnotes omitted.)

[149] Even if the loans are found to be void, there is a very strong likelihood of an enrichment claim being brought by Nedbank and the UIF. I am, accordingly, not prepared to find that the mortgage bonds are void.

Conclusion

[150] The Gribnitz plan, despite its length, remains unpersuasive that the aims of business rescue can be achieved. In other words, it does not say what Mr Munsami says it says and there is no reasonable prospect of the first respondent being saved.

[151] Mr *Wasserman* accurately summed up the position in his heads of argument, where he stated that the applicant's:[59]

'… business rescue application is devoid of substance. It advances no coherent or funded plan capable of restoring solvency to the second respondent. The proposal relies on vague assertions of future restructuring, speculative forecasts, and lacks verifiable financial information, binding commitments, or independent validation.'

I am fully in agreement with that statement.

[152] As was stated in *Oakdene (Gauteng)*:[60]

'In my view, the interests of the creditors, as opposed to that of the company, should carry more weight in the circumstances of this case. There is no "business" of the company to be rescued.'

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[58] *Panamo* para 31.

[59] While the extract quoted refers to the second respondent, the reference is, nonetheless, a reference to the first respondent.

[60] *Oakdene (Gauteng)* para 49.7.

[153] Furthermore, as was also stated in *Oakdene (Gauteng)*:[61]

'Having regard to the provisions of ss 128 to 154 of the Act, once a company is placed under supervision and business rescue proceedings have commenced, such proceedings are open-ended, and could probably include further applications to court, and carry on for a considerable period of time. This would be even more so if there are parties involved who are seeking to obstruct the creditors of the relevant company, as the applicants have been accused of doing. These conditions will make the task of a business practitioner who has to seek the cooperation of the directors, management and creditors extremely difficult.' (Footnotes omitted.)

Given that I have found such obstruction to exist in this matter, the words narrated above find application.

[154] It seems to me that no proper case for supervision and business rescue has been made out. The application must accordingly be dismissed with costs.

Costs

[155] This was a complicated and lengthy matter and justified, in my view, the employment of two counsel. In the exercise of my discretion, I make no order of costs against FCMB, Infinity, Siyaya and RSA Boss, who must each bear their own costs.

[156] Regard being had to the views of Wallis JA expressed in *Pro-Wiz*, I am of the view that an order of costs on the attorney and client scale against the applicant is justified, given the facts of this matter.[62]

[157] I turn now to consider the counter-applications for liquidation brought by Nedbank and the UIF.

The liquidation counter-application

Introduction

[158] Section 131(4)(*b*) of the Act, in what can only be described as a discordant use of grammar, states the following:

'After considering an application in terms of subsection (1), the court may-

(a) …

[61] *Oakdene (Gauteng)* para 49.6.
[62] *Pro-Wiz* para 22. See also *Cape Point Vineyards* para 7.

(b) dismissing the application, together with any further necessary and appropriate order, including an order placing the company under liquidation.'

The case for liquidation

[159] Much of the evidence on this topic derives, ironically, from the Gribnitz plan itself.

[160] In the Gribnitz plan, the author acknowledges the dire financial circumstances in which the first respondent is presently trapped. As previously mentioned, he has indicated that the first respondent is unable to pay its debts as and when they fall due, and he accepts that the first respondent requires an injection of capital to be able to continue in existence. In other words, without such capital injection, the first respondent has no ability to sustain itself. There is, however, no indication of any capital being forthcoming.

[161] Dr Gribnitz, further, and critically, states that:

'The company's liabilities currently exceed its assets to the value of R373 647 877,44 as set out in the trial balance dated 30 June 2024.'

[162] That statement unequivocally establishes factual insolvency[63] (as previously mentioned, commercial insolvency has already been established.) The trial balance referred to in that extract is already more than 18 months out of date and, as with the other financial documentation apparently seen by Dr Gribnitz, has not been put up as an annexure to the founding papers. There is, accordingly, every possibility that the amount by which the first respondent's assets are exceeded by its liabilities has increased since the trial balance was performed.

[163] Dr Gribnitz makes the further observation that the first respondent:

'… cannot be rehabilitated in the conventional sense through restructuring of its own income streams.'

[164] Adding to the picture of abject financial helplessness:

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[63] *Boschpoort* para 16.

(a) Nedbank states that it has not received any payments from the first respondent for several years. That has not been challenged by the first respondent;

(b) It is also unchallenged by the first respondent that Nedbank served a letter of demand on it in terms of s 345 of the Old Companies Act and that it failed to pay or compound the amount demanded to the reasonable satisfaction of Nedbank.

[165] All of these facts create the vision that the first respondent is no longer simply financially distressed but now finds itself beyond the event horizon in the black hole of factual insolvency, from which nothing can escape.

[166] The applicant, nonetheless, attempts to defeat the pull of factual insolvency by raising noncompliance with s 45 of the Act as its answer to Nedbank's and the UIF's case that the first respondent be wound up. I consider that issue now.

Section 45 of the Act

[167] Section 45(3) of the Act states that:

'Despite any provision of a company's Memorandum of Incorporation to the contrary, the board may not authorise any financial assistance contemplated in subsection (2), unless-

(a) the particular provision of financial assistance is-

(i) pursuant to an employee share scheme that satisfies the requirements of section 97; or

(ii) pursuant to a special resolution of the shareholders, adopted within the previous two years, which approved such assistance either for the specific recipient, or generally for a category of potential recipients, and the specific recipient falls within that category; and

(b) the board is satisfied that -

(i) immediately after providing the financial assistance, the company would satisfy the solvency and liquidity test; and

(ii) the terms under which the financial assistance is proposed to be given are fair and reasonable to the company.'

[168] The applicant initially contended that there had been non-compliance with s 45 of the Act when it stated that:

'There was no such Section 45 compliance, as is the subject of extensive dispute on the pending winding up application against the First Respondent, which requires reference and application here in.'

[169] There is, however, evidence of compliance with the requirements of s 45. As Nedbank states in its replying affidavit in its counter application for liquidation:

'In response to ULI Holdings having disputed compliance with section 45, Nedbank adduced the resolutions evidencing due compliance with section 45, and ULI Holdings was afforded the opportunity to deal there with in a further answering affidavit.'

[170] Likewise, the UIF put up copies of documents signed by the directors of the first respondent as annexures to its answering affidavit that, on the face of them, also demonstrated compliance with s 45. Faced with this, Mr Munsami was compelled to alter his stance and accordingly stated the following in his answering affidavit to the UIF's application:

'[23] … I have conducted a search of the First Respondent's and Applicant's records and have ascertained that there were in fact section 45 documents produced by the respondents for signature, as this was a requirement for validity of the transactions in question.

[24] At one level, this proves as correct that the Applicant and First Respondent's point that section 45 compliance was required.

[25] However, at another level it involves a further inquiry as regards what was produced for that compliance and signed complied (sic) with the statutory requisites.

[26] In fact, there was no such compliance because the directors simply signed the document that had been forwarded to them either UIF/PIC in the apparent belief that everything was in order and that the UIF/PIC, who were fully alive to the financial position of the First Respondent and Homii would have checked this for compliance in the first place

[27] The directors accordingly never applied their minds to the proper test for the solvency and liquidity requirements, which was to assess the financial position as if the guarantees had been called up. This follows from the use of the works in the statute '*immediately after*' in section 45.'

[171] Mr Munsami does not state how many directors there were at the critical moment, or who the directors were at the time who did not apply their minds to the issue of s 45. Nor does he explain what entitlement he has to make submissions on behalf of the unnamed directors. In stating that no consideration was given to the

provisions of s 45, he can, at best, only speak for himself. Whether he did as is described in the extract above is, however, of no real consequence. Section 45 does not deal with the views of a single director: it requires the board of directors of a company to hold a certain view. There is no compelling evidence that any of the other unidentified directors held the view that Mr Munsami now professes prevailed at the time that the loans were being considered.

[172] Even if that conclusion should be incorrect, it is not difficult to discern that the version now advanced by the applicant concerning this issue has changed. It was initially based upon the allegation that there had been non-compliance with s 45 but has now transformed itself into a defence that, while there appeared to have been compliance with s 45, there was, in truth, no proper compliance. This directly contradicts Dr Gribnitz's previously mentioned assertion that there were no board resolutions nor special shareholder resolutions.[64]

[173] To establish that there was no proper compliance with s 45, the applicant does not ask the other directors of the first respondent in office at the time of the conclusion of the loans to comment under oath on what they did and what they believed at that time. Instead, the applicant has turned to a firm of chartered accountants, GG Chartered Accountants (the accountants), for assistance.

[174] The accountants were requested to comment upon an agreed-upon procedure proposed by the management of the first respondent. That assignment was accepted, and the accountants generated a report, which was dated 7 March 2025.

[175] In that report, the accountants make the following opening comment:

'We have performed the procedure enumerated below with respect to the solvency and liquidity position of Urban Lifestyle Investment Holdings (Pty) Ltd. Our engagement was undertaken in accordance with the International Standard on Related Services 4400 (Revised) applicable to agreed-upon procedures engagements. The procedures were performed solely to assist Urban Lifestyle Investment Holdings (Pty) Ltd to determine the validity and accuracy of the solvency and liquidity test in terms of S45 of the Companies Act of South Africa prepared by management on 06 March 2025 for the purpose of providing financial assistance.'

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[64] See paragraph 111 of this judgment.

[176] The accountants reported their findings as follows:

'1. We have obtained the balance sheet and solvency and liquidity test, prepared by management for the periods 28 February 2019, 31 March 2019, 29 February 2020 and 31 March 2020.

2. We reperformed selected casts and cross casts and confirmed the mathematical accuracy of the balance sheet and the solvency and liquidity test calculations.

3. We reperformed the solvency and liquidity test as per the requirements of the Companies Act of South Africa and compared to the test results produced by management.

4. We presented discrepancies based on our findings.'

[177] The accountants conclude their report with the following statement:

'As this is not an audit or a review engagement, we do not express any assurance opinions on the information provided and work performed.'

[178] The *ISRS 4400 (Revised)* document, referred to in the accountant's report, states the following on an agreed-upon procedure:[65]

'In an agreed-upon procedures engagement, the practitioner performs the procedures that have been agreed upon by the practitioner and the engaging party, where the engaging party has acknowledged that the procedures performed are appropriate for the purpose of the engagement. The practitioner communicates the agreed-upon procedures performed and the related findings in the agreed-upon procedures report. The engaging party and other intended users consider for themselves the agreed-upon procedures and findings reported by the practitioner and draw their own conclusions from the work performed by the practitioner.'

[179] What this appears to mean is that no investigative work was performed by the accountants: they simply performed a mathematical exercise to determine the accuracy of what had been presented to them. The details of that exercise are not mentioned in any detail.

[180] It appears to me that no real value can be extracted from this exercise. It is an attempt by the management of the first respondent to go back in time to 2019 and to determine the state of mind of a collection of unidentified directors. The efforts of the accountants are entirely dependent upon the information that they were given by

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[65] International Auditing and Assurance Standards Board *ISRS 4400 (Revised)*, Final Pronouncement April 2020, para 4.

management. What that information was is not disclosed and neither are the balance sheets and the solvency and liquidity tests that were presented to them to enable them to do what the management of the first respondent wanted them to do. The woeful financial records kept by the first respondent have already been addressed in this judgment and do not inspire any form of confidence. The accountants further comment that they ascertained discrepancies, but they do not disclose what those discrepancies were.

[181] It seems to me that the defence predicated on s 45 of the Act has consequently not been established.

Conclusion

[182] I am not satisfied that there is any merit in the s 45 defence. Mr *Harpur* has labelled it as an 'extensive dispute'. I do not see it that way. It appears to me to be a last resort to escape liquidation. There is objective evidence that there was compliance with the prerequisites of s 45 of the Act and there is overwhelming evidence that the first respondent is both factually and commercially insolvent. Dr Gribnitz, in fact, perhaps not realising that he did so, states this to be the case.

[183] The first respondent has no ability to trade profitably, has no access to capital, and, as this judgment has found, has no entitlement to be placed in business rescue. In addition, if transfer of the immovable properties somehow occurs, whatever income may be generated through the immovable properties will not accrue for the benefit of the first respondent because of the cessions of income in favour of Nedbank. That income will therefore not be available as working capital to help keep the first respondent afloat.

[184] The first respondent is in a hopeless financial position. It appears to me that in such circumstances, an order of liquidation is not only justified but is also necessary. Section 131(4)(*b*) of the Act expressly permits such an order to be granted. The formalities required by law have been met and the first respondent has acknowledged under oath that it has no employees.

[185] I am, in the circumstances, of the view that the counter-applications must succeed and that a provisional order of liquidation must issue.

Costs

[186] The costs order that must now follow shall be costs in the liquidation and shall include the costs of two counsel where so employed by Nedbank and the UIF and they shall be payable on the attorney and client scale for the reasons advanced when dismissing the business rescue application.

Order

[187] I accordingly grant the following order:

1. The application to place the first respondent under supervision and to commence business rescue proceedings is dismissed with costs. As regards the payment of those costs:

(a) The costs of the affected parties, Nedbank Limited and the Unemployment Insurance Fund, shall be paid by the applicant on the attorney and client scale and shall include the costs of two counsel where so employed; and

(b) The affected party, RSA Boss Protection (Pty) Ltd, shall pay its own costs.

2. The counter-applications brought by the affected parties, Nedbank Limited and the Unemployment Insurance Fund, are granted and a rule nisi issues, calling upon the first respondent, and any other interested party, to show cause to this court on 24 April 2026 at 09h30, or so soon thereafter as counsel may be heard, why the first respondent should not be finally wound-up.

3. This order shall operate as an order provisionally winding-up the first respondent with immediate effect.

4. A copy of this order shall be published on or before 10 April 2026, once in the *Government Gazette* and once in a newspaper published in Durban and circulating in KwaZulu-Natal.

5. The costs of the liquidation application shall be costs in the winding-up and the costs of Nedbank Limited and the Unemployment Insurance Fund shall be paid on the attorney and client scale and shall include the costs of two counsel where so employed.

6. Identical orders shall simultaneously issue, *mutatis mutandis*, in the following matters:

(a) Case number 2025-120714: Homii Lifestyle (Pty) Ltd v K2017659127 (SA) (Pty) Ltd.

(b) Case number 2025-120725: Homii Lifestyle (Pty) Ltd v K2017659651 (SA) (Pty) Ltd;

(c) Case number 2025-120731: Homii Lifestyle (Pty) Ltd v K2018043790 (SA) (Pty) Ltd;

(d) Case number 2025-120738: Homii Lifestyle (Pty) Ltd v Umbulumko Knowledge Services (Pty) Ltd; and

(e) Case number 2025-120747: A1 Capital (Pty) Ltd v Uli Props (Pty) Ltd.

[redacted]

MOSSOP J

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