

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA



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

Case Number: **042191/25**

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

20 April 2026

DATE

SIGNATURE

In the matter between:

ALMAR INVESTMENTS (PTY) LTD

Applicant

and

MAREMANE

MANGANESE

(PTY)

LTD

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

Introduction

- [1] This is the return date of a provisional liquidation order granted on 16 September 2025.

Applicant's case

- [2] The application is premised on a demand, in terms of section 345(1)(a) of the Companies Act 61 of 1973, (the Act) served at the respondent's registered address on 17 January 2025 for payment of the amount of R 123 054 247, 62 being monies due and owing for mining services, crushing and screening and logistical services rendered at the special instances and request of the respondent.
- [3] The respondent neglected to pay the amount within three weeks and is, as a result, deemed unable to pay its debts and liable to be liquidated in terms of section 344(f) of the Act.

Respondent's case

- [4] The respondent opposes the application and relies, *inter alia*, on a Memorandum of Agreement ("MOU") between the shareholders of the respondent, Matsapa Trading 529 Close Corporation ("Masapa") and Vector Mining Group Propriety Limited ("Vector Mining") signed on 21 September 2021. The applicant denies that Matsapa is a shareholder in the respondent and attached a shareholders' agreement, which was received from the attorney

acting for the respondent herein, on 4 April 2022. The shareholder's agreement is between Uthando Lwethu Investments (Pty) Ltd and Vector Mining in their capacities as 50% shareholders each in the respondent. I pause to mention that the MOA defines "*Shareholders Agreement*" as follows: "*means the agreement, to be entered into pursuant to this Agreement, which, inter alia, governs the relationship between the shareholders for the time being of the JV Company.*" (own emphasis). The JV Company is a reference to the respondent.

[5] Be that as it may, both parties referred extensively to Annexure "A" attached to the MOA. In Annexure "A", Vector Mining, or one of its subsidiary companies, the applicant, will mine the ore resources and will bill the respondent for all the costs of mining, crushing, screening, logistics, and P&G costs, plus a 25% markup. The applicant's invoices for the mining costs will be paid from proceeds received for the iron and/or manganese ore mined.

[6] Against the aforesaid background, the respondent raised several points *in limine*.

Points in limine

First point in limine: Arbitration clause

[7] The respondent averred that the MOA has an arbitration clause, which must first be exhausted prior to the hearing of the application. As set out *supra*, the MOA was concluded between Masapa and Vector Mining, and although the applicant is mentioned in Annexure "A" attached to the MOA, the applicant is not a party to the agreement. This point has no merit.

Second point in limine: Non-compliance with section 345 of the Companies Act, 1973

[8] Section 345(1)(a) reads as follows:

"(1) A company or body corporate shall be deemed to be unable to pay its debts if-

(a) a creditor, by cession or otherwise, to whom the company is

indebted in a sum not less than one hundred rand then due-

(i) *has served on the company, **by leaving the same at its***

***registered office**, a demand requiring the company to pay the sum so due; or...*

and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.; or..”

[9] The respondent has two directors, Petrus Roets (“Roets”) and Kholisile Knowledge Komanisi (“Komanisi”), the deponent to the respondent’s answering affidavit. The respondent’s registered address is situated at 6[...] R[...] P[...], Commercia, Midrand, Gauteng. On 17 January 2025, the sheriff served the demand in terms of section 345(1)(a) on Roets at the respondent’s registered address.

[10] Komanisi denied that service at the respondent’s registered address suffice and contended that the demand should also have been served on him in his capacity as co-director of the respondent.

[11] The contention is ill-conceived, not in accordance with the provisions of section 345(1)(a), and cannot be upheld.

[12] Komanisi further contended that the demand failed to specify an amount, cause, and due date with sufficient particularity. The demand reads as follows:

“2. *We confirmed that Maremane Manganses (Pty) Ltd with registration number 2021/418545/07 (“the Company”), is truly and lawfully indebted to our Client in the amount of R123 054 247.62 (One hundred and Twenty Three Million Fifty Four Thousand Two and Forty Seven Rand and Sixty Tow Cents) (“Outstanding Debt”) for mining services, crushing and screening and logistical services rendered at this special instance and request of the Company at the Turner mining operations and in terms of the agreement between the parties. The Outstanding Debt to our Client is evidenced by the Certificate of Balance confirming the amount of the Outstanding Debt which is*

due and signed by the managing director of our Client together with the statement and supporting invoices annexed hereto as Annexure "A".

3. *We confirm that the Outstanding Debt is currently due, owing and payable to our Client and accordingly it is our instructions to demand payment for the full Outstanding Debt from the company in terms of section 345 of the Companies Act (as amended), as we hereby do."*

[13] The demand *prima facie* contains all the necessary averments to sustain a claim against the respondent. This contention has similarly no merit and does not assist the respondent in its opposition to the relief claimed herein. Insofar as the "*cause*" for the claim is concerned, both parties are *ad idem* that the terms of Annexure "A" apply to the services that were rendered by the applicant.

[14] Lastly, Komanisi pointed out that Roets is a director of both the applicant and respondent and, as such, acted contrary to section 75 of the Companies Act, 71 of 2008, in receiving the demand. Section 345(1)(a) only requires the demand to be served at a company's registered address and does not specify on whom the demand may or may not be served. To his credit, Mr Njeza, counsel for the respondent, did not rigorously pursue this point.

Mertis

A portion of the claimed amount has prescribed and the amount is disputed

[15] The respondent averred, with reference to the invoices attached to the founding affidavit, that the bulk of the claimed amount has prescribed in terms of the provisions of section 11(d) read with sections 12, 14, and 15 of The Prescription Act, 68 of 1969, in that the amounts are older than three years. According to the respondent, only an amount of approximately R 795 403, 72 falls within the three-year period, which amount is *bona fide* disputed on reasonable grounds. The *bona fide* dispute on reasonable grounds is premised on Komanisi's general statement that the amounts are exorbitant, that the invoices lack detail, and that he, due to the aforesaid, never signed any of the invoices. Apparently, the services rendered by the applicant were also not up to

standard, and some or other undetermined amount should be deducted from the R 795 403, 72.

[16] The applicant pointed out that the claimed amount has never been disputed and that it appears in the financial statements of the respondent on 28 February 2023 and in its statement of affairs dated 15 October 2025.

[17] Furthermore, clause 6 of Annexure “A” stipulates that the invoices will be paid from the proceeds received from the disposal of the iron and/or manganese ore mined. The first proceeds were received by the respondent in September 2024.

Legal principles and discussion

[18] In order to obtain a final liquidation order, an applicant must satisfy the court on a balance of probabilities that a case has been established to confirm the provisional order. Should disputes of fact arise, the colloquially referred to *Plascon Evans* rule applies. [*Paarwater v South Sahara Investments (Pty) Ltd* [2005] 4 All SA 185 (SCA) at para [3] AND [4]]

[19] The respondent does not deny that the applicant rendered services and issued invoices in respect of the services for R 123 054 247, 62. Insofar as the prescription point is concerned, prescription, in terms of section 12(1) of the Prescription Act, 68 of 1969, only commences once the debt is due. In terms of clause 6 of Annexure “A”, the debt would be due once the respondent receives proceeds from the disposal of the mined ore. The applicant states that the first proceeds were received in September 2024, whereas Komanisi, in an affidavit attached as annexure “KK2” to the answering affidavit, stated that the first proceeds were received on 10 October 2024.

[20] In the result, the prescription point has no merit.

[21] The respondent’s denial that it owes money to the applicant is gainsaid by the invoices that were delivered without any objection being raised by the respondent, the fact that the amount is contained in the respondent’s financial statements, and in the statement of affairs prepared by the provisional liquidator.

[22] The fact that the amount is due and owing is strengthened by the respondent's failure to explain which portion of the amount is not owed and on what basis. A real, genuine and *bona fide* dispute of fact exists only when the party who purports to raise the dispute has in his/her affidavit seriously and unambiguously addressed the fact so disputed. [See: *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008(3) SA 371 (SCA)]

[23] The respondent has failed dismally to raise a serious and unambiguous dispute in respect of the averments contained in the applicant's founding affidavit.

Conclusion

[24] In the result, I am satisfied that the applicant has established on a balance of probabilities that it is a creditor of the respondent as envisaged in section 345(1)(a) of the Companies Act, 1973, that the respondent is unable to pay its debts and that the applicant is entitled to a final liquidation order in terms of section 344 of the Act.

Order

1. The respondent is placed under final winding up.
2. The costs of the application is costs in the winding up.

JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

DATE OF HEARING : 10 March 2026

DATE OF JUDGMENT : 20 April 2026

APPEARANCES

Counsel for the applicant: Adv. JW Kloek

Instructed by: Jooste Peters incorporated

Counsel for the respondent: Adv. A Njeza

Instructed by : Poswa incorporated

