

REPUBLIC OF SOUTH AFRICA



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

Case Number: 056347/24

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

In the matter between:

DON STEPHAN PIENAAR

Applicant

And

TRACK LAB (PTY) LTD

Respondent

JUDGMENT

JANSE VAN NIUWENHUIZEN J

Introduction

[1] This is an application for the provisional winding up of the respondent. The applicant launched the application on 22 May 2024 in his capacity as a 40% shareholder, director, and a creditor of the respondent. The respondent opposed the application, and the other two directors and 30% shareholders each in the respondent, Roon and Vermaak endeavoured to intervene in the application without complying with the provisions of rule 12 of the Uniform Rules of Court. Mr De Oliveira, counsel for the respondent and the intervening parties, to his credit, did not persist with the application for intervention. At the hearing of the application, it transpired that Roon and Vermaak had resolved to remove the applicant as a director and had obtained his shareholding.

[2] Be that as it may, the applicant alleges that:

2.1 he is a creditor of the respondent, that the respondent is commercially insolvent and unable to pay its debts as envisaged in section 344(f) read with section 345(1) of the old Companies Act, 61 of 1973 (“the Act”);

2.2 alternatively, he is a director of, and shareholder in, the respondent, and that it would be just and equitable to place the respondent under winding up.

[3] As stated *supra*, the applicant is no longer a director or shareholder of the respondent, and I propose to only deal with the issues pertaining to the applicant’s *locus standi* and the alleged inability of the respondent to pay its debts.

Background

[4] The respondent was incorporated during 2021 to develop and market a solar tracking product. Roon and Vermaak, through their company, Lumax (Pty) Ltd (“Lumax”), had been involved in the Solar Industry since 2015, and the applicant, an electronic engineer, had developed individual software and hardware in respect of the product.

[5] According to the applicant, the agreement relating to the development of the product was as follows:

5.1 the applicant will develop the product and render invoices for his services in his own name or in the name of his company Greenbyte (Pty) Ltd;

5.2 services will be rendered at a 40% reduced and discounted rate, and the 40% discount will be allocated to a loan account for the benefit of the applicant in the respondent;

5.3 Roon and Vermaak will finance the research and development, and their financial contribution will similarly be allocated to loan accounts in the respondent;

5.4 Lumax will be the respondent's initial client and will implement the product in their solar installations.

[6] Although the respondent received orders and was paid for the delivery of the product, the development of the product was ongoing and placed a financial strain on the respondent. In the meantime, the applicant duly delivered invoices for the further development of the product. During November 2023, the applicant was, however, informed that he must start contributing financially to the expenses of the respondent. The applicant obtained a R 150 000, 00 loan via the bond account over his house and paid same to the respondent. Roon and Vermaak each contributed R 50 000, 00. The contributions were allocated to their respective loan accounts and is reflected in Excel spreadsheets prepared by Roon.

[7] The contributions were not nearly enough to sustain the respondent, and capital was urgently needed to further develop, manufacture, and market the product. In sourcing a new investor, Roon and Vermaak, *inter alia*, suggested that the loan accounts be capitalized to make the respondent a more attractive investment. To this end, Roon prepared Excel spreadsheets that explained how the loans would be capitalised.

- [8] The January 2024 spreadsheet indicated that the applicant's loan account was R 1 392 149, 42. The capitulation of the loan accounts would dilute the applicant's shares from 30% to 15%, and the applicant was not willing to agree to a capitulation of the loan accounts. The applicant's unwillingness did not find favour with Roon and Vermaak. Vermaak informed the applicant in an email dated 21 February 2024 that, should he not agree to a share dilution, the respondent will be liquidated, and the Intellectual Property and material will pass to Lumax, being the largest creditor of the respondent.
- [9] On 20 March 2024, Roon sent an email to the applicant stating that the respondent is "out of money" and requesting a contribution to the monthly expenses. The expenses were indicated to be salaries in the amount of R 77 781, 00 and SARS in the amount of R 27 478, 30. At that stage, SARS was overdue, and the amount was accruing penalties and interest.
- [10] In an email dated 31 March 2024, Roon informed the applicant that Lumax, due to the large amount owed to it, will not be paying any outstanding invoices of the respondent. It is common cause that the respondent does not receive any income at present.
- [11] In the result, the applicant submitted that the respondent does not have the finances to meet its immediate expenses, there is no business being conducted to generate an income, and there are no outstanding creditors that could yield an income to meet the respondent's expenses.
- [12] In response, the respondent alleged that the application is an abuse of process and was solely brought to divest the respondent of its intellectual property to enable the applicant to trade in the same business as the respondent by using its intellectual property.
- [13] Roon, the deponent to the respondent's answering affidavit, denied that the applicant is a creditor of the respondent. Insofar as the spreadsheet indicating the applicant's loan account in the amount of R 1 392 149, 42 is concerned, Roon alleged that the spreadsheet was prepared for the sole purpose of negotiating the proposed capitalisation of the respondent. According to Roon, it was agreed that the applicant will contribute his expertise, know-how and labour

as “sweat capital” whilst Roon and Vermaak’s contributions will be by way of cash payments towards the applicant’s remuneration, which would be discounted at a rate of 40% and considered as “sweat capital” and not as a loan.

[14] Roon also denies that the applicant is insolvent and attached its latest management accounts for the period ending July 2024 to the answering affidavit. The accounts reflect that the respondent’s liabilities exceed its assets. Roon, however, stated that the major creditors, being himself, Vermaak, and Lumax, are not demanding payment of their claims at the moment. Furthermore, his and Vermaak’s loan accounts are subordinate to other creditors, and therefore, the respondent should not be regarded as being factually insolvent. The respondent admits that it requires urgent funding for working capital, but denies that this is tantamount to commercial insolvency in that the respondent’s major creditors are not demanding payment of their debts.

[15] Although Roon stated that his and Vermaak’s contributions, which are reflected as loans only arose at a later stage, he persisted in denying that the applicant’s R 150 000, 00 payment was a loan. Contrary to this denial, the R 150 000, 00 is indicated as a loan in the spreadsheets prepared by Roon.

[16] The respondent did not deny that it has monthly expenses and that it is not generating an income. As a result, the management accounts for the period ending 30 June 2025 indicated that the respondent has incurred debt in the form of further loans from Lumax in an amount of approximately R 500 000, 00. In the respondent’s supplementary affidavit, Roon stated that he and Vermaak have, furthermore, each advanced R 500 000, 00 to the respondent.

[17] In his replying affidavit, the applicant persisted with the allegation that the respondent is trading under insolvent circumstances. The applicant attached an Excel spreadsheet, which was sent by Roon on 19 March 2024 and contained a proposed budget for 2024. Roon calculated a “struggle budget” which entailed that the respondent could hardly operate, and required R 3,8 million for 2024, and a proper budget, which calculated that an amount of R 9, 5 million is necessary to keep the respondent in business.

[18] The applicant also attached a bank statement, which indicated that the respondent's closing balance on 30 November 2023 was R 55 109, 33. The applicant emphasised that there was no further income after the aforesaid date.

[19] Lastly, the applicant stated that a valuation was done by Roon on 8 August 2024 to determine the value of his shares. The valuation of the nett asset value of the respondent was determined to be a negative value of minus R 2 131 998,00. According to the valuation the Discounted Cash Flow for the following three years reflected the following negative values:

3 year projection: R 4 886 215

4 year projection: R 2 394 792

5 Year projection: R 1359 549

[20] The applicant's shares were valued at R 0, 00.

[21] I am mindful that the respondent paid a creditor, Otto Marketing, the sum of R 92 295, 38 after the company filed an application for leave to intervene in the liquidation proceedings.

Legal framework

[22] The test applicable at the provisional liquidation of a company has been succinctly summarised in *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd* 2015 (4) SA 449 (WCC) as follows at para [7]:

"[7] In an opposed application for provisional liquidation the applicant must establish its entitlement to an order on a prima facie basis, meaning that the applicant must show that the balance of probabilities on the affidavits is in its favour (Kalil v Decotex (Pty) Ltd and Another [1988 \(1\) SA 943 \(A\)](#) at 975J – 979F). This would include the existence of the applicant's claim where such is disputed.

[23] Insofar as *locus standi* is concerned, once the applicant shows that the debt *prima facie* exists, the onus shifts to the respondent to show that it is *bona fide* disputed on reasonable grounds. [*Orestisolve supra* at para [8]]

Discussion

- [24] The spreadsheets prepared by Roon and Vermaak on behalf of the respondent show that the applicant has a loan account with the respondent. The onus, therefore, shifts to the respondent to show that the loan account is *bona fide* disputed on reasonable grounds.
- [25] Roon's explanation that the loan account was merely acknowledged for capitalisation purposes is unconvincing to say the least. The loan account was acknowledged and reflected on various spreadsheets and confirms the applicant's version insofar as the loan account is in dispute. In my view, the respondent's denial that the loan account exists is neither *bona fide* nor based on reasonable grounds.
- [26] In the result, I am satisfied that the applicant is *prima facie* a creditor of the respondent.
- [27] Insofar as the respondent's inability to pay its debts is concerned, the respondent's submission that it is solvent because major creditors, being Lumax, Roon, and Vermaak, are not claiming the amounts owed to them does not hold water. Bearing the applicant's claim in mind, the Supreme Court of Appeal in *Murray and Others v African Global Holding (Pty) Ltd and Others* 2020 (2) SA 93 (SCA), stated the following at para [31]:
- "[31] The argument about timing misconceived the nature of commercial insolvency. It is not something to be measured at a single point in time by asking whether all debts that are due up to that day have been or are going to be paid. The test is whether the company 'is able to meet its current liabilities, including contingent and prospective liabilities as they come due'. [18](#) Put slightly differently, it is whether the company*
- 'has liquid assets or readily realisable assets available** to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry on normal trading — in other words, can the company meet current demands on it and remain buoyant?' [19](#) (own emphasis)*
- [28] On the respondent's own version, it has no assets. It is, therefore, not clear how the respondent would pay the applicant's loan account that has been *prima facie*

established. The respondent is also not able to carry on normal trading. It is unable to pay its monthly expenses and has to incur further liabilities in the form of further loans in an attempt to do so. The payment to Otto Marketing is not a result of the respondent having liquid assets or readily realisable assets, but as a result of further debt incurred by it. The respondent's liabilities are increasing daily, which is not in the best interest of the *concursum creditorum*.

[29] The respondent did endeavour to paint a more positive picture of its financial situation in the supplementary affidavit. The problem, however, remains that the applicant's nett asset value is in the negative, which disposes of any notion that the respondent will be able to meet its current liabilities as they fall due.

[30] In the result, I am satisfied that the applicant has established on a *prima facie* basis the respondent's inability to pay its debts as envisaged in section 344(f) read with section 346(1)(c) of the Companies Act, 1973.

Order

I grant an order in terms of the draft order attached hereto and marked "X"



**N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Date of hearing: 09 February 2026

Judgment delivered: 16 April 2026

For the Applicant: Adv E. Janse Van Rensburg

Instructed by : Baartman Du Plessis Attorneys

For Respondent :

Adv M. De Oliveira

Instructed by:

HBG Schindlers Attorneys

