IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable

CASE NO: 2025-209746

In the matter between:

LIGHTMAP (PTY) LTD	Applicant
and	
CYBERSMART (PTY) LTD	First Respondent
ANDREW FORSSMAN	Second Respondent
INFRA IMPACT MID-MARKET INFRASTRUCTURE FUND I	Third Respondent
HEXION DATA STORAGE PROPRIETARY LIMITED	Fourth Respondent

Coram: HOLDERNESS J

Heard: 15 April 2026; 29 April 2026

Delivered: 14 May 2026

JUDGMENT

HOLDERNESS J

[1] The applicant, Lightmap (Pty) Ltd ("Lightmap or the applicant"), a minority shareholder in the first respondent, Cybersmart (Pty) Ltd ("Cybersmart or the Company"), applies in terms of Part A for urgent interim interdictory relief pending the determination of Part B.

[2] The applicant seeks to halt the implementation of two transactions, the proposed disposal of the hosting division of Cybersmart to Host Africa (Pty) Ltd ("Host Africa") pursuant to a letter of intent dated 12 February 2026 (the LOI) (the Hosting Disposal) and the Hexion JV unwinding (the transactions).

[3] The matter initially served before me in the fast lane of third division. After hearing argument solely on the issue of urgency, I found that the relief sought in Part A was urgent and that substantial redress would not be available to Lightmap at a hearing in the ordinary course.

[4] I afforded the respondent an opportunity to file an answering affidavit in respect of the Part A relief, and for this reason the matter was set for hearing on 29 April 2026.

[5] The application, which Lightmap initially launched as a rule *nisi* to preserve the status quo pending the return date, is now sought in two parts, Part A and Part B.

[6] The applicant seeks relief solely against the first and second respondents. The third and fourth respondents are cited as interested parties only.

[7] I do not intend dealing at this stage with the Uniform rule 30 ("rule 30") proceedings launched by the applicant at the first hearing, relating to an amendment to the notice of motion which was subsequently withdrawn by Lightmap. I intend ordering that the costs of the rule 30 application stand over for determination at the hearing of Part B.

Factual background

[8] The facts and issues in this matter are complex and for the purposes of this judgment, which is only in respect of Part A, I will endeavour to deal only briefly with the factual matrix insofar as it is relevant to the urgent interim relief sought.

[9] Cybersmart was incorporated in 1998 as an internet service provider (ISP). According to Mr. Laurie Fialkov (Mr. Fialkov), a director of the applicant and the founder of Cybersmart, the Hosting Division is its founding business and its second largest revenue stream. On a gross profit margin basis, it is the most profitable division of the company (40.3% as against 38.5% for fibre) and contributes approximately 50% of the net profit of the company.

[10] According to the applicant, Cybersmart reported a net loss of R649,428 for the year to date to January 2026. Absent the gross profit contribution of the

Hosting Division of R4,030,651, the net loss would have increased sevenfold to approximately R4.68 million.

Chronology of events leading up to the urgent application

[11] On 27 February 2026 the second respondent, Mr. Andrew Forsmann (Mr. Forssman) sent an email to the Board presenting the unwinding of the incorporated joint venture in Hexion Data Storage (Pty) Ltd (the Hexion JV unwinding) as a *fait accompli.* Mr. Fialkov immediately noted his objection to the Hexion JV unwinding to the Chairperson of the Board.

[12] On 2 March 2026 Mr. Zaid Bester (Mr. Bester) began reinstalling the identical data storage software on the identical hardware used in the Hexion Venture, under a different licence for Cybersmart's own account.

[13] On 9 March 2026 Lightmap delivered its objection letter expressly placing on record that the transactions constitute reserved matters requiring a special resolution and demanding inter alia that no further steps be taken (the objection letter).

[14] On 13 March, Mr. PJ Veldhuizen of Gillan & Veldhuizen Attorneys (Mr. Veldhuizen), the attorney acting on behalf of the first and second respondents, responded stating that the R20 million SHA would not be crossed and that the Hexion matter *'is already underway, if not completed.'* The parties thereafter agreed to a joint instruction to a senior advocate to resolve the impasse by providing a joint opinion.

[15] On 25 March 2026, a board resolution was sought to approve the Hosting Disposal, recording that due diligence is underway and a revised LOI is being executed. The meeting was cancelled in the wake of Mr. Fialkov's objections.

Shortly thereafter, a dispute arose regarding the terms of reference of the senior counsel's brief and the first and second respondents withdrew from the process.

[16] On 27 March 2026 Ms Joon Chong of Webber Wentzel (Ms. Chong), the attorney of record for Lightmap, sent a letter to the respondents demanding an undertaking that no further steps would be taken to advance the transactions, alternatively requesting the implementation dates.

[17] Mr. Veldhuizen replied via email on 2 April 2026 stating that Cybersmart would not provide any undertaking.

[18] The application was launched three court days later, on 8 April 2026.

[19] On 9 April 2026, Mr. Veldhuizen replied to Ms. Chong raising procedural objections, demanding the withdrawal of the application, threatening punitive costs, and that he intended reporting Ms. Chong to the Legal Practice Council.

[20] On 10 April 2026, Ms. Chong proposed that the matter be postponed in exchange for a status quo undertaking. Mr. Veldhuizen did not respond and filed a Notice of Intention to oppose on behalf of the first and second respondents.

[21] On 11 April 2026, Mr. Forssman circulated a round robin board resolution to oppose the application, for him to sign all necessary affidavits to give effect to this resolution on behalf of service smart and for the board to ratify any steps, actions or process which has already been undertaken.

[22] The applicant contends that the authorisation of the individual whose conduct is impugned to control Cybersmart's defence of proceedings challenging that very conduct is itself prejudicial to Lightmap's interests as a minority shareholder.

[23] The Hosting Disposal is subject to a 90-day exclusivity period expiring on or about 13 May 2026.

[24] The applicant contends that if the Hosting Disposal proceeds before judicial determination, its entrenched minority veto right would have been rendered academic, Lightmap's investment value will have been materially diminished, and the practical efficacy of any subsequent order setting aside the transaction will be compromised by the creation of third-party rights, the migration of customers, the transfer of employees, and the restructuring of operational systems.

[25] The applicant emphasised that the breach of clause 5.3.3.3 of the MOI occurred at the point at which negotiations for the hosting disposal commenced without a special resolution. That breach renders the negotiations and any agreement concluded pursuant to them void *ab initio* by operation of section 15(7)[1] of the Companies Act 71 of 2008 (the "Companies Act"), alternatively section 20(9) of the Companies Act.[2]

[26] According to Lightmap the Hosting Disposal further creates material operational risks to Cybersmart's remaining business, specifically pertaining to paid for capacity going unused post-disposal, customers losing single-point fault

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[1] Section 15(7) provides that the shareholders of a company may enter into any agreement with one another concerning any matter relating to the company, but any such agreement must be consistent with this Act and the company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with this Act or the company's Memorandum of Incorporation is void to the extent of the inconsistency.

[2] Section 20(9) provides that if, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may-

(a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and

(b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph *(a)*.

resolution, increasing attrition risk and approximately 10,000 @cybersmart.co.za email addresses which are not addressed by the LOI.

[27] The applicant further highlighted that the FY2027 budget signed by all board members on 26 and 27 March 2026 (save for Mr. Fialkov) does not reflect the Hosting Disposal proceeds and continues to reflect Hosting Division revenue. The transaction remains open and capable of being interdicted.

[28] Regarding the Hexion JV Unwinding, it appears that certain operational steps have already been taken, including the cessation of the R66,000 monthly payment to Hexion, the withdrawal of Mr. Bester from Hexion JV technical duties, and the reinstallation by Mr. Bester on or about 2 March 2026 of the identical software on the identical hardware under a different licence for deployment by Cybersmart independently of Hexion.

[29] According to Lightmap, these operational steps were taken before any formal unwinding agreement was signed, before the board had received the Investment Committee (IC) recommendation, and without a 75% shareholder resolution.

[30] To date, a written unwinding agreement has not been executed, and Cybersmart's 50% equity in Hexion has not been formally retransferred. The Hexion JVA accordingly appears to remain operative as a matter of law.

[31] The urgency, according to the applicant, is that the formal legal completion of the unwinding, the execution of a written agreement, the retransfer of equity, the payment of the repurchase price, and the mutual release of claims will convert what is presently a reversible operational situation into an irreversible legal one. Cybersmart's contractual rights under the Hexion JVA

will be extinguished, and the committed third-party revenue stream will be permanently forfeited.

[32] In my view, the matter is clearly urgent. The first and second respondents are intent on proceeding with the implementation of the transactions before Part B is heard. If not, they would have provided the requested undertaking to preserve the status quo *pendente lite.*

[33] I am not persuaded, in light of the timeline of events set out above, that any urgency is self-created. The applicant acted with due haste after reasonable attempts to resolve the matter failed.

[34] The first and second respondents refused three invitations to engage meaningfully at shareholder level to resolve the dispute or to provide an undertaking not to advance the transactions pending judicial determination. The applicant launched proceedings within one court day of the second refusal.

[35] I agree with Mr. Irish SC, who appeared together with Mr. Choate for the applicant,[3] that the respondents cannot credibly contend that the applicant's pursuit of a resolution mechanism before litigation constitutes self-created delay, while simultaneously accusing the applicant of failing to pursue alternative dispute resolution in a letter from their attorneys. These positions are irreconcilable.

[36] It is for these reasons that I ruled that the matter was urgent and agreed to hear Part A on an expedited basis.

The impugned transactions

[3] At the second hearing only Mr. Choate appeared for the applicant.

[37] The applicant seeks interim relief on two independent bases. The first is an interim order in terms of section 163(2) of the Companies Act. The second is a common law interim interdict founded on the relevant clauses of the MOI and SHA.

The hosting disposal

[38] On 12 February 2026, Host Africa (Pty) Ltd ("Host Africa") sent Mr. Forsmann the LOI for the Hosting Division, proposing a purchase price of R13,825,000, which represents approximately 10% of Cybersmart's enterprise value based on the recent minority stake acquisition by the third respondent, Infra Impact Mid-Market Infrastructure Fund I ("Infra").

[39] The applicant contends that the LOI offer price is significantly undervalued and that, on any reasonable basis, a disposal of one-tenth of Cybersmart's total value constitutes a disposal of the Company's business within the meaning of clause 5.3.3.3 of the MOI, requiring special resolution approval with no threshold value.

[40] The LOI includes a 90-day exclusivity period, a five-year restraint of trade; deferred payment of the purchase price, and a 24-month referral obligation without compensation.

[41] The applicant alleges that Mr. Forssman has since received a draft purchase agreement and an updated LOI, neither of which has been disclosed to the applicant.[4]

[42] According to Cybersmart, the hosting disposal, which has not yet been concluded, advanced the interests of Cybersmart as hosting services are

[4] Reference is made in the answering affidavit to an updated LOI however same was not attached thereto.

becoming more specialised and scale dependant, which is not its focus, but is the core business of Host Africa.

[43] In reply, the applicant conceded that the sale agreement has not yet been signed, but highlights that due diligence has materially advanced, there is an updated LOI, and Mr. Forssman instructed Infra's legal adviser to draft board resolutions on 3 March 2026. Board approval was sought in the 25 March 2026 CEO report (which meeting was cancelled).

[44] The applicant's stance is that Mr. Forsmann's continued negotiations with Host Africa in the face of Lightmap's objection letter and urgent hearing for interim relief, and the fact that he has been provided with a draft purchase agreement which he has failed to share with Mr. Fialkov, is a clear indication of his intention to block all communication from him, and amounts to a blatant disregard for Lightmap's interests.

[45] In early 2025, Cybersmart entered into an incorporated joint venture (JV) and acquired 50% of the equity of the fourth respondent, Hexion Data Storage (Pty) Ltd (Hexion), pursuant to a Subscription and Shareholders' Agreement dated 17 March 2025 (the Hexion JVA). The JV provided distributed data storage across Cybersmart's data centres and so eliminated a single catastrophic point of failure.

Are the transactions, prima facie, reserved matters?

[46] According to the applicant, the transactions are 'reserved matters' under the MOI and SHA, requiring the prior written approval of shareholders holding not less than 75% of the issued ordinary shares of Cybersmart. It does not appear to be in dispute that no such approval has been obtained.

[47] Lightmap, a minority shareholder, holds 33.511% of the issued ordinary shares of Cybersmart, which gives it a blocking vote on matters requiring a special resolution[5] which includes matters defined as 'reserved matters' under the Memorandum of Incorporation (MOI) and the Second Addendum to and Restated Shareholders' Agreement (SHA) of Cybersmart.

[48] In terms of the MOI, the board of Cybersmart shall not, without the passing of a special resolution, inter alia*,* negotiate for and/or conclude any agreement in respect of the sale of the Company's business (clause 5.3.3.3) nor conduct the business of the Company outside the normal and regular course of its business (clause 5.3.3.4).

[49] Clause 5.3.3.3 does not contain any monetary threshold.

[50] Cybersmart, as a private company is governed by the Companies Act, its MOI and then its SHA.[6]

[51] The applicant contends that the negotiations with Host Africa, encapsulated in the LOI, fall within clause 5.3.3.3 of the MOI, and that as no prior special resolution was obtained, the negotiations and any agreement concluded pursuant thereto, are void *ab initio,* by operation of section 15(7) alternatively section 20(9) of the Companies Act.

[52] In my view, neither section 15(7) nor section 20(9) find application. While section 15(7) establishes the binding nature of the MOI, it does not, on its own, prescribe the consequence of voidness for a breach. Section 20(9) deals with the piercing of the corporate veil, which does not apply *in casu.*

[5] In terms of clause 4.7.2 of the MOI, for a special resolution to be adopted at a Shareholders' Meeting, it must be supported by the holders of at least 75% of the issued Ordinary Shares.

[6] Section 15(7) of the Companies Act.

[53] Where the parties differ is whether clauses 5.3.3.3 properly interpreted includes the sale of a division of the company's business.

[54] The SHA has a corresponding clause, clause 3.2.3, which requires a special resolution of the shareholders before the board can negotiate for and/or conclude any agreement in respect of the sale of the Company's business.

[55] In terms of clause 3.2.24 of the SHA, the '*disposal of the business of the Company or any aspect of portion of its Business with a value in excess of R20 million, and / or the merger or amalgamation of the Company with any other entity'* also requires a special resolution.

[56] Unsurprisingly, the parties presented competing arguments regarding how these clauses are to be interpreted and whether the sale of the hosting division, which falls below the R20 million threshold, constitutes the sale of the business.

[57] The respondents contend that clause 3.2.24 militates against the argument that clauses 5.3.3.3 of the MOI and 3.2.3 of the SHA relate to the sale of a division of the company rather than the entire company. On their interpretation, the relevant clauses of the MOI and the SHA make it clear that it envisages the 'disposal of the business in its entirety'.

[58] It is well established in our law that the interpretation of a constitutive corporate instrument should be undertaken in accordance with the unitary approach, which considers language, context and purpose as an integrated exercise.[7]

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[7] *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) paras [65]–[68].

[59] The applicant contended that, with regard to language, the operative phrase is 'any agreement in respect of the sale of the Company's business.' As the word 'any' stands unqualified, to confine the clause to a sale of the entire business would require the reading in of such a qualifier that does not appear in the text.

[60] This becomes even more apparent when regard is had to the context, as the separate provision in clause 3.2.24 expressly provides for the disposal of any aspect or portion of the business exceeding R20 million. If clause 5.3.3.3 of the MOI applied only to a disposal of the entirety of the business, the MOI would provide no minority protection in respect of partial disposals, however large, so the applicant's argument went.

[61] Put differently, if clause 5.3.3.3 were construed as applying only to a disposal of the entirety of the business, the MOI would not provide any minority protection for partial disposals, however large the transaction, which is the antithesis of the protection that the clause was plainly designed to provide.

[62] In argument, Mr. Woodland SC, who appeared together with Ms. McChesney on behalf of the first and second respondents, contended that the MOI takes precedence over the SHA, but what the SHA provides at clause 3.2.24 is that the board cannot sell the substratum of the company, which resonates with section 65 of the Companies Act.

[63] The respondents argued that the directors sought to frame SHA consistent with the MOI by imposing a threshold of R20 million, and that this is the only way to read the MOI with the Companies Act and SHA consistently.

[64] The applicable clauses were clearly incorporated for the purpose of protecting minority shareholders, and similarly to section 163 of the Companies

Act, must be interpreted in a manner which advances that protection and the remedies available to minority shareholders, rather than limit or undermine it.

[65] I find myself in agreement with the applicant that on the respondents' interpretation, the board could sell off the entirety of the business but for one small division without ever engaging clause 5.3.3.3. This would produce an absurd and unbusinesslike result.

[66] I say this mindful that it is not for the court at this stage, when only urgent interim relief is being sought, to make any definitive findings in this regard. I do not make any such findings and leave these complex matters, which require a full ventilation of all the issues which are to be further traversed in a supplementary answering affidavit and replying affidavit in respect of the Part B relief, to the court hearing the application in terms of Part B for final relief.

Has the applicant prima facie established that the transactions fall outside the normal and regular course of business?

[67] The next issue which arises in considering whether, prima facie, the transactions are reserved matters is whether they fall 'outside the normal and regular course of business' as contemplated in clause 3.2.4 of the MOI.

[68] The evidence of Mr. Fialkov is that the Hosting Division is a core component of Cybersmart's business and that the normal course of business is the provision of these services, not the disposal of them.

[69] According to the applicant, without the Hosting Division, the Company would have been loss making every month.[8] The disposal of a division of this significance is, according to Lightmap, 'extraordinary'.

[8] From March 2025 to January 2026.

[70] The applicant emphasised that the Hosting Disposal would precipitate five cascading consequences: (a) unused bandwidth capacity for which Cybersmart would continue to pay; (b) loss of approximately 10,000 "@cybersmart.co.za" email addresses, which operate as an embedded fibre-retention mechanism; (c) the elimination of staff cost recovery; (d) loss of brand goodwill driven by the hosting services; and (e) destruction of the Hexion synergy.

[71] It appears prima facie that a disposal of one tenth of the enterprise value, which the Hosting Division represents, concentrated in the most profitable division, is a step which may indeed require shareholder oversight.

[72] A further persuasive argument is if the Hosting Disposal was intended as a transaction in the ordinary course of business, it would have been reflected in the approved budget for FY 2027. The applicant contends that its exclusion suggests that the transaction may well be not in normal and ordinary course of business and may constitute a divergence from the approved budget.

[73] I turn now to consider whether the Hexion JV unwinding is taking place in the normal and ordinary course of business.

[74] The Hexion JV was undertaken as a strategic initiative to provide distributed data storage across various Cybersmart data centres, a configuration that successfully eliminated the single point of failure for the company.

[75] Cybersmart maintained a 50% equity stake in this venture, which had received IC approval and was generating committed revenue from third-party clients.

[76] The JV entailed Mr. Hardy and Mr. Steingo contributing R3 million in capital and provided sales and marketing expertise without taking salaries, while Cybersmart provided technical support through the deployment of Mr. Bester. Cybersmart retained 50% of the equity, revenue and infrastructure assets of the venture on what the applicant describes as 'commercially favourable terms'.

[77] Despite the commercial viability of the arrangement, the joint venture was subsequently unwound. This dissolution occurred alongside the disposal of Cybersmart's most profitable division at a time when the internal technical team was already under-resourced and struggling with performance.

[78] The applicant contends that this clearly not in the normal and ordinary course of business.

[79] The financial implications of this unwinding are significant based on the valuation established in the letter of intent. By applying a multiple of 1.75 times the yearly recurring revenue, the Hexion venture reached an implied enterprise value of approximately R5.8 million.

[80] Based on the foregoing, the retransfer of Cybersmart's 50% equity stake at nil consideration constitutes a disposal of approximately R2.9 million without shareholder value, which the applicant contends can only be characterised as an extraordinary transaction.

[81] The respondents, by their own admission, seek to sell of the profitable divisions of the Company and then ultimately the Company itself. To do so without the requisite shareholder oversight would prima facie constitute an unfair trammelling of the applicant's rights as a minority shareholder.

[82] It bears repeating that it is not for this court to determine whether the transactions are reserved matters in terms of the MOI and the SHA. All that the applicant need establish at this stage is that it has a prima facie right to the relief which it seeks, though it may be open to some doubt

Interim interdictory relief – Applicable legal principles

[83] The question which this court need determine is whether the applicant has met the lower threshold of a prima facie right and the further requirements for an interim interdict, either in terms of section 163 of the Companies Act or in terms of the common law.

Section 163(2) of the Companies Act

[84] As the holder of 33.511% of the issued ordinary shares of Cybersmart, Lightmap holds a blocking vote on reserved matters under the MOI and the SHA.

[85] In *Grancy Property Ltd v Manala and Others*[9] (*Grancy),* the Supreme Court of Appeal (the "SCA") held that where a shareholder asserts that corporate steps breach entrenched approval rights in a manner that is oppressive or unfairly prejudicial to it, the shareholder has direct standing.[10]

[86] The court in *Grancy* emphasised that in determining whether the conduct complained of is oppressive, unfairly prejudicial or unfairly disregards the interests of the minority shareholder it is the conduct itself and the effect which it has on other members of the company that the court must examine, and not the motive behind the conduct complained of.[11]

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[9] *Grancy Property Ltd v Manala and Others* 2015 (3) SA 313 (SCA).
[10] Ibid paras 21- 27.
[11] Ibid para 27.

[87] Section 163(2) of the Companies Act, which is headed 'Relief from oppressive or prejudicial conduct or from abuse of separate juristic personality of company', confers a broad power on this court to make *'any interim of final order it considers fit'*.

[88] In terms of section 163, a shareholder or a director of a company may apply to a court for relief if-

> '(1) (a) any act or omission of the company, or a related person, has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant.
> (b) the business of the company, or a related person, is being or has been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant; or
> (c) the powers of a director or prescribed officer of the company, or a person related to the company, are being or have been exercised in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant.'

[89] The court considering such an application may, inter alia *'make an order restraining the conduct complained of.'*[12] The broad remedial nature of the section, which is focused on unfairly prejudicial or oppressive conduct, permits the court to grant any order it considers just and equitable to address the mischief.[13]

[90] A conspectus of the evidence suggests that Cybersmart has been systematically excluding the applicant from communications and decision making.

[12] In terms of section 163(2)(*a*).
[13] *Grancy* at paras [27] to [32].

[91] Concerning incidents include significant unauthorised payment of R1.5 million to Mr. Forssman, unratified salary increases, and the withdrawal of over R13 million from a reserve account without the requisite 75% resolution.

[92] The evidence adduced by the applicant suggests that these actions are compounded by a lack of institutional oversight, evidenced by the failure to form an Audit and Risk Committee for eighteen months and persistent delays in key performance reporting.

[93] The applicant describes a pattern of deliberate marginalisation where Mr. Fialkov (on behalf of the applicant) who appears to have been an integral part of the Company for three decades, was removed from formal communication channels and excluded from critical strategy meetings regarding the Hosting Disposal.

[94] The second respondent's refusal to share draft purchase agreements until they are finalised is viewed by the applicant as a strategy to present transactions as a *fait accompli*, similar to the previous unwinding of the Hexion JV.

[95] A further notable complaint is that the management's current strategy prioritises short term financial gains over sustainable shareholder value, by, for example, disposing of profitable divisions while key leadership roles such as the Chief Technical Officer and Head of Finance remain vacant. The applicant describes this as a piecemeal liquidation of the Company rather than a sound turnaround strategy.

[96] The financial impact of the Hexion venture dissolution alone exceeds the contractual thresholds that trigger entrenched minority protection rights, yet these protections were allegedly ignored.

[97] Section 163 is no longer limited to oppressive conduct or conduct which is '*unfairly prejudicial, unjust or inequitable',* but now includes conduct '*that unfairly disregards the interests of, the applicant*' indicating a far wider basis upon which relief may be sought.

[98] The introduction of a new ground in section 163 (as compared to the old section 252, namely conduct '*that unfairly disregards the interests of the applicant*' indicating a far wider basis upon which relief may be sought – in other words, the conduct now need not be limited to oppressive conduct or conduct which is '*unfairly prejudicial, unjust or inequitable*'.

[99] By treating matters that require a seventy five percent majority as ordinary resolutions, the respondents appear, at least prima facie, to be attempting to circumvent the constitutional safeguards found in the Shareholders' Agreement and the Memorandum of Incorporation, which may well constitute unfair prejudice under the Companies Act.

Interim interdictory relief in terms of the common law

[100] Turning now to the common law requirements for interim interdictory relief. The requirements are well established and will be dealt with individually below.

Prima facie right

[101] The first requirements are the establishment of a prima facie right, even if thought to be open to some doubt.

[102] On these papers, which will be amplified before the hearing of Part B, it is clear that there is a genuine dispute regarding whether the transactions constitute reserved matters in terms of the MOI and SHA.

[103] Regarding the Hosting Disposal, the IC considered the matter sufficiently material to impose multiple conditions and expressly noted that the issue of whether the transactions are reserved matters required board level or legal consideration.

[104] The CEO report recorded the applicant's stance and recorded that Cybersmart was 'in the process of getting clarity' on whether the sale of a portion of the business required a special resolution.

[105] The respondents contend that any right which the applicant may have to the ultimate relief sought can only arise when the applicant may exercise that right.

[106] This contention cannot be sustained. The applicant as a minority shareholder has a right to be protected as provided for the in the MOI, SHA, and the Companies Act. The court hearing Part B will determine whether the transactions are reserved matters, however, it is necessary for the status quo to be preserved and for further implementation to be halted to give effect to such rights.

[107] The interpretative exercise is best left to the court hearing Part B. I am however persuaded, at least prima facie, that the Hosting Disposal and the Hexion JV unwinding, based on all the reasons and upon a careful consideration of the evidence referred to above, is not in the normal and ordinary course of business, and that the applicant has accordingly established a prima face right to the relief it seeks in Part B.

[108] Put differently, in my view the applicant had demonstrated a *bona fide* and prima facie enforceable right not to have reserved matters implemented without a special resolution.

Reasonable apprehension of irreparable harm

[109] The Constitutional Court in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others*[14] confirmed the test for threatened irreparable harm in the context of interim relief. An applicant need only demonstrate a well-grounded apprehension of harm that cannot adequately be compensated by damages or otherwise reversed by final relief.

[110] The relief is necessary to prevent the disputed transactions from being implemented or further implemented and completed, which, if the Part B relief is ultimately granted, would result in the infringement of the applicant's minority protection rights.

[111] As alluded to above, the respondents' refusal to provide a status quo undertaking served to reinforce the applicant's well-grounded fear that they are intent with proceeding with the transactions to its likely detriment.

[112] According to the applicant, the Hosting Disposal would increase Cybersmart's loss sevenfold, and the Hexion JV unwinding will result in the 'surrender of an operationally integrated venture with committed revenue,

[14] *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* 2023 (4) SA 325 (CC).

contributed expertise and significant capital value, in exchange for equipment at depreciated cost.'

[113] The crystallisation of third-party rights once the transactions are implemented, the migration of customer, transfer of employees and restructuring of systems would render any subsequent relief hollow.

[114] The respondents deny that the applicant faces irreparable harm, contending that it seeks to interdict a proposed disposal where no such disposal exists. I cannot agree. The LOI is the courting phase which by all accounts will culminate in a final agreement to dispose of the Company's hosting business. If this were not so, the respondents would not hesitate to furnish the requested undertaking.

[115] I am satisfied, on a careful consideration of the evidence and arguments presented in this matter, that the applicant has established that it has a reasonable apprehension that it may suffer irreparable harm if the relief sought is not granted, as the implementation of the transaction without shareholder approval will mean that its minority shareholder right to approval cannot be restored, such as by a damages claim.

Balance of convenience

[116] The respondents in their Heads of Argument argued that the applicant will not be prejudiced if Cybersmart is permitted to engage in non-binding negotiations 'and to formulate an agreement with Hexion and/or Host Africa and then present same for the requisite voting approval, which Cybersmart contends is an ordinary resolution'.

[117] It is clear from this contention that the respondents will proceed with the proposed transactions and that they will present them for approval by ordinary, and not special resolution. This is precisely the prejudice which the applicant contends that it will suffer if interim relief is not granted.

[118] Having weighed the prejudice to the applicant if the interdict is refused against the prejudice to the respondents if it is granted, I am persuaded that the balance clearly favours the applicant. No cogent evidence of any prejudice to the respondents has been placed before the court.

[119] There is no evidence to suggest that the interim relief will permanently scupper or in any way imperil the potential sale to Host Africa. Host Africa have approached Cybersmart on three occasions, each time with a higher offer, and by all accounts they are committed to proceeding with transaction.

[120] On the respondents' version, the unwinding has commenced and there is no reason to believe it will not be completed.

[121] By contrast the refusal of relief in terms of Part A would allow the implementation of transactions which are on the applicant's version unlawful and irreversible. The respondents have failed to cast any serious doubt on the applicant's version that its right is secured and sought to be protected in the MOI and SHA.

[122] The applicant sought to obtain an undertaking and to have matters resolved by the appointment of a joint decision-maker, to no avail. With a shareholding of only 33.511%, the applicant cannot block ordinary resolutions which the respondent has stated it will present to implement the transactions.

[123] A claim for damages is not an adequate alternative remedy as the consequences of the transactions are irreversible, including a five-year trade restraint and the migration of the applicant's hosting customer base.

[124] As to the Hexion JV unwinding, as pointed out by the applicant an order directed at Cybersmart cannot compel the other parties to the JV to re-enter the JV. It appears at this interim stage that it is not in the ordinary course of business if Cybersmart exits JV with a R3million loss.

[125] In *Jackson v Louw,*[15] the court, in deciding whether a disposition was made in the ordinary course of business, found that the court must ask itself whether the disposition was one which would normally be entered into between solvent business persons, or put differently, whether the disposition conforms with ordinary business methods adopted by solvent businessmen, or whether it 'would not to the ordinary man of business appear anomalous, un-businesslike or surprising,' and '[i]t means that the transaction must fall into place as part of an undistinguished common flow of business done, so that it should form part of the ordinary course of business as carried on, calling for no remark and arising out of no special situation'.[16]

[126] If the Hosting Disposal proceeds, Cybersmart cannot re-open or return to hosting operations for five years. This too may well constitute business not in the ordinary course.

[127] The applicant's case is that the catastrophic infrastructure failure risk cannot be compensated in damages, and that any damages would ultimately be awarded against Cybersmart which would diminish the value of the applicant's shareholding. Because these infrastructure risks are catastrophic, they fall

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[15] *Jackson v Louw N.O and Another* (CA&R 149/17) [2018] ZAECGHC 141; [2019] 2 All SA 145 (ECG) (13 December 2018).

[16] *Ibid* at para 60.

outside the scope of simple monetary compensation, and contends, correctly in my view, that the remedy for a void act is prevention, not compensation.

[128] The result of the transaction, permitted to proceed unhindered, will be that the applicant is unfairly prejudiced by not being permitted to exercise its blocking vote in terms of the SHA and MOI on transactions which at least prima facie appear to be reserved matters in terms thereof.

Conclusion

[129] I am persuaded that the applicant has demonstrated, prima facie, that it is entitled to relief in Part B, and that there is a reasonable risk that unfair prejudice will ensue if the urgent relief in part A is refused. The applicant has therefore established that these rights should be protected pending determination of Part B

[130] In all the circumstances, I am satisfied that the applicant has made out a proper case for the relief sought in part A of the notice of motion.

Costs

[131] Turning now to costs. The respondents proposed that costs should be costs in the cause. The applicant contended that costs should rather stand over for later determination.

[132] The court hearing Part B will ultimately determine the merits of the application, and as the issues in Part A are inextricably linked with those in Part B, will have a fuller picture of the evidence and competing arguments, once the papers have been supplemented and the issues fully ventilated.

[133] In the circumstances I am of the view that the fairest order would be for the costs of this application, including the costs of the rule 30 application which did not proceed due to the applicant abandoning their proposed amendment on the first day of the hearing, to stand over for later determination.

Order

[135] The following order shall issue:

(a) Pending the hearing of Part B of the application as set out in paragraph 4 of the Notice of Motion, on a date to be determined by the Registrar, the first and second respondents are interdicted and restrained from implementing, giving effect to, concluding, performing or taking any further steps in relation to:

i. The proposed disposal by the First Respondent of its Hosting Division to Host Africa (Pty) Ltd pursuant to the letter of intent dated 12 February 2026 or any updated letter of intent, agreement or arrangement ("the Hosting Disposal").

ii. The unwinding or termination of the joint venture between the First Respondent and Hexion Data Storage (Pty) Ltd, together with any transfer, disposal, compromise, release, write-off, assumption of liabilities, or restructuring pursuant thereto ("the Hexion JV Unwinding").

(b) All issues of costs, including the costs of the rule 30 application brought by the first and second respondents, shall stand over determination by the court hearing Part B of the application.

M HOLDERNESS

JUDGE OF THE HIGH COURT

<u>Appearances</u>

For Applicant:	Adv Irish SC (Heads of argument and hearing on 15 April 2026) and Adv L Choate
Instructed by:	Webber Wentzel (Per: Ms. J Chong)
For Respondents:	Adv G Woodland SC (Heads of argument and hearing on 29 April 2026) and Adv MA McChesney
Instructed by:	Gillan & Veldhuizen Inc. (Per: Mr. PJ Veldhuizen)